

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

CHAPTER 11

SHOTWELL LANDFILL, INC.

CASE NO. 13-02590-8-SWH

Debtor.

**OBJECTION TO AMENDED CONSOLIDATED PLAN AND DISCLOSURE
STATEMENT FILED BY LSCG FUND 18, LLC**

NOW COMES Shotwell Landfill, Inc. and objects to the Amended Consolidated Plan filed by LSCG Fund 18, LLC ("LSCG") on July 16, 2014 (Docket # 665) and the Amended Disclosure Statement filed July 18, 2014 (Docket # 674) ("Plan" and "Disclosure Statement").

Objections to Plan

The Debtor objects to the Plan filed by LSCG as follows:

1. The Plan provides for the appointment of a Liquidating Trustee to manage the Debtor. The Plan fails to identify such individual, saying only that such individual shall be an attorney. The Plan fails to meet the requirements of 11 U.S.C. 1129 (a)(5).
2. The Plan was not proposed in good faith. Instead, the Plan is the culmination of a concerted attempt to force a liquidation of the Debtor to the detriment of all creditors other than LSCG. The Plan fails to meet the requirements of 11 U.S.C. 1129(a)(3).
3. The Plan proposes an unworkable and unreasonably short liquidation process. The result of the proposed process would be to eliminate all potential buyers other than Waste Industries. Upon information and belief, LSCG began discussing and plotting the liquidation of the Debtor with Waste Industries almost immediately after LSCG purchased the debt from BB&T, and has received material aid from Waste Industries in violation of at least one non-disclosure agreement.
4. The Plan calls for an auction of all of the Debtors' assets, but fails to explain how proceeds will be allocated between those assets which are LSCG's collateral, and those which are not.
5. The Plan artificially defines "Effective Date" as a date many months after confirmation and following the proposed auction.
6. The Plan provides for payment of administrative expenses on the artificially defined "Effective Date" only after an auction, which will be many months after confirmation, rather than on the true effective date of the Plan as that term is used in 11 U.S.C. 1129(a)(9)(A). LSCG may not alter the language and intent of 1129(a)(9)(A) simply by creating an artificial definition of "Effective Date."
7. The Plan treats class 2 as unimpaired, yet does not pay class 2 until many months after confirmation.

8. The Plan attempts to treat classes 4, 6, 8, and 9 as “impaired” despite the providing that the holders of such claims will be paid by LSCG on or before the “Effective Date.”

9. The Plan provides for the “purchase” of the claims of classes 4, 6, 8, and 9 without requiring the consent of such claim holders.

10. The Plan proposes to pay Class 7 in full from the sale proceeds, regardless of the amount for which the collateral of class 7 sells.

11. The Plan attempts to interpret and enforce the “Memorandum Agreement” between David Cook and David King, despite the fact that the enforceability of such agreement has not yet been ruled upon.

12. The Plan fails to treat creditors and equity holders fairly.

Objections to Disclosure Statement

The Disclosure Statement is defective and fails to provide adequate information in that it fails to disclose the Plan’s defects, as described above. The Disclosure Statement is also deficient as follows:

1. The Disclosure Statement fails to disclose LSCG’s discussions, cooperation, and agreements with Waste Industries. The Disclosure Statement further fails to disclose that discussions with Waste Industries and efforts to force the Debtors into liquidation have been ongoing since shortly after LSCG purchased the debt.

2. The Disclosure Statement, on page 4, describes 5 “appraisals” (incorrectly referring to one valuation done by an unlicensed individual as an appraisal). The Disclosure Statement falsely states that “the additional value provided by the Affiliated Debtor’s other than Shotwell is minimal.” That statement is contradicted by every one of the five “appraisals.”

3. The Disclosure Statement fails to disclose that three of these “appraisals” list a separate, lower value for LSCG’s primary collateral. In particular, the Disclosure Statement fails to disclose it that the last appraisal was done for Womble, Carlyle, Sandridge, & Rice, LLP and shows a value for the landfill real estate of only \$12,389,500. LSCG should disclose that it is giving itself a secured claim in excess of its lawyer’s own appraiser’s valuation.

4. The Disclosure Statement fails to disclose (as required by this Court’s Order dated May 1, 2014) that by consolidating the debts of all creditors into one Plan, and treating unsecured creditors equally regardless of which Debtor owed the debt in question, the Plan could prejudice the creditors of any particular Debtor. On page 5, the Disclosure Statement states this concern with respect to the Debtors’ Plan, but then fails to state that the same is true with respect to LSCG’s Plan. That concern is much more important with regard to the LSCG Plan, since, unlike the Debtors’ Plan, LSCG does not propose to pay creditors in full.

5. The Disclosure Statement inexplicably states, on page 14, that general unsecured claims total \$360,000. There is simply no justification for this figure. Currently Allowed Unsecured Claims far exceed this figure. Unsecured Creditors are misled by this Disclosure Statement into thinking that they will get a much larger pro-rata share of any distribution.

6. The Disclosure Statement fails to disclose the possible causes of action against David Cook, LSCG, and Waste Industries. The Disclosure Statement fails to alert creditors that the LSCG Plan fails to specifically preserve such actions.

7. By Order dated May 1, 2014, this court ruled that a disclosure statement should contain a separate liquidation analysis for each debtor. The ruling was made so that creditors would be able to see their projected recovery if the Debtors were liquidated separately, rather than a consolidated manner. The seven Liquidation Analysis' attached as Exhibit B to the Disclosure Statement are inconsistent, misleading, and nonsensical. For example:

a) The "Expected Recovery" (meaning sale proceeds) for the combined Debtors is listed as \$21,214,487. The same number is used on each of the six liquidation analyses for each separate Debtor. A separate liquidation analysis (as this court has previously ordered is required) is meaningless if each separate analysis assumes that every dollar of sale proceeds would be generated by the liquidation of each separate debtor.

b) The claim of LSCG on the first "All Debtors" Liquidation analysis is listed as \$13,728,012.15. However, the claim of LSCG as to King's Grading is listed as \$14,599,106.96. How could the combined claim for all Debtors be less than the claim for just one of the Debtors?

8. The Debtors reserve the right to present further objections at argument following LSCG's presentation of evidence at the confirmation hearing.

WHEREFORE, The Debtor requests that LSCG's Disclosure Statement not be approved and that confirmation of LSCG's Plan be denied.

This the 15th day of August, 2014.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing has been filed via CM/ECF and served upon each of the parties listed below by placing copies of the same in the United States Mail, postage prepaid or electronically as indicated:

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This the 15th day of August, 2014.

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