

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

IN RE:)	Chapter 11
)	
DERRY COAL COMPANY, LLC,)	Case No. 16-24727-GLT
Debtor.)	
)	Document No. _____
)	
RTB HOLDINGS, LLC,)	Related to Document No. 55
)	
Movant,)	
)	Responses Due: 8/16/2017
vs.)	
)	Hearing Date and Time:
DERRY COAL COMPANY, LLC,)	8/31/17 at 10:00 a.m.
)	
)	
Respondent.)	
)	

**OBJECTION OF RTB HOLDINGS, LLC TO DISCLOSURE STATEMENT DATED
JULY 19, 2017**

AND NOW, comes RTB Holdings, LLC (“RTB”), by and through its undersigned counsel, and respectfully submits this objection to the Disclosure Statement accompanying the Chapter 11 Plan filed by the Debtor dated July 19, 2017.

I. BACKGROUND

1. Derry Coal Company, LLC (the “Debtor”) filed a joint voluntary petition for relief under Chapter 11 of the Bankruptcy Code on December 22, 2016 (the “Petition Date”).
2. RTB is a party in interest in this case as a secured creditor of the Debtor.
3. On December 30, 2014, the Debtor executed that certain Secured Promissory Note dated December 30, 2014 in favor of Basecamp Holdings, Inc. (“Basecamp”) in the principal amount of \$750,000.00 (the “Note”).

4. As security for the payment of all amounts due under the Note, the Debtor granted and conveyed to Basecamp, *inter alia*, that certain Mortgage dated December 30, 2014 in the original principal amount of \$750,000.00, which was recorded in the Westmoreland County Recorder's Office at Instrument No. 201412310042508 on December 31, 2014 (the "Mortgage"). On May 15, 2017, RTB filed a proof of claim in this case at Claim No. 1, which proof of claim details RTB's secured claim and contains the herein referenced documents.

5. On or about December 7, 2016, all of Basecamp's rights, title and interests under and to the Note and Mortgage and any ancillary or related documents were assigned to RTB.

6. The Mortgage encumbers real property owned by the Debtors and located at 1 Coal Loader Drive, Derry, PA 15627 (the "Property"). The Property is the only real property owned by the Debtor and, other than certain permit rights related to the construction of a wash plant on the Property, the Property is the Debtor's only asset.

7. Due to the Debtor's defaults under the Note and Mortgage, on April 11, 2016 RTB commenced a mortgage foreclosure action against the Debtor in the Court of Common Pleas of Westmoreland County, Pennsylvania at Case No. 16-01712. On or about July 27, 2016, RTB obtained a judgment in foreclosure against the Debtor. The Property was scheduled to be sold at a sheriff's sale on January 3, 2017, but said sale has been stayed by the Debtor's instant bankruptcy filing.

8. On July 19, 2017, the Debtor filed the subject Disclosure Statement (the "Disclosure Statement") in this case to accompany the Debtors' proposed Chapter 11 Plan of Reorganization dated July 19, 2017 (the "Plan").

9. Other than an alleged unsecured debt owing to Debtor's related company, C&D Coal Company, LLC, which is also a Chapter 11 debtor at case no. 16-24726, RTB is the only known creditor of the Debtor.

10. Because there are no unsecured creditors of the Debtor other than the alleged debt owed to C&D, no committee of general unsecured creditors was appointed in this case.

11. Accordingly, RTB is the only real party in interest in the Debtor's case.

II. RTB'S OBJECTIONS TO APPROVAL OF DEBTOR'S DISCLOSURE STATEMENT

12. RTB objects to the Debtor's Disclosure Statement and contends that it cannot be approved by the Court because it fails to provide adequate information as required by §1125(a)(1) of the Bankruptcy Code. Specifically, §1125(a)(1) of the Bankruptcy Code requires a debtor to provide creditors with a disclosure statement containing "adequate information" so creditors can make an informed judgment regarding whether or not to accept or reject a plan. In pertinent part, §1125 (a)(1) of the 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 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."

See 11 U.S.C. §1125(a)(1).

13. Because both the Court and creditors rely heavily on the disclosure statement, complete, honest disclosure is imperative. *See e.g., Oneida Motor Freight, Inc. v. United Jersey Bank*, 84 F.2d 414, 417 (3d Cir. 1988). Furthermore, disclosure statements must contain factual

support for any opinions contained therein since opinions alone do not provide the parties voting on the plan with sufficient information upon which to formulate decisions. See e.g., *In re Fierman*, 21 B.R. 314 (Bankr. E.D. Pa. 1982) and *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

14. The Debtor's Disclosure Statement is devoid of any specific information regarding the actual planned or likely treatment of RTB's Secured Claim. The Disclosure Statement and Plan, rather, are based solely on the "concept" of selling the Property and paying RTB in full if and when the Property is sold. The Debtor does not identify any particular purchaser of the Property, or even any potential purchasers, and/or any particular details of a sale of the Property. The Debtor's Plan does not state that the Debtor has any commitment from any party to purchase the Property. The Debtor's Plan and Disclosure Statement set forth nothing more than a theoretical idea. The Disclosure Statement, therefore, contains no information regarding an actual event that might result in a particular treatment of RTB's Secured Claim.

15. For the reasons set forth above, the Debtors' Disclosure Statement lacks "adequate information" as required by and defined in §1125 of the Bankruptcy Code to allow RTB to make an informed judgment to accept or reject the Plan and, therefore, cannot be approved.

III. CONCLUSION

WHEREFORE, RTB respectfully requests that this Court enter an order denying approval of the Debtor's Disclosure Statement dated July 19, 2017 and grant such other relief that it may deem appropriate.

Dated: August 16, 2017

Respectfully submitted,

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