UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:	)	
Macco Properties, Inc.	)	**BK-10-16682-NLJ**
	)	**(Chapter 11)**
Debtor.	)	

OBJECTION OF UNITED STATES TRUSTEE TO EQUITY SECURITY HOLDER JENNIFER PRICE'S PROPOSED DISCLOSURE STATEMENT TO ACCOMPANY FIFTH AMENDED PLAN OF REORGANIZATION DATED DECEMBER 21, 2012
AND BRIEF IN SUPPORT

The United States Trustee ("UST") files this objection to equity security holder Jennifer Price's ("Price") proposed disclosure statement filed December 21, 2012. The proposed disclosure statement fails to provide "adequate information", as defined by section 1125(a)(1)[1].

Overview

This is Price's fifth attempt to provide a disclosure statement with adequate information to permit creditors to make an informed decision as to whether they want to continue a relationship with the Price and McGinnis management team. The consistent theme throughout Price's disclosure statement, as well as Price and McGinnis's conduct throughout this case, has been to limit information to creditors, the official unsecured creditors committee, the chapter 11 trustee, the U.S. Trustee, and this Court. Examples of their conduct include operating their inappropriate cash management system without disclosure (robbing Peter to pay Paul); settling litigation without disclosure; dissipating $1,375,000 in litigation proceeds without disclosure; and paying professionals post-petition without disclosure or Court approval. Price and McGinnis are no different today than they were at the commencement of this case. Recent events continue to provide examples of their improper conduct.

[1] Statutory references shall refer to sections of the Bankruptcy Code, 11 U.S.C. §§ 101—1532, unless stated otherwise.

MA Cedar Lake Apartments, LLC

Price filed a motion for conditional order dismissing MA Cedar Lake Apartments, LLC ("Cedar Lake") on November 2, 2012. Price asserted in her motion the chapter 11 trustee of Macco Properties, Inc. ("Macco") was to sell Macco's ownership interest in Cedar Lake to Price, et al. In her motion, Price provided assurances that all claims of all creditors would be paid and as such, there would be no need for the continuation of the bankruptcy. Price requested the case be dismissed to permit new management "… maximum flexibility …" to operate the business. In essence, Price did not want to be confined in her operation of the business by the duties and responsibilities imposed by the Bankruptcy Code and Rules.

Needless to say, that in light of Price's previous conduct and unfulfilled promises to creditors and parties in interest, her motion drew objections from All American Bank ("AAB"), Cedar Lake, and the UST. Each objector opposed dismissal of the case without payment of creditors' claims first. In addition, the UST wanted documented proof of payment of all claims. The matter was set for hearing and continued twice in the span of a week in the hope that the sale of Macco's ownership interest in Cedar Lake to Price et al would close and all creditors would contemporaneously be paid. The sale did not close by an agreed date, creditors were not paid, and Price withdrew her motion.

On or about November 28, 2012, the sale eventually closed and the AAB claim was paid, subject to further litigation by Price. Price, thereafter, on November 30, 2012, filed her Renewed Motion to dismiss the Cedar Lake bankruptcy. Price then asserted "… the continued pendency of the Cedar Lake case would (i) unnecessarily delay payment of the Remaining Creditor's claims …" (which the UST believed approximated $65,000 at the time of closing).

Price continues to pursue dismissal of Cedar Lake with hollow promises of paying all creditors. Price knew the claims to be paid and just had to pay them. However, since the closing,

the UST believes Price has not paid any other claims, except AAB's which of course Price is challenging. In addition, the UST believes since the closing additional administrative claims approximating $165,000 now exist and have gone unpaid. Her intentional failure to pay creditors of Cedar Lake goes to the very essence of her lack of good faith.

Division Properties, LLC

In January 2012 this Court approved, and the trustee sold, Macco's interest in Division Properties, LLC ("Division") to an entity controlled by Price and McGinnis. When the chapter 11 trustee turned over the property to Price and McGinnis it is believed that the mortgage was current, the utilities were current, the property taxes were current, and the tenant security deposit account was fully funded. In just seven short months, the wheels on the bus fell off. Price and McGinnis on July 20, 2012 placed Division in chapter 11 bankruptcy in the Northern District of Texas (Case No. 12-34679-sgj11). The story of Division is no different than all the other stories of entities owned, managed, or controlled by Price and McGinnis. Price and McGinnis did not make the mortgage payments. Price and McGinnis did not pay the utilities. Price and McGinnis plundered the tenant security deposit accounts, again. Specifically, Division's schedules reflect the current creditor makeup to be secured claims totaling $7,426,398.67; priority claims (tenant security deposits) totaling $45,016; and general unsecured creditors (primarily unpaid utility providers) claims totaling $77,167.28.

It wasn't until Price filed her 4th plan and accompanying disclosure statement on September 21, 2012, that she disclosed the bankruptcy filing of Division. However, even in her disclosure, Price fails to include all the relevant and important facts and circumstances of that bankruptcy filing. It is relevant and important information for all creditors and parties in interest to know that within seven months of purchasing the assets of Division it was necessary for Price and McGinnis to seek further financial reorganization for Division. The intentional

failure to disclose this paramount information goes to the very essence of their lack of good faith.

The UST objects to the approval of the disclosure statement dated December 21, 2012 based on the following:

1. The disclosure statement fails to adequately outline the events leading to the debtor's financial difficulties and the eventual filing of the case. It inaccurately implies the cause for the bankruptcy filing was "limited" to Twin Lake's financial difficulties. This does not accurately portray the debtor's financial condition at the time of the bankruptcy filing. In reality, not only was Twin Lakes in mortgage default but a multitude of related entities were also in mortgage default status. In addition, a multitude of related entities and Macco, were years behind in the payment of property taxes, months behind in the payment of utility bills, and tenants were under threat of utilities being cut off.

2. A major contributing factor in forcing the debtor into bankruptcy was the multitude of litigation against debtor and related entities alleging fraudulent conduct on the part of the debtor, the Price and McGinnis management team, and related entities. Repeatedly, Price and McGinnis have attempted to minimize their conduct. And again in this most recent disclosure statement Price continues to minimize Price and McGinnis' wrongful pre-petition conduct. A listing of all pending litigation against the debtor, Price and McGinnis, and related entities and the allegations of same should be provided/disclosed to all creditors thus enabling creditors to make an informed decision of whether they want to continue a relationship with the Price and McGinnis management team. In addition, the disclosure statement should disclose the outcome of litigation during the chapter 11, such as the Bristol Park litigation, the Linwood litigation, the Cobblestone litigation and the Utah federal court receiver litigation. Price minimizes the resolution of litigation with the statement, "was eventually settled for a minimal amount". UST

believes that numerous lawsuits were settled, each of them for hundreds of thousands of dollars. Full terms of settlement effecting Macco, Price and McGinnis, and related entities should be disclosed.

3. The disclosure statement fails to contain a brief narrative identifying the steps taken to alleviate or correct the situation since the inception of the case.

4. Price, during the July, 2011 trial on her motion to dismiss identified 35 entities/properties reflecting real estate assets and five other assets totaling $2,868,769 (including four notes or mortgages of $2,450,144). What happened to these assets? They were not turned over to the chapter 11 trustee.

5. The disclosure statement inadequately discloses the anticipated future of this debtor in funding the reorganization. The disclosure statement is unclear regarding the $20,000,000 "letter of credit". No documentation is provided reflecting whether the letter of credit is a "hard" letter of credit, i.e. does it currently exist, or may it only exist upon some unknown future event(s), i.e. after confirmation and after creditors have sacrificed their right to appeal? What are the terms of the letter of credit, such as; what are the repayment terms, default provisions, etc.?

6. The disclosure statement fails to provide adequate financial information about the debtor. At Exhibit "E" Price provides superficial financial projections, not based in fact or reality. An analysis of realistic numbers need to be provided, based upon information on a per entity basis. This information further needs to identify all assumptions being utilized in preparation of the financial information. When financial information is included, the accounting method utilized to produce financial information and the names of the responsible accountants should also be disclosed.

7. A disclosure statement should include a Chapter 7 liquidation analysis. The disclosure

statement should clearly indicate the difference between treatment accorded in the plan, and what creditors would receive under a Chapter 7 liquidation. Price's proposed disclosure statement accompanying her 4th amended plan reflected a total asset value of $7,265,000. Compare this to Price's latest version which now only values Macco's assets at $4,950,000. How were these asset valuations determined? If Price's valuation of Macco's assets are to be believed, how does Price explain Macco's asset value reduction of $2,215,000 compared to what Price, et al paid for the assets purchased within the last few months.

8. The disclosure statement makes passing reference that additional administrative claims will not exceed $300,000. Due to the very litigious nature of this case, Price should communicate with all administrative claimants and obtain an estimated amount of fees to be incurred to wrap up the case in the unlikely event her plan were to be confirmed. Such disclosure should indicate the expected amounts owed, the identity of the claimants (including United States Trustee quarterly fees), and the source of funds from which they will be paid upon confirmation.

9. The disclosure statement fails to disclose the collectability and current balance of accounts receivable, notes receivables, and or mortgage receivables as discussed above. See Paragraph 4.

10. The disclosure statement fails to include adequate information concerning pending or potential legal proceedings to which the debtor is, was, or may be a party. Specifically, all the avoidance actions brought by the Trustee should be disclosed. The information should include the location of the litigation, the present status, the relief sought, Price's prognosis of the eventual outcome, and the effect, if any, on the plan. Furthermore, there remains pending the adversary proceeding entitled *Jennifer Price v. Michael E. Deeba*, Adv. No:

11-1099, brought by Price. The disclosure Statement does not disclose Price's or the Reorganized Debtor's intent with regard to the prosecution of that litigation or any other potential/threatened litigation against the Trustee or the Trustee's professionals.

11. The disclosure statement fails to adequately describe post-petition activities affecting the debtor. Such as, the wrongful conduct of prior management (which included Price) which led to the replacement of prior management with a chapter 11 trustee. That conduct included among other things, the settling of litigation without bankruptcy court approval and the attempt to dissipate $1,375,000 in settlement proceeds.

12. The disclosure statement fails to identify and quantify what pre-petition or post-petition claims McGinnis and/or Price hold, either directly or indirectly, through agents and/or others, and whether McGinnis and Price will be voting those claims.

13. The disclosure statement fails to disclose the existence of, and dollar amount of, pre-petition causes of actions (i.e §§ 547 and 548) which may exist, Price's proposed attempts to recover same, and the actual or projected realizable value from the recovery of preferential or otherwise voidable transfers.

14. The disclosure statement fails to contain a narrative of the existence of, and dollar amount of, post-petition causes of actions (i.e. § 550) which may exist, Price's proposed attempts to recover same, and the actual or projected realizable value from the recovery of unauthorized post-petition transactions. Specifically, post-petition payments made by the prior management team of Price and McGinnis, without court authority.

15. The disclosure statement fails to list the source of information stated.

16. The disclosure statement fails to provide complete, meaningful financial information.

17. The disclosure statement provides at page 16 when discussing the guaranty claims of Macco a gross value of properties based upon "available appraisal information." Price has provided

an Exhibit "G" which purports to provide appraisal information. However, none is attached and, although requested a multitude of times by the UST and **promised to be provided a multitude of times**, none have been provided. Like in all things that Price and McGinnis have done in an attempt to limit information, there is no basis to limit this information to creditors, the chapter 11 trustee or any other party in interest. Each of the appraisals the debtor has relied on should be provided to the U.S. Trustee's office and any other requesting party.

18. The Court's September 7, 2011, 52 page opinion is telling with respect to the poor and faulty management performance of Price and McGinnis. In light of Price and McGinnis' management history, including their failure to disclose the pending bankruptcy of Division, their failure to pay the creditors in Cedar Lake, and the requirement that confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization, it is incumbent on Price and McGinnis to provide personal financial statements which would allow creditors to make an informed decision as to Price and McGinnis' ability to fund the operations of the debtor post confirmation.

BRIEF IN SUPPORT

Section 1125(b) provides:

> 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 ... (emphasis added).

11 U.S.C. § 1125(b).

Section 1125(a)(1) defines adequate information:

> 'adequate information' means information of a kind, and in sufficient detail, as far as 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... (emphasis added)

11 U.S.C. § 1125(a)(1).

Among the relevant factors for evaluating the adequacy of a disclosure statement are: (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 summary thereof; (12) the estimated administrative expenses, including attorneys' and accountant fees; (13) the ability to collect accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the chapter 11 plan; and (15) information relevant to the risks posed to creditors under the plan. In re Metrocraft Publishing Services, Inc., 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984).

Although the above listed factors are not exhaustive of the information which may be necessary to provide adequate information, disclosure of all these factors may still be insufficient to provide adequate information to creditors voting on the plan. Id. Where the disclosure statement fails to enable a creditor to make an informed decision regarding acceptance or rejection of the proposed plan, the requirements of section 1125 are not fulfilled. 11 U.S.C. § 1125. Therefore, the court should disapprove the proposed disclosure statement until such time as Price complies with the applicable statute.

Without financial information, creditors cannot determine whether the proposed plan is beneficial or feasible. Parties in interest have no information to determine what has been accomplished while this estate has been administered under chapter 11. It may be that conversion of this estate to chapter 7 makes more sense. Furthermore, the lack of a liquidation analysis compounds the lack of financial information.

Failure to disclose litigation specifics may preclude the debtor from pursuing litigation post-confirmation. Confirmation of the proposed plan may be deemed res judicata to claims against third parties or creditors. Howe v. Vaughan (In re Howe), 913 F. 2d 1138 (5th Cir. 1990)(In barring debtor's post-confirmation claims against lender under res judicata the court adopted the transactional test set forth in the RESTATEMENT (SECOND) OF JUDGMENTS); In re Kelley, 199 B.R. 698 (9th Cir. BAP 1996)(Claims were barred where debtor failed to set forth in the disclosure statement specifics regarding post-confirmation litigation); In re Rosenheim, 918 F. Supp. 98 (S.D.N.Y. 1996).

WHEREFORE, based upon the foregoing, the UST respectfully requests this court to deny approval of Price's proposed disclosure statement; require the foregoing information to be included in any revised or amended disclosure statement; and for such other and further relief as this court deems just, equitable and proper.

Respectfully submitted,

RICHARD A. WIELAND
UNITED STATES TRUSTEE

/s/ Charles S. Glidewell
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was electronically filed through the Court's CM/ECF System and it is my understanding a "Notice of Electronic Filing," will be generated and transmitted to the following parties in interest allowing then to receive a copy of this document:

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