

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

In re:	:	Chapter 11
	:	
ARCON PROPERTIES, LLC,	:	Case No. 18-bk-00212 RNO
	:	
ARCON HOMES, LLC,	:	Case No. 18-bk-00213 RNO
	:	
Debtors.	:	Related Docket Nos.:
	:	Properties Docket No. 88;
	:	Homes Docket No. 51.

**OBJECTION OF CBC PARTNERS I, LLC
TO THE AMENDED JOINT DISCLOSURE STATEMENT
IN SUPPORT OF DEBTORS' PLAN OF REORGANIZATION**

NOW COMES CBC PARTNERS I, LLC ("CBC"), by and through its attorneys, Post & Schell, P.C., and files this Objection to Amended Joint Disclosure Statement In Support of Debtors' Plan of Reorganization (the "Objection") and respectfully states as follows:

PRELIMINARY STATEMENT

1. The Amended Joint Disclosure Statement (the "Amended Disclosure Statement") should not be approved because it does not contain the information necessary to enable a hypothetical reasonable creditor to make an informed judgment about the Debtors' Chapter 11 Plans, including whether to vote to accept or reject the Plans and to assess the Debtors' ability to satisfy their obligations thereunder.¹ A disclosure statement represents the primary source of information for creditors to determine whether to vote to accept or reject a proposed plan and it is commonly recognized as "a pivotal concept of Chapter 11 reorganization." *Kunica v. St.*

¹ While the Debtors have filed only one version of the Amended Disclosure Statement, there are actually two versions of a Chapter 11 plan, one being the Amended Plan of Reorganization of Arcon Properties, LLC and one being the Amended Plan of Reorganization of Arcon Homes, LLC. The two Chapter 11 Plans will be collectively referred to as the "Plans." Apparently, the Amended Disclosure Statement is intended to be utilized in connection with both of the Plans.

Jean Financial Inc., 233 B.R. 46, 54 (S.D.N.Y. 1999). In the present case, the information contained in the Amended Disclosure Statement is extremely vague and lacking in detail.

THE PARTIES

2. CBC is a Washington limited liability company with a business address of 777 108th Ave. NE, Suite 1895, Bellevue, WA 98004.

3. Arcon Group, Inc., is a Pennsylvania corporation with a business address of 195 Airport Road, Selinsgrove, PA 17870.

4. Arcon Homes, LLC, is a Pennsylvania limited liability company with a business address of 195 Airport Road, Selinsgrove, PA 17870.

5. Arcon Properties, LLC, is a Pennsylvania limited liability company with a business address of 195 Airport Road, Selinsgrove, PA 17870.

BACKGROUND

6. On January 22, 2018, Arcon Properties, LLC and Arcon Homes, LLC filed voluntary petitions for relief in the United States Bankruptcy Court for the Middle District of Pennsylvania (the "Petitions").

7. The Debtors remain in possession of their assets and are managing their affairs as Debtors-in-Possession.

8. CBC is the primary secured creditor of the Debtors, holding liens on the real estate of Arcon Properties, LLC through an Open-End Mortgage in favor of CBC and liens on other assets through a Security Agreement in favor of CBC executed by Arcon Group, Inc., Arcon Homes, LLC, and Arcon Properties, LLC.

9. On May 10, 2018, the Debtors filed the Amended Joint Disclosure Statement, both in the Arcon Properties, LLC matter and in the Arcon Homes, LLC matter. [Arcon Properties, LLC Docket No. 88. Arcon Homes, LLC Docket No. 51].

10. Also on May 10, 2018, Debtor Arcon Properties, LLC and Debtor Arcon Homes, LLC each filed their Amended Plan of Reorganization. [Docket No. 86 and Docket No. 49, respectively].

11. On May 11, 2018, the Court entered an Order and Notice for Hearing on Amended Disclosure Statement in both cases. [Docket No. 90 and Docket No. 43, respectively].

12. The May 11, 2018 Order provided that a hearing to consider approval of the Amended Disclosure Statement is scheduled for July 26, 2018, with a deadline of June 15, 2018 for filing any objections to the Amended Disclosure Statement.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334(b). Venue of these proceedings is proper in this Judicial District pursuant to 28 U.S.C. §§ 1408 and 1409.

OBJECTION

14. The Amended Disclosure Statement should not be approved because it fails to meet the standards and, more importantly, the purpose, of Section 1125 of the Bankruptcy Code. For the reasons described fully below, the Court should enter an order denying approval of the Amended Disclosure Statement.

ARGUMENT

A. Statutory Requirement Of Adequate Information.

15. Section 1125(b) of the Bankruptcy Code provides that an acceptance or rejection of a plan of reorganization may not be solicited until after a disclosure statement approved by the Bankruptcy Court as containing "adequate information" has been prepared and distributed to creditors. Section 1125 of the Bankruptcy Code defines the term "adequate information" as:

[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, 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 holder 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).

16. The Third Circuit has held that a party seeking chapter 11 bankruptcy protection has an affirmative duty to provide creditors with a disclosure statement containing adequate information to enable a creditor to make an informed judgment about the plan. *Krystal Cadillac-Oldsmobile-GMC Truck, Inc. v. General Motors Corp.*, 337 F.3d 314, 321 (3rd Cir. 2003) (explaining that "the importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court. Given this reliance, we cannot overemphasize the . . . obligation to provide sufficient data to satisfy the Code standard of adequate information").

17. The harm in failing to provide adequate information is elementary: without adequate information, no creditor can assess, among other things, whether the plan is feasible or offered in good faith, or whether proposed plan distributions amount to fair and equitable treatment. *See In re Ferretti*, 128 B.R. 16, 18 (Bankr. D.N.H. 1991) ("The purpose of a

disclosure statement is to provide adequate information to creditors to enable them to decide whether to accept or reject the proposed plan.”). The requirement that a disclosure statement contain adequate information has been described as “the very ‘heart of the consolidation of the various reorganization chapters.’” *In re U.S. Truck Co.*, 42 B.R. 787, 788-89 (Bankr. E.D. Mich. 1984) *citing* H.R. Rep. 95-595, 95th Cong. 1st Sess. 408 (1977)); *see also In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983)(“The key to the reorganization Chapter, therefore, is disclosure.”).

18. Precisely what constitutes adequate information in any particular instance will develop on a case by case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case. *In re Stanley Hotel, Inc.*, 13 B.R. 926 (Bankr. D. Colo. 1982); *see also* H.R. Rep. No. 95-595, at 409 (1977).

19. As the legislative history surrounding the passage of Section 1125 of the Bankruptcy Code makes clear, Congress intended for bankruptcy judges to exercise a great deal of discretion when considering the "adequacy of information" provided by a disclosure statement. *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) *citing Matter of Texas Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988); *In re Monroe Well Serv., Inc.*, 80 B.R. 324, 331 (Bankr. E.D. Pa. 1987).

20. To assist in the analysis of what constitutes adequate information, courts have developed the following non-exclusive list of pertinent factors:

- (a) the history of the debtor and a description of the debtor's business(es);
- (b) a complete description of the available assets and their value;
- (c) the anticipated future of the debtor;
- (d) the source of the information provided in the disclosure statement;

- (e) a disclaimer, which typically indicates that no statements of information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement;
- (f) a recitation of the events precipitating the chapter 11 filing;
- (g) the condition and performance of the debtor while in chapter 11;
- (h) information regarding claims against the estate;
- (i) a liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
- (j) a statement of the accounting method utilized to produce the financial information contained in the disclosure statement and an identification of the accountant(s) responsible for deriving the information as well as the valuation methods used to provide the financial information in the disclosure statement;
- (k) information regarding the future management of the debtor including the amount of compensation to be paid to any insiders, directors, and/or officers of the debtor;
- (l) a summary of the plan of reorganization;
- (m) an estimate of all administrative expenses, including attorneys' fees and accountants' fees;
- (n) the collectability of any accounts receivable;
- (o) any financial information, valuations or *pro forma* projections that would be relevant to a creditor's determinations of whether to accept or reject the plan;
- (p) information relevant to the risks being taken by the creditors and interest holders;
- (q) the actual or projected value that can be obtained from avoidable transfers;
- (r) the existence, likelihood and possible success of non-bankruptcy litigation;
- (s) the tax consequences and a statement of the tax attributes of the debtor and of a plan of reorganization;
- (t) the relationship of the debtor with affiliates;
- (u) a disclosure of transactions with insiders; and

(v) a statement as to how the plan is to be executed.

See In re Phoenix Petroleum Co., 278 B.R. at 393; *In re Oxford Homes, Inc.*, 204 B.R. 264, 269 n.17 (Bankr. D. Me. 1991); *In re Dakota Rail, Inc.*, 104 B.R. 138, 142-43 (Bankr. D. Minn. 1989). *See also In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990); *In re Metrocraft Publishing Services, Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984).

21. Although each disclosure statement need not contain every item of information set forth above, these criteria developed by the courts provide a useful guide in evaluating the adequacy of information provided in a disclosure statement. Where, as here, a disclosure statement fails to provide information material to the proffered plan, courts will deny approval of the disclosure statement. *See In re American Capital Equipment, Inc.*, 405 B.R. 415, 421 (Bankr. W.D. Pa. 2009) (finding that because disclosure statement described a facially unconfirmable plan it had to be rejected); *In re New Haven Radio, Inc.*, 18 B.R. 977 (Bankr. D. Conn. 1982) (finding disclosure statement inadequate because it failed to provide sufficient information concerning the debtor's assets and liabilities, specifically the identity of creditors, an indication as to the amount or classification of claims, and disclosure of the status of the debtor's FCC license).

22. The disclosure statement should also contain factual support for the opinions stated therein. *See In re East Redley Corp.*, 16 B.R. 429, 430 (Bankr. E.D. Pa. 1982).

23. As such, this Objection relates to the adequacy of the Amended Disclosure Statement and the accuracy of the information contained therein.

24. While some of the objections stated herein may also be made in an objection to confirmation of the Plans, a bankruptcy court may address confirmation issues at a hearing on the disclosure statement when the plan is so fatally and obviously flawed that it cannot be confirmed. *In re Bjolmes Realty Trust*, 134 B.R. 1000 (Bankr. D. Mass. 1991). If a plan of

reorganization described in a disclosure statement is unconfirmable as a matter of law, the court is authorized to deny approval of the disclosure statement. *In re Monroe Well Service, Inc.*, 80 B.R. 324, 332 (Bankr. E.D. Pa. 1987) (may be appropriate to disapprove disclosure statement where a court is convinced that the plan could not possibly be confirmed); *In re Ginger Ella*, 148 B.R. 157 (Bankr. D. R.I. 1992); *In re Dakota Rail*, 104 B.R. 138, 143 (Bankr. D. Minn. 1989); *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986); *In re Kehn Ranches, Inc.*, 41 B.R. 832 (Bankr. D. S.D. 1984). “Allowing a facially unconfirmable plan to accompany a Disclosure Statement is both inadequate disclosure and a misrepresentation.” *In re Dakota Rail*, 104 B.R. at 143.

25. CBC reserves all rights to object to confirmation of the Plans.

26. The Amended Disclosure Statement cannot be approved because it does not contain adequate information.

27. This Court has ample basis to deny approval of the Debtors’ proposed Amended Disclosure Statement because it lacks sufficient detail to enable creditors to evaluate the real economic substance and viability of the Plans.

B. The Amended Disclosure Statement Fails To Provide Adequate Information Regarding The Debtors’ History, The Debtors’ Business, And The Events Precipitating The Chapter 11 Filing.

28. While Section 2.2 of the Amended Disclosure Statement provides some minimal information regarding the Debtors’ pre-petition history, it only consists of a mere seven sentences comprising one-third of a page. This seems especially brief, considering that one of the Debtors has been in business for 5 years and the other Debtor has been in business 11 years. The events precipitating the Chapter 11 filings are barely mentioned. No mention is made as to

the Debtors' pre-petition litigation with multiple parties, nor are anything other than perfunctory details given as to other precipitating factors.

C. The Amended Disclosure Statement Fails To Provide Adequate Information Regarding Administrative Expenses.

29. It is critical for creditors to possess information regarding administrative expenses.

30. The Amended Disclosure Statement only makes one reference to a collective amount of administrative expenses which is contained in Exhibit C - Liquidation Analysis.

31. No breakdown of what comprises the administrative expense figure is provided, nor is any other information given as to potential or likely administrative expense claims.

32. This information is needed, especially in cases such as these where the Debtors have failed to pay post-petition expenses, including such critical items as insurance and taxes.

33. The failure to provide detailed information or even any breakdown of administrative expenses violates applicable standards.

D. The Amended Disclosure Statement Does Not Contain Adequate Information About The Funding Of The Plans Of Reorganization.

34. The Amended Disclosure Statement provides that the Debtors will obtain funding to execute the Plans. See Section 4.1 and Section 6.10. However, the description of the funding is so lacking in detail as to be meaningless.

35. Section 4.1 of the Amended Disclosure Statement states that the Debtors "have sought funding from various sources" and "believe they have located a party to provide the Cash Infusion or new financing" but absent that, it will list the assets for sale.

36. Section 6.10 of the Amended Disclosure Statement similarly states that the Debtors are seeking a cash infusion and "hope that an amount will be obtained" to allow for full

funding, but absent that, they are seeking a refinance of all debts, but absent that they will list the assets for sale.

37. The vague pronouncements contained in Section 4.1 and in Section 6.10 of the Amended Disclosure Statement provide no details whatsoever. No information or details are provided as to the three referenced possibilities, specifically a potential cash infusion, a potential refinance, or a potential sale. No background, amounts, or other details are provided to enable a party to make an informed judgment regarding the viability of the possibilities.

38. The various scenarios put forth of potential cash infusion, potential refinance, or potential sale demonstrate that the Debtors really have no definitive idea of what they will do and how they will proceed. At best, the Plans are premature. At worst, they are illusory and non-existent. Such Plans cannot be confirmed.

39. Thus, the Amended Disclosure Statement has failed to provide adequate information regarding funding.

E. The Amended Disclosure Statement Inadequately Describes Plan Feasibility.

40. The Amended Disclosure Statement's Feasibility Analysis is completely lacking. There is no reference to the Debtors' historical performance, nor even any projections. This information is critical because the Debtors seek to solicit acceptances based on a variety of vastly different scenarios, ranging from an investor, to a refinancing, or possibly a sale.

41. These infirmities make it impossible for creditors in the various classes to understand the treatment of their claims based on differing scenarios in order to make an informed decision as to whether to accept or reject the Plans. As a result, the Amended Disclosure Statement cannot be approved.

F. The Amended Disclosure Statement Does Not Contain A Complete Description Of Estate Assets And Value.

42. The Amended Disclosure Statement contains virtually no information regarding available assets and has no reliable information regarding the value of those assets. While the Amended Disclosure Statement makes reference to the Schedules for valuations, it contains no evidence supporting the actual value of the Debtors' assets. As courts repeatedly have held, such a "description of available assets and their value is a vital element of necessary disclosure." *In re Ligon*, 50 B.R. 127, 130 (Bankr. M.D. Tenn. 1985); *see also In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567, 569 (Bankr. N.D. Ga. 1984) (noting that the debtor should give actual value of property originally scheduled or an explanation as to why such information has not been presented); *In re East Redley Corp.*, 16 B.R. 429, 430 (Bankr. E.D. Pa. 1982) (disapproving disclosure statement in part due to lack of factual support of valuations by debtor).

43. The closest the Amended Disclosure Statement comes to the issue of valuation is located in Section 1.5 which states that "[t]here have been valuations in the past and the Debtors' values listed in the Schedules are based, in part, upon recent appraisals." Similarly, Section 5 of the Amended Disclosure Statement references the Schedules.

44. This is insufficient. No information as to facts upon which the valuations are based is contained in the Amended Disclosure Statement itself; no information is provided as to the past valuations, when they were obtained, who performed them, and what assets they covered; and no information is provided as to the "recent appraisals," when they were obtained, who performed them, and what assets they covered.

45. The information provided by the Debtors regarding assets and valuation is simply inadequate under the required standards governing disclosure statements.

G. Retention Of Jurisdiction.

46. The Plans provide for the Court to retain jurisdiction of matters relating to the bankruptcy cases and the Plans. However, this retention of jurisdiction provision does not expressly provide that the Court shall retain jurisdiction to approve Section 363 sales and to resolve all issues related thereto. The Plans should provide for the retention of jurisdiction over the foregoing. Furthermore, the Plans should make clear that any post-confirmation sale or sales are pursuant to the Plans and, therefore, recording taxes and similar items are not due to be paid under 11 U.S.C. § 1146. *See Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 128 S.Ct. 2326 (2008). Moreover, as part of the required summary of the Plans to be included in the Amended Disclosure Statement, the Amended Disclosure Statement should also make reference to the retention of jurisdiction.

H. Corporate Structure And Management.

47. Section 2.1.1 and Section 2.1.2 of the Amended Disclosure Statement describe the corporate structure of the Debtors in cursory and abbreviated fashion. In order to provide adequate information to the creditors of the Debtors, the Amended Disclosure Statement should provide detailed information as to the organization of each Debtor, the related companies to each Debtor, the relationship of the Debtors to Arcon Hybrid Construction, LLC, and the relationship of the Debtors to the Debtors' principal, Merrill D. Miller, Jr.

48. Moreover, the Amended Disclosure Statement contains no information regarding management of the Debtors, both pre-petition and currently.

49. In addition, no information is provided as to past and present compensation paid to management, officers, directors, and insiders.

50. The failure to provide the above information violates applicable standards of disclosure.

I. The Amended Disclosure Statement Fails To Disclose Transactions With Insiders.

51. It is well established that transactions with insiders must be disclosed.

52. The Amended Disclosure Statement discloses no information regarding insider transactions.

53. Merrill D. Miller, Jr., is the Debtors' principal and equity owner. What other roles he fills, both officially and unofficially, is unknown.

54. The Amended Disclosure Statement at Section 6.9.2 states that Debtor Arcon Properties, LLC "has a lease of a portion of the office consisting of 6,000 square feet to an affiliate, Arcon Hybrid, Inc. Properties also leases a portion of the manufacturing facilities at the Real Property to Arcon Hybrid, Inc. This lease is assumed under the Plan."

55. CBC is aware from its pre-petition litigation against, among others, the Debtors that Arcon Hybrid, Inc.² is owned by the Debtors' principal and insider Merrill D. Miller, Jr.

56. No disclosure of this insider transaction has been made. The supposed "lease" has never been produced and there is no evidence that the alleged monthly rent of \$10,000.00 has ever been paid to the Debtors.

57. The failure to disclose and describe this insider transaction is a serious oversight in the Amended Disclosure Statement and a notable violation of the applicable standards.

58. Moreover, this serious failure to disclose raises the possibility that other insider transactions have also not been disclosed.

² Arcon Hybrid, Inc. is believed to be the same entity as Arcon Construction Hybrid, LLC.

59. The failure to disclose insider transactions violates applicable disclosure standards.

J. The Amended Disclosure Statement Fails To Disclose The Relationship Of The Debtors With Affiliates.

60. A basic disclosure requirement is to disclose the Debtors' relationships with affiliates.

61. At least two affiliates of the Debtors exist that have not been discussed, including the nature of their relationship to the Debtors.

62. One such affiliate is Modular Building Systems, LLC about which nothing is mentioned.

63. A second affiliate is the above-mentioned Arcon Hybrid, Inc.

64. While Modular Building Systems, LLC may possibly be defunct, affiliate Arcon Hybrid, Inc. certainly is not as evidenced by the fact that it is utilizing assets belonging to the Debtors and mentioned in the Amended Disclosure Statement.

65. In order to meet the applicable standards for supplying adequate information, the Debtors' relationships with these two non-debtor affiliates must be disclosed.

RESERVATION OF RIGHTS

66. CBC reserves the right to further address the Amended Disclosure Statement and other ancillary issues and respond to any reply of the Debtors, or any party, either by further submission to this Court, at oral argument, or by testimony to be presented at any hearing. CBC expressly reserves the right to supplement this Objection at any time prior to or during the hearings on the Debtors' Amended Disclosure Statement. Moreover, CBC reserves all rights as to all matters that may arise in these cases relating in any way to CBC's claims against the

Debtors or otherwise, whether under its loan documents, the Bankruptcy Code, or any other applicable state or federal laws.

CONCLUSION

WHEREFORE, for the reasons set forth above, CBC respectfully requests that this Court enter an Order denying approval of the Amended Disclosure Statement and granting such further relief as may be necessary or appropriate.

Respectfully submitted,

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