

2020 Mont. B.R. 345

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

HAWAII MOTORSPORTS LLC,

Debtor.

Case No. **20-10006-BPH**

ORDER

At Butte in said District this 9th day of September, 2020.

In this Chapter 11¹ bankruptcy, after due notice, a hearing was held September 4, 2020, on approval of Debtor's Disclosure Statement ("Disclosure Statement") filed on August 21, 2020, at ECF No. 178. Appearances were noted on the record. The following objections to the Disclosure Statement were filed.

1. RJZ, LLC ("RJZ") and SGG, LLC ("SGG" (ECF Nos. 180 & 181)

RJZ and SGG both assert that the Disclosure Statement does not contain adequate information, particularly with respect to a lease with RJZ and SGG for a T-shirt shop which Debtor has yet to assume or reject. Debtor represented that it, RJZ, and SGG had agreed to continue the lease on a month-to-month basis but RJZ and SGG contend that no formal agreement has been reached.

2. Hawaii State FCU (ECF No. 182)

Hawaii State FCU objects to the adequacy of the Disclosure on several grounds. First, it notes that Debtor's reorganization is based on continued floor plan financing by Hawaii State FCU but contends that no commitment for future advances exists. Second, Hawaii State FCU contends that the Disclosure Statement does not accurately reflect the factors leading to Debtor's filing, including the sale of collateral out of trust. Third, it asserts that the economic crisis and quarantine order in Hawaii are not mentioned in the Disclosure Statement, both of which impact the feasibility of Debtor's reorganization. Finally,

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

2020 Mont. B.R. 346

Hawaii State FCU asserts that the Disclosure Statement’s projections for future sales are speculative and unrealistic.

3. Automotive Finance Corp (“AFC”) (ECF No. 184) and Wells Fargo (ECF No. 186)

AFC objects to the Disclosure Statement because it does not provide for the assumption or rejection of a Promissory Note pursuant to which AFC agreed to provide floorplan financing to the Debtor for the purchase, sale, and rental of motor vehicles. Wells Fargo, another floorplan lender of Debtor, joins in AFC’s objections.

4. American Honda Finance Corp., (“American Honda”)

American Honda objects to the Disclosure because it does not address the fact that Hawaii has a mandatory 14-day quarantine order for out-of-state travelers in place until September 30, 2020. American Honda also reaffirms the validity of certain guaranties between itself and Debtor. Finally, American Honda asserts that the Disclosure should be amended to address the possibility that American Honda’s pending Motion to Modify Stay (ECF No. 127) may be granted. That Motion is presently set for hearing on October 29, 2020.

A. Analysis of Objections

To be approved a disclosure statement must contain “adequate information.” “Adequate information means 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, including a discussion of the potential material federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.” § 1125(a).

1. RJZ and SGG’s Objection is overruled.

At the hearing, counsel for RJZ, SGG, Debtor and Cycle City explained to the Court that through discussions outstanding issues related to the lease had been reached. Once finalized the agreement would eliminate the basis of the objection. As a result of the likely agreement, a

2020 Mont. B.R. 347

detailed explanation of these issues is not necessary for “adequate information” purposes.

These objections to the Disclosure Statement are overruled.

2. Hawaii State FCU’s objection is sustained in part and overruled in part.

Debtor conceded at the beginning of the hearing that it would amend the Disclosure Statement and include the most recent and updated information related to Hawaii’s quarantine Order. Following arguments by counsel and based on the UST’s comments, Debtor shall amend the Disclosure Statement as follows:

A secured creditor has alleged Debtor sold collateral out of trust, and provided Debtor with information regarding this allegation. Debtor disputes this allegation and is in the process of checking its books and records and investigating the claim.

As a result, Hawaii State FCU’s objection on “quarantine” and “out of trust” objections are sustained. The remainder of Hawaii State FCU’s objection is overruled.

3. AFC and Wells Fargos’ objections are overruled.

Counsel for AFC and Wells Fargo conceded that their objections were closely tied to the plan and its feasibility, rather than the adequacy of the information included in the Disclosure Statement. As a result, their objections are overruled.

4. American Honda’s objection is sustained in part and overruled in part.

As a result of Debtor’s concession that the Disclosure Statement had to be amended to reflect the Governor of Hawaii’s most recent quarantine order, American Honda’s objection is sustained. The remainder of the objection is overruled.

B. Additional Issues

At the hearing the Debtor characterized some of Hawaii State FCU’s objections as “make work” objections. Although the Court overruled certain objections lodged by Hawaii State FCU, the Court does not necessarily agree that the objections were “make work”

2020 Mont. B.R. 348

objections. As counsel for Hawaii State FCU explained at the hearing, the form of certain underlying financial information in the Disclosure Statement was not easily accessible to less sophisticated creditors. Ordinarily, this Court would expect the U.S. Trustee to scrutinize the Disclosure Statement and lodge objections to ensure that the Disclosure Statement included adequate information that would enable a hypothetical investor of the relevant class, (i.e. any less sophisticated or unsecured class of creditors) to make an informed judgment about the plan. Absent an objection by the UST regarding the accessibility of the information for less sophisticated creditors, the Court overruled the objection, but this is not synonymous with the adoption of Debtor's "make work" argument.

At the hearing, the Court was advised that the feasibility of Debtor's plan may depend on, "compelled advances by flooring lenders." All parties at the hearing agreed that this is a confirmation issue, and Debtor's counsel referred the Court to two cases: *Transamerica Commercial Finance Corporation v. Citibank, N.A. (In re Sun Runner Marine, Inc.)*, 945 F.2d 1089 (9th Cir. 1991); and, *In re Seatco, Inc.*, 259 B.R. 279, 284 (Bankr. N. D. Tex.2001). The parties further explained to the Court that Hawaii State FCU, American Honda, AFC, Wells Fargo, and potentially other parties have agreed to participate in a mediation on October 19, 2020, in an effort to resolve these issues, and either develop a consensual plan, or narrow the outstanding issues that may be contested at a confirmation hearing. Accordingly,

IT IS ORDERED that Approval of Debtor's Disclosure Statement filed at ECF No. 178 is denied. On or before **September 25, 2020**, Debtor shall file an Amended Disclosure Statement that addresses the limited objections that the Court sustained. Specifically, the Amended Disclosure Statement shall include (i) the quarantine amendment, and the (ii) out of trust amendment consistent with this Order. Upon filing, the Amended Disclosure Statement will be

2020 Mont. B.R. 349

approved² and Debtor shall transmit the Amended Disclosure Statement, any further Amended Plan, a copy of this Order, and a ballot conforming substantially to the appropriate official form as approved by the Court, by mail to creditors, equity security holders, the United States Trustee, and other parties in interest as provided in Rule 3017(d). Debtors' counsel shall file a Certificate of Service with the Court on or before **September 25, 2020**, showing that all parties-in-interest as set forth above were properly served with the documents.

IT IS FURTHER ORRDERED:

1. **October 9, 2020** is fixed as the last for filing and serving written objections to Debtor's further Amended Plan filed on September 25, 2020, (A copy of any objection to approval of the Plan shall be mailed to counsel for the proponent at the address listed on that Plan, to the United States Trustee, and to counsel (or chairperson) of the official committee of unsecured creditors, if any), and for filing written acceptances or rejections (ballots) of the Plan;³
2. Debtor shall file a written response to any plan objections on or before **October 16, 2020**;
3. Hawaii State FCU, American Honda, AFC, Wells Fargo, Debtor (and any other party that has agreed to participate) shall proceed with their scheduled mediation with Ward ("Mick") Taleff on **October 19, 2020**;
4. The mediator shall file a report with the Court outlining the results of the

² The Court expects the further Amended Disclosure Statement will be materially unchanged from the Disclosure Statement that was considered at the September 4, 2020 hearing, except as to the quarantine and out of trust amendments. For purposes of § 1125(b), the notice and hearing requirement was satisfied by the September 4, 2020 hearing, which thoroughly addressed the objections, and explicitly addressed the limited amendments necessitated by the objections.

³ The 28-day notice period under Rule 2002(b) for objections to the Plan may be shortened pursuant to Rule 9006(c).

2020 Mont. B.R. 350

mediation on or before **October 26, 2020**;

5. Any stipulations, or further amended plan that may result from the mediation shall be filed on or before **October 30, 2020**;

6. A hearing on confirmation of Debtor's Amended Chapter 11 Plan will be held **November 6, 2020, at 01:00 p.m.** in the CHIEF MOUNTAIN COURTROOM, 3RD FLOOR, MISSOURI RIVER COURTHOUSE, 125 CENTRAL AVENUE WEST, GREAT FALLS, MONTANA.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana