

SO ORDERED: June 28, 2012.



A handwritten signature in black ink, reading "Basil H. Lorch III".

**Basil H. Lorch III**  
**United States Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE:	)	
	)	
KMC REAL ESTATE INVESTORS, LLC,	)	CASE NO. 11-90930-BHL-11
	)	
Debtor.	)	

**ORDER CONFIRMING SECOND AMENDED PLAN  
OF REORGANIZATION AS SUPPLEMENTED AND IMMATERIALLY MODIFIED**

On May 31, 2012, the Debtor's Second Amended Plan of Reorganization [Document No. 171] (as supplemented and modified prior to the hearing date<sup>1</sup> and further modified herein, the "Plan") filed by KMC Real Estate Investors, LLC (the "Debtor" or "KMCREI") on March 13, 2012, came before the Court for confirmation (the "Confirmation Hearing"). Upon consideration of the Plan, the Ballot Report [Document No. 238-1] and all oral representations, arguments,

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<sup>1</sup> The Debtor filed a supplement and several immaterial modifications to the Second Amended Plan of Reorganization on [Document Nos. 172, 240, and 241] in addition to the oral modification made in open Court during the May 31, 2012 Confirmation Hearing with respect to treatment the Class 2 Claim held by RL BB Financial, LLC.

testimony, documents, filings and evidence presented at or in connection with the Confirmation Hearing, the COURT HEREBY FINDS that the Plan should be confirmed.

The Court specifically finds as follows:

A. The Plan meets all applicable provisions of § 1129 of title 11 United States Code (the “Bankruptcy Code”).

B. The proponent of the Plan has complied with all applicable provisions of the Bankruptcy Code;

C. The Plan has been proposed in good faith and not by any means forbidden by law;

D. Any payment made or promised by the proponent, by the Debtor, or by any person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the case, or in connection with the Plan and incident to the case, have been disclosed to the Court; and

a. any such payment made before confirmation is reasonable; or

b. if such payment is to be fixed after confirmation of the Plan, such payment is subject to Court approval as being reasonable;

E. The proponents of the Plan have sufficiently disclosed the identity and affiliations of any individual proposed to serve after confirmation of the Plan in connection with the Debtor’s business, and employment of said individuals is consistent with the interests of creditors and with public policy;

F. The proponents of the Plan have sufficiently disclosed the identity of any insider who will be employed by the reorganized Debtor and the nature of the compensation for such insider;

G. No regulatory commission has jurisdiction over the rates of the Debtor;

H. With respect to each class, each holder of a claim or interest of such class has accepted the Plan, or will receive or retain under the Plan, on account of such claim or interest, property of a value as of the Effective Date<sup>2</sup> of the Plan that is not less than the amount such holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

I. Pursuant to the Plan, claims of creditors shall be satisfied as follows:

Class	Impairment	Treatment
Class 1 - Priority Claims	Unimpaired	Each holder of an Allowed Class 1 Priority Claim will be paid in full, in cash, upon the later of the Effective Date or the date on which such Claim is allowed by a Final Order.
Class 2 – Secured Claim of Rialto	Impaired	Upon the Effective Date, the holder of the Allowed Class 2 Claim will receive a promissory note in the principal amount of \$16,000,000.00 (“ <u>Rialto Note A</u> ”). Rialto Note A will remain secured by the Rialto Collateral, bear annual interest at the fixed rate of two (2) points above the prime rate published by the Wall Street Journal in effect on the Effective Date, and the obligations thereunder will mature 240 months after the Effective Date. The monthly payment obligations owing to Rialto under Rialto Note A will be determined based on a 360-month amortization.
Class 3-A – Allowed liquidated and non-contingent Unsecured Claims not entitled to priority	Impaired	On the date that is thirty (30) days after the Effective Date, the Debtor will commence making cash distributions to holders of Allowed Class 3-A Claims representing each such holder’s <i>pro rata</i> portion of regular payments totaling \$6,725.00 per month for a period of sixty (60) months.
Class 3-B – Unsecured Claim of DivLend	Unimpaired	The Debtor’s liability to DivLend under the subject guaranty shall remain intact following Confirmation. The payment obligations owing to DivLend shall be satisfied according to the plan of reorganization filed by KMC in its bankruptcy case.
Class 3-C – Unsecured Claim of Rialto	Impaired	Upon the Effective Date, the holder of the Allowed Class 3-C Claim will receive a cash payment of \$500,000.00 from the Debtor on account of its Allowed Class 3-C Claim. Upon receipt of the cash payment, the Allowed Class 3-C Claim against the Debtor shall be forever released and discharged.
Class 3-D – Unsecured Subrogee Claims	Unimpaired	Holders of Class 3-D Subrogee Claims shall retain their subrogation rights against the Debtor as liquidated pursuant to their respective performance under the pre-petition guaranty agreement between the Class 3-D claimant the holder of the Class 2 Secured Claim. With respect to each such right of subrogation, holders of Class 3-D Subrogee Claims shall continue to be bound by their waiver of subrogation until “all of the Indebtedness has been satisfied in full,” as provided in each pre-petition guaranty agreement.
Class 4 – Membership Interests in KMCREI	Impaired	On the Effective Date, holders of Class 4 Interests shall have their membership interests canceled.

<sup>2</sup> Capitalized terms not defined herein adopt the meanings ascribed in the Plan.

J. At least one (1) class of claims that is impaired under the Plan has accepted the Plan, and the determination of that class' acceptance was made without including any acceptance of the Plan by an insider holding a claim in said class.

NOW, THEREFORE, based upon the above findings of fact, IT IS HEREBY ORDERED:

1. Confirmation. The Second Amended Plan of Reorganization, including all supplements, exhibits and modifications thereto, filed by KMC Real Estate Investors, LLC, be, and hereby is, **CONFIRMED**. The terms of the Plan, all exhibits, supplements and modifications thereto, are incorporated by reference into and are an integral part of this Confirmation Order. The failure to include or specifically reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision.

2. Objections. All objections to confirmation of the Plan that have not been withdrawn, waived or settled as set forth herein are overruled on the merits (specifically, the *RL BB Financial LLC Objections to Debtor's Second Amended Plan of Reorganization* [Document No. 221] and *RL BB Financial, LLC's Supplemental Objections to Debtor's Second Amended Plan of Reorganization, As Modified* [Document No. 252] (together, the "RL BB Objections") for the reasons stated on the record by the Court at the Confirmation Hearing and as set forth as findings of fact and conclusions of law specifically listed below.

3. Findings of Fact and Conclusions of Law. The Court makes the following findings of fact and conclusions of law with regard to the Plan and any and all objections thereto, and specifically, the RL BB Objections as defined above. The Court accordingly finds, by a preponderance of the evidence, as presented at the Confirmation Hearings and further

demonstrated throughout the course of the KMC and KMCREI bankruptcy proceedings, as follows:

- a. The Plan is feasible. The combination of the cash infusion into KMC and KMCREI, the completion of the hospital facility, combined with the ongoing operations of KMC and its ability to make rental payments to KMCREI, all pursuant to their respective Plans, sufficiently demonstrates the feasibility of the KMCREI Plan;
- b. The Plan does not discriminate unfairly, and is fair and equitable, with respect to RL BB and every other class of claims and interests that are impaired under, but have not accepted, the Plan. Specifically, RL BB will retain its liens on the real estate owned by KMCREI which secures RL BB's Class 2 Claim under the Plan and will receive on account of its Class 2 Claim deferred cash payments totaling at least the amount of its Class 2 Claim, of a value, as of the Effective Date, of at least the value of RL BB's interest in estate's interest in such property;
- c. That the term and rate of interest with respect to the deferred cash payments toward RL BB's Class 2 Claim, with such rate as adjusted by the Court at the Confirmation Hearings and orally modified by KMCREI to comply with the Court's adjustment, conform with *Lee M. Till v. SCS Credit Corporation*, 541 U.S. 465 (2004); and
- d. The separate classification of RL BB's unsecured deficiency Class 3C Claim from general unsecured claims included in Class 3A is appropriate and justified under 11. U.S.C. §1122 due to the different nature of the claims included in Class 3A, which are comprised of claims for goods or services provided to KMCREI or KMC and are held by claimants KMC and KMCREI may have ongoing business

relations with, as compared to RL BB's Class 3C Claim, comprised solely of the deficiency balance on its secured claim. Further justifying the appropriateness of separately classifying RL BB's Class 3C Claim from the general unsecured claims in Class 3A are the guaranties RL BB holds executed by a number of doctors securing RL BB's claims against KMCREI and the large sums already collected, and likely yet to be collected, on said guaranties. For these reasons, the Court further finds the Plan's treatment of RL BB's Class 3C Claim is fair and equitable, and does not result in unfair discrimination.

4. Terms of Existing Injunctions or Stays. All injunctions or stays provided for in the Debtor's chapter 11 case under Bankruptcy Code §§ 105 or 362, or otherwise, and in existence on the date of the Confirmation Hearing, shall remain in full force and effect until the earlier of (i) entry of a Final Order specifically terminating the injunction or stay, or (ii) the Effective Date.

5. Retention of Jurisdiction. Pursuant to Bankruptcy Code §§ 105(a) and 1142, and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction as provided in the Plan over all matters arising out of, arising in, and related to the Debtor's bankruptcy case and the Plan to the fullest extent permitted by law, including, among other items and matters, jurisdiction over those items and matters set forth in the Plan.

6. Final Order. This Confirmation Order is a **final order** and the period in which an appeal must be filed shall commence upon the entry hereof.

SO ORDERED.

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