

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE: HOMEROOMS, INC.,	:	CHAPTER 11
	:	
DEBTOR	:	CASE NO. 17-51324
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OBJECTION TO PROPOSED PLAN AND DISCLOSURE STATEMENT

NOW INTO COURT, through undersigned counsel, comes Gulf Coast Bank (“GCB”), a secured creditor herein, which files this objection to the Disclosure Statement (Rec. Doc. 35) and proposed Chapter 11 Plan (Rec. Doc 34) filed by Homerooms, Inc. (the “Debtor”), and respectfully represents as follows:

PRELIMINARY STATEMENT

The Debtor has had ample opportunities to satisfy or restructure its debts. It has failed to do so and, yet, still seeks to control the liquidation of GCB’s collateral on a debt that has effectively been in default for more than six (6) years now. At this juncture, it is fully apparent that this Debtor is unable (or unwilling) to timely resolve this debt or liquidate this collateral. Further, both the disclosure statement and proposed plan are woefully deficient and lack many statutory and practical requirements. Finally, the plan, to the extent it would in any way limit GCB’s right to enforce its guaranty from Michael Munro overreaches and violates the Bankruptcy Code.

THE DEBTORS’ BUSINESS AND THE MORTGAGED PREMISES

1. The Debtor runs a low-end lodging business commonly referred to as the “Cypress Tree Inn.” The business is located just south, southwest of the

Lafayette Airport in the run-down site of a former large-scale motel property.

2. The Debtor's primary asset is the immovable property located at that site, which consists of a number of tracts totaling approximately 10 acres together with the deteriorating buildings and improvements thereon, all of which is subject to a first priority mortgage in favor of GCB (the "Mortgaged Premises").¹ The Mortgaged Premises is in a state of extreme disrepair.
3. The debtor has no material prospects for turning its business around, and the sole officer and shareholder of the Debtor has indicated on numerous instances that it is unable to operate the business as a lodging property any longer and must liquidate the property.
4. Further, since the bankruptcy, GCB has had to force-place insurance for several months. While the Debtor seems to have secured insurance for the time being, sometime in early 2018, the debtor presented its insurance agent with a check that had insufficient funds and the check bounced! The Debtor subsequently paid cash for at least one (1) month of insurance.

PROCEDURAL BACKGROUND

5. The debtor previously filed bankruptcy in this Court on two (2) prior occasions. On or about August 31, 2005, the debtor filed a chapter 11 petition in this court, which filing bears docket no. 05-52307

¹ The mortgage secures any and all indebtedness of the Debtor to GCB, including a Promissory Note executed by the debtor, dated December 17, 2010 (the "Note"), in the original principal amount of \$1,650,025.00.

("Homerooms I"). Upon information and belief, *Homerooms I* was dismissed on the debtor's own motion.

6. On or about February 10, 2012, the debtor filed a second chapter 11 petition in this court, which filing bears docket no. 14-50136 ("*Homerooms II*"). Eventually, on or about November 29, 2012, the debtor confirmed a Chapter 11 Plan of Reorganization (the "2012 Plan"). Said 2012 Plan provides, among other things, as follows:

Gulf Coast Bank has a secured claim against the Debtor in the approximate amount of \$1,828,698.47. This claim is secured by a first mortgage on the Hotel. This secured claim will be amortized over twenty (20) years with interest at the rate of 5.25% per annum. The monthly payments, in the amount of \$12,322.58 per month, will begin on the first day of the month that is at least 30 days after the Effective Date. All of following payments will be due and payable by the Debtor on the first day of each month thereafter. **This loan will balloon and come due in thirty-six (36) months in the amount of \$1,532,892.06.** The Debtor will make adequate protection payments of \$10,000.00 to Gulf Coast Bank beginning on or before October 5, 2012 and continuing until the Chapter 11 Plan is confirmed. (Emphasis added.)

7. The creditors in the *Homerooms II* case consisted of principally the same creditors (or types of creditors) listed in this case, *Homerooms III*.² In fact, GCB is the senior secured creditor in both cases, Michael Munro (the sole owner and officer of the debtor) claims to be the junior secured creditor in both cases, and the unsecured creditors in both cases primarily consist of utilities or entities affiliated with Munro.

² This case, docket no. 17-51324, is hereafter sometimes referred to as "*Homerooms III*."

8. The debtor defaulted on the balloon payment due under the 2012 Plan, and, as a result, GCB initiated a foreclosure on the Mortgaged Premises on or about March 29, 2017.
9. The Sheriff's Sale was scheduled for October 11, 2017, and the debtor filed this bankruptcy the day before, on October 10, 2017.
10. Although the debtor values the property at \$4,000,000, it has no appraisals or written offers to support that valuation. The current fair market value of the property in "as is" condition is believed to be much less - **\$2,088,000**. That value may be significantly less when the property is sold under distressed circumstances.
11. GCB filed a Motion to Dismiss Bankruptcy Case, or in the Alternative, Convert to Chapter 7 (the "Motion to Dismiss") (Rec. Doc. 24) and a Motion for Relief from Automatic Stay, or, in the Alternative, for Adequate Protection (Rec. Doc. 26) (the "Motion for Stay Relief"), both of which are set for hearing on April 3, 2018.³

OBJECTIONS TO DISCLOSURE STATEMENT

12. The disclosure statement fails to provide basic and fundamental information on which GCB can rely in making an informed decision. 11 U.S.C. § 1125(a).
13. Particularly troubling in the case of a Debtor that has shown an inability to sell the property, the disclosure statement (and the plan) provides no

³ In the interest of judicial efficiency and out of an abundance of caution, GCB adopts its arguments, evidence and allegations set forth in those motions.

information on the methodology, details, timeline or deadline for **how and when** the Debtor intends to market or sell the Mortgaged Premises.

14. The disclosure statement provides no information on prior attempts to sell the property or the appraised value of the property such that the manner or method the property might be sold can be appropriately evaluated by GCB.
15. The disclosure statement fails to describe how the property will be sold? Will it be sold by auction? If so, who is the auctioneer? What is the procedure? Is there a fallback or stalking-horse offer? What commission will the auctioneer be paid? Will it be sold through a real estate agent? What discretion does the Debtor have to negotiate? What are the terms of the current listing agreement (which presumably has now been rejected)? Will a new listing agreement be proposed? What are the proposed terms of the new listing agreement? Is there a deadline by which the property must be sold? What happens if it is not sold in 3 months? 6 months? One year?
16. The disclosure statement fails to identify the length of time the current listing agent has listed the property, the efforts he has taken or the efforts he plans to take to successfully sell the property.
17. The disclosure statement provides no information on the fees, commissions or expenses that might be incurred by the Debtor in selling the Mortgaged Premises or whether the Debtor proposes to have those fees paid in priority to the interest of GCB.

18. The disclosure statement grossly under-states the value of GCB's claim. The Debtor lists the claim "in the approximate amount of \$1,800,000.00." However, the claim as of the petition date was \$1,984,999.05. Since that time, per diem interest of \$879.56 continues to accrue.

OBJECTIONS TO CONFIRMATION OF DEBTOR'S PLAN

19. The Bankruptcy Code's ultimate goal is to maximize value for creditors and to pay claims quickly. Here, GCB is the only disinterested creditor with a meaningful interest in the Mortgaged Premises.⁴
20. Every day that passes threatens the limited equity cushion, if any, that GCB has in the Mortgaged Premises.
21. There is no need to allow this Debtor to continue to operate the business. Completely contrary to the purposes of Chapter 11, there appears to be *no benefit* from selling this Debtor's assets as a going concern. To the contrary, the mere operation of this "business" appears to present a public safety threat and a likely ongoing reduction in the Debtor's limited assets. Any delay occasioned by allowing the Debtor to manage its own affairs diminishes GCB's limited equity in the finite assets available.
22. Furthermore, the Debtor's plan fails to provide adequate means for implementation. Indeed, the plan is devoid of any specifics as to the procedure, costs, or timeframe in which the Mortgaged Premises is to be liquidated.

⁴ Michael Munro, the Debtor's sole shareholder, claims to have a second mortgage on the Mortgaged Premises. There is a question of whether the mortgage is bona fide or the amount of any debt secured by that mortgage.

23. In determining feasibility, a bankruptcy court must find that the proposed plan is workable and has a reasonable prospect for success. *e.g.*, *In re M & S Assocs., Ltd.*, 138 B.R. 845, 849 (Bankr. W.D. Tex. 1992). The plan proponent bears the burden to present evidence to sufficiently demonstrate that the plan has a reasonable chance of succeeding. *In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 226 (Bankr. D.N.J. 2000).
24. The best indicator that this is problematic is the Debtor's poor track record in selling or obtaining commercially reasonable offers to sell the property.
25. Although the Debtors' proposed plan indicates very generally that the property will be sold, the specific provisions as to how that end will be met are not included. Under these circumstances, the absence of adequate procedures and guidelines to ensure that the Debtor will actually achieve the plan goals and requirements in a timely manner should be fatal to the plan. Indeed, this proposed plan violates Bankruptcy Code § 1129(a)(11).
26. When a secured creditor rejects the plan and the court is asked to confirm the plan over that rejection, the court is being asked to deprive the secured creditor of its ability to foreclose on its interest in the debtor's property – a property interest that is entitled to protection under the Fifth Amendment to the Constitution. *See Armstrong v. United States*, 364 U.S. 40, 48 (1960) (government action preventing creditors from enforcing liens constituted a Fifth Amendment taking); and *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589, 594-95(1935).

27. The disruption of interests in property caused by bankruptcy cases should be minimized. See e.g. *Johnson v. First National Bank of Montevideo*, 719 F.2d 270, 273 (8th Cir. 1983). See also *D&F Construction*, 865 F.2d at 675-76.
28. Years ago, GCB bargained for a short-term commercial loan that would have matured in 2013. After the Debtor defaulted, GCB moved to foreclose. Then the Debtor initiated *Homerooms II*, eventually resulting in the 2012 Plan. The Debtor defaulted on that plan and is still in control of its meager affairs. GCB attempted to foreclose, and six (6) months ago, the Debtor initiated this case. In the past six (6) months, the Debtor has done little except propose a bare-bones plan short of procedures and deadlines and unlimited in time.
29. Among the requirements set forth in section 1129(a) of the Bankruptcy Code, the plan must be proposed in good faith. Courts interpreting section 1129(a)(3) have recognized that the good faith inquiry focuses on examining the “totality of the circumstances” surrounding the proposed plan and whether there is a reasonable likelihood that the plan will achieve results consistent with the standards under section 1129. See *In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985); *Public Fin. Corp. v. Freeman*, 712 F.2d 219, 221 (5th Cir. 1983); *In re Save Our Springs (S.O.S.) Alliance, Inc.*, 388 B.R. 202, 247 (Bankr. W.D. Tex. 2008); and *In re Ferch*, 333 B.R. 781, 784 (Bankr. W.D. Tex. 2005).

30. Here, the Debtor's proposed plan fails to satisfy the "totality of the circumstances" test. This Debtor has done little to engender trust or confidence and its plan is fully devoid of any of the procedures, specifics or deadlines that are necessary under the totality of these circumstances.
31. **To the extent the proposed injunction would in any way limit or impede GCB's right or ability to pursue Michael Munro for the amounts due, the plan does not satisfy the Bankruptcy Code.** In that regard, the proposed injunction is overbroad and violates Bankruptcy Code § 1141. See also § 1129(a)(1); *In re: Couture Hotel Corporation*, 536 B.R. 712 (Bankr. N.D. Tx. 2015); 11 U.S.C.A. § 524(e) ("discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt."); and *N.C.N.B. Texas Nat'l Bank v. Johnson*, 11 F.3d 1260, 1266 (5th Cir. 1994).
32. Until any and all language that might purport to impair GCB's claims against Munro are removed, the plan cannot satisfy the requirements of Bankruptcy Code § 1129.

CONCLUSION

This Debtor has had ample opportunities to satisfy its debts and salvage any equity it may have in the property. Now, it is fully apparent that this Debtor is unable (or unwilling) to do either and it is merely delaying liquidation. Further, both the disclosure statement and proposed plan are woefully deficient and lack many statutory and practical requirements needed. Finally, the plan, to the extent it would in any way limit

GCB's right to proceed on its guaranty from Michael Munro overreaches and violates the Bankruptcy Code.

WHEREFORE, in light of the foregoing, this court should deny confirmation of the proposed plan.

Submitted: March 25, 2018

OTTINGER HEBERT, L.L.C.

/s William H.L. Kaufman

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CHAPTER 11

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CERTIFICATE OF SERVICE

I hereby certify that in accordance with the Western District of Louisiana's electronic filing procedures the above and foregoing Objection to Proposed Plan and Disclosure Statement is being filed electronically. A Notice of Electronic Filing will be sent by the Court to all counsel of record who have consented to email notification and electronic service, including:

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This document is available for viewing and downloading from the Court's ECF system.

Thus done on this 25th day of March, 2018.

/s William H. L. Kaufman
William H. L. Kaufman