

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter: 11
)
) Case No. 15-25824
Armato Paving, Inc.)
) Judge: Hon. Pamela S. Hollis
)
)
Debtor.)

THIRD AMENDED DISCLOSURE STATEMENT FOR LIQUIDATING PLAN

Dated: November 8, 2016

TABLE OF CONTENTS

I. DISCLAIMER..... 2
II. DEFINITIONS2
III. INTRODUCTORY NARRATIVE AND OUTLINE OF PLAN; SUMMARIZATION
OF ASSETS AND LIABILITIES..... 3
IV. SOURCES OF INFORMATION FOR THIS DISCLOSURE STATEMENT 5
V. BUSINESS HISTORY AND EVENTS PRECIPITATING CHAPTER 11 FILING6
VI. PROCESS OF VOTING ON THE PLAN..... 6
VII. PRESENT CONDITION OF THE DEBTOR WHILE IN CHAPTER 11 7
VIII. ESTIMATED RETURN TO CREDITORS7

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I. DISCLAIMER

ARMATO PAVING, INC., (hereinafter "*debtor*"), provide herewith the information contained in this Disclosure Statement to all of the known creditors of the debtor in order to disclose that information deemed by their counsel to be material, important and necessary for creditors to arrive at a reasonably informed decision in exercising their rights to vote for acceptance or rejection of the Liquidation Plan which is submitted to creditors concurrently with this document.

NO REPRESENTATIONS CONCERNING THE DEBTOR, PARTICULARLY AS TO FUTURE BUSINESS OPERATIONS OR VALUE OF PROPERTY, ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE ACCEPTANCE OF THE PLAN WHICH ARE OTHER THAN AS CONTAINED IN THIS STATEMENT SHOULD NOT BE RELIED UPON BY ANY CREDITOR. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. THE INFORMATION OBTAINED BY THE COUNSEL AND KEPT BY THE DEBTOR, INCLUDING THE DEBTOR'S RECORDS, ARE NOT WARRANTED OR REPRESENTED TO BE WITHOUT ANY INACCURACY, ALTHOUGH EVERY EFFORT HAS BEEN MADE TO BE ACCURATE.

II. DEFINITIONS

1. "Administration expenses" shall mean a cost/expense of administration of the Chapter 11 case, including any actual and necessary expenses of preserving the estate, and any actual and necessary expenses of operating the debtor's business from and after the petition date, to and including the confirmation date, and all costs of administration allowed by the Court in accordance with the Code.

2. "Allowed claim" shall mean: a claim (a) a proof of which is filed within the time fixed by the Bankruptcy Rules or by the Court or, if the claim arose from the rejection of an executory contract or unexpired lease, within such other time as may be fixed by the Court, or (b) that has been or hereafter is rescheduled by the debtor as liquidated in amount and not disputed or contingent, and in the event of either (a) or (b), as to which no objection to the allowance thereof has been filed within the applicable time fixed by the Court, or as to which any such objection has been determined by order of the Court which has become final and non-appealable and as to which no appeal is pending.

3. "Code" refers to the Bankruptcy Code, which is Title 11 of the United States Code (11 U.S.C. §101, et seq.). The Bankruptcy Code is the federally enacted statute pertaining to bankruptcy law in the United States.

4. "Court" shall mean the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, and the United States Bankruptcy Judge **Pamela S. Hollis** presiding in this Chapter 11 proceeding.

5. "Confirmation" or "date of confirmation" shall mean that date on which the order

confirming the Reorganization Plan is entered by the bankruptcy court.

6. "Debtor" shall mean and refer to **ARMATO PAVING, INC.**

7. "Filing date" shall mean the date of the filing of this Chapter 11 proceeding, July 29, 2015.

8. "Impaired creditor" shall refer to the Bankruptcy Code definition of an impaired claim or interest, impairment can be summarized or paraphrased as meaning that the Plan provides that the claim holder's amount or method of repayment is altered from the original note or instrument entered into with the debtor. The Bankruptcy Code requires that a Plan designate impairment or non-impairment and specify treatment of impaired claims.

9. "Liquidation value" shall mean the value of an asset if sold at a distress sale or auction by a bankruptcy trustee or debtor in possession for whatever bid could be obtained without financing presuming a transfer free and clear of liens and encumbrances.

10. "Plan" shall mean the Reorganization Plan, which will be submitted subsequent to approval of this Disclosure Statement.

11. "Secured claim" shall mean an allowed claim of a creditor secured by a lien on properties in which the estate has an interest, or that is subject to set off under Section 553 of the Code, to the extent of the value (determined in accordance with Section 506(a) of the Code) of such creditor's interest in the estate's interest in such property or to the extent of the amount subject to set off.

12. "Unsecured claims" or "unsecured creditors" shall mean all creditors of the debtor who hold claims for unsecured debts, liabilities, demand or claims of any character whatsoever, including secured creditors to the extent that liquidation of secured collateral would not satisfy their claims.

**III. INTRODUCTORY NARRATIVE AND OUTLINE OF PLAN;
SUMMARIZATION OF ASSETS AND LIABILITIES
PLAN PAYMENTS**

CREDITOR	CLASS	CLAIMS	<u>PAYMENT</u>	TERM
U.S. Bank		\$15,471.97	\$15,471.97	Upon Sale of real estate Collateral
507(a)(5) Priority Claims Laborers' Pension and Welfare Funds ("Laborers") and Local 731 Funds ("Local 731") Claims	2	\$125,861.43	\$80,000.00	Based upon 507(a)(5) priority for unpaid contributions within 6 months of cessation of business. \$50,000.00 to Laborers and \$30,000.00 to Local 731.

Unsecured Creditors (Excluding tax claims)	3	\$201,297.66 (including non- priority portion of priority claims)	\$	Pro rata balance, if any, after payment of second, priority, and administrative claims.
Equity Holders	4	n/a		The equity interests of Dean Armato Sr. and Thomas Armato will be cancelled.

The business of the debtor corporation is a paving business. The corporation's business is conducted in an office building owned by the debtor at 19800 Glenwood Rd., Chicago Heights, Illinois.

The debtor's principal is Dean Armato, Sr. who is the president of the debtor corporation and 50% shareholder. Mr. Thomas Armato owns the remaining 50% of the shares. Dean Armato, Sr. has guaranteed the indebtedness of the principal secured creditor, US Bank.

This is a liquidating plan whereby the debtor proposes to sell and liquidate all of its property in order to satisfy the claims of all of its creditors. Prior to the filing of this case, the debtor entered into a lease agreement with Advantage Paving Solutions, Inc., whereby Advantage leased all of the debtor's equipment. The lease agreement contemplated that Advantage would eventually purchase all of the equipment. Debtor principals, Dean Armato Sr., and Thomas Armato are employed by Advantage. Debtor principals do not have any ownership in Advantage, and the lease and sale is not contingent upon any continued employment of the debtor principals by Advantage.

The property is to be liquidated in the following manner. Advantage has negotiated with the debtor to purchase the machinery and equipment of the debtor for the sum of \$130,000.00. The purchase price will be paid in two equal installments. Debtor shall retain a security interest in the equipment until paid in full. The debtor has obtained an order, pursuant to 11 U.S.C. §363, approving the sale to Advantage Paving Solutions, Inc. The first installment has been paid in the sum of \$65,000.00 with the second installment due December 31, 2016. Thereafter the remaining funds will be deposited into the debtor-in-possession account. The debtor owns real estate c/k/a/ 19800 Glenwood Rd., Chicago Heights, Illinois. The court approved the sale of this property. The sale price is \$55,000.00. U.S. Bank will be paid in full from the sale proceeds. Any remaining assets will be sold either by private sale or auction. The estimated value of the remaining assets is approximately \$5,000.00 or less. All net proceeds from the sale of assets will be paid to creditors in order of priority. The claims are summarized below.

The secured claim of US Bank is secured by all the assets of the debtor, with a balance of \$15,472.00 as of filing. There are priority tax claims filed by the Internal Revenue Service ("IRS") in the amount of \$163,627.11 and by the Illinois Department of Revenue ("IDOR") in the sum of \$25,539.50. The tax claims, which are entitled to priority under 11

USC §507(a)(8) have not been separately classified. The tax claims will be paid from available funds after payment of administrative expenses and payment of the 507(a)(5) claims in the amounts stated below. The tax claims shall be paid prior to any unsecured creditors payment.

The Laborer's Pension and Welfare Funds ("Laborers' Funds") filed priority claims under 11 U.S.C. §507 (a)(5) in the amount of ~~\$87,966.83~~ ^{\$89,115.63}, for contributions unpaid during the 180 prior to the cessation of the debtor's business. Local 731 filed claims with same priority for the following entities:

- a) Local 731 Health and Welfare Fund
- b) Local 731 Excavators and Pavers Pension Fund
- c) Local 731 Garage Attendants Welfare Fund
(Hereinafter "Local 731 entities")

The total amount priority claims by the foregoing Local 731 entities is \$36,745.30.

The debtor asserts that the 507(a)(5) claims, as stated above, exceed the amount allowable under 507(a)(5). These claims have been placed in Class 2. In an effort, however, to resolve the dispute, debtor proposes that the sum of \$80,000.00 be paid from the asset liquidation, to the 507(a)(5) priority claims as follows: \$50,000.00 to the Laborers' Funds and \$30,000.00 to Local 731 Funds. The sum shall be paid prior to the Section 507(a)(8) tax claims. The balance of these claims shall be placed in the class of unsecured creditors.

After the payment of secured creditor(s), such funds shall first be used to bankruptcy court approved bankruptcy costs of administration, including attorneys' fees and expenses, priority tax claims, and thereafter to unsecured debt pro rata. Based upon an analysis of debtor's assets and the likelihood of sale, it does not appear likely that any funds will be available for priority or unsecured creditors in a Chapter 7 or forced liquidation by US Bank. Therefore orderly liquidation of debtor's assets is far more likely to satisfy secured debt and provide the maximum distribution to creditors under the circumstances of this case.

The foregoing narrative and outline of the plan also includes the narrative summarizing scheduled assets and liabilities.

A brief summary of the debtor's assets, as scheduled, demonstrates that its personal property including its receivables, patents, machinery, inventory, office equipment, and excluding the equipment lease and purchase money interests, cash has an approximate value. Since all of the foregoing assets are subject to the claim of US Bank or any other creditor, it is clear that a Chapter 7 or forced liquidation will result in no return to priority or unsecured creditors.

The debtors management consists of Dean Armato, Sr. and Thomas Armato. Those individuals are insiders as provided by the Bankruptcy Code. Creditors should be aware that as "insiders" these individuals did receive payments within a year of the bankruptcy filing. These individuals assert that the payments received were based upon their

full-time employment and services rendered during the applicable time period. Those payments occurred between August 1, 2014 -December 31, 2015, the latter being the last date of business operations. The total payments received during this time period are as follows:

Dean Armato, Sr. -\$87,000.00
Tom Armato -\$73,394.00

Although a Chapter 7 trustee may elect to file a preference or fraudulent conveyance action to recover these funds, debtor believes that it would not ultimately be in the best interest of creditors that the case be converted for the following reasons.

Both Dean Armato, Sr. and Thomas Armato assert that the funds received by them were for services and work they were performing in the ordinary course of the debtor's business for the debtor in exchange for the payments. Therefore, both debtor principals would vigorously defend any trustee action. Moreover, debtor principals assert that they are, at present, judgment proof, and would likely seek bankruptcy protection in the event of an adverse judgment by a bankruptcy trustee.

Therefore, it debtor's belief that appointment of a Chapter 7 trustee will also merely increase the administrative expenses in this case, and diminish and delay the ultimate payment to creditors.

The source of funds for payments are the sale of its assets. This is a liquidating plan in which the sale of all property is proposed to resolve debt. All creditors in each class are treated equally. There are no insider pre-petition creditors who are secured or who will receive any payment whatsoever.

The plan further proposes that the Court retain post-confirmation jurisdiction over the debtor and its assets for the purpose of implementing the plan and ruling upon disputes, although debtor intends to close the case and obtain a final decree without delay so as to obviate the ongoing necessity of Section 1930 fees to the United States Trustee.

Any post-petition unsecured creditors will be paid in full in the ordinary course of business. On one effective date of confirmation, all funds collected and the debtor-in-possession account will be transferred to Thomas Springer, not individually, but as trustee for creditors trust, who will be responsible for making payment to creditors and carrying out the provisions of the confirmed plan.

IV. SOURCES OF INFORMATION FOR THIS DISCLOSURE STATEMENT

The debtor, **ARMATO PAVING, INC.**, filed the above voluntary Chapter 11 proceeding on July 29, 2015.

It is incumbent upon the debtor, pursuant to 11 U.S.C. §1106(a)(5), to propose a

Reorganization Plan under 11 U.S.C. §1121 which must be accompanied or preceded by a Disclosure Statement pursuant to 11 U.S.C. §1126(b). In preparing this Disclosure Statement, the counsel for the debtor has relied upon and utilized:

- (1) Business records of **ARMATO PAVING, INC.** furnished by the debtor;
- (2) Estimates of the value of debtor's property provided by appraisal and cost data furnished by the debtor.
- (3) Monthly operating reports which have been filed in this proceeding.
- (4) Interviews and telephone conferences with creditors, prospective purchasers and their attorneys.

V. BUSINESS HISTORY AND EVENTS PRECIPITATING CHAPTER 11 FILING

The debtor corporation has operated under present management since 1990.

In recent years, the company has been experiencing declining revenues due to intense competition in the construction industry and a general down turn in the construction industry. The decline in revenues resulted in the debtor corporation falling behind in its contributions to the health and welfare plans of its union employees. Although debtor management endeavored to resolve this issue, it eventually was sued by the Funds involved. Compounding this issue, the debtor became delinquent in its payroll reporting and payments to the Internal Revenue Service, and Illinois Department of Revenue. In light of the continuing losses and increased pressure from creditors, the debtor ceased most business operations as of January 1, 2015 but continued to collect rents from its property hereafter. Because of the pending suits, and competing claims to the debtor assets, the debtor believes that Chapter 11 is the best alternative for maximizing the asset value and resolving any priority issues in one setting.

For all of the foregoing reasons the Debtor Corporation filed this Chapter 11 proceeding and now files this liquidation plan. The debtor corporation and its principals believe that an orderly liquidation of its property, will produce better return for all of debtor's creditors, priority, secured and unsecured than a forced liquidation by any one of its secured or judgment creditors. The sale of assets as contemplated will also allow some of the employees of the debtor to maintain employment with the purchasing entity.

VI. PROCESS OF VOTING ON THE PLAN

In the event that the Court approves this Disclosure Statement, it should be noted that although the Court has approved the adequacy of information contained in the Disclosure Statement, this action does not constitute an approval by the Court of the Reorganization Plan and the opinions expressed therein. Creditors whose claims are "impaired", as that term is defined by 11 U.S.C. §1124, will receive ballots upon which they may signify their

acceptance or rejection of the Plan. The Court will set a time within which ballots must be returned to the Court. Creditors, whose claims are not impaired under 11 U.S.C. §1124 are deemed to have accepted the Plan, will not receive ballots and may not vote.

VII. PRESENT CONDITION OF THE DEBTOR WHILE IN CHAPTER 11

The foregoing sections of this Disclosure Statement have already reviewed the assets and liabilities of the debtor which this liquidating plan will attempt to resolve. The debtor has operated as a debtor in possession in this Chapter 11 proceeding for approximately ten months.

The debtor has obtained a court order employing debtor counsel and accountants and has set a bar date for all claims. The debtor has obtained approval of the sale to Advantage Paving, Inc., and the sale of the real estate.

VIII. ESTIMATED RETURN TO CREDITORS

This portion of the Disclosure Statement outlines the percentage of debt repayment which the debtor believes is available to creditors and which it proposes in the Chapter 11 Plan. In the present case, debtor believes that the 363 sales and orderly liquidation is the best option for the estate and its creditors, however does not appear that any dividend will be payable to non-priority unsecured claims.

Respectfully submitted,
ARMATO PAVING, INC.

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