

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

<b>IN RE:</b>	§	
	§	
	§	<b>CASE NO. 17-41913</b>
<b>WWLC INVESTMENT, L.P.</b>	§	
	§	<b>(CHAPTER 11)</b>
	§	
<b>DEBTOR</b>	§	

**OBJECTION TO DISCLOSURE PLAN**

Creditor Sorab Miraki objects to the Debtor’s Disclosure Statement (“Disclosure Statement”), filed on January 4, 2018, on the grounds that it fails to provide adequate information as required by 11 USC 1125(a) for the following reasons:

1. In Paragraph B of the Disclosure Statement, Debtor makes multiple statements about facts that were supposedly alleged in an underlying lawsuit challenging the default judgment obtained by Creditor Sorab Miraki. The omissions in the description of what occurred in the original lawsuit, and Debtor’s challenge through a Petition for Bill of Review, create the false impression that Mr. Miraki’s default judgment is the subject of a legitimate dispute as to its validity.

Mr. Miraki disagrees with the Debtor’s recitation of facts. The actual course of events, and court proceedings, is as follows:

Debtor’s *First Amended Motion for New Trial / Motion for Rehearing* in Cause No. 416-02539-2017 was: (a) untimely and preserves nothing for appeal; (b) attempts to present new evidence without offering any explanation of why Debtor was unable to present the evidence before or during the July 14, 2017 hearing or the August 2, 2017 hearing; and (c) grossly mischaracterizes facts that were established by the sworn testimony of Wendy Chen at the June 14, 2017 hearing.

Debtor also failed to seek leave from the Court to file the untimely motion, or obtain any order from the Court granting leave to file the motion in accordance with Tex. R. Civ. P. 329b.

The facts that were asserted by Creditor Miraki in the underlying Bill of Review lawsuit, and which persuaded the trial court to deny Debtor's petition for bill of review, are as follows:

In February, 2013, Debtor and Miraki entered into a commercial lease agreement (the "2013 Lease Agreement") pursuant to which Miraki would lease from Debtor the commercial space identified as "2901 W. 15<sup>th</sup> St #B Plano TX 75075" to "use for food market and restaurant..." The 2013 Lease Agreement is attached to *Defendant Miraki's Brief in Support of Denial of Temporary and Permanent Injunction* (the "*Miraki Brief*")<sup>1</sup> as Exhibit 1-A.

On or about May 7, 2013, Wendy Chen purchased a residential property located at 5610 East Side Avenue in Dallas, Texas 75214. The General Warranty Deed conveying 5610 East Side Avenue to Wendy Chen is attached to the *Miraki Brief* as Exhibit 2.

On or about February 25, 2015, Chen executed an amendment to the 2013 Lease Agreement as "President" of Debtor. The 2015 Lease Agreement is attached to the *Miraki Brief* as Exhibit 1-B. Pursuant to that agreement, Debtor was supposed to perform significant work to ensure the space could be occupied by Miraki and his business. Debtor did not comply with its obligations mandated by the 2015 Lease Agreement.

Debtor failed to perform the tasks required by the amendment in the time required to perform them.

On or about November 25, 2015, Miraki filed the underlying lawsuit (Case No. 416-04856-2015) naming Debtor as the Defendant. That lawsuit is hereinafter referred to as the "Underlying Lawsuit."

In Miraki's Original Petition in the Underlying Lawsuit, he identified the lease agreement made the basis of his claims to be the one entered into between Debtor and Miraki in February, 2013. That is the same agreement identified as Exhibit 1-A above.

On December 4, 2015, Wendy Chen filed a lawsuit in the Justice Court of Collin County, Precinct 3, Place 1, as Agent of Debtor. That Petition is attached to the *Miraki Brief* as Exhibit 3. In that Petition, Wendy Chen identifies herself as the agent of Debtor, and represented to the Court that the "Address of Plaintiff (Landlord/Property Owner) or Agent" was "5610 East Side Avenue, Dallas Texas 75214."

On or about December 18, 2015, Wendy Chen submitted a homestead exemption application form to the Dallas County Appraisal District to make 5610 East Side

---

<sup>1</sup> All exhibits that were attached to the *Miraki Brief* are incorporated herein by reference as though attached hereto, as well as all exhibits entered into evidence by Miraki during the June 14, 2017 hearing.

Avenue her homestead. The Dallas County Appraisal District records reflecting the homestead exemption application is attached to the *Miraki Brief* as Exhibit 4.

On January 13, 2016, Miraki filed its First Amended Petition and requested the issuance of a citation for service of process for the Defendant at 5610 East Side Avenue, Dallas, Texas 75214; the citation was issued the same date.

The citation was delivered to Special Delivery, and was assigned to private process server Tracy Edwards, who is authorized to effectuate service of process under order of the Supreme Court of Texas. Tracy Edwards attempted to effectuate service of process five (5) times at different times of day between January 20, 2016 and January 29, 2016. During the attempts at service of process, the process server saw mail addressed both to Debtor and Wendy Chen, spoke with a neighbor who confirmed Ms. Chen lived there, left his business card, which was gone the next day, and saw new mail addressed to Ms. Chen 6 days after the first visit. *See* Affidavit of Tracy Edwards, which is attached to the *Miraki Brief* as Exhibit 5, and to Plaintiff Miraki's Motion for Substitute Service filed on March 16, 2016 in Cause No. 416-04856-2015.

On March 22, 2016, the Court granted Plaintiff Miraki's Motion for Substitute Service, and authorized Miraki to effectuate service of process by attaching a true copy of the citation to Debtor, with a copy of the first amended petition attached, to the front door of 5610 East Side Avenue, Dallas, Texas 75214.

On April 6, 2016, an authorized process server served Debtor by attaching a true copy of the citation to Debtor, with a copy of the first amended petition attached, to the front door of 5610 East Side Avenue, Dallas, Texas 75214. The *Return of Service* describing the manner of service on Debtor is attached to the *Miraki Brief* as Exhibit 6. Debtor's appearance day under Rule 99 of the Texas Rules of Civil Procedure was therefore April 25, 2016.

Debtor did not file an answer or otherwise defend this suit by the April 25, 2016 deadline, and Debtor was in default through the date when the Default Judgment was issued by the Court and Debtor has no legitimate excuse for this failure.

The *Return of Service* for service of Debtor was filed with this Court and states the date, time, and manner of service upon Debtor. The *Return of Service* for service of Debtor was on file with the Clerk of the Court for at least ten (10) days, exclusive of the day of filing and the day of judgment, and otherwise meets all the requirements of Rule 107 of the Texas Rules of Civil Procedure. Debtor failed to appear in a timely manner.

After conducting multiple hearings, and requesting and receiving additional evidence and legal authorities, the Court issued a Default Judgment on November 28, 2016.

Debtor filed its *Original Petition for Bill of Review, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction* on June 1, 2017, just over 4 months after its charter was forfeited by the Texas Secretary of State.

When Wendy Chen signed the verification to support the Bill of Review, she identified herself as, “officer for WWLC Investment, L.P.” See *Original Petition for Bill of Review*, page 5, which is on file in the records of this Court.

During the June 14, 2017 hearing on Debtor’s bill or review and application for injunction, Wendy Chen provided testimony about the 5610 East Side Avenue address, as follows:

- a. Wendy Chen “received notices for WLC Investments, L.P. at 5610 East Side Avenue.” June 14, 2017 Hearing Transcript, page 40, lines 13-15.
- b. Wendy Chen is the “President” of WLC Investments, L.P. June 14, 2017 Hearing Transcript, page 40, lines 16-19.
- c. When Wendy Chen filed the “Petition: eviction case,” in the Collin County Justice of the Peace Court 3-1, Case No. 31-EV-01861, she authorized the filing of the petition, and was verifying to the Court that all of the information in the document was true and correct, which includes: (1) 5610 East Side Avenue was the address for WLC Investments, L.P.; and (2) Wendy Chen wanted notifications for WLC Investment, L.P. to go to 5610 East Side Avenue. June 14, 2017 Hearing Transcript, page 40, line 20 through page 42, line 8.

Debtor should be required to amend the Disclosure Statement to include all relevant facts regarding the Underlying Lawsuit, the bill of review lawsuit, and current pending appeal (Cause No. 05-17-01126-CV) before it is approved.

2. In Paragraph D(5) of the Disclosure Statement, Debtor indicates that Debtor has a claim and cause of action for “\$317,969.62 for unpaid rent arising under” a lease agreement with Sorab Miraki.

Mr. Miraki disagrees with the statements in the Disclosure Statement, and believes the following properly describes the matter:

On December 4, 2015, Debtor filed a lawsuit against Creditor Sorab Miraki in the Justice Court of Collin County, Precinct 3, Place 1, and given Cause No. 31-EV-15-01861. In that Petition, Debtor alleged that Sorab Miraki owed \$7,787.56 in connection with failure to pay rent on a lease agreement involving 2901 W. 15<sup>th</sup> Street, #B, Plano, Texas 75240. Debtor did not effectuate proper service of process on Mr. Miraki, but obtained a default judgment on December 17, 2015 in the amount of \$7,787.56. Presumably that is the same \$7,787.56 identified in Paragraph D(2) of the Debtor’s Plan as an “Account Receivable.” Regardless of whether the \$7,787.56 “account receivable” is legitimate, *res judicata* precludes Debtor from seeking any additional money based on the same claim. Accordingly, the Disclosure Statement should be amended to reflect the actual basis and amount of any potential claim the estate could assert against Mr. Miraki.

3. In Paragraph E(4) of the Disclosure Statement Debtor indicates that Creditor Sorab Miraki has an unsecured claim in the amount of \$1,183,924.95.

Mr. Miraki believes this statement is inaccurate and misleading.

This 'unsecured' claim is the same claim that Debtor acknowledges is secured in Paragraph E(2). This claim is secured by an Abstract of Judgment that was filed in the Collin County property records on June 29, 2017. Since Debtor concedes that the Abstract of Judgment was filed before this bankruptcy case was filed, and has taken no action to set aside the lien in the bankruptcy, the lien is valid and the claim is secured. As a consequence, the Disclosure Statement must be amended to properly state the amount and status of Mr. Miraki's claim.

### **PRAYER**

Accordingly, Creditor Sorab Miraki respectfully requests that this Court deny approval of Debtor's Disclosure Statement unless the Debtor amends it to include the facts included in this objection.

Respectfully Submitted,

**MORALES | WALKER PLLC**

*/s/ Eric D. Walker*

ERIC D. WALKER

State Bar No. 24047056

6060 N. Central Expy., Suite 500

Dallas, Texas 75206

972.948.3646 (Telephone)

972.361.8005 (Facsimile)

[ewalker@mwtrialfirm.com](mailto:ewalker@mwtrialfirm.com)

**Attorneys for Creditor Sorab Miraki**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 6, 2018, a true and correct copy of the foregoing document was served via ECF electronic filing and/or first class mail, postage prepaid, on the United States Trustee at 1100 Commerce Street, Room 976, Dallas, Texas 75242, and upon the parties listed on the attached service list.

/s/ Eric D. Walker\_\_\_\_\_

ERIC D. WALKER