

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:	§	Chapter 11
	§	
GATOR EQUIPMENT RENTALS OF IBERIA, LLC	§	Case No. 16-51667
et al	§	
	§	
Debtors,	§	(Jointly Administered)
	§	

SYNERGY BANK’S OBJECTION TO THE JOINT DISCLOSURE STATEMENT

**TO THE HONORABLE, ROBERT SUMMERHAYS
UNITED STATES BANKRUPTCY JUDGE:**

Synergy Bank (the “Synergy”) a secured creditor of Gator Crane Service LLC (“Gator-Crane”) and Gator Equipment Rentals, LLC (“Gator-Equipment”), jointly administered debtors¹ with Gator Equipment Rentals of Iberia, LLC (“Gator-Iberia”) and Gator Equipment Rentals of Fourchon, LLC (“Gator-Fourchon”) (collectively, the “Debtors”) in the above captioned Chapter 11 cases (collectively, the “Chapter 11 Case”), by and through undersigned counsel, hereby submits this objection (the “Objection”) to the *Disclosure Statement in Support of the Debtors’ Joint Chapter 11 Plan of Reorganization* (the “Disclosure Statement”) [Dkt. # 230] with the *Debtors’ Joint Chapter 11 Plan of Reorganization Dated March 6, 2017* (the “Plan”)[Dkt. # 228] and Synergy respectfully represents as follows:

Synergy’s Claims

A. Gator-Equipment:

1. Proof of Claim 22-1: On January 25, 2017, Synergy filed its proof of claim listed as Claim 3-1 in the amount of \$67,972.65 with attached supporting documents. The claim is for

¹ The following proceedings are jointly administered: Gator Equipment Rentals of Iberia, LLC Case No. 16-51667; Gator Equipment Rentals of Fourchon, LLC Case No. 16-51668; Gator Crane Services, LLC Case No. 16-51669; and Gator Equipment Rentals, LLC Case No. 16-51671.

amounts owed under a promissory note with Gator-Equipment as the borrower. The funds were used to purchase certain identified equipment. The promissory note is subject to commercial guarantees executed by Norman J. Schieffler, Jr.; Joey D. Pierce; and Lovencie J. Gambaella, Jr. The parties, Synergy and Gator-Equipment entered into a commercial security agreement whereby Synergy possess a purchase money security interest (“PMSI”) in four Niftylift Bi-Energy Units as indicated in the UCC Financing Statement, file number 1141045 filed in Lafourche Parish, Louisiana.

2. Proof of Claim 22-1: On January 25, 2017, Synergy filed its proof of claim listed as Claim 22-1 in the amount of \$149,931.77 with attached supporting documents. The claim is for amounts owed under a promissory note with Gator-Equipment as the borrower. The funds were used to purchase certain identified equipment. The promissory note is subject to commercial guarantees executed by Norman J. Schieffler, Jr.; Joey D. Pierce; and Lovencie J. Gambaella, Jr. The parties, Synergy and Gator-Equipment entered into a commercial guarantee and multiple indebtedness mortgage (a third party pledge) whereby Gator-Iberia pledged collateral to secure the Gator-Equipment loan on real property located 12617 Highway 90 East, Jeanerette, Louisiana (the “Pledged Real Estate”). The mortgage was recorded with Iberia Parish, file number 2012-9457, book 1507 – page 47.

B. Gator-Crane:

3. Proof of Claim 3-1: On January 25, 2017, Synergy filed its proof of claim listed as Claim 21-1 in the amount of \$38,343.24 with attached supporting documents. The claim is for amounts owed under a promissory note with Gator-Crane as the borrower. The funds were used to purchase certain identified equipment. The promissory note is subject to commercial guarantees executed by Michael A. Pontiff; Todd W. Fanguy; Lovencie J. Gambaella, Jr.;

Norman J. Schieffler, Jr.; Gator-Equipment; and Joey D. Pierce. The parties, Synergy and Gator-Crane entered into a commercial security agreement whereby Synergy possess a PMSI in Material Baskets with GPS Systems and Slings as indicated in the UCC Financing Statement, file number 1122738 filed in Lafourche Parish, Louisiana with the continuation filed.

4. Proof of Claim 4-1: On January 25, 2017, Synergy filed its proof of claim listed as Claim 4-1 in the amount of \$200,000 with attached supporting documents. The claim is for amounts owed under a promissory note with Gator-Crane as the borrower. The funds were used to purchase certain identified equipment. The promissory note is subject to commercial guarantees executed by Joey D. Pierce; Norman J. Schieffler, Jr.; Lovencie J. Gambraella, Jr.; Michael A. Pontiff; Todd W. Fanguy; and Gator-Equipment. The parties, Synergy and Gator-Equipment entered into a commercial guarantee and multiple indebtedness mortgage (a third party pledge) whereby Gator-Iberia pledged collateral (certain identified trailers and real estate) to secure the Gator-Crane loan. The real property is located at 12617 Highway 90 East, Jeanerette, Louisiana (the "Pledged Real Estate"). The mortgage was recorded with Iberia Parish, file number 2012-9457, book 1507 – page 47.

Opposition

5. Synergy submits the opposition to approval of the Disclosure Statement because of the lack of “adequate information” as required by 11 U.S.C. § 1125 as discussed herein.

Standard for Approval of a Disclosure Statement

6. Section 1125 of the Bankruptcy Code, which governs the requirements for the Disclosure Statements in this Chapter 11 case, provides, in part, the following:

An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or

before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing by the court as containing adequate information. The Court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets.

11 U.S.C. § 1125(b).

7. "Adequate information" is defined in Section 1125, as follows:

(I)nformation 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, that would enable a hypothetical reasonable investor typical of holders of claims or interests 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.

11 U.S.C. § 1125(a)(1).

8. "The determination of what is adequate information is subjective and made on a case by case basis [and] is largely within the discretion of the bankruptcy court." *Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) (citations omitted). The case law, however, has elucidated basic principles that courts should keep in mind in evaluating the adequacy of information contained in a disclosure statement. "A disclosure statement . . . is evaluated . . . in terms of whether it provides sufficient information to permit enlightened voting by holders of claims or interests." *In re BSL Operating Corp.*, 57 B.R. 945, 950 (Bankr. S.D.N.Y. 1986).

9. Courts have considered the following factors to determine, on a case by case basis, whether a disclosure statement meets the statutory requirement of adequate information:

- (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 collectability 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 the affiliates.

See, In re U.S. Brass Corp., 194 B.R. 420, 424-25 (E.D. Tex. 1996), *citing In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567, 568 (Bkrtcy.N.D.Ga.1984).

10. In the present case, the Disclosure Statement in many instances provides no information, while at other times provides information that is misleading and incomplete.

Synergy realizes that not all factors are applicable, however, the Disclosure Statement does not contain sufficient information to comply with the standard mandated by 11 U.S.C. § 1125.

11. To summarize, Synergy asserts the Disclosure Statement needs to be amended to include such additional information as:

- (a) a definitional section in the Disclosure Statement that is consistent with the definitions in the Plan;
- (b) the cash balance of the debtor-in-possession account(s);
- (c) the collectability of outstanding accounts receivable; the amount owed to each of the Debtors; and estimate of the amount collectible by each Debtor;
- (d) to complete the information that is listed “to be supplement” in the Plan exhibits including: (i) the list of retained causes of action on Exhibit P-4; (ii) the list of assumed executory contracts on Exhibit P-5 together with the cure amounts; and (iii) the list of intercompany claims on Exhibit P-6 together with the amounts;
- (e) a discussion of the payment of any estimated cure amounts for any assumed executory contracts;
- (f) the estimated amount of and financial information to indicate that the Debtors have sufficient cash to satisfy payment of unclassified claims, all administrative expenses, United States Trustee fees, and effective date payments; including a projected budget and estimated revenue from operations for each of the Debtors;
- (g) estimation of the amount of allowed claims that qualify as members of the convenience class;

- (h) fill in the numerous blanks in the Disclosure Statement that reference a dollar amount;
- (i) include information regarding any retained causes of action that satisfies the Fifth Circuit's standard of "specific and unequivocal" retention of causes of action. *See, In re United Operating, L.L.C.*, 540 F.3d 351, 355-56 (5th Cir. 2008);
- (j) the specific amount to be paid to the reorganized Debtors' managers;
- (k) explanation of the provision for the cancellation of instruments at the request of the Debtors; including what situation would warrant the Debtors requesting a party to cancel any security interest, lien or encumbrance; *see* Disclosure Statement page 38;
- (l) the estimated amount if any of a general unsecured claim in favor of Regions Bank;
- (m) the commission being sought by Propre'te Shoppe as the listing agent for the Apache Road Property and the property of certain insiders and whether Propre'te Shoppe qualifies as an employable professional;
- (n) a discussion of the cost of moving the operations from the Tunnel Road Property, should the property sell and where the operations may be re-located;
- (o) a discussion on how the limited injunction against all non-debtor guarantors is not in violation of 11 U.S.C. § 524(e) and an exhibit that specifically lists the non-debtor guarantors subject to this provision; *see*, Disclosure Statement page 45; and

(p) a discussion of what the Debtors anticipate as “Plan Supplemental Documents” as stated on page 43 of the Disclosure Statement.

12. Clarification Synergy’s Claims: The Disclosure Statement indicates on page 22, that Synergy is Gator-Iberia’s only secured creditor and as such is classified in Iberia Class 1. However, as discussed herein, Synergy has a PMSI in specific equipment of Gator-Equipment and a PMSI in specific equipment of Gator-Crane that has a priority over any secured claim of Regions Bank. Furthermore, as indicated in the Plan, Gator-Iberia has pledged collateral to secure loans of Gator-Equipment and Gator-Crane. *See*, Proof of Claim 22-1 (Gator-Equipment) and Proof of Claim 4-1 (Gator-Crane). Synergy is the first mortgage holder in the Pledged Real Estate. Accordingly, the Disclosure Statement should properly identify the security interests of Synergy and against which Debtors Synergy holds encumbrances.

13. Payment of Synergy’s Claims: The Disclosure Statement indicates that Synergy will be paid based on its Allowed Claim, with interest accruing at the rate of 5.75% per annum, with monthly installment payments to commence on July 15, 2018 and continue for 72 months. The Disclosure Statement simply adds-up all the amounts owed as indicated in the referenced proofs of claim; without any regard to the fact that the claims all stem from four different loan agreements with two different Debtors. *See*, Gator-Equipment Proofs of Claim 21-1 and 22-1 and Gator-Crane Proofs of Claim 3-1 and 4-1.

14. The Disclosure Statement is unclear as to when the interest is to start accruing, or the source of the payments. Therefore, the Disclosure Statement needs to be amended to indicate when interest will accrue.

15. It is indicated in the Disclosure Statement that post-confirmation distributions will be made from “Cash generated from operations or through the sale of Collateral.” *See*,

Disclosure Statement page 38. Collateral in the Plan is defined as, in summary, as any property of the estates of any Debtor subject to an encumbrance. It is unclear from the Disclosure Statement if “Collateral” from which distribution are to be made is limited to the property of the Debtors and insiders listed in Article X that are to be sold or auctioned, or additional collateral that the Debtors’ may sell post-confirmation not listed in Article X. Basically, it is murky at best the source of the distributions, the amount the Debtors anticipate they will have to distribute, and whether the distribution provision equates to substantive consolidation.

16. Accordingly, the Disclosure Statement should be amended to indicate if Synergy is being paid from operations from Gator-Equipment for Proofs of Claim 22-1 and 22-2; and from Gator-Crane for Proofs of Claim 3-1 and 4-1 or from Gator-Iberia as holder of a third-party pledge; will Synergy get paid from any equipment sold that is subject to a PMSI in favor of Synergy; will Synergy get paid from the sale of the Pledged Real Estate Collateral?

17. Timing of the Payments Relative to Other Creditors: The scheme of the Plan, in summary, is that certain identified assets of the Debtors, underutilized assets of the Debtors, and property of non-debtor insiders will be sold with distributions to Regions Bank and any holders of encumbrances that have a priority over Regions.

18. It appears that it is anticipated that the Debtors will continue operations. Thus, it is unclear from the Disclosure Statement as to the justification of delaying payments to Synergy until June 15, 2018 – that is why the Debtors have the benefit of continuing operations for over a year while Synergy receives no payments and the value of Synergy’s collateral is depreciating from use in the Debtors’ operations. There is insufficient information in the Disclosure Statement to adequately evaluate if the Debtors will have sufficient funds from operations to make the payments in June 2018.

19. Furthermore, the Plan presents the possibility that general unsecured claimants could be paid prior to Synergy as a holder of a secured claim, if Regions Bank is paid in full prior to June 2018. General unsecured claimants are to start being paid when Regions Bank is paid in full, with holders of convenience class creditors paid 90 days after the effective date of the Plan. Thus, it is unclear if the proposed timing of the payments to convenience class creditors and general unsecured creditors violates 11 U.S.C. § 507. Accordingly, the Disclosure Statement should be amended to specifically address the timing of when payments commence in favor of Synergy, protections in place to secure the value of Synergy's collateral, and if the payment scheme violates 11 U.S.C. § 507.

WHEREFORE, Synergy Bank respectfully requests that this Court direct the Debtors to amend the Disclosure Statement to include information sufficient to allow a creditor to vote to accept or reject the Plan as discussed in this Objection and prays for such other further relief as may be just and proper.

Respectfully submitted,

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Counsel for Synergy Bank

CERTIFICATE OF SERVICE

I, Greta M. Brouphy, counsel for Synergy Bank, do hereby certify that I caused the above and foregoing OBJECTION TO THE JOINT DISCLOSURE STATEMENT to be served on **April 10, 2017**, to all parties entitled to service via the Court's Electronic Filing System as follows:

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