

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

IN RE:)
)
4522 KATELLA AVENUE, LLC)
)
) Case No: 15-12107
) Chapter 11
Debtor.)
_____)

**DEBTOR’S COMBINATION DISCLOSURE STATEMENT AND
CHAPTER 11 PLAN OF REORGANIZATION
DATED JULY 11, 2016**

HISTORY OF EVENTS

In 2002, James Rainboldt and his mother, Lois Rainboldt, formed the Debtor, 4522 Katella Avenue, LLC (“Katella” or “Debtor”) for the purpose of acquiring an office building bearing that address. Each of the Rainboldts were 50% members in the LLC. In May, 2006, Katella purchased a seventy apartment unit located at 1212 and 1226 South Longfellow (“Longfellow”) in Wichita for the purchase price of \$1,600,000. Simultaneously Katella also purchased a forty-six apartment unit located at 928 North Carter (“Carter”) in Wichita for the purchase price of \$1,200,000. In September, 2006, Katella purchased an eighteen unit townhouse located at 1625 South Beech (“Beech”) in Wichita for the purchase price of \$922,500.

On September 27, 2006, Katella executed a multi-family note and mortgage covering the Beech property in favor of LaSalle Bank National Association in the principal amount of \$690,000, payable over a thirty (30) year period at 7.35% interest. Post-Petition, this loan was sold to CDCF III MF4 Funding, LLC (“CDCF”).

On February 15, 2007, Katella executed a multi-family note and mortgage covering Carter in favor of LaSalle Bank National Association in the principal amount of \$1,020,000.00. The loan was payable over a thirty (30) year period with an initial interest rate of 7.07%.

On the same date, February 15, 2006, Katella executed a multi-family note and mortgage covering Longfellow in favor LaSalle Bank National Association in the principal amount of \$1,400,000.00, payable over a thirty (30) year period at 7.07% interest. Both the Carter and Longfellow loans were subsequently sold to ColFin MF5 Funding, LLC (“ColFin”).

ColFin has filed a proof of claim in the case alleging a total amount due as of the Chapter 11 filing of \$2,555,187.41 on the Longfellow and Carter loans. It has filed a Proof of Claim relating to the Beech property in the secured amount of \$600,433.13.

The loans for Carter and Longfellow were modified in April 2011. Interest payments were reduced from 7.07% to 5%. The difference between the previous and modified monthly payments on the Longfellow loan accrued no interest until maturity or payoff of that loan.

The Debtor disputes the amount of ColFin’s claims relating to the Carter and Longfellow loans. At the heart of the dispute is a disagreement over ColFin’s application of payments, particularly those related to arrearages and the escrow accounts of the Longfellow and Carter loans. The dispute is the subject of a pending Adversary proceeding wherein the Debtor has challenged the amount owed to ColFin. The case is in the discovery stage. A trial date has not been scheduled. Katella has not challenged the balance owing to CDCF on the Beech loan.

PROBLEMS WITH THE PROPERTY MANAGEMENT

From the time of purchase until January 15, 2016 management of the properties have been a problem. As an example, until November 2013 all of the units were managed by Greater Wichita Investment Real Estate (“GWIRE”). While under GWIRE, thirty of the forty-six units

at Carter were leased to the Wichita Children's Home. In February 2013 the Children's Home breached its' lease agreement and vacated all of the units at the same time resulting in a decrease in rental of \$185,000 for the period of January to November 2013. In addition, the Children's Home left the units in an un-rentable condition. Mr. Rainboldt spent approximately \$56,000 of his own funds to bring the Carter units back to a rentable condition.

In November 2013, management of the properties was taken over by Wheatland Real Estate Management, LLC. Its' onsite manager developed drug abuse problems. From November 2013 to June 2015 rents declined and the condition of the properties deteriorated. ColFin commenced foreclosure proceedings against the properties and on June 12, 2015, a Receiver was appointed to supervise and manage the properties. The Receivership lasted until January 15, 2016, when the Bankruptcy Court ordered the removal of the receiver and reinstated the Debtor as manager of the properties.

From 2015 until the reinstatement of the Debtor on January 15, 2016, Mr. Rainboldt was not in a position to supervise and actually manage the properties. He is an attorney in Santa Ana, California. More significantly, his mother, Lois Rainboldt was afflicted with Alzheimer's disease and required a great deal of his attention. In April 2015, Mrs. Rainboldt fell and broke her hip. She died on June 6, 2015. Since that time Mr. Rainboldt has made numerous trips to Wichita to oversee the properties. As he testified in the December 15, 2015 hearing on Debtor's Motion for Turnover he is prepared, if necessary, to take up residence in Wichita to supervise the day to day management of the properties and to expend the necessary sums needed to bring the properties into a condition that will allow for an increase in rent. Attached as Exhibits A, B, and C are comparisons of Profit and Loss for each of the properties from: a) November 2013 to June

6, 2015; b) June 6, 2015 to January 15, 2016 – the period under receivership¹; and c) January 15, 2016 to the present.

Attached as Exhibit D is a Profit and Loss Comparison statement for 2013 until September 25, 2015, Exhibit E is a Profit and Loss Comparison statement for September 25, 2015 through June 30, 2016. Mr. Rainboldt estimates it will take approximately eight (8) months from the Effective date to complete improvements on the properties, which will enable them to attract more suitable tenants and higher rents. Attached as Exhibit F are estimates of the expenses of improvements and projections of income and expenses for two years following improvements. Attached as Exhibit G are income and expense statements for James Rainboldt for the years 2015 until July 1, 2016. Attached as Exhibit H is a Liquidation Analysis.

In the event the Debtor is unable to generate enough income to make Plan payments, Mr. Rainboldt will supplement any shortage.

On July 23, 2015, during the course of the Receivership, at the request of ColFin, the Receiver issued a Broker's Opinion of Value of the properties, showing Carter valued at \$985,000 and Longfellow valued at \$1,350,000. Subsequently, and not satisfied with the values given in its' Broker's Opinion, ColFin has engaged additional appraisals. These show Longfellow with a value of 1,255,000, and Carter with a market value of \$950,000. The Debtor accepts these values.

1. \$7,018 was spent to eliminate a bed bug problem that developed during the Receivership. During the Receivership insurance increased because the Receiver failed to pay the premiums, although there were sufficient funds in the escrow account to pay them. Insurance increased from \$17,235.68 for one year to \$11,712.68 for six months for Longfellow and from \$5,299.00 for one year to \$6,667.53 for six months. During the Receivership the Receiver collected revenues of \$98,873.76 from Longfellow and \$63,492.61 from Carter for a total of \$162,000.00 but failed to pay any loan payments or taxes.

Chapter 11 Plan

The Debtor, 4522 Katella Avenue, LLC, in compliance with 11 U.S.C. §1123 and 11 U.S.C §1129 hereby proposes the following Debtor's Plan of Reorganization.

ARTICLE I **DEFINITIONS**

The following terms when used in this Plan shall, except where the context otherwise requires, have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

1.01 Administrative Claim: A claim entitled to priority under §507(a)(1) and allowed under §503, 507 or 1114 of the Bankruptcy Code.

1.02 Allowed Claim: The amount of a claim: (a) in respect of which a Proof of Claim has been filed with the Court or, if a time limitation for filing Proofs of Claim has not been fixed by the Court, (b) scheduled in the list of creditors prepared by the Debtor and filed with the Court pursuant to Rule 1007(b) of the Bankruptcy Rules and not listed as disputed, contingent, or unliquidated as to amount, and in any case, to which no objection to its allowance has been interposed within any applicable time limitation fixed by the Court or as to which the Allowance Date has occurred, or (c) if the claim arose out of the rejection of an executory contract or unexpired lease, filed within the time fixed by the Court or as provided in this Plan.

1.03 Carter: The Debtor's property located at 928 North Carter, Wichita, Kansas, 67203.

1.04 Claim: Any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is

reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

1.05 Class: Any class into which allowed claims or allowed interests are classified pursuant to § 1122 of the Code.

1.06 Code: The Bankruptcy Code, 11 U.S.C. §101 et. seq. and any amendments thereto.

1.07 Confirmation Date: The date of entry of the Confirmation Order in accordance with the provisions of the Bankruptcy Code, provided, however, that if on motion the Confirmation Order or consummation of the Plan is stayed pending appeal, then the Confirmation Date shall be the date of entry of the Final Order vacating such stay or the date on which such stay expires or is no longer in effect. The date upon which the Confirmation Order entered by the Court becomes final and non-appealable.

1.08 Confirmation Hearing Date: The Date set by the Court or any continuance thereof for the Court to hear evidence regarding the Debtor's Chapter 11 Plan.

1.09 Confirmation Order: The Order entered by the Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code, which Order is subject to any appeal or certiorari proceeding, and as to which no appeal or certiorari proceeding is pending.

1.10 Court: The United States Bankruptcy Court for the District of Kansas in which the debtor's Chapter 11 case is pending, and any Court, including the United States District Court, having competent jurisdiction to hear appeals or certiorari proceedings therefrom.

1.11 Debtor: 4522 Katella Avenue, LLC, also sometimes referred to herein as Katella.

1.12 Effective Date: The date on which the Order confirming the Plan becomes final and non-appealable and no appeal therefrom is pending. If no appeal is taken, this will be fifteen (15) days after entry of the Confirmation Order.

1.13 The Estate: All of the Debtors' property and interests in property specified in Sections §541 and §1115 of the Bankruptcy Code.

1.14 Impaired Class: A class with claims whose legal, equitable, and contractual rights are altered under the Plan.

1.15 Insider: Insider is given the meaning set forth under § 101(31) of the Bankruptcy Code. James Rainboldt is classified as an Insider for purposes of this Plan.

1.16 Longfellow: The Debtor's property located at 1212 Longfellow, Wichita, Kansas 67207.

1.17 Petition Date: September 25, 2015, the date the Debtor filed his Chapter 11 Petition with the Court.

1.18 Priority Claim: Any claim entitled to priority payment under § 507 of the Bankruptcy Code.

1.19 Secured Creditor: A creditor having an Allowed Claim that is (a) secured by a lien (other than any lien granted under the Plan) on collateral which is not void or voidable under applicable state and federal law, including the Code, or (b) subject to setoff under §553 of the Code, in each case to the extent of the value of said creditor's interest in the Debtors' interest in the property or the amount of the setoff, as applicable; provided, however, that nothing herein shall prohibit a secured creditor from making the election provided in §1111(b)(2) of the Bankruptcy Code.

1.20 Unsecured Creditor: A creditor having an Allowed Claim against the debtor that is not a secured claim, priority tax claim, or administrative claim including that portion of a secured claim that is not adequately covered by the security interest, lien, mortgage, or other encumbrance on the Debtors' property.

ARTICLE II
CLASSIFICATION OF CLAIMS AND INTEREST

All claims, as defined herein and at §101(4) of the Bankruptcy Code against the Debtor, of whatever nature, whether or not scheduled or unliquidated, absolute or contingent, including all claims arising from the rejection of executory contracts, and all interests arising from the ownership of the Debtor, whether resulting in an allowed claim or not, shall be bound by the provisions of the Plan and are hereby classified as follows:

2.01 Administrative and Priority Tax Claims: Administrative Expenses claims which are accorded priority pursuant to §507(a)(1) and Allowed Claims under §507(a)(2) are not classified and shall receive cash in the full amount of each such claim on the later of (a) the effective date or (b) sixty (60) days after such claim becomes an Allowed Claim, unless the holder of the claim agrees to less favorable treatment. The priority tax claim of Franchise Tax Board, California is such a claim. Also included is the Sedgwick County Treasurer who has assessed the Properties (Longfellow and Carter) with 2015 taxes of \$36,010.39 and \$18,244.14 respectively. The Debtor also estimates 2016 taxes to be about \$27,000. The Debtor asserts that these taxes were paid into an escrow account with ColFin and should have been paid. The amounts are subject to an appeal and are also involved with the Adversary proceeding, Case No. 16-05032 pending in the Bankruptcy Court. The taxes will be paid as soon as practicably possible after the appeal and the Adversary are resolved. These claims will be treated in accord with §1123(a)(1) of the Bankruptcy Code and Orders of the Bankruptcy Court.

2.02 Class One: Allowed Unimpaired Secured Claim of CDCF III MF4 Funding, LLC. This claim has been and will continue to be paid according to the terms of the Loan and Mortgages it has with the Debtor.

2.03 Class Two: Allowed Secured Claim of ColFin MF5 Funding, LLC (ColFin) in the Allowed amount of 2,355,000.00. On April 26, 2016 ColFin obtained an appraisal showing Longfellow to be worth \$1,250,000 and Carter to be worth \$950,000, or a total of \$2,205,000 for both properties. The Debtor accepts these appraisals as the value of ColFin's secured claim. It will pay 100% of the value, \$2,205,000 as follows:

1) Monthly payments will be made in the amount of \$5,718.98 (\$3,255.18 Longfellow, \$2,463.80 Carter) commencing on the fifteenth day of the month next following the effective date and continuing on the fifteenth day of each succeeding month until the fifteenth day of the sixth month thereafter (Interim period).

2) Commencing on the fifteenth of the seventh month after the effective date, payments on the remaining balance will be made over the next 30 year period at 3.5% interest until the balance is paid in full.

3) ColFin's rights including its' remedies for default will be governed by the pre-petition loan documents between ColFin and the Debtor, there successors and assigns.

2.04 Class three: Unsecured Guaranteed Deficiency Claim of ColFin MF5 Funding, LLC (ColFin):

ColFin has also designated \$220,187.41 as an unsecured amount of its' claim. However, based upon its' new appraisal, the unsecured claim should be \$350,000. The amount of claim is disputed and subject to an Adversary proceeding (Case No. 16-05032) to determine the balance due. The Debtor will pay the entire balance (100%) when determined either by agreement of the parties or by the Court (final balance) as follows: \$1,500 each month commencing fifteen days after the determination of the final balance (final balance date) and continuing on the fifteenth day of each succeeding month thereafter for fifty-nine (59) months. On the 60th month the

Debtor will pay the remaining balance in full. The amount of the claim will not bear interest. ColFin's rights including its' remedies for default will be governed by the Pre-Petition loan documents between ColFin and the Debtor, their successors and assigns.

2.05 Class Four: General Unsecured Creditors:

This class consists of all creditors listed on Schedule F attached to the Debtor's Voluntary Petition. These creditors will be paid 100% of their claims. Payments will commence as soon as practicably possible following the Effective Date, and continue in equal monthly installments for 24 months thereafter. Claims in this class will not bear interest.

ARTICLE III
Implementation of the Plan

3.01 Except as otherwise provided in the Plan, the Debtor will remain in possession and ownership of all of its' assets and will continue to maintain and operate its' properties.

A) Action by the Debtor:

The Debtor will retain and may inforce any claims, demands, rights and causes of action which the Debtor holds under the Bankruptcy Code against any person or entity as of the effective date. The Debtor will review and pursue the actions as are deemed appropriate.

B) Statutory Fees:

The Debtor will be responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 1930(a)(6). After confirmation, the Debtor will file with the Court and serve on the United States Trustee, a disbursement report for each quarter, or portion thereof, until a Final Decree has been entered. The deposit of funds to the Unsecured Claim Reserve, and the disbursement of funds from such reserve will not be considered disbursements for purposes of 28 U.S.C. § 1930(a).

C) Bar Date:

Except as otherwise provided in the Bankruptcy Code, Court Order, or this Plan, holders of claims must file claims no later than thirty (30) days after the Confirmation Date.

Parties who have already filed claim need not re-file. In addition, creditors are deemed to have a claim in the nature and amount as listed in the Debtors' schedules, unless scheduled as disputed, contingent or unliquidated. See 11 U.S.C. § 1111(a). such claims are "Deemed Allowed Claims." Accordingly, any claimant having a claim, the amount of which is correctly listed in the schedules (other than those listed as disputed, contingent or unliquidated) need not file claims. Such claimants will have an Allowed Claim without further action on their part. Claimants who do not have a Deemed Allowed Claim, or who claim an amount different that as set out in the schedules, and who do not file a claim by the bar date, will be barred from asserting such claim against the Debtor, their assigns, or the property of the same.

D) Resolution of disputed Claims:

At any time after the applicable bar date, the Debtor, or as allowed by the Bankruptcy Code, any other Creditor, may object to a claim. The Court will resolve all such disputes.

**ARTICLE IV
Cram Down**

The Debtor request confirmation under 11 U.S.C. § 1129(b) with respect to any impaired class that does not accept the Plan.

**ARTICLE V
Discharge**

Except as provided in this Plan or Confirmation Order, confirmation will discharge the Debtor of all claims or other debts which arose, accrued, or grew out of acts performed by the Debtors before the Effective Date, and all claims/debts of the kind specified in 11 U.S.C. §

502(g),(h) or (i), whether or not a proof of claim is filed, the claim is allowed, or the holder of the claim accepts the Plan. Confirmation will constitute judicial determination that the Debtor will engage in business after confirmation and that the Plan does not provide for liquidation of all or substantially all of the property of the estate. The discharge will void any judgment obtained against the Debtor at any time, to the extent such judgment relates to a discharged claim. Except as provided in the Plan, all entities which have held, currently hold, or may hold a claim or other debt liability that is discharged will be permanently enjoined from taking any action to enforce such claim, including commencement or continuation of legal action; creating, perfecting or enforcing any lien against property of the Debtor, their assigns or successors; or asserting a set-off, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due the Debtor, their successors or assigns.

ARTICLE VI Retention of Jurisdiction

The Bankruptcy Court will retain jurisdiction:

- A. To rule on the allowance of Claims and the hear any objections thereto;
- B. To consider and resolve adversary proceedings or contested matters which may be brought by the Debtor. The Debtor reserves the right to bring such actions notwithstanding confirmation;
- C. To determine and resolve questions concerning the existence of default(s) under the Plan;
- D. To modify the Plan pursuant to § 1127(b) of the Code;
- E. To correct any defect, cure any omission, or reconcile any inconsistency in the Plan or Order of Confirmation, as may be necessary to carry out the purposes and intent of the Plan;

F. To issue an injunction against any activity interfering with implementation, or enforcement of the Plan or Confirmation Order; and

G. Determine matters concerning federal, state, or local taxes in accordance with 11 U.S.C. § 346, 505 and 1146.

ARTICLE VII Miscellaneous Provisions

A. **Limitation of Liability:** The Debtor and its' respective members, directors, officers, employees and professionals, the Creditors and their members and professionals, will neither have nor incur any liability to any entity for any act taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, confirmation, or consummation of the Plan or the Disclosure Statement; provided however, that this provision will have no effect on the liability of any entity that would otherwise result from the failure to perform or pay any obligation or duty provided for under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan.

B. **Modification of the Plan:** The Debtor may amend the Plan at any time to the extent allowed by 11 U.S.C. § 1127 and Bankruptcy Court order.

C. **Revocation of the Plan:** The Debtor may revoke or withdraw the Plan at any time prior to entry of the Confirmation Order. If the Plan is revoked or withdrawn, it shall be null and void and no provision of the Plan will constitute a waiver of the claim or rights of any party.

D. **Grace Period:** Except as otherwise provided in the Plan, the Debtor and any assigns thereof will have forty-five (45) days from any due date to comply with any requirement or make any payment as provided for in the Plan.

Respectfully submitted,

s/David G. Arst

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