

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

IN RE:	:	CHAPTER 11
CROFCHICK REALTY, LLC	:	
	:	CASE NO. 5:15-bk-03724-JJT
	:	
Debtor	:	
	:	
CROFCHICK REALTY, LLC	:	
Movant/Plan Proponent	:	
vs.	:	
	:	
PNC BANK, NATIONAL ASSOCIATION	:	
Creditor/Objector	:	

.....

**OBJECTION OF PNC BANK, NATIONAL ASSOCIATION, TO DEBTOR’S SECOND
AMENDED DISCLOSURE STATEMENT AND SECOND AMENDED CHAPTER 11
PLAN OF REORGANIZATION DATED FEBRUARY 11, 2017**

PNC Bank, National Association, by and through its attorneys, Sheils Law Associates, P.C., objects to the Debtor’s Second Amended Disclosure Statement and Second Amended Chapter 11 Plan of Reorganization dated February 11, 2017 for the following reasons:

FACTUAL BACKGROUND

1. On August 30, 2015 (the “Petition Date”), Crofchick Realty, LLC (“Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).
2. PNC Bank, National Association, (“PNC”) is a creditor of the Debtor.
3. As of August 28, 2015, the total claim of PNC Bank, National Association, against Debtor was \$159,950.51.
4. On May 10, 2016, PNC filed a Proof of Claim in the amount of \$159,950.51 secured by all the assets of the Debtor.

5. On September 15, 2016, this Court sustained objections to the Debtor's Disclosure Statement and Chapter 11 Plan of Reorganization and directed the Debtor to file an amended disclosure statement within thirty (30) days.

6. On October 15, 2016, Debtor filed its First Amended Disclosure Statement and First Amended Chapter 11 Plan of Reorganization dated October 15, 2016.

7. On January 12, 2017, this Court sustained objections to the Debtor's First Amended Disclosure Statement and First Amended Chapter 11 Plan of Reorganization and directed the Debtor to file an amended disclosure statement within thirty (30) days.

8. On February 11, 2017, Debtor filed its Second Amended Disclosure Statement and Second Amended Chapter 11 of Reorganization dated February 11, 2017.

9. Debtor lists a value of the asset of Debtor as \$154,860.00 with secured creditor recoveries of \$135,288.80.

10. Crofchick, Inc. lists a liquidation value of its assets as \$83,680.65.

11. Debtor and Crofchick Inc. propose to pay the claim of PNC in full by making yearly payments of \$41,400.00 in monthly payments ranging from \$5,700.00 to \$2,700.00 to PNC and tendering a Deed of Debtor to PNC which can be recorded if and only if the Debtor is in arrears with the payments schedule, provided that PNC Bank first provides advance written notice of the default and afford Debtor and Crofchick, Realty, LLC 60 days to cure such default. *See* Exhibit "A" of the Second Amended Disclosure Statement.

12. In Exhibit "C" of the Second Amended Disclosure Statement, Debtor has \$0.00 income in its Post-Petition Operating Reports

13. In Part II Section "E" of the Second Amended Disclosure Statement of Debtor, Debtor states Robert Crofchick has taken over the operations of the business. Mr. Crofchick

intends to explore social media, wholesale accounts, catering accounts, fundraisers and possibly opening up a storefront in Mountain Top, Pennsylvania area; also the Debtor states “One of the most prominent bakeries in Luzerne County, Pennsylvania has proposed to lease its operation to the Debtor. Discussions are currently pending, as this endeavor will enable the Debtor to generate additional revenue with limited overhead and expense.” *See Documents #149 Page 6.*

14. In Exhibit “F” of the Second Amended Disclosure Statement of Debtors, Debtor makes no income projections.

15. In Exhibit “F” of the Second Amended Disclosure Statement of Crofchick, Inc., Crofchick, Inc. lists Gross Sales (Actual) \$140,754.88 from January 2016 to December 2016, projected Gross Sales of \$154,830.37 from January 2017 through December 2017, Debtor projects Gross Sales of \$170,313.40 from January 2018 through December 2018, Debtor projects Gross Sales of \$187,344.75 from January 2019 through December 2019, Debtor projects Gross Sales of \$206,079.22 from January 2020 through December 2020 and Debtor projects Gross Sales of \$226,687.14 from January 2021 through December 2021

16. In Exhibit “C” of the Second Amended Disclosure Statement of Crofchick, Inc., Crofchick, Inc. lists a post-petition gross operating income of \$197,739.71 from September 2015 through December 2016.

17. Crofchick, Inc.’s previously filed monthly operating reports describe a discrepancy between projected income and actual income for the Debtor and net monthly losses.

18. In Exhibit “C” of the First Amended Disclosure Statement of Crofchick, Inc., Debtor lists a post-petition gross operating income of \$142,960.70 from September 2015 through August 2016.

19. Crofchick, Inc.'s previously filed monthly operating reports describe a discrepancy between projected income and actual income for the Crofchick, Inc. and net monthly losses.

20. Recently, the Crofchick, Inc.'s gross income has been substantially less than projected and had monthly net losses for three (3) out of the last six (6) months. *See* Docket Entry 86, Docket Entry No. 129 and Docket Entry No. 138.

OBJECTIONS

A. Adequacy of Information: The Second Amended Disclosure Statement does not contain adequate information for PNC and other creditors to make an intelligent and informed judgment as to whether to accept or reject the Plan. 11 U.S.C. §1125.

21. "Adequate information" of Section 1125(b) of the Bankruptcy Code should be decided on a case by case basis and should not include "burdensome, unnecessary and cumbersome detail". In re Dakota Rail, Inc., 104 B.R. 138, 143 (Bankr.D.Minn. 1989)

22. In most small business Chapter 11 cases, the disclosure statement should be adequate if it gives creditors sufficient information to make an intelligent judgment concerning the plan's feasibility, and to determine if they will receive a better deal through the plan rather than under a Chapter 7 liquidation. Id.

23. A disclosure statement is inadequate where it contains glowing opinions or projections, having little or no basis in fact and/or contradicted by known fact. In re Copy Crafters Quickprint, Inc., 92 B.R. 973, 981 (Bktrcy.N.D.N.Y.1988) (court is reluctant to approve a disclosure statement premised upon unsupported and self-serving valuations); In re Civitella, 15 B.R. 206, 208 (Bktrcy.E.D.Pa.1981) (mere allegations or opinions unsupported by factual information in the disclosure statement do not meet the standard of adequate information); In re Snyder, 56 B.R. 1007, 1013 (N.D.Ind.1986).

24. Debtor's and Crofchick Inc.'s Second Amended Disclosure Statements fail to provide adequate information regarding the viability of the projected income and projected expenses of Crofchick Inc.'s business operation, and the liquidation value and possible deterioration value of Debtor's and Crofchick Inc.'s assets.

25. Without more specific facts in the First Amended Disclosure Statements, creditors do not have sufficient information to make an intelligent judgment concerning the plan's feasibility, and to determine if they will receive a better deal through the plan rather than under a Chapter 7 liquidation. In re Dakota Rail, Inc., 104 B.R. 138, 143 (Bankr.D.Minn. 1989).

B. The Second Amended Disclosure Statement Should Not be Approved Because the First Amended Chapter 11 Plan it describes is unconfirmable.

26. Courts have held that where a proposed plan is not confirmable on its face, it will not approve a disclosure statement with respect to the plan because to do so would be an exercise in futility. *See In re 266 Washington Associates*, 141 B.R. 275, 288 (Bankr.S.D.N.Y. 1992).

27. “The Debtor has the burden of proving that a disclosure statement is adequate, including showing that the plan is confirmable or that defects might be cured or involve material facts in dispute.” Accord In re Curtis Ctr. Ltd. P'ship, 195 B.R. 631, 638 (Bankr.E.D.Pa.1996); In re R & G Props., Inc., No. 08–10876, 2009 WL 2043873, at 5 (Bankr.D.Vt. July 6, 2009).” In re Am. Capital Equip., LLC, 688 F.3d 145, 155 (3d Cir. 2012).

Feasibility

28. Section 1129(a)(11) requires as condition of confirmation that the Court find that confirmation is “not likely to be followed by liquidation, or the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed under the plan.”

29. The chapter 11 plan proponent must present evidence to sufficiently demonstrate that the plan has a reasonable chance of succeeding. In re Acequia, Inc., 787 F.2d 1352, 1364 (9th Cir. 1986).

30. In considering whether a particular plan passes the feasibility test, a court should consider: (1) the adequacy of the debtor's capital structure; (2) the earning power of its business; (3) economic conditions; (4) the ability of the debtor's management; (5) the probability of the continuation of the same management; and (6) any other related matters that determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan. In re Greate Bay Hotel & Casino, Inc., 251 B.R. at 226-227. *See* In re Temple Zion, 125 B.R. 910, 915 (Bankr.E.D.Pa 1991) and In re Landmark at Plaza Park, Ltd. 7 B.R. 653, 659 (Bankr.D.N.J. 1980).

31. Where a debtor proposes to fund a plan out of operating revenue, its financial record during the pendency of the Chapter 11 is probative of feasibility. *See* In re Northern Protective Services, Inc., 8 B.C.D. 1363, 19 B.R. 802 (Bkrtcy.W.D.Wash.1982); In re Western Management, Inc., 6 B.R. 438 (Bkrtcy. W.D. Kentucky 1980).

32. Recently, the Crofchick, Inc.'s gross income has been substantially less than projected and had monthly net losses for three (3) out of the last six (6) months. *See* Docket Entry 86, Docket Entry No. 129 and Docket Entry No. 138 of Crofchick Inc. Case.

33. Debtor and Crofchick, Inc. project gross sales with increases of approximately \$15,000.00 to \$30,000.00 each of the next five years. *See* Exhibit "F" of the Second Amended Disclosure Statement.

34. In Part II Section "E" of the Second Amended Disclosure Statement of Debtor and Crofchick, Inc., Mr. Crofchick intends to explore social media, wholesale accounts, catering

accounts, fundraisers and possibly opening up a storefront in Mountain Top, Pennsylvania area also the Debtor states “One of the most prominent bakeries in Luzerne County, Pennsylvania has proposed to lease its operation to the Debtor. *See* Document #149 Page 6.

35. In Exhibit “C” of the Second Amended Disclosure Statement, Crofchick Inc. lists a post-petition gross operating income of Crofchick, Inc. for September 2015 through December 2015 that is greater than the gross operating income of Crofchick, Inc. for September 2016 through December 2016.

36. Crofchick, Inc.’s business is not doing better from the Petition Date.

37. Based upon lack of information provided to verify or give some credence to the projected income of Crofchick Inc., and Crofchick Inc.’s failure to reach projected numbers in its past operating reports, the Debtor and Crofchick, Inc. have not shown that their business can sustain itself in the next five years and increase its sales to fund its Second Amended Chapter 11 Plan.

38. The Second Amended Chapter 11 Plan cannot be confirmed because its fails to comply with 11 §1129(a)(11).

Good Faith Requirement

39. A plan fails to meet the good faith requirement of section 1129(a)(3) where: (1) it is inconsistent with the Bankruptcy Code's objectives, (2) it is not proposed with honest intentions and an achievable basis for reorganization, or (3) lacks fundamental fairness in dealing with creditors. In re Lernout & Hauspie Speech Products N.V., 308 B.R. 672, 675, 42 Bankr. Ct. Dec. (CRR) 225 (D. Del. 2004); see, e.g., In re Allegheny Intern., Inc., 118 B.R. 282, 299-300 (Bankr. W.D. Pa. 1990).

40. An inquiry into good faith is fact-intensive and made on a case-by-case basis. Solow v. PPI Enterprises (U.S.), Inc. (In re PPI Enterprises (U.S.), Inc.), 324 F.3d 197, 211 (3d Cir. 2003).

41. Though the Debtor proposes to pay the claim of PNC through the Second Amended Chapter 11 Plan, the Debtor fails to provide specificity or to sufficiently demonstrate that the Second Amended Chapter 11 Plan has a reasonable chance of succeed other than providing speculative income projections indicating financial progress not based on concrete evidence of financial progress.

42. The question of feasibility and Debtor's lack of specificity in the Second Amended Chapter 11 Plan and Second Amended Disclosure Statement places an unfair burden on PNC and other credits and is inconsistent with the Bankruptcy Code's objectives.

43. Debtor's Plan proposes that PNC give written notice of the default to the Debtor and afford Debtor and Crofchick, Inc. 60 days to cure such default. *See* Exhibit "G" of the Second Amended Disclosure Statement.

44. Debtor filed for Chapter 11 on August 30, 2015.

45. The Debtor states that Debtor filed this case to obtain a stay of collection action by its primary lender, PNC. *See* Second Amended Disclosure Statement Page 6 Paragraph D.

46. "The Supreme Court has said that "[h]owever honest in its efforts the debtor may be, and however sincere its motives, the District Court is not bound to clog its docket with visionary or impracticable schemes for resuscitation." Tennessee Publishing Co. v. American Nat'l Bank, 299 U.S. 18, 22, 57 S.Ct. 85, 87, 81 L.Ed. 13 (1936).

47. An unfeasible chapter 11 plan is contrary the Bankruptcy Code because its increase costs, incurs delays, and decreases the value of collateral when any confirmation is

“likely to be followed by liquidation, or the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed under the plan.” 11 U.S.C. 1129(a)(11).

48. Based upon lack of information provided to verify or give some credence to the projected income of Crofchick, Inc. and Debtor and the Crofchick, Inc.’s failure to achieve projected revenues in its past operating reports, the Debtor has not shown that it has presented its Second Amended Chapter 11 Plan in good faith and that its business can sustain itself in the next five years and increase its sales to fund its Second Amended Chapter 11 Plan.

49. A proposed plan can only be confirmed if it has been proposed in good faith. 11 U.S.C. 1129(a)(3).

Confirmation Requirements Not Met.

50. A court can only confirm a plan if, it complies with the applicable provisions of this Bankruptcy Code. 11 U.S.C 1129(a)(1).

51. A proposed plan can only be confirmed if it has been proposed in good faith. 11 U.S.C. 1129(a)(3).

52. For the above reasons, the Debtor’s Second Amended Chapter 11 Plan and Second Amended Disclosure Statement should not be confirmed by this Court.

WHEREFORE, PNC Bank, National Association, respectfully requests that this Court deny the Debtor's Second Amended Disclosure Statement and Second Amended Chapter 11 Plan of Reorganization dated February 11, 2017 and provide such relief as is equitable and just.

Respectfully submitted,

SHEILS LAW ASSOCIATES, P.C.

/s/ Robert P. Sheils, III
Robert P. Sheils, III Esquire
Supreme Court ID: 91108
108 North Abington Road
Clarks Summit, PA 18411
570-587-2600
570-585-0313 – Facsimile
rsheilsIII@sheilslaw.com