

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

In re:)	10-BK-16682-NLJ
)	Chapter 11
MACCO PROPERTIES, INC. ¹)	Jointly Administered
)	
Debtor-in-Possession)	

**OFFICIAL UNSECURED CREDITORS' COMMITTEE'S OBJECTION,
WITH BRIEF IN SUPPORT, TO PRICE'S DISCLOSURE STATEMENT
TO ACCOMPANY FIFTH AMENDED PLAN OF REORGANIZATION**

The Official Unsecured Creditors' Committee ("Committee"), hereby submits this Objection to the Disclosure Statement to Accompany Fifth Amended Plan of Reorganization Dated December 21, 2012 [Doc #1383].² In support of this Objection, the Committee would show the Court as follows:

1. After five (5) attempts we are faced once again with nothing more than before; the non-binding inadequate "commitment" and lack of adequate disclosure as to funding, the lynchpin of the Fifth Amended Plan of Reorganization [Doc #1382] (the "Plan").

2. The history of the Debtor and prior management's operations thereof is well known to the Court, Chapter 11 Trustee, Committee, United States Trustee office and most of the secured creditors. However, other than the perceived frauds and failure to pay, the general unsecured creditors represented by the Committee are not specifically familiar with the unlawful and unethical conduct of the Proponent and her husband, Lew McGinnis. Despite the amount of knowledge of the

¹ The affiliated Debtors are Macco Properties, Inc.; NV Brooks Apartments, LLC (10-16503); MA Cedar Lake Apartments, LLC (10-16563); JU Villa Del Mar Apartments, LLC (10-16842); and, SEP Riverpark Plaza, LLC (10-16832).

² The Committee incorporates its Objection to the Disclosure Statement to Accompany Fourth Amended Plan of Reorganization [Doc #1240], Response to Price's Disclosure Statement [Doc #905], Response to Price's Motion [Doc #915], Supplemental Objection to Price's Motion [Doc #996], Objection to Disclosure Statement [Doc #1112] and the responses and objections of other unsecured creditors, U.S. Trustee and the Trustee to the Disclosure Statement.

principal parties, there appears to be even more to be learned in the insider dealings which are now the subject of adversary proceedings and discovery.

3. The Disclosure Statement's disclosure and particularly the representation of future money to fund the Plan must be closely examined to insure the requirements of adequate disclosure by 11 U.S.C. §1125.

4. This Fifth Disclosure Statement does not move the ball any closer to adequate disclosure and repeats the same inadequacies that all parties have continually raised or even the direct instructions by the Court.

5. After the Third Amended Plan and Disclosure Statement hearing was requested to be continued, the Committee understood that the basis for the Court's granting of such additional continuance was the Court's instruction and Ms. Price counsel's acknowledgment that they were not to go forward with an amendment unless and until an irrevocable and unconditional letter of credit or commitment, as promised in the three prior disclosure statements, was obtained.

6. Nevertheless, the Fourth Amended Plan and Disclosure Statement were filed based on a conditional commitment for NBC Bank to issue a \$5 Million letter of credit "for the account of" Consolidated Capital Investments, LLC ("CCI") to Macco, followed by a letter from CCI that it assures it will do what is required.

7. In this Fifth Disclosure Statement, the Proponent now attaches a single page letter which states a "wish to confirm my commitment to Macco Properties, Inc. ("Macco") to establish a line of credit for its use and benefit in the amount of Twenty Million Dollars" upon the occurrence of the Effective Date, from Edward Snyder.

8. First, the alleged confirmation of commitment is ambiguous and omits the necessary and required terms to form a contract or be enforceable. Thus, the letter is a nullity.

9. The Letter fails to state that Mr. Snyder will even be the lender under such Line of credit but merely he will "establish" a line of credit.

10. Clearly if Mr. Snyder is a "high net-worth" individual and businessman, he understands the importance of legal agreements and could afford the cost of preparing a legally binding commitment if he chose to do so. Failing to do so, speaks and discloses volumes but not that which is required by Section 1125.

11. Most importantly, the Disclosure Statement is void of any material information on Edward Snyder, let alone "adequate information" required by Section 1125 which would require the disclosure of the financial means and ability to meet the funding commitment. Minimally, detailed financial statements of Mr. Snyder must be attached to the Disclosure Statement with a legally binding commitment.

12. The Fifth Plan has gone from requiring funding of \$5 Million to over \$20 Million. The Disclosure Statement sets forth a listing of unsecured creditors and claims that generally supports the use of \$2,500,000 as an estimate for Class 19 unsecured creditors. However, there is no support for the Disclosure Statements use of \$300,000 - \$500,000 as the amount of unfunded professional fees or that the amount of \$17 Million is sufficient to meet the remaining financial obligations. The Disclosure Statement once again fails to even attempt to meet the burden required in order to provide sufficient information for creditors to make any informed decision, particularly relating to the source and amount of funding required by the Plan.

13. The amended treatment of Classes 6, 15, 16 and 17 require the guaranty by Edward Snyder of substantial amounts of debt in addition to the \$20 Million alleged commitment. Once again, the Disclosure statement is void of any meaningful information on Mr. Snyder or his financial means or ability to guaranty such debts. It is insufficient to offer some disclosure only upon the

signing of a confidentiality agreement. The bankruptcy process is required to be an open and transparent process. There is nothing in the Disclosure Statement or even the "commitment" letter reflecting Mr. Snyder's agreement or obligation to execute such guarantees.

14. The unsecured creditors are not provided sufficient information to make an informed decision on the Fifth Amended Plan. There is no reasonable assurance that the Fifth Amended Plan will result in the payment in full of the approximately \$2,500,000 of unsecured claims in class 19, let alone the payment or other satisfaction of other unsecured guaranty claims.

15. The Fifth Disclosure Statement fails to remedy prior objections as to the insufficiency of the disclosure of prior management and the plan proponent's misconduct, her abuse of the bankruptcy process, repeated bankruptcy filings and creating a new entity and transferring title of property to that entity for the sole purpose of filing bankruptcy to stop foreclosure, the feasibility of reorganization, the repayment or debt service for the line or credit or any re-payment obligations to Mr. Snyder, the lack of need for further reorganization efforts and the payment of administrative expenses and the amount and nature of recovery actions against the prior management and related affiliates and why those should be dismissed.

ARGUMENT AND AUTHORITY

THE DISCLOSURE STATEMENT LACKS ADEQUATE INFORMATION

Section 1125 of the Bankruptcy Code requires the Disclosure Statement provide adequate information which means information 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. Even as amended, the Disclosure Statement fails to provide adequate information and the Disclosure Statement cannot be approved.

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...

11 U.S.C. § 1125(a)(1)(emphasis added).

Without a confirmed commitment, free of contingencies, creditors are left with nothing short of "empty promises" that they will be paid at some point in the future. See, *In re Quigley Co., Inc.*, 437 B.R. 102,142 (Bankr.S.D.N.Y.2010)(plan was not feasible where funding source was "speculative at best and visionary at worst"). The Proponent's fifth attempt fails to satisfy and disclose a legally enforceable commitment and repeats the empty promises that the parties have long experienced with Mr. McGinnis and Ms. Price. As shown above, the Disclosure Statement for the Fifth Amended Plan fails to contain adequate information and should not be approved.

WHEREFORE, the Committee respectfully requests the Court deny approval of Price's Disclosure Statement and deny further dates for the confirmation process until a disclosure statement is approved and for such other and further relief as the Court deems just and equitable.

/s/ RUSTON C. WELCH
Ruston C. Welch, OBA# 13796
WELCH LAW FIRM, P.C.
4101 Perimeter Center Drive, Suite 360
Oklahoma City, Oklahoma 73112-2309
Telephone: (405) 236-5222
Facsimile: (405) 231-5222
rwelch@welchlawpc.com
ATTORNEY FOR OFFICIAL UNSECURED
CREDITORS' COMMITTEE

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 a "Notice of Electronic Filing," will be generated and transmitted to all parties entitled to receive a copy of this document.

/s/ RUSTON C. WELCH