

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
§ CASE NO 17-32789-H4-11
SUBDIVISION OF SILVER CITY, LLC, §
§ CHAPTER 11
DEBTOR. §
§ JUDGE JEFF BOHM

**SECURED CREDITOR JACK CHRISTIE’S OBJECTION TO CONFIRMATION OF
CHAPTER 11 PLAN AND DISCLOSURE STATEMENT**

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

Jack Christie (“Dr. Christie”), a secured creditor in this Chapter 11 case, objects to confirmation of the Chapter 11 Plan (“Plan”) and Disclosure Statement (“Disclosure Statement”) filed by the Debtor in Possession, SUBDIVISION OF SILVER CITY, LLC. In support of these Objections, Dr. Christie respectfully shows the following:

SUMMARY OF OBJECTION

1. The Court should deny confirmation because the Plan (i) is not feasible and lacks adequate disclosure of the Debtor's financial projections and ability to perform under the Plan; and (ii) was proposed with an impermissible purpose indicative of a lack of good faith. In sum, the Plan is fatally flawed, and the Debtor has no prospects for a successful reorganization. As a result, the court should deny confirmation of the Plan.

BACKGROUND

2. Debtor filed a voluntary petition for relief under Chapter 11 on May 1, 2017 and has operated as the Debtor-in-Possession since that time.

3. Debtor has filed monthly operating reports for May, June, July and August, 2017 (See Docket Nos. 25, 28, 32 and 49).

4. Debtor filed its Plan and Disclosure Statement (See Docket Nos. 33 and 34). The Disclosure Statement was conditionally approved by the Court at Docket No. 36 on or about September 11, 2017.

5. On May 7, 2016, Dr. Christie conveyed the following property to Debtor by way of a warranty deed with assumption and vendor's lien, recorded in the Montgomery County Clerk's Real Property Records under Doc. #2016039674 ("Warranty Deed") (A copy is attached as Exhibit "A"):

Lot 14 in Block 2, of Lake Breeze Section One, a subdivision in Montgomery County, Texas, according to the Final Plat thereof found in Cabinet Z, Sheets 311 and 312 of the Plat Records of Montgomery County, Texas. (the "Property")

6. Debtor granted a security interest, the Deed of Trust to Secure Assumption, executed by the Debtor's representative Peter Hill ("Mr. Hill"), which was dated the same date as the Warranty Deed ("Deed of Trust 1"). Deed of Trust 1 was recorded in the Montgomery County Clerk's Real Property Records under Doc. #2016039675. A copy is attached as Exhibit "B."

7. Mr. Hill conveyed the Property to Catherine Kekeocha ("Ms. Kekeocha") on February 9, 2017. Subsequently, a correction deed, also dated February 9, 2017, conveyed the Property from the Debtor to Ms. Kekeocha and was recorded on April 25, 2017 in the Montgomery County Clerk's Real Property Records under Doc. #2017034226. Ms. Kekeocha executed a Deed of Trust – Wraparound Mortgage for Debtor's benefit on February 9, 2017. Copies of the Correction Deed to Ms. Kekeocha and Wraparound Mortgage for Debtor's benefit are attached as Exhibit "C."

8. Debtor filed this bankruptcy case on May 1, 2017, less than 90 days of transferring the Property to Ms. Kekeocha.

9. Debtor's Disclosure Statement states: "The Debtor does not believe there are any preference actions or fraudulent transfer actions to pursue." Doc. 34, page 3, Section E.

10. The Property is valued at \$175,170 pursuant to Montgomery County Appraisal District. A copy of the County Assessed Value Statement is attached as Exhibit "D."

11. Although the Debtor lists the Property as a non-exempt on Exhibit "C," Chapter 11 Liquidation Analysis, Debtor failed to mention the transfer of the Property in the Schedules, Statement of Financial Affairs, proposed Plan or Disclosure Statement. Furthermore, Debtor failed to list the property as an asset on Schedule A/B.

OBJECTIONS AND AUTHORITIES

12. Dr. Christie adopts the arguments and objects regarding the Plan's lack of feasibility, Debtor's failure to comply with applicable provisions of Title 11, objections to the Disclosure Statement and alternative request for conversion to Chapter 7 raised in *Secured creditor Gary Bensema's Objection to Confirmation of Chapter 11 Plan and Disclosure Statement, and Alternative Motion to Convert to a Case Under Chapter 7*, Doc. No. 55., and in *New York Mutual LLC's Objection to Disclosure Statement and Plan of Reorganization*, Doc. No. 58.

13. **The Plan is not feasible.** In order for a plan to be confirmed, it must comply with all of the subparagraphs of §1129(a). At the confirmation hearing, the Court has a "mandatory independent duty" to determine whether the plan has met all of the requirements of confirmation whether or not anybody objects. *In re Williams*, 850 F.2d 250, 253 (5th Cir. 1988). Section 1129(a)(11) of the Bankruptcy Code requires that "[c]onfirmation of the [P]lan is not likely to be followed by the liquidation, or the need for further financial reorganization of the [D]ebtor or any successor to the [D]ebtor." 11 U.S.C. § 1129(a)(11). The Debtor's Budgets and operating history, and speculative future operational projections demonstrate why the Debtor's Plan is not feasible.

See In re Lakeside Global II, Ltd., 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989). "[A] [d]ebtor's prior performance is probative of the feasibility of any plan Speculative, conjectural or unrealistic projections by [the] Debtor cannot support [the] Debtor's predictions of future performance." *See Canal Place Ltd. P'ship v. Aetna Life Ins. Co. (In re Canal Place Ltd. P'ship)*, 921 F.2d 569, 579 (5th Cir. 1991); *see also Save Our Springs (S.O.S.) Alliance, Inc. v. WSI (II)-COS, L.L.C. (In re Save Our Springs (S.O.S.) Alliance, Inc.)*, 632 F.3d 168, 173-74 nn.6 & 8 (5th Cir. 2011) (citing a six-factor feasibility test including: consideration of the adequacy of the debtor's capital structure, the debtor's earning power, economic conditions, and the ability of the debtor's management, and noting that courts require specific, concrete evidence to support feasibility).

14. To prove feasibility, the Debtor must have concrete evidence that sufficient cash exists to fund its Plan. *See Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 508 (S.D.N.Y. 1994). An essential issue in assessing the feasibility of a plan of reorganization is whether the debtor can generate sufficient cash flow to fund and maintain both its operations and obligations under the plan. *See In re Trevarrow Lanes, Inc.*, 183 B.R. 475, 482 (Bankr. E.D. Mich. 1995). Further, in determining feasibility, the court need not accept unsubstantiated statements of confidence in the income projections. *In re Prudential Energy Co.*, 59 B.R. 765, 767-68 (Bankr. S.D.N.Y. 1986).

15. Debtor's income projections provided in Exhibit B to the Disclosure Statement show an insufficient amount available to make payments proposed under the Plan after the Debtor's other fixed and routine operating expenses are paid.

16. Furthermore, the monthly operating reports filed to date do not give any comfort that the Plan is feasible.

17. Debtor has an inconsistency in the Plan regarding payment to Dr. Christie, and the Disclosure Statement does not provide reasonable disclosure. Ultimately, it appears that the Debtor will more than likely seek further reorganization or liquidation prior to consummating the Plan.

18. **The Plan is not filed in good faith.** Debtor has not included all its assets on the Schedules. The Debtor failed to explain the value transfers of properties, including the Property on which Dr. Christie has a lien. Furthermore, Debtor fails to explain why the transfers are not being pursued and states in its that the Debtor does not believe there are any preference actions or fraudulent transfer actions to pursue.” Doc. 34, page 3, Section E.

19. Less than 90 days prior to filing this case, Debtor transferred the Property to Ms. Kekeocha and failed to mention the transfer on the Schedules, Statement of Financial Affairs or Disclosure Statement. The Property is valued at \$175,170 pursuant to Montgomery County Appraisal District. See **Exhibit “D.”** Debtor fails to explain why the equity in the Property should not be used to pay creditors.

20. On information and belief, there is no impaired accepting class, and the Plan discriminates unfairly and is not fair and equitable.

21. **The Disclosure Statement should be disapproved because it provided false or misleading information.** The Disclosure Statement provided false or misleading information in at least the following respects:

A. The Disclosure Statement did not address the significant and material unlisted assets and transactions set forth above;

B. The Disclosure Statement stated no insider would receive distributions or payments during the term of the Plan, but Peter Hill, an insider, is still receiving a salary postpetition;

C. The Disclosure Statement greatly overstates Debtor's projected monthly post-petition income;

D. The Disclosure Statement and Chapter 11 Plan is inconsistent in accounting for projections of income and expenses, stating some on a monthly basis and some on a quarterly basis, thus hiding the fact Debtor does not have sufficient post-petition income to meet the promised payments to pre-petition creditors under the Chapter 11 Plan.

PRAYER

Dr. Christie prays that the Court deny Debtor's Plan of Reorganization, does not approve the Debtor's Disclosure Statement, and grant Dr. Christie such other relief as the Court deems appropriate.

Dated: October 18, 2017

Respectfully submitted,

HOOVER SLOVACEK LLP

By: /s/ Brendetta A. Scott

Brendetta A. Scott
State Bar No. 24012219
scott@hooverslovacek.com
Galleria Tower II
5051 Westheimer, Suite 1200
Houston, Texas 77056
Telephone: (713) 977-8686
Facsimile: (713) 977-5395

ATTORNEY FOR DR. JACK CHRISTIE

CERTIFICATE OF SERVICE

This is to certify that on October 18, 2017, I served a true and correct copy of the foregoing Objection to Confirmation to be served upon all parties requesting notice by the ECF notification system.

17-32789 Notice will be electronically mailed to:

Karl Daniel Burrer on behalf of Creditor David Straube
burrerk@gtlaw.com, jamrokg@gtlaw.com, parkinsl@gtlaw.com

Karl Daniel Burrer on behalf of Creditor Steve Arizpe
burrerk@gtlaw.com, jamrokg@gtlaw.com, parkinsl@gtlaw.com

John P Dillman on behalf of Creditor Montgomery County
Houston bankruptcy@publicans.com

Alan Sanford Gerger on behalf of Creditor New York Mutual, LLC
asgerger@gerglaw.com, dngbkpfilings@gmail.com

William Britton Hall on behalf of Creditor Gary Bensema
billhall17@yahoo.com, murdochm@consolidated.net; rigby1964@yahoo.com

Teri H Kelley on behalf of Creditor Larry Hibbard
tk@thkelleylaw.com

Craig C. Lesok on behalf of Creditor FYP, LLC d/b/a Texas Property Tax Loans
craig@lesoklaw.com

Christine A March on behalf of U.S. Trustee US Trustee
christine.a.march@usdoj.gov

Margaret Maxwell McClure on behalf of Debtor Subdivision of Silver City, LLC
margaret@mmmclurelaw.com, james@mmmclurelaw.com; dariel@mmmclurelaw.com

Brendetta Anthony Scott on behalf of Creditor Jack Christie, MD
scott@hooverslovacek.com,
phelan@hooverslovacek.com, bankruptcy1@hooverslovacek.com, Scott.hsllp@gmail.com

Owen Mark Sonik on behalf of Creditor Willis Independent School District
osonik@pbfcm.com, tpope@pbfcm.com; osonik@ecf.inforuptey.com

US Trustee
USTPRegion07.HU.ECF@USDOJ.GOV

Kimberly A Walsh on behalf of Creditor Texas Comptroller of Public Accounts
bk-kwalsh@oag.texas.gov, sherri.simpson@oag.texas.gov

/s/ Brendetta A. Scott
BRENETTA A. SCOTT