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COUNSEL FOR REPUBLIC BUSINESS CREDIT, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: §
§
BAILEY TOOL & MANUFACTURING § **Case No. 16-30503**
COMPANY, et al, § **Chapter 11**
§
Debtors. §
§

**REPUBLIC BUSINESS CREDIT, LLC’S OBJECTION TO DEBTORS’
DISCLOSURE STATEMENT [DOCKET NO. 337]**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Republic Business Credit, LLC (“RBC”), a party in interest in the above-referenced bankruptcy case, hereby files this Objection (the “Objection”) to the Debtors’ *Disclosure Statement Under 11 U.S.C. §1125 In Support of the Plan of Reorganization for (I) Bailey Tool & Manufacturing Company; (II) Hunt Hinges; (III) Cafarelli Metals, Inc.; and (IV) Bailey Shelter, LP [Docket No. 338]* (the “Disclosure Statement”), as follows:

OBJECTIONS

1. On or about February 25, 2015, Debtors Bailey Tool & Manufacturing Company, Hunt Hinges, Inc., and Cafarelli Metals, Inc. each entered into a factoring agreement entitled *Agreement for Purchase and Sale* as well as documents related thereto with RBC.

2. On or about June 2, 2016, RBC timely filed a proof of claim in each of the Debtors' cases. RBC is classified in its own class by the Debtors in the Plan as Bailey Class 12, Hunt Class 6, and Cafarelli Class 5.

3. RBC objects to the Disclosure Statement because it fails to provide adequate information regarding how the Plan would be funded. In particular, the Debtors failed to identify (1) any party that has committed to provide exit equity funding to enable the Debtor to reorganize, (2) the amount of the funding needed, or (3) the business projections supporting that the amount committed to be provided would be adequate.¹ Without such information, there is no way for creditors to determine whether the Plan is fair and equitable, and indeed, as the Debtors failed to identify any party that has committed to provide any funding at all, whether the Plan is even feasible on its face. Without the information, the Plan as proposed resembles a "hope certificate" rather than a plan that creditors may make an informed decision based on the information provided whether to support or reject.

A. Standards for Approving a Disclosure Statement

4. 11 U.S.C. §1125(b) requires that a disclosure statement contain "adequate information," which the Bankruptcy Code defines as follows:

¹ As this Objection was finalized, the Debtors filed supplements to their Disclosure Statement. RBC had represented to the Debtors (before the Debtors filed the supplements) that RBC would file this Objection by Wednesday, December 28 so that the Debtors would be able to see that the arguments contained herein are the same as those included in RBC's Motion to Convert filed on December 22, 2016. RBC hereby reserves the right to supplement this Objection based on the supplements filed by the Debtors.
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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 reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan...

11 U.S.C. §1125(a)(1).

5. A disclosure statement fails in its purpose if it omits material information about the risks associated with the proposed plan and the creditors' treatment thereunder. *In re Cardinal Congregate I*, 121 B.R. 760, 765 (Bankr.S.D.Ohio 1990).

6. Furthermore, it is within the Bankruptcy Court's discretion to deny approval of a disclosure statement if the accompanying plan is unconfirmable on its face. *See In re American Capital Equipment, LLC*, 688 F.3d 145, 154 (3rd Cir. 2012); *In re Beyond.com Corp.*, 289 B.R. 138, 140 (Bankr.N.D.Cal. 2003). In order to be confirmed, a plan, among other requirements, must be "feasible". 11 U.S.C. §1129(a)(11). The feasibility requirement is to prevent confirmation of "visionary schemes." *Matter of Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1382 (9th Cir. 1985). A plan that calls for financing but without the debtor providing evidence that a party has committed to provide the funding is only speculative and does not meet the feasibility requirement. *See In re Chadda*, 2007 Bankr. LEXIS 4213 *17 (Bankr.E.D.Pa. 2007).

7. Based on the specific deficiencies described below, RBC submits that (1) the Disclosure Statement fails to meet the Debtors' burden of providing material information to allow parties to assess the risks and possibility of success of the proposed Plan, and (2) the Plan as proposed is patently unconfirmable because it is not feasible, therefore, approval of the Disclosure Statement must be denied.

B. The Disclosure Statement and Plan Fail to Disclose Material Information

8. The Debtors have been operating as debtors in possession for most of 2016. During the pendency of these chapter 11 cases, the Debtors have been operating by using cash collateral of Comerica Bank. The use of cash collateral is strictly controlled by Court approved Budgets. The projections of cash collections and use were prepared by the Debtors. As each week went by, the Debtors would circulate a budget to actuals for weekly comparisons (“Budget to Actual”).²

9. The Budget to Actual shows that through the year 2016, the Debtors have consistently missed their own revenue projections by significant margins. Early in these cases, in April, the Debtors were able to generate funds (from A/R collections and factoring proceeds) such that their weekly ending cash balances during April averaged approximately \$130,000. After April, the Debtors’ weekly ending cash balances dropped steadily, missing their projected numbers week after week. By August, the weekly ending cash balances were dropping below \$10,000, to low as few hundred dollars on some weeks. During one week in September, the weekly ending cash was \$9. As of the week ending November 26, 2016, the latest information available as of the filing of this Objection, the Debtors had a cash balance of \$20.

10. Based on the Budget to Actual, in order for the Debtors to continue to operate, they will need additional working capital. Thus, not surprisingly, the Debtors’ proposed Plan calls for New Equity Funding with which the Debtors intend to use to pay creditor claims and to fund going forward operations.

² On December 22, 2016, RBC filed the *Motion to Convert the Debtors’ Chapter 11 Cases to Chapter 7 Cases* [Docket No.344] (“Motion to Convert”). The Motion to Convert contains a more detailed discussion of the Debtors’ cash collection and use projections. RBC hereby incorporates the arguments made in the Motion to Convert as well as Exhibit A attached thereto by this reference.
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11. Neither the Disclosure Statement nor the Plan, however, discloses the identity of the New Equity Holder. Indeed, neither the Disclosure statement nor the Plan actually state that anyone at all has committed to become the New Equity Holder.

12. The Disclosure Statement also fails to disclose the amount of the New Equity Funding that the Debtors will require in order to have a chance to successfully reorganize.

13. Without having identified any party to have committed to provide the New Equity Funding, the Debtors' Plan is nothing but a "visionary scheme" that courts have held cannot pass the feasibility requirement under Section 1129(a)(11). *In re Quigley Co., Inc.*, 437 B.R. 102, 142 (Bankr.S.D.N.Y. 2010) (plan was not feasible where funding source was "speculative at best and visionary at worst"); *In re Chadda*, 2007 Bankr. LEXIS 4213. The Plan as proposed is nothing more than a lottery ticket, as the Debtors have no ability to ensure that they will win, only that they *hope* that a New Equity Holder will appear over the horizon with a check made out for the New Equity Funding.

14. Moreover, the Debtors have also failed to disclose the amount of the New Equity Funding that would be needed in order to consummate the Plan and fulfil Debtors' working capital needs until they are able to improve revenue stream. The Debtors have provided no business analysis or projections³ to support the amount of funds needed in the coming months. Without such information, there is no way for the Court and parties to assess whether the Plan is workable and has a "reasonable likelihood of success." *See In re Idearc, Inc.*, 423 B.R. 138, 167 (Bankr.N.D.Tex. 2009).

15. On the other hand, even if the Debtors did provide financial projections, whether such numbers may be relied upon is of concern. "To establish the feasibility of a plan, the debtor

³ See footnote 1.
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must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.” *In re Idearc*, 423 B.R. at 167 (citing *In re M&S Assoc.*, 138 B.R. 845, 849 (Bankr.N.D.Tex. 1992)). The Debtors have failed, time after time, to meet their projections throughout 2016. As such, the ability of the current management to make somewhat realistic projections is questionable.

C. The Debtors are Administratively Insolvent.

16. The Debtors’ Budget for cash collateral use contains a line item for professional fees. The line item projects professional fees at \$7,500 per week starting in March. To date, the Debtors have not paid any compensation to their bankruptcy counsel, Franklin Hayward, LLP, or to counsel for the Unsecured Creditors Committee, Fox Rothschild LLP.

17. The Disclosure Statement discloses that Debtors’ bankruptcy counsel has accrued approximately \$300,000 in professional fees through November, 2016.

18. Additionally, based on that certain *Amended Stipulation and Consent Order Regarding Fox Rothschild LLP's First Interim Fee Application* [Docket No. 320], counsel for the Committee has accrued fees and expenses through July 25, 2016 of approximately \$72,000. It would reasonable to estimate that since July 25, 2016, counsel for the Committee likely accrued an additional \$25,000 to the end of November, thereby increasing the amount of accrued and unpaid professional fees of Committee counsel to \$100,000

19. Therefore, as of the filing of Disclosure Statement, the Debtors have accrued administrative professional fee obligations of no less than approximately \$400,000.

20. Another significant fact impacting administrative insolvency is that the Budget does not include any amount having been projected for taxes. A search of the taxing authority website shows that Debtor Bailey Manufacturing was assessed, among other tax assessments, for

the year 2016 of no less than \$120,000 in personal property taxes which are due on January 2, 2017.

21. The Budget to Actual shows that as of the week ending November 26, 2016, the Debtors' ending cash balance was \$20. Accordingly, the Debtors are currently administratively insolvent when professional fees and taxes are taken into consideration.

22. Looking at the Debtors' Budget from December through the first week of January, 2017, the Debtors' Budget does not anticipate generating funds that come close to meeting their professional fee obligations, let alone any tax obligations.

23. The Debtors' apparent administrative insolvency highlights the Debtors' dire need for outside financial assistance if the Debtors are to have any chance at all to reorganize. The Plan filed by the Debtors does not provide assurance that the Debtors have located anyone willing to commit to provide funding. Indeed, it would appear that the Debtors filed the Disclosure Statement and Plan simply to meet a deadline imposed by Comerica Bank or lose the authority to use cash collateral. The Plan as proposed offers nothing more than a hope and prayer for reorganization.

D. The Disclosure Statement Fails to Address Allocation of Funds Among the Debtors

24. The Plan provides that holders of general unsecured claims of all of the Debtors will receive a "Pro Rata Share of the RBC Litigation Proceeds Carve-Out." The RBC Litigation Proceeds Carve-Out is defined as 20% of the net proceeds recovered, if any, from the Debtors' lawsuit against RBC.

25. The Debtors' Plan does not contemplate substantive consolidation. As such, the RBC Litigation Proceeds Carve-Out, if any, would presumably be first allocated among the three

Debtors, Bailey, Hunt, and Cafarelli then distributed to the unsecured creditors of each of the Debtors. The Disclosure Statement does not address how the RBC Litigation Proceeds Carve-Out, if any, would be allocated among the three Debtor estates.

26. If the Debtors intend to allocate such funds, if any, pro rata among the three Debtor estates, the Disclosure Statement fails to provide an explanation of why a pro rata allocation would be fair and equitable to the creditors of each of the estates. If the Debtors intend to allocate such funds, if any, differently among the three Debtor estates, then the Disclosure fails to explain why the allocation as proposed is fair and reasonable. Without such information, a creditor would be unable to determine whether a fair and equitable allocation will be made in the best interest of each of the Debtor estates.

27. Furthermore, the RBC Litigation Proceeds Carve-Out is supposed to consist of the “net proceeds” of the RBC Litigation Proceeds, if any. The Disclosure Statement does not explain what the Debtors intend to net out the RBC Litigation Proceeds, if any, and why such amounts should be netted out.

28. A remaining issue not addressed in the Disclosure Statement is whether the RBC Litigation Proceeds, if any, constitute collateral of Comerica Bank, and if so, whether Comerica Bank has consented to the release of its collateral to be used by the Debtors as proposed under the Plan.

WHEREFORE, for the reasons set forth above, RBC submits that (1) the Disclosure Statement fails to provide adequate information as required under Section 1125, and (2) the Plan is patently unconfirmable as proposed, and as such RBC requests that the Court deny approval of the Disclosure Statement.

Dated: December 28, 2016

Respectfully submitted,

By: /s/ Vickie L. Driver

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2016, a true and correct copy of the foregoing pleading was served upon the parties receiving notice via the Court's electronic filing transmission and by U.S. Mail, first class, on the parties on the attached Service List.

/s/ Vickie L. Driver

Vickie L. Driver