

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	
	§	
Athens Interests, LLC	§	Case No. 17-40693
1333 McDermott	§	
Suite 300	§	
Allen, TX 75013	§	
COLLIN-TX	§	
Tax ID / EIN: 01-0857607	§	
	§	
Debtor(s)	§	CHAPTER 11

OBJECTION TO DISCLOSURE STATEMENT

TO ALL INTERESTED PARTIES:

COMES NOW, *John Wright Construction, Inc.* (“Wright”) and files this its *Objection to the Disclosure Statement* (the “Objection”) of Athens Interests, LLC (“Debtor”) [Dkt. No. 25] (the “Disclosure Statement”) filed in the above styled and numbered case, and would respectfully state and show as follows:

I. Background

1.1. The above case was filed on April 3, 2017 (the “petition date”). The Debtor’s operations appear to have effectively ceased, with little economic activity reflected in the monthly operating reports filed by the Debtor. Debtor does not appear to have filed monthly operating reports for August, September, or October, 2017.

1.2. The United States Trustee moved to dismiss or convert the case because of lack of activity, failure to file a plan or disclosure statement, and failure to pay US Trustee fees [Dkt No. 19]. Wright joined in the dismissal motion [Dkt No. 21]. Subsequently, the U.S. Trustee

entered into an agreed order [Dkt. No. 23] (the “Agreed Order”), requiring Debtor to file a reorganization plan on or before October 31, 2017 and to obtain confirmation of a plan by December 15, 2017.

1.3. Debtor filed its proposed Chapter 11 Plan on October 31, 2017 [Dkt. No. 26].

1.4. On October 31, 2017, the Court entered its *Order Conditionally Approving Disclosure Statement* [Dkt. No. 27].

1.5. Wright is a creditor of Debtor, being owed \$143,344.00 for construction work performed in connection with the Athens Project as defined in the Plan and Disclosure Statement, not including interest or attorneys fees. Wright has filed a lien against the Athens Project pursuant to chapter 53 of the Texas Property Code.

II. Objection

2.1. The Disclosure Statement fails to contain certain information which is relevant to a decision by creditors of the Debtor in determining whether to vote for acceptance or rejection of the Debtor’s Plan of Reorganization and therefore fails to comply with the provisions of 11 U.S.C. § 1125. The Court should not approve the Disclosure Statement because of this failure to include material information.

2.2. A disclosure statement must contain “adequate information.” 11 U.S.C. § 1125(b) (Lexis 2015). Adequate information is “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 . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan . . .” 11 U.S.C. § 1125(a)(1) (Lexis 2015). The Court “shall consider the complexity of the case, the benefit of additional

information to creditors and other parties in interest, and the cost of providing additional information” when making a determination regarding adequate information. *Id.* Courts also consider several other factors when evaluating the adequacy of a disclosure statement. “These factors may include:

- (1) the events which led to the filing of a bankruptcy petition;
- (2) a description of the available assets and their value;
- (3) the anticipated future of the Company;
- (4) the source of information stated in the disclosure statement;
- (5) a disclaimer;
- (6) the present condition of the debtor while in Chapter 11;
- (7) the scheduled claims;
- (8) the estimated return to creditors under a Chapter 7 liquidation;
- (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information;
- (10) the future management of the debtor;
- (11) the Chapter 11 plan or a summary thereof;
- (12) the estimated administrative expenses, including attorneys' and accountants' fees;
- (13) the collectibility of accounts receivable;
- (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan;
- (15) information relevant to the risks posed to creditors under the plan;
- (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers;
- (17) litigation likely to arise in a nonbankruptcy context;
- (18) tax attributes of the debtor; and
- (19) the relationship of the debtor with the affiliates.”

In re United States Brass Corp., 194 B.R. 420, 424-425 (Bankr. E.D. Tex. 1996), citing *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567, 568 (Bkrcty.N.D.Ga. 1984). Finally, “the purpose of the disclosure statement is not to assure acceptance or rejection of a plan, but to provide enough information to interested persons so they may make an informed choice between two alternatives. *In re United States Brass Corp.*, 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996), citing *In re Stanley Hotel, Inc.*, 13 Bankr. 926, 930 (Bkrcty.D.Colo. 1981).

2.3. The Disclosure Statement in this case fails to contain adequate information to allow creditors to make an informed choice regarding the Plan. Specifically it lacks the following:

- A. The Disclosure Statement does not contain a liquidation analysis to allow creditors to determine whether or not they could be paid more in a hypothetical Chapter 7 case.
- B. The Disclosure Statement does not explain or disclose the nature or structure of the proposed sale of the Athens Project to Maku Holdings, LLC. For example, no sale contract or term sheet is disclosed. No price is disclosed, though Debtor has scheduled the real estate underlying the Athens Project as having a value of \$1,000,000.00. No estimated time of closing is given. No conditions precedent to closing are disclosed, nor is any explanation given of what contingencies may allow Maku Holdings, LLC to terminate its “obligation” to close the sale. No information describing what is actually proposed to be sold is provided, real estate or the Debtor’s interest in some undefined partnership with Maku Holdings, LLC.
- C. The Disclosure Statement does not explain, in the event a sale of the Athens Project closes, what “separate Court order” will be required in order to distribute funds in payment of the claim of Wright nor who will be required to obtain such order. See Article VI(C). The Disclosure Statement also does not explain the reason that such an order is required

for some creditors (Wright, Redco, and Total) but not others (Chachere).

- D. Paragraph IV of the Disclosure Statement states that Debtor owns (1) a 100% “interest” in 7 acres of land in Athens Texas, (2) a 50% “net profits interest” in the “Athens Project”, (3) a 50% “net interest” in 7 acres on SH130 in Austin, TX, and (4) a 50% “net interest” on a “0.8 site” on I-35 in Waco. No explanation is given regarding the nature of the “interest”, “net profits interest”, or “net interest”, owned by Debtor and whether they will all be retained by Debtor under the Plan.
- E. The Disclosure Statement does not contain sufficient information regarding the identity, contact information, state of incorporation, or financial strength of Maku Holdings, LLC, nor of its ability to close a sale of the Athens Project. The Disclosure Statement also does not contain sufficient information regarding the relationship, if any, between Debtor and Maku Holdings, LLC.
- F. The Disclosure Statement does not contain sufficient information regarding the marketing efforts and costs, nor the anticipated sales proceeds to be received, from liquidation of Debtor’s Athens Project.
- G. The Disclosure Statement does not contain any information regarding whether litigation after confirmation of the Plan is anticipated.
- H. The Disclosure Statement does not contain any information regarding Debtor’s intentions or Plan if the proposed sale of the Athens Project fails to close.

- I. The Disclosure Statement does not contain estimates or sufficient information regarding the amount of administrative expenses estimated owed by Debtor, nor what if any funds will be available to pay such expenses.
- J. The Disclosure Statement does not contain estimates or sufficient information regarding the amount or number of claims in each class estimated to be owed by Debtor.
- K. The Disclosure Statement does not contain a sufficient explanation of the reasons that the liquidation of the Debtor cannot be more efficiently accomplished in chapter 7.
- L. The Disclosure Statement does not contain sufficient information regarding the continued or future management of Debtor after confirmation.
- M. The Disclosure Statement does not contain an estimate of the amount of time the liquidation proposed in the Plan may require to be accomplished.
- N. The Disclosure Statement does not contain a projection or any other estimate of the amounts anticipated to be available to pay claims of creditors in future under the Plan.
- O. The Disclosure Statement does not contain sufficient information regarding the amount of, nor Debtor's efforts to recover, its alleged receivable from the City of Athens.
- P. The Disclosure Statement does not contain sufficient information

regarding Debtor's proposed treatment, if any, of Wright's lien claim against the Athens Project pursuant to chapter 53 of the Texas Property Code, nor regarding the intended effect of the Plan on the lien rights of Wright. The Disclosure Statement states only that Wright is not impaired, and that the claim of Wright will be paid "subject to determination as an allowed claim." No information is given regarding whether Debtor intends to treat the claim of Wright as allowed or to object to such claim.

Q. The Disclosure Statement does not contain sufficient information regarding whether or not Debtor intends to provide a claim for interest or attorney's fees on Wright's lien claim against the Athens Project pursuant to Tex. Prop. Code § 53.156 (stating that "In any proceeding to foreclose a lien . . . or in any proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, the court shall award costs and reasonable attorney's fees as are equitable and just."). A mechanic's lien claimant like Wright is "entitled to an allowed unsecured claim for both prejudgment interest and its reasonable attorney's fees." *In re Crusader Energy Grp., Inc.*, No. 09-31797-BJH-11, 2011 Bankr. LEXIS 453, at *15 (Bankr. N.D. Tex. 2011).

R. The Disclosure Statement does not contain any treatment or information regarding the treatment of scheduled claims owed by Debtor to GM Financial and secured by a 2016 Yukon and/or 2017 Silverado.

S. The Disclosure Statement does not contain any information regarding

retainage, if any, relating to the Athens Project in the possession of the Debtor and whether Debtor intends to use any such retainage to pay claims of lien creditors such as Wright.

T. The Disclosure Statement does not contain sufficient information regarding the basis for Debtor's statement that the claim of Wright is unimpaired.

2.4. Therefore, the Disclosure Statement should not be approved without the inclusion of the additional information listed in paragraph 2.3 above which is currently lacking.

WHEREFORE, PREMISES CONSIDERED, Wright prays that the Court find that Debtor's Disclosure Statement fails to contain adequate information, fails to comply with the provisions of 11 U.S.C. § 1125, should not be approved in its current form, and for such other and further relief to which it may be entitled.

DATED November 21, 2017.

Respectfully submitted,

SEARCY & SEARCY, P.C.

/s/ Joshua P. Searcy

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ATTORNEYS FOR JOHN WRIGHT
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CERTIFICATE OF SERVICE

[(if applicable) * NOT ON COURT'S MAILING LIST, MAIL IN SEPARATE ENVELOPE]

I HEREBY CERTIFY that the foregoing document shall be served via electronic means to all persons requesting electronic notice in this proceeding under the ECF filing system, if made available; or, otherwise by regular, first-class U.S. mail, postage prepaid, to the interested party(ies) as shown below by this law firm; and/or by and through the undersigned's servicing agent: BK Attorney Services, LLC d/b/a certificateofservice.com, an Approved Bankruptcy Notice Provider as authorized by the United States Courts Administrative Office, pursuant to Fed.R.Bankr.P. 9001(9) and 2002(g)(4) to:

- Athens Interests, LLC, Chapter 11 Debtor, 1333 McDermott, Suite 300, Dallas, TX 75248-6600; and
- Eric A. Liepins, Attorney for Debtor, 12770 Coit Road, Suite 1100, Dallas, TX 75251-1329; and/or
- U.S. Trustee, Office of the U.S. Trustee, 110 N. College Ave., Suite 300, Tyler, TX 75702-7231; and
- John Wright Construction, Inc., 2160 State Hwy 43 E, Henderson, TX 75652; and
- to all the interested persons listed on the attached service list

on or before November 21, 2017.

/s/ Joshua P. Searcy
JOSHUA P. SEARCY