UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

HOTEL SYRACUSE, INC. CASE NO. 90-02921

Debtor Chapter 11

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On September 24, l99l, this Court held a hearing on the sufficiency of the Disclosure Statement ("DS") filed by the Debtor on August l3, l99l, in accordance with §1125 of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code").

At said hearing the Court considered not only the sufficiency of the DS but also the objections thereto filed by Hilton Inns, Inc. ("Hilton"), Manufacturers Hanover Trust Company ("MHTC") and the City of Syracuse, Syracuse Economic Development Corporation and Syracuse Industrial Development Agency (collectively the "City").[1]

In the course of the hearing, the Debtor consented to making certain additions and/or amendments to the DS which will be referred to hereinafter.

[1] Apple Bank for Savings ("Apple") filed a Response to the DS, as well as to the objections of MHTC and the City, which the Court does not categorize herein as an objection to the DS.

JURISDICTION

The Court has jurisdiction of this contested matter by virtue of 28 U.S.C. §§1334 and 157(a), 157(b)(l) and (b)(2)(A,L).

DISCUSSION

With regard to the Objection of Hilton, the Debtor has agreed to amend the DS to indicate that the Debtor will assume a License Agreement with Hilton as part of its Plan of Reorganization ("Plan") filed with the Court on July 30, l99l. The DS will be further amended to include within the definition of "Administrative Expenses" found at page ll, any sums the Debtor contends will result from the assumption of the License Agreement in the nature of an administrative expense in accordance with Code §§503(b) and 507(a)(l).

With regard to the Objection of MHTC, the Debtor has agreed to amend that portion of the DS which deals with the "intent" of all of the parties regarding the industrial development financing referred to on page 6 to make explicit that such representation of "intent" is that of the Debtor only and not necessarily concurred in by any other party.

The Debtor further agreed to adjust the language of the DS found at page 6 to provide that MHTC is the holder of a document entitled "Lease Agreement" as the assignee under a document entitled "Conditional Assignment of Leases and Rents".

With regard to Schedule C attached to the DS, Debtor has agreed to particularize the generic phrase "pre-debt cash flow" to identify the actual payments that will be required under its Plan if confirmed.

The Debtor also agreed to provide further information regarding the willingness and

financial ability of Joseph Murphy, ("Murphy") to comply with the terms of the Plan which require direct financial contributions by him.

Debtor consents to the inclusion of a definition of the term "impairment" in the DS at page 9 as it is set forth in Code §1124.

Finally, the Debtor has agreed to provide creditors with sufficient historical financial data in the DS from which creditors might assess Debtor's ability to meet its financial projections reflected in Exhibit C upon the condition that the Debtor may briefly narrate the reasons it contends caused a deterioration of its financial position leading up to the filing of the Chapter ll case.

Code §1125 requires that before a Chapter ll debtor may solicit acceptances of a plan of reorganization, it must first transmit to its creditors a disclosure statement approved by the bankruptcy court as containing adequate information.

Adequate information is generally defined in Code §1125(a)(l) and the courts are, for the most part, in agreement that whatever adequate information is, it must be determined on a case by case basis. See A.H. Robbins Co. v. Mabey, 880 F.2d 694 (4th Cir. l989); In re Texas Extrusion Corp., 844 F.2d ll42 (5th Cir. l988); In re Copy Crafters Quick-Print, Inc., 92 B.R. 973 (Bankr. N.D.N.Y. l988); In re Scioto Valley Mortgage Co., 88 B.R. l68 (Bankr. S.D.Ohio l988).

A hearing on a disclosure statement may not be utilized by creditors to raise objections that go to the confirmability of debtor's plan pursuant to Code 1129(a) and (b), unless the creditors can show that the alleged defect raised by the objection cannot be overcome upon confirmation of the plan. See In re Monroe Well Service, Inc., 80 B.R. 324 (Bankr. E.D.Pa. l987) (later proceeding 83 B.R. 3l7).

In the instant case, the written objections of MHTC focus primarily on the disputes that have arisen and will hereafter arise between itself and Debtor in regard to whether the Lease

Agreement of May 2, l98l is in fact a lease or a security agreement, the valuation of MHTC's secured claim and the "cram down" and subsequent "negative amortization" of its claim as proposed by Debtor's Plan, equitable subordination of MHTC's claims, its election under Code §1111(b), and Debtor's proposal to comply with the absolute priority rule with regard to the equity interest of Murphy.

One might conclude that MHTC's objections, as they relate to the foregoing issues, can only be satisfied by the complete revision of the DS to articulate the pros and cons of each disputed issue, and perhaps even a prognostication as to who will succeed and who will fail on those issues.

This Court does not believe that such an assessment is necessary to satisfy the adequate information component of Code §1125(a)(l).

It is true, however, that "[a] disclosure statement is misleading where it contains glowing opinions or projections having little or no basis in fact and/or contradicted by known fact." In re Dakota Rail, Inc., l04 B.R. l38, l49 (Bankr. D.Minn. l989).

The City's written Objection to some extent parallels that of MHTC in criticizing the exhibits attached to the DS, which purport to provide a liquidation analysis and a projection of future income and expenses. The City and MHTC also insist that the DS contain personal data regarding Murphy, since he is to supply any shortfall in the amounts due upon the "Effective Date" of the Plan.

CONCLUSION

Upon a review of both the City and MHTC's written Objections, as well as the oral argument held on September 24, l99l, the Court concludes that while the Debtor has consented to

several additions and/or amendments to the DS as outlined herein, there must be further additions in order to insure that the DS will pass muster in accordance with Code §1125(a)(l).

First, Debtor must amend the "Background" portion of the DS to provide in greater detail what effect a declaration by this Court that the Lease Agreement is in fact a true lease will have on the Debtor's ability to reorganize.

Second, Debtor must amend that portion of the DS entitled "Potential Cram down of Non-Consenting Classes" to reflect that on September 24, l99l, both MHTC and the City filed notices of election under Code §1111(b), together with a brief discussion of the potential consequences of that election upon the application of Code §1129(b).

Third, Debtor shall include in the DS the authority upon which it relies to obtain approval of the so-called "negative amortization" to be applied to the secured claims of MHTC, Apple and the Syracuse Economic Development Company ("SEDCO").

Fourth, Debtor shall revise Exhibit B attached to the DS to provide the basis on which it relies for the valuations set forth therein, and shall reconcile to the extent possible, the valuations set forth on Exhibit B with those in the same or similar categories set forth on Exhibit D attached to the DS.

Fifth, in agreeing to supplement the DS by providing historical financial data, Debtor shall make specific reference to the data included in Exhibit A attached to the City's Objection filed with the Court on September l6, l99l, and shall fairly summarize the operating reports filed with the Office of the United States Trustee since the filing of this case.

Finally, there is objection to the failure of the DS to make reference to the useful life of the hotel property, since the Plan proposes a twenty-five year amortization of the mortgage claims and the City joins with MHTC in insisting that creditors be informed as to any relationship of

Murphy to Apple Bank and be given an explanation as to why the Debtor does not seek equitable subordination of Apple's secured claim pursuant to Code §5l0.

The City postures further that creditors should be made aware of Murphy's alleged guarantee of Apple's claim so that a "Deprizio" analysis may be properly performed.[2]

Data regarding the useful life of the hotel property, while pertinent to the alleged long term secured claims of MHTC, Apple and SEDCO, need not be included in the DS since these creditors are sufficiently sophisticated to have analyzed the adequacy of their security and have made an informed judgment as to whether the proposed treatment of their claims is acceptable.

The Court believes, however, that creditors must be adequately informed regarding any relationship between a debtor and its insiders which may impact upon the general creditor body, and that is appropriate here. See In re Microwave Products of America, Inc., l00 B.R. 376 (Bankr. W.D. Tenn. l989).

Thus, the Court will require the Debtor to disclose at page l4-l5 of the DS whether or not Murphy is in fact personally liable to Apple Bank with regard to its secured claims referred to in paragraph 5 set forth therein.

Beyond the foregoing, the Court does not believe that the DS requires further amendment or supplementation. The Court, in reaching this conclusion, recalls comments of Bankruptcy Judge James E. Yacos in In re Waterville Timeshare Group, 67 B.R. 4l2, 4l3 (Bankr. N.H. l986).

> In my judgment, approval of a disclosure statement is an interlocutory action in the progress of a Chapter ll reorganization effort leading to a confirmation hearing at which all parties have ample opportunity to object to confirmation of the plan. It is not intended to be the primary focus of litigation in a contested Chapter ll

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[2] Levit v. Ingersoll Rand Financial Corp., 874 F.2d ll86 (7th Cir. l989).

proceeding.

Based upon the forgoing, Debtor is directed to prepare and file an amended Disclosure Statement, in accordance with this Order, within twenty days of the date of its entry.

IT IS SO ORDERED.

Dated at Utica, New York

this day of October, l99l

STEPHEN D. GERLING
U.S. Bankruptcy Judge