

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
(Harrisburg Division)**

IN RE:

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MANN REALTY ASSOCIATES, INC.,

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Case No. 1:17-bk-01334-RNO

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Debtor.

Chapter 11

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**MCCORMICK 108, LLC’S OBJECTION TO DISCLOSURE STATEMENT IN  
SUPPORT OF DEBTOR’S PLAN OF REORGANIZATION**

McCormick 108, LLC (the “**Lender**”), a secured creditor of the Debtor in the above-captioned case, Mann Realty Associates, Inc. (the “**Debtor**”), files this Objection to the Disclosure Statement (the “**Disclosure Statement**”) [Docket No. 104] in Support of the Plan of Reorganization Proposed by the Debtor (the “**Plan**”), and, for the reasons stated herein, requests that this Court deny approval of the Disclosure Statement.

**Background**

1. The Debtor is currently indebted to the Lender under and in connection with a \$1,000,000.00 commercial loan that the Lender previously made to the Debtor (the “**Loan**”). The Loan is evidenced by, among other things, a Promissory Note, dated February 1, 2007, executed and delivered by the Debtor to the order of Commerce Bank/Harrisburg, N.A. (“**Commerce Bank**”) in the stated principal amount of \$1,000,000.00 (“**Note**”).

2. The Note was subsequently assigned to the Lender by Commerce Bank, and its successors-in-interest, pursuant to an Allonge dated March 29, 2016 (“**Allonge**”).

3. The indebtedness and obligations that are owed by the Debtor to the Lender under the Note is secured by a first-priority mortgage lien against, among other things, certain real

property owned by the Debtor and generally known as 25, 81, 83 and 103 Hunterstown Road, Straban Township, Gettysburg, Pennsylvania 17325 and having Uniform Parcel Identification Numbers of 38-G12-0111A and 38-G12-0112 (collectively, the “**Real Property**”), pursuant to and as more particularly described in a Mortgage, dated February 1, 2007, executed by the Debtor in favor of the Lender and recorded with the Recorder of Deeds for Adams County, Pennsylvania at Book 4737, Page 292, and an Assignment of Rents and Leases, dated February 1, 2007, executed by the Debtor in favor of the Lender and recorded with the Recorder of Deeds for Adams County, Pennsylvania at Book 4737, Page 306 (collectively, the “**Mortgage**”).

4. The Mortgage was assigned by Commerce Bank, and its successors-in-interest, to the Lender pursuant to an Assignment of Mortgage, dated March 29, 2016, and recorded with the Recorder of Deeds for Adams County, Pennsylvania at Book 6135, Page 644, and an Assignment of Assignment of Rents and Leases, dated April 22, 2016, and recorded with the Recorder of Deeds for Adams County, Pennsylvania at Book 6136, Page 355 (collectively, the “**Assignments**”).

5. The Note, the Allonge, the Mortgage, the Assignments and all other documents evidencing, securing, guarantying or otherwise documenting the indebtedness that is owed by the Debtor to the Lender under the Loan are collectively referred to herein as the “**Loan Documents**.”

6. The Lender has filed a Proof of Claim in this bankruptcy case, as Claim No. 9-1 (the “**Proof of Claim**”), that sets forth in detail information about the Loan the Debtor owes to the Lender under the Loan Documents. The Lender’s Proof of Claim, with attached Loan Documents and exhibits, has been filed in the Claims Register for this bankruptcy case.

7. The Debtor instituted this bankruptcy case as a Chapter 11 proceeding on March 31, 2017 (the “**Petition Date**”).

8. Prior to the Petition Date, the Debtor defaulted under the terms and conditions of the Loan Documents by, among other things, failing to make the full payments to the Lender called for thereunder as and when due.

9. As a result of various defaults by the Debtor and in accordance with the terms and conditions of the Loan Documents and applicable law, the Lender previously accelerated and demanded payment of all indebtedness owed by the Debtor under the Loan Documents.

10. Due to the various defaults by the Debtor, the Lender further confessed judgment, on or about September 28, 2016, on the Loan Documents against the Debtor in the Court of Common Pleas of Dauphin County, Pennsylvania, Case No. 2016-CV-07329-NT (the “**Judgment**”). In addition, on March 30, 2017, the Lender filed a civil mortgage foreclosure action against the Real Property in the Court of Common Pleas for Adams County, Pennsylvania, as Case No. 2017-SU-0000333 (the “**Mortgage Action**”). The Mortgage Action has been stayed by the filing of this bankruptcy case.

11. The Debtor and the Lender have further agreed to a Consent Order Terminating the Automatic Stay as to the Lender and the Real Property, which Consent Order was entered by this Court on September 7, 2017 (the “**Consent Order**”) [Docket No. 121]. Under the terms of the Consent Order, the Debtor was specifically required to “incorporate the terms of this Consent Order in any Plan of Reorganization that the Debtor may file in this case or any subsequent bankruptcy proceeding.”

12. The Debtor recently filed the proposed Plan and Disclosure Statement. The Plan and Disclosure Statement failed to specifically incorporate all terms and conditions from the

Consent Order. In addition, the Disclosure Statement lacks adequate information pertaining to the Debtor's Real Property, revenues, income, financial statements and projections and the proposed sale and marketing for the Real Property.

13. The Plan and Disclosure Statement generically set forth the Debtor's intention to sell the Real Property. The Plan and Disclosure Statement provide no further treatment for the Lender's Loan and secured claim. This Plan is patently unconfirmable because the Debtor's general intention to sell the Real Property without further information and treatment of the Lender's secured claim is not fair and equitable under the circumstances. A disclosure statement cannot be approved if the related plan is patently unconfirmable.

### **Objections and Legal Argument**

The Disclosure Statement fails to provide the Debtor's creditors with "adequate information" to allow such creditors to make an informed decision whether to accept or reject the Plan. A chapter 11 disclosure statement must contain "adequate information" in order to be approved by the court. Title 11, Section 1125(a)(1) of the United States Bankruptcy Code defines "adequate information" as:

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, 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[.]

An adequate disclosure statement is a precondition to confirmation of a chapter 11 plan. *See In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000) (citing 11 U.S.C. § 1129(a)(2)). A party in interest is "entitled to rely on the representations and information contained in the . . .

disclosure statement.” *See, e.g., Okan’s Foods, Inc. v. Windsor Assocs. Ltd. P’ship (In re Okan’s Foods, Inc.)*, 217 B.R. 739, 753 (Bankr. E.D. Pa. 1998). “Because creditors and the bankruptcy court rely heavily on the debtor’s disclosure statement in determining whether to approve a proposed reorganization plan, the importance of full and honest disclosure cannot be overstated.” *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996).

“At the ‘heart’ of the chapter 11 process is the requirement that holders of claims in impaired classes be furnished a proper disclosure statement...” *In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990). The adequate information requirement of 11 U.S.C. § 1125(b) is “intended to help creditors in their negotiations” with a debtor with respect to a proposed plan. *Century Glove, Inc. v. First American Bank*, 860 F.2d 94, 100 (3d Cir. 1988).

**A. *The Disclosure Statement and Plan Fail to Adequately Incorporate the Specific Terms of the Consent Order.***

As noted above, the Consent Order mandated that the Debtor incorporate its terms and conditions into the Debtor’s Plan. Though the Debtor’s Plan generally incorporates by reference all prior orders of this Court, the Consent Order agreed to by the Debtor and the Lender specifically requires the Debtor to satisfy and remain compliant with various provisions included in the Consent Order, some of which conflict with the Plan. For instance, the Plan states that no default may occur until after the expiration of twenty (20) days after receipt of notice of non-payment has been received by the Debtor’s counsel. *See* Plan, p. 19. Conversely, the Consent Order provides the Debtor only five (5) calendar days to cure a default after receipt of notice by Debtor’s counsel. The Plan incorporates this Court’s orders only to the extent not inconsistent with the terms of the Plan. *See* Plan, p. 25.

To the contrary, the Lender submits that the Consent Order should control to the extent of any inconsistency and, by the terms of the Consent Order, the Debtor was obligated to incorporate all terms and conditions from the Consent Order into its Plan, which is attached to the Disclosure Statement. The Consent Order also contains critical information and deadlines regarding the sale of the Real Property and the Lender's remedies upon default. The Lender objects to the Disclosure Statement as failing to provide creditors with "adequate information" until such time as the terms of the Consent Order are appropriately incorporated into the Disclosure Statement and Plan as the Debtor is obligated to do.

Additionally, the Consent Order mandated that the Debtor execute and deliver to the Lender certain documents, including a Deed in Lieu of Foreclosure, Acceptance of Service and Consent to Entry of Judgment. To date, the Debtor has not delivered such executed documents to the Lender and the Lender objects to the Disclosure Statement on this basis as well.

***B. The Disclosure Statement Fails to Disclose Sufficient Information Regarding the Debtor's Real Property.***

The Debtor's Disclosure Statement is devoid of any substantive information regarding the Debtor's Real Property other than a simple listing of its alleged fair market value attached to the Disclosure Statement. The Disclosure Statement fails to provide information regarding (a) the nature, condition and description of the Real Property, (b) the basis for the valuation of the Real Property, (c) a complete listing of the liens that exist against the Real Property and the amount of the liens, (d) the expenses related to the Real Property, (e) whether any real estate taxes are owed with respect to the Real Property, and (f) the cash flow generated by the Real Property. This is basic information that creditors need to evaluate the proposed Plan.

***C. The Disclosure Statement Fails to Provide Adequate Information Regarding the Potential Sale of the Real Property.***

As to the Lender's claim, the Debtor's Plan is directly premised upon the Debtor's sale of the Real Property to pay down the Lender's Loan. The Disclosure Statement however fails to provide (a) any information regarding under what conditions and in what manner the Debtor would propose to sell the Real Property, (b) when the Debtor proposes to sell the Real Property, (c) whether the Debtor has received any offer to purchase the Real Property, or (d) the estimated net proceeds that will be generated from the sale of the Real Property. The Debtor has failed to provide any documentation or information regarding the marketing of the Real Property and the potential viability of any proposed sale or auction that the Debtor may undertake.

***D. The Disclosure Statement Completely Lacks the Financial, Income and Projection Information Necessary for the Lender and Other Creditors to Appropriately Evaluate the Plan.***

The Disclosure Statement fails to provide adequate information to allow this Court and creditors to measure the feasibility and desirability of the proposed Plan. Though the Debtor claims to have unaudited financial projections available for creditors, the Debtor has failed to provide the necessary information, financial projections and revenue statements for the Debtor's Real Property. Exhibit H is missing from the Disclosure Statement.

In addition, the Disclosure Statement fails to provide any information regarding the Debtor's future rental income projection from the Real Property. The Debtor has not even provided information regarding past rental income generated by the Real Property or the operating expenses for the Real Property. Thus, creditors currently lack the ability to analyze the Disclosure Statement and Plan.

***E. The Disclosure Statement Should Not be Approved  
Because the Debtor's Plan is Patently Unconfirmable.***

Importantly, a disclosure statement should not be approved where it describes a plan that is not confirmable on its face. *In re 266 Washington Assocs.*, 141 B.R. 275, 288 (Bankr. E.D.N.Y. 1992) (“[D]isclosure statement will not be approved where . . . it describes a plan which is fatally flawed and thus incapable of confirmation.”), *aff’d*, 147 B.R. 827 (E.D.N.Y. 1992); *In re Eastern Maine Elec. Co-op., Inc.*, 125 B.R. 329, 333 (Bankr. D. Me. 1991); *In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990); *In re Spanish Lake Assocs.*, 92 B.R. 875, 877 (Bankr. E.D. Mo. 1988); *In re Atlanta West VI*, 91 B.R. 620, 622 (Bankr. N.D. Ga. 1988); *In re S.E.T. Income Properties, III*, 83 B.R. 791, 792 (Bankr. N.D. Okla. 1988) (clear showing that plan is not confirmable justifies denial of sufficiency of disclosure statement to avoid cost and delay of fruitless venture); *In re Pecht*, 53 B.R. 768, 769-70 (Bankr. E.D. Va. 1985).

As one court explained:

If the disclosure statement describes a plan that is so “fatally flawed” that confirmation is “impossible,” the court should exercise its discretion to refuse to consider the adequacy of disclosures. Such an exercise of discretion is appropriate because undertaking the burden and expense of plan distribution and vote solicitation is unwise and inappropriate if the proposed plan could never legally be confirmed.

*Eastern Maine Elec. Co-op., Inc.*, 125 B.R. at 333 (internal citations omitted). *See also In re Valrico Square Ltd. P’ship*, 113 B.R. 794, 796 (Bankr. S.D. Fla. 1990) (“Soliciting votes and seeking court approval on a clearly fruitless venture is a waste of time of the Court and the parties.”)

The Debtor’s Plan is patently unconfirmable in this case. With respect to the Lender’s Loan Documents and Real Property, the Debtor simply proposes to liquidate and/or sell the Real



Property at some time in the future. The Debtor's proposed terms are unacceptable and are contrary to the requirements of the Bankruptcy Code. Imposing the Debtor's proposed terms on the Lender would be unreasonable and would not pass muster under the "fair and equitable" standard set forth in Section 1129(b). The Loan Documents were in default, were fully matured prior to the Petition Date and the Judgment noted above was entered by the appropriate court upon the Loan Documents.

Given these circumstances, the Debtor's proposal to sell the Real Property at some point in the future fails to adequately treat the Lender's secured claim. The Debtor proposes no monthly payments to the Lender in the Plan while the Debtor attempts to market and sell the Real Property. In addition, the Plan must provide for attachment of the Lender's lien to any proceeds from the sale of the Real Property. *See* 11 U.S.C. § 1129(b)(2). The Debtor's proposed Plan falls well short of the standard set forth in Section 1129(b). Additionally, the Plan lacks information regarding how the Debtor would protect and maintain the Lender's Real Property as the Debtor attempts to sell the Real Property. Thus, the Debtor's Plan is patently unconfirmable.

### **Conclusion**

The Debtor's Disclosure Statement fails to provide creditors with adequate and complete information that is essential for creditors to make an informed judgment regarding the Debtor's proposed Plan, especially as to the specific requirements of the Consent Order. The Plan itself is also patently unconfirmable. As a consequence of the deficiencies described above, the Disclosure Statement contains inadequate information and should be denied.

For these reasons, and any other reasons presented by the Lender at the hearing on the Disclosure Statement, the Lender objects to the Debtor's Disclosure Statement and the Disclosure Statement should not be approved by the Court.

The Lender reserves the right to amend or supplement its objections and make additional objections to the Disclosure Statement and Plan.

WHEREFORE, McCormick 108, LLC, respectfully requests that this Court (a) deny approval of the Disclosure Statement, and (b) grant such other and further relief as is just and appropriate under the circumstances.

Respectfully submitted,

DATE: September 18, 2017

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 18th day of September, 2017, a copy of the foregoing Objection to Disclosure Statement was served electronically by the Court's ECF system to all those entitled to receive notice and by first-class mail, postage prepaid to the following:

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