

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

In Re:

Chapter 11

TALLAHASSEE INDOOR SHOOTING
RANGE, LLC,

Case No: 16-40407-KKS

Debtor.

**AMENDED OBJECTION TO AMENDED DISCLOSURE STATEMENT, AMENDED
SMALL BUSINESS PLAN, AND INCORPORATED MEMORANDUM OF LAW**

Creditor Ray MacInnes, by and through undersigned counsel, hereby objects to the Amended Disclosure Statement and Amended Small Business Plan and states the following in support.

1. The amended disclosure statement does not provide “adequate information” as required by 11 U.S.C. § 1125(a). As such, the disclosure statement should not be confirmed. Because the disclosure is inadequate, the amended small business plan should not be confirmed.

2. Mr. MacInnes’s claims arise out of a promissory note and purchase agreement between him and Tallahassee Indoor Shooting Range, LLC (the “Range”).

3. After the Range failed to make payments as required, Mr. MacInnes instituted an action in the Northern District of Florida.

4. This case was set for trial on September 6, 2016. On August 26, 2016, the Range filed a Suggestion of Bankruptcy, staying the case.

5. In response to the bankruptcy filing, Mr. MacInnes timely filed a Proof of Claim in the amount of \$299,218.75.

6. Mr. MacInnes has now received the Amended Disclosure Statement that the Range is seeking to be confirmed.

7. Mr. MacInnes objects to the confirmation of this disclosure statement and plan as it fails to adequately inform him as to how his claim will be treated, fails to adequately inform him as how the numbers were arrived at, has conflicting information, and pays the owners more than they are currently making now.

8. Finally, as of the date of this filing, Mr. MacInnes has not received a ballot. To the extent he does not timely receive one, it should be noted that Mr. MacInnes votes to not approve the plan.

Memorandum of Law

9. “Adequate Information is defined by statute to mean:

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

11 U.S.C. § 1125(a)(1).

10. Courts have interpreted this requirement to include many relevant factors. These relevant factors may include:

(1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the

future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectibility of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the Debtor; and (19) the relationship of the debtor with affiliates.

In re Reilly, 71 B.R. 132, 134 (Bankr. D. Mont. 1987) *citing* In re Metrocraft Pub. Service Inc., 39 B.R. 567, 568 (Bankr.N.D.Ga.1984).

11. As it relates to Mr. MacInnes's claim, the disclosure statement fails to meet the requirements set forth in 11 U.S.C. § 1125(a)(1) and any of the factors set for in Reilly.

12. While the amended disclosure statement and plan did address some of the issues initially raised by Mr. MacInnes, it still fails provide Mr. MacInnes with adequate information.

13. There is no discussion or evaluation as to how these amounts were determined.

14. Further, Mr. MacInnes cannot compare these numbers to the operating reports filed as the disclosure and plan are contradictory. For example, in some places, the IRS payments are to be made monthly, in other places quarterly. This makes a large difference in the amount of money available each month.

15. Additionally, the disclosure has an entirely different treatment of unsecured creditors than the small business plan, which only purports to pay unsecured creditors 10% of their claim. If the plan is approved, Mr. MacInnes will not be treated in the way the disclosure states he will be.

16. Also, there is no support for paying the managers \$5,200 per month. The latest operating report, March of 2017, only shows a payroll expense of \$5,022.82. There is no discussion of whether or not this payroll is to the managers or to other employees or if that payroll

is actually the distribution to the managers. Additionally, there is no discussion as to why the three managers of an operation that is losing almost \$10,000 per month are entitled to that amount of monthly distribution.

17. Overall, the plan is lacking in details that show that the payments proposed by the debtor are appropriate or feasible. Debtor simply states that the source of the payments will be “[b]usiness revenue from Debtor’s principle business operations.”

18. Yet, there is no way for Mr. MacInnes to determine if these payments will be adequately covered by the business operations or if Debtor has additional money that could be used to pay him.

19. The latest monthly operating report, March of 2017, is devoid of any information with all of the required information left blank. Debtor has simply attached ledgers and bank statements for that month that fail to show the detail required in these operating report forms.

20. Mr. MacInnes cannot discern from these random attachments how much is currently being paid to the creditors at issue and how this plan would affect the Debtor’s ability to pay Mr. MacInnes.

21. In short, while this amended disclosure, to the extent it is not inconsistent with itself or the small business plan, does a better job of explaining how Mr. MacInnes will be treated, it still fails to adequately inform him as to why he is being treated this way and the ability of the Debtor to actually make these payments (or make larger payments).

22. As such, the disclosure should be denied and the small business plan should not be confirmed.

Wherefore, Mr. MacInnes respectfully requests that this honorable Court REJECT the Disclosure Statement and not confirm the Small Business Plan.

Respectfully submitted this 5th day of June, 2017.

/s/ STEPHEN B. BURCH
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by the Court's CM/ECF system to the Office of the U.S. Trustee (USTPRegion.TLECF@usdoj.gov) and via U.S. Mail to the attached mailing matrix this 5th day of June, 2017.

/s/ STEPHEN B. BURCH
STEPHEN B. BURCH

Label Matrix for local noticing
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Case 16-40407-KKS
Northern District of Florida
Tallahassee
Fri Mar 3 12:02:53 EST 2017

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Bypassed recipients 0
Total 26