Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
November 08, 2013

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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In re:	)	Case No.: 11-14974-MKN
	)	Chapter 11
R&S ST. ROSE, LLC,	)	
	)	Date: October 21, 2013
Debtor.	)	Time: 9:30 a.m.
	)	

MEMORANDUM DECISION ON CONFIRMATION OF FIRST AMENDED LIQUIDATING PLAN OF REORGANIZATION FOR R&S ST. ROSE, LLC UNDER CHAPTER 11 OF THE BANKRUPTCY CODE[1]

On October 21, 2013, a hearing was conducted on confirmation of the First Amended Liquidating Plan of Reorganization for R&S St. Rose, LLC Under Chapter 11 of the Bankruptcy Code. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On April 4, 2011, R&S St. Rose, LLC ("Debtor") filed a voluntary Chapter 11 petition for reorganization. Debtor's real property Schedule "A" lists a fee simple interest in

[1] In this memorandum decision, all references to "ECF No." are to the numbers assigned to the documents filed in the particular bankruptcy case or the minute entries by the court as they appear on the docket maintained by the clerk of the court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "NRCP" are to the Nevada Rules of Civil Procedure. All references to "NRAP" are to the Nevada Rules of Appellate Procedure.

approximately 38 acres of raw land ("the Property") located at St. Rose Parkway and Spencer Road in Henderson, Nevada, Assessor Parcel No. 177-26-814-001. (ECF No. 1). Debtor's personal property Schedule "B" lists only a checking account having a balance of $1,500.

On the same date, R&S St. Rose Lenders, LLC ("Lenders") also filed a voluntary Chapter 11 petition, denominated Case No. 11-14973-MKN.[2]

On May 1, 2012, Branch Banking and Trust Company, successor in interest to the Federal Deposit Insurance Corporation as Receiver of Colonial Bank N.A. ("BB&T") filed a motion to substantively consolidate the two bankruptcy estates ("Consolidation Motion").[3] (ECF No. 116).

On July 18, 2012, Debtor filed a proposed Chapter 11 liquidating plan accompanied by a proposed disclosure statement.[4] (ECF Nos. 137, 138).[5]

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[2] Lenders' real property Schedule "A" lists no real property assets while its personal property Schedule "B" lists two checking accounts totaling $574.38, a claim in the amount of $12 million against the Debtor, and a "judgment against BB&T" in the amount of $41,000. (Lenders ECF No. 1).

[3] On May 13, 2010, BB&T previously filed an involuntary Chapter 7 petition against the Debtor ("Involuntary Case"), denominated Case No. 10-18827-MKN. On May 25, 2010, a motion to dismiss the involuntary petition was filed by Forouzan, Inc. ("Forouzan"), RPN, LLC ("RPN"), Saiid Forouzan Rad ("Rad"), and Phillip Nourafchan ("Nourafchan"). Forouzan and RPN each have a 50% interest in the Debtor. Forouzan and RPN each have a 50% interest in Lenders. Forouzan is owned by Rad and members of his family, while Nourafchan is the owner of RPN. On June 23, 2010, the motion to dismiss was heard. Supplemental materials were filed. On October 29, 2010, a memorandum decision was entered by the court as well as a separate order granting the motion to dismiss.

[4] Under Section 1121(b), only the Debtor could file a proposed plan during the first 120 days after the commencement of the case. As the Chapter 11 petition was filed on April 4, 2011, the 120-day period expired on August 2, 2011. Although the Debtor could have sought an extension of this "plan exclusivity period" under Section 1121(d)(1), it did not do so. As a result, under Section 1121(c), any party in interest could have filed a proposed Chapter 11 plan after August 2, 2011.

[5] On July 24, 2012, Debtor filed a motion for approval of certain procedures with respect to plan confirmation and the sale of the Debtor's assets ("Procedures Motion"). (ECF No. 147).

On July 19, 2012, a hearing was conducted on the Consolidation Motion. On September 4, 2012, an order was entered denying the Consolidation Motion ("Consolidation Order").[6] (ECF No. 168). On September 12, 2012, BB&T filed a notice of appeal to the United States District Court for the District of Nevada (ECF No. 173) which was assigned Case No. 12-cv-01615-LDG-GWF. (ECF No. 181). On September 18, 2012, Commonwealth Land Title Insurance Company ("CLT") also filed an appeal from the Consolidation Order to the district court (ECF No. 183) which was assigned Case No. 12-cv-01647-LRH-GWF. The two appeals were consolidated and assigned to the same judge. (ECF No. 214).[7]

A hearing on approval of the disclosure statement as well as the Procedures Motion was noticed for September 5, 2012. (ECF Nos. 139, 148).

[6] In November 2008, prior to the filing of the instant bankruptcy petition, an action was brought in the Eighth Judicial District Court for Clark County, Nevada ("State Court"), by Robert E. Murdock and Eckley M. Keach against Rad, Nourafchan, Forouzan, RPN, Debtor, and Lenders, styled as Murdock, et al. v. Rad, et al., Case No. 08-A574852-C. In July 2009, BB&T's alleged predecessor in interest, Colonial Bank, commenced a separate action in the State Court against Lenders, and others, denominated Case No. 09-A-594512-C. Both Colonial Bank and Lenders were secured creditors of the Debtor. Colonial Bank's primary assertion was that Lenders had improperly obtained a lien against the Debtor's real property ahead of the bank's lien position. In the latter action, BB&T as the alleged successor to Colonial Bank, filed an amended complaint asserting claims for subrogation, estoppel, unjust enrichment, misrepresentation, and civil conspiracy. Lenders counterclaimed, seeking a declaration that its deed of trust had priority over the deed of trust in favor of Colonial Bank. On June 23, 2010, after a ten-day non-jury trial, the State Court entered Findings of Fact and Conclusions of Law ("State Court Order") determining, inter alia, that Lenders' deed of trust has priority over the Colonial Bank deed of trust. A copy of the State Court Order was submitted by the Debtor with its opposition to the Consolidation Motion. (ECF No. 136). A lengthier summary of the State Court proceedings is set forth in the Consolidation Order. BB&T appealed. On May 31, 2013, the State Court Order was affirmed by the Nevada Supreme Court. A copy of the Nevada Supreme Court's order ("Order of Affirmance") is attached as Exhibit "A" to Debtor's omnibus reply to the plan confirmation objections raised by BB&T and CLT. On September 26, 2013, the Nevada Supreme Court denied BB&T's motion for rehearing. A copy of the Order Denying Rehearing is attached as Exhibit "B" to the Debtor's omnibus reply. On or about October 8, 2013, BB&T filed a petition for rehearing en banc.

[7] BB&T and CLT also appealed the same Consolidation Order that was entered in Lenders' bankruptcy proceeding. Those appeals, Case Nos. 12-cv-01617-JCM-GWF and 12-

On July 24, 2012, Debtor filed a motion for approval of certain procedures with respect to plan confirmation as well as bidding procedures ("Bid Procedures") governing the sale of the Property ("Procedures Motion"). (ECF No. 147). A hearing on approval of the disclosure statement as well as the Procedures Motion was noticed for September 5, 2012. (ECF Nos. 139, 148).

On August 21, 2012, BB&T filed an objection to approval of the disclosure statement as well as the Procedures Motion ("Procedures Objection"). (ECF No. 158). On August 22, 2012, CLT filed an opposition to approval of the disclosure statement. (ECF No. 160).

The hearing on approval of the disclosure statement as well as the Procedures Motion was continued on numerous occasions to January 23, 2013. (ECF Nos. 164, 201, 202, 216, 218, 220). On January 22, 2013, Debtor filed a proposed amended Chapter 11 plan ("Amended Plan") accompanied by an amended disclosure statement ("Amended Disclosure Statement"). (ECF Nos. 223, 224).[8] At the hearing on January 23, 2013, the court approved both the Amended Disclosure Statement as well as the Procedures Motion. On January 28, 2013, written orders were entered on both matters. (ECF Nos. 225, 226).[9]

On June 25, 2013, an order was entered scheduling a hearing on confirmation of the Amended Plan to take place on October 21, 2013 ("Scheduling Order"). (ECF No. 239). The order also approved the form of ballots, fixed a deadline for ballots to be submitted, approved the

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cv-01667-JCM-GWF, also were reassigned to the same judge.

[8] Both versions of the documents were in "redlined" format to show changes from the original proposed plan and disclosure statement.

[9] The order approving the Amended Disclosure Statement ("Disclosure Approval Order") (ECF No. 225) preserved for plan confirmation the objections raised by BB&T and CLT going to classification of claims, good faith, priority claim treatment, impaired class acceptance, and fair and equitable treatment. In connection with such approval, the court rejected the request of BB&T and CLT to stay any further proceedings in the Chapter 11 case pending the outcome of the appeals of the State Court Order as well as the Consolidation Order. See Disclosure Approval Order at 4:6-11.

Bid Procedures for the sale of the Property, and appointed Debtor's counsel to tabulate ballots.

On August 2, 2013, Debtor re-filed the Amended Plan and the Amended Disclosure Statement in "clean" form, i.e., without the redline from the original versions. (ECF Nos. 242, 243). On the same date, Debtor filed notices of hearing with respect to solicitation of ballots, the hearing on plan confirmation, and the sale of the Debtor's real property, each reflecting the October 21, 2013, scheduled date. (ECF Nos. 244[10], 245, 246[11]).

On September 24, 2013, Debtor filed an objection to proofs of claim numbers 3-1 and 4-1 that previously had been filed by CLT[12] ("CLT Claim Objections"). (ECF No. 252). A hearing on the claim objections was noticed for October 21, 2013, i.e., the same date as the plan confirmation hearing. (ECF No. 253). On the same date, BB&T filed an objection to proof of claim number 12 that previously had been filed by Lenders in the secured amount of $12,000,000 ("Lenders Secured Claim").[13] (ECF No. 257). A hearing on that claim objection was noticed for October 30, 2013. (ECF No. 258).[14]

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[10] The notice soliciting votes to accept or reject the proposed Amended Plan ("Solicitation Notice") reiterated the confirmation hearing date as well as the deadline to objection to plan confirmation.

[11] Attached as Exhibit "A" to the Notice of Auction and Sale ("Auction Sale Notice") (ECF No. 246) is a copy of the approved Bid Procedures.

[12] On July 26, 2011, CLT filed proof of claim designated 3-1 in the unsecured, nonpriority amount of $1,175,905.44. On the same date, it filed proof of claim 4-1 in an unsecured, nonpriority amount to be determined.

[13] Lenders' proof of claim was filed on August 2, 2011. The total amount of the claim is $27,460,871, of which $12,000,000 is asserted as being secured. The balance of the claim amount appears to be based on additional principal loaned to the Debtor and interest from August 1, 2008 through December 31, 2010. It is not clear whether the interest is calculated based on the original principal, the additional principal, or both. A copy of a promissory note is attached to the proof of claim which includes a provision for interest at 13.5% and a separate provision for costs of collection, including reasonable attorney's fees.

[14] On October 21, 2013, counsel for BB&T, Lenders, and the Debtor filed a stipulation continuing the hearing on BB&T's objection for at least thirty days. (ECF No. 281).

On September 27, 2013, BB&T filed an objection to confirmation of the Amended Plan ("BB&T Objection"). (ECF No. 264). On September 30, 2013, CLT also filed an objection to confirmation ("CLT Objection"). (ECF No. 266).

On October 11, 2013, CLT filed a response to the Debtor's objection to its proofs of claim as well as a request for temporary allowance of its claims. (ECF No. 270).

On October 14, 2103, Debtor's counsel filed a declaration reporting the tabulation of ballots cast with respect to confirmation of the proposed Amended Plan ("Ballot Tabulation"). (ECF No. 273). On the same date, Debtor filed a brief in support of plan confirmation (ECF No. 272) as well as a reply to the BB&T and CLT objections to plan confirmation ("Debtor's Reply"). (ECF No. 274).

On October 18, 2013, Debtor filed its September 2013 monthly operating report ("MOR") showing a cash balance of $115.00 as of September 30, 2013. (ECF No. 279). On the same date, Debtor filed a declaration of Rad ("Rad Declaration") in support of plan confirmation. (ECF No. 280).[15]

DISCUSSION

Debtor's primary asset consists of approximately 38 acres of land ("the Property") located in Henderson, Nevada. The Amended Plan provides for the Property to be sold at auction in accordance with the Bid Procedures approved by the court.

Debtor's creditors and interest holders are divided into five separate classes. Class 1 consists of the claim of the Clark County Taxing Authority ("Clark County") secured by the Property.[16] See Amended Plan, Article III.B.1. Class 2 consists of the claim of Lenders secured

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[15] At the plan confirmation hearing, appearances were made by counsel for the Debtor, Lenders, BB&T and CLT. Additionally, counsel appeared on behalf of Forouzan, RPN, Rad and Nourafchan. No live witness testimony was offered or requested in connection with plan confirmation.

[16] The amount of the Clark County secured claim was estimated to be $48,794.91 in the Disclosure Statement and for which the Equity Holders were given the opportunity to make an

by the Property. Id., Article III.B.2. Class 3 consists of the claim of BB&T secured by the Property. Id., Article III.B.3. Class 4 consists of the claims of general unsecured creditors as well as secured creditors having unsecured claims under Section 506(a). Id., Article III.B.4. Class 5 consists of the members of the Debtor limited liability company ("Equity Holders"). Id., Article III.B.5. The Amended Plan designates each class as being impaired and therefore entitled to vote on whether to accept or reject plan treatment. Id., Article IV.B.

According to the Ballot Tabulation, Debtor received a total of eight votes. Clark County in Class 1 and Lenders in Class 2 voted to accept plan treatment. BB&T in Class 3 rejected the plan. CLT and BB&T submitted three ballots in Class 4 rejecting plan treatment, while creditor Bailus Cook & Kelesis, and Lenders, submitted two ballots accepting plan treatment. No ballots were received with respect to Class 5. Under Section 1126(c), Class 1 and Class 2 are accepting classes while Class 3, Class 4 and Class 5[17] are rejecting classes.

In view of the acceptances by Class 1 and Class 2, Debtor maintains that it has met all of the applicable requirements under Section 1129(a), including Section 1129(a)(10)[18], except with respect to Section 1129(a)(8). Debtor therefore proposes to "cram down" the Amended Plan under Section 1129(b) over the objections of BB&T and CLT with respect to rejecting Class 3 and rejecting Class 4.

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equity contribution sufficient to pay the claim. See Disclosure Statement at 13 and 14. The estimated amount matches the amount of the proof of claim filed by Clark County on May 13, 2011. As of September 6, 2013, however, the amount of the Clark County secured claim may have been as much as $436,587.84. See Exhibit "A" to Debtor's Reply.

[17] Because only votes that are actually cast may be counted, there are no affirmative votes in Class 5 and the class therefore has not accepted plan treatment. See generally 7 COLLIER ON BANKRUPTCY, ¶ 1126.04 (Alan N. Resnick and Henry J. Sommer, eds., 16th ed. 2012). See also In re M. Long Arabians, 103 B.R. 211, 215 (B.A.P. 9th Cir. 1989); In re Root, 2012 WL 5193840 at *3 (Bankr.D.Idaho Oct 19, 2012).

[18] This provision requires that in the event that a proposed Chapter 11 plan includes impaired classes, at least one impaired class has voted to accept the plan "determined without including any acceptance of the plan by any insider". 11 U.S.C. § 1129(a)(10).

The confirmation objections brought by BB&T and CLT essentially mirror the objections they raised in connection with approval of the Amended Disclosure Statement. Both argue that the Amended Plan is not proposed in good faith as required by Section 1129(a)(3)[19], see BB&T Objection at 8:11 to 11:2 and CLT Objection at 1 n.1[20], that the Amended Plan does not comply with Section 1129(a)(1) because it mis-classifies or "artificially impairs" the secured tax claim of Clark County, see BB&T Objection at 12:11 to 13:15 and CLT Objection at 6:2-23, that Section 1129(a)(10) is not met because neither Clark County in Class 1 nor Lenders in Class 2 are proper classes or non-insider accepting classes, see BB&T Objection at 13:19 to 16:3 and CLT Objection at 6:2 to 7:24, and that the Amended Plan violates the "absolute priority rule" under Section 1129(b)(2)(B)(ii) with respect to general unsecured creditor Class 4. See BB&T Objection at 19:8-25 and CLT Objection at 4:7 to 5:14. BB&T also argues that the proposed plan generally is not fair and equitable under Section 1129(b)(1) with respect its treatment of rejecting classes. See BB&T Objection at 17:15 to 19:4.[21]

The court having considered the objections raised and the record in the case, together with the written and oral arguments and representations of counsel, concludes that confirmation

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[19] Section 1129(a)(3) requires proof that the Chapter 11 plan "has been proposed in good faith and not by any means forbidden by law." In their objection, BB&T and CLT do not suggest that the Amended Plan has been proposed by a "means forbidden by law." The sole question is whether it is proposed in good faith.

[20] CLT incorporates by reference its prior objections to approval of the disclosure statement ("CLT Disclosure Objections"). (ECF No. 160).

[21] Originally, BB&T also objected that the Amended Plan does not comply with Section 1129(a)(1) because it does not provide for BB&T to vote an allowed undersecured claim under Section 506(a) in general unsecured creditor Class 4. See BB&T Objection at 11:3 to 12:6. By allegedly failing to include the unsecured portion of BB&T's claim in the unsecured creditor class, BB&T argued that the Amended Plan does not comply with the classification permitted by Section 1122(a) and therefore does not meet Section 1129(a)(1). However, after BB&T filed its objection to plan confirmation, it was provided a ballot to vote its undersecured claim in Class 4, see Debtor's Reply at 5:24-30, which was reflected in the Ballot Tabulation. At the plan confirmation hearing, BB&T withdrew this basis for objection.

of the proposed Amended Plan is appropriate in this case subject to certain conditions with respect to the sale of the Property.

1. Compliance with Section 1129(a)(10).

As an initial matter, the court is persuaded that Debtor has met the requirement of Section 1129(a)(10).

A. Acceptance by Clark County in Class 1.

Class 1 provides for Clark County[22] to receive payment in full of its secured claim[23] on the 90th day after the effective date[24] of the plan, from either the proceeds of the sale of the Property[25] or contributions by the Equity Holders. Section 1129(a)(9) requires a proposed Chapter 11 plan to treat certain enumerated claims "except to the extent that the holder of a

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[22] No argument is made that Clark County is an insider whose acceptance could not be considered under Section 1129(a)(10).

[23] Section 1123(a)(1) permits a proposed Chapter 11 plan to designate classes of claims "other than claims of a kind specified in section...507(a)(8) of this title..." Section 507(a)(8)(B) includes unsecured claims of governmental units that are for "a property tax incurred before the commencement of the case..." Because Clark County's claim is a secured by the Property, Section 1123(a)(1) does not by its terms prohibit its claim from being classified in the proposed Amended Plan. For reasons set forth in note 26, infra, Clark County would have a priority claim under Section 507(a)(8) if the claim was unsecured.

[24] Article I.B.42 of the Amended Plan defines the effective date as occurring on the first business day that is at least 10 days after entry of a plan confirmation order, provided that no stay of the order is in effect and all other conditions specified in Article IX.B have been met or waived. One of the conditions is the completion of the actions necessary to implement the plan. One of those actions under Article V.A is the sale of the Property. Thus, the effective date occurs when the sale of the Property closes, plus ten days. The Amended Plan does not provide for a deadline for a sale of the Property to close. Thus, the "90th day after the effective date" of the confirmed plan is uncertain.

[25] Article I.B.74 of the Amended Plan defines a "sale" under the plan to be deemed "a sale as a result of a foreclosure action under Nevada law for purposes of any and all state court litigation currently pending or to be commenced in the future against the Debtor or Guarantors." This language appears to be designed to have the sale fall within the ambit of Nevada Assembly Bill 273 enacted into law on June 10, 2011, as discussed in Section 1.B.1 of the Amended Disclosure Statement. No party in interest has objected to this language.

particular claim has agreed to a different treatment of such claim." Subparagraph (D) provides that "with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit[26] under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive...cash payments, in the same manner and over the same period, as prescribed in subparagraph (C)." The manner and period prescribed by subparagraph (C) is for the claimant to receive regular installment payments in cash equal to the total amount of the claim within five years of the commencement of the bankruptcy case in a manner "not less favorable than the most favored nonpriority unsecured claim provided for by the plan..." 11 U.S.C. § 1129(a)(9)(C).

Under the Amended Plan, the most favored nonpriority unsecured claims are provided for in Class 4. Under Class 4, general unsecured claims are paid from any proceeds of the sale of the Property remaining after satisfaction of the secured creditor claims in Classes 1, 2 and 3. On its face, the treatment of Clark County's secured tax claim is at least as favorable as the treatment of nonpriority unsecured claims under the proposed plan.

Section 1129(a)(9), however, expressly permits a creditor to agree to a different treatment of its claim. In this case, Class 1 of the Amended Plan proposes and Clark County has agreed by accepting plan treatment, to be paid the full amount of its claim within 90 days after the effective date of the plan, which is dependent on the close of the sale of the Property. Debtor's most recent operating report indicates that the Debtor does not have funds sufficient to pay Clark County's secured claim. Outside of bankruptcy, Clark County would not be required to delay for

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[26] Debtor seems to argue that Clark County's claim is not affected by Section 1129(a)(9)(D) because Clark County is not a priority creditor under Section 507(a)(8). See Debtor's Reply at 7:14-17. However, Section 507(a)(8) applies to the tax claims of governmental units. Under Section 101(27), a "governmental unit" includes not only the United States, but also a department, agency or instrumentality of the United States, a State, or a municipality. Under Section 101(40), a municipality means a political subdivision or instrumentality of a State. As Clark County is a political subdivision of the State of Nevada, it is a governmental unit under Section 507(a)(8) and encompassed by Section 1129(a)(9)(D).

an uncertain period of time its effort to enforce its secured claim. Under these circumstances, Clark County's legal rights in connection with its secured claim have been altered within the meaning of Section 1124(1).[27] No more is required for its claimed to be impaired and for its acceptance to satisfy Section 1129(a)(10).

B. Acceptance by Lenders in Class 2.

Class 2 provides for Lenders to be paid on its secured claim from the balance of the proceeds of the sale of the Property after allowed administrative claims[28] and Clark County are paid in full. Because Lenders currently is in its own Chapter 11 proceeding, the funds distributed from the sale of the Property would be received and held by Lenders as debtor in possession in its bankruptcy proceeding.

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[27] In this circuit, any alteration of the claimant's rights, including an enhancement of those rights, constitutes impairment under Section 1124(1). See In re L&J Anaheim Assocs., 995 F.2d 940, 942-43 (9th Cir. 1993). The proper inquiry is whether the alteration of rights was proposed in good faith rather than being done solely to create an impaired class to vote in favor of the plan. Id. at 943 n.2. BB&T maintains that the court should follow the result reached by the court in In re Mangia Pizza Invs., LP, 480 B.R. 669, 678-79 (Bankr.W.D.Tex. 2012). See BB&T Objection at 13:10-11. In rejecting the vote of the secured tax claimant, the Mangia Pizza court reasoned that "...tax claims should not be given the ability to vote if the taxing authority accepts treatment less than that allowed under section 1129(a)(9)(C) and (D). In doing so, creditors who are not given statutory rights will not have their votes diluted." 480 B.R. at 679. Unfortunately, that rationale overlooks the language of Section 1129(a)(9) that expressly allows the holder of the claim to agree "to a different treatment of such claim." Moreover, it does not account for provisions in Chapter 11 permitting other creditors who have unique statutory rights to vote or pursue their own interests irrespective of the interests of otherwise similarly situated claimants. For example, a nonrecourse secured creditor can elect treatment as fully secured creditor even though its undersecured claim determined under Section 506(a) could potentially control acceptance by the general unsecured class. See 11 U.S.C. § 1111(b). Likewise, the holder of an allowed unsecured claim can object to confirmation and force an individual Chapter 11 debtor to devote his projected disposable income to payment of unsecured creditors rather than other claims. See 11 U.S.C. § 1129(a)(15)(B). Thus, the court is not find the Mangia Pizza decision persuasive and instead is guided by the broad language of impairment recognized in L&J Anaheim.

[28] Article I.B.2 defines "administrative claim" to included operating expenses of the Debtor, professional compensation approved by the court, and statutory fees.

Unlike Clark County in Class 1, BB&T and CLT both argue that Lenders is an "insider" whose acceptance would not be sufficient to meet the requirement of Section 1129(a)(10). In other words, even if Lenders' claim is impaired under Class 2, its acceptance of such treatment cannot be counted as an accepting impaired class under Section 1129(a)(10). See BB&T Objection at 14:14 to 16:3, citing In re Enter. Acquisition Partners, Inc., 319 B.R. 626, 631 (B.A.P.9th Cir. 2004), In re Lettick Typographic, Inc., 103 B.R. 32, 38 (Bankr.D.Conn. 1989) and Beemer v. Crandon Enters., Inc. (In re Holly Hill Med. Ctr., Inc.), 53 B.R. 412, 413 (Bankr.M.D.Fla.1985).

(i) Lenders as a "Per Se" or "Statutory Insider."

BB&T argues that Lenders is a "per se" insider of the Debtor because it falls within the statutory definition of an insider. See BB&T Objection at 15:13. Alternatively, BB&T argues that Lenders is an entity so "closely related" that it should be treated as a "non-statutory" insider. See BB&T Objection at 14:15. CLT merely asserts that Lenders is an insider without reference to the statute or citation of case authority. See CLT Objection at 7:8-11.

Under Nevada law, a limited liability company is considered to be a corporation for liability purposes. See Weddell v. H2O, Inc., 271 P.3d 743, 748-49 (Nev. 2012). Bankruptcy courts have treated limited liability companies as corporations for the purpose of determining insider status. See Solomon v. Barman (In re Barman), 237 B.R. 342, 348 (Bankr.E.D.Mich. 1999); Kotoshirodo v. Zapara (In re Lull), 2009 WL 3853210 at *3-4 (Bankr.D.Hawaii 2009). With respect to a corporation, an insider under Section 101(31)(b) includes a director, officer, person in control of the corporation, a partnership in which the corporation is a partner, and a general partner of the debtor.[29] Under Section 101(31)(E), an insider also includes an "affiliate, or insider of an affiliate as if such affiliate were the debtor."

[29] Section 101(31)(B)(vi) also provides that relatives of a general partner, director, officer, or person in control also are considered to be insiders of a corporate debtor. Under Section 101(45), a "relative" means an individual, i.e., a natural person.

There is no dispute that Lenders is not a director or officer of the corporate Debtor under Section 101(31)(B)(i and ii), is not a partnership in which the Debtor is a general partner under Section 101(31)(B)(iv), and is not a general partner of the Debtor under Section 101(31)(B)(v). BB&T apparently argues that both Debtor and Lenders are controlled by RPN and Forouzan, but that would not establish that Lenders is a "person in control of the debtor" as required by Section 101(31)(B)(iii).[30] Under these circumstances, Lenders is not a "per se" or "statutory" insider of the Debtor unless it is an "affiliate" included as an insider under Section 101(31)(E).

In pertinent part, Section 101(2) defines an affiliate to mean the following:

> "(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor... [or]
> (B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, **or** by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor..."

11 U.S.C. § 101(2)(A and B). (Emphasis added.)

As previously noted, Debtor is a limited liability company whose sole members and managers are Forouzan and RPN. Forouzan is a corporation that is wholly owned by the Rad family. Lenders is a limited liability company that is owned by Nourafchan. Forouzan and RPN have fifty percent member and management interests in each entity. Because of this relationship, BB&T argues that

> Under Section 101(2), any entity that RPN and Forouzan Inc. owns or controls 20 percent or more of the voting shares, is an affiliate. Accordingly, RPN and Forouzan Inc.'s wholly-owned and wholly-controlled entities Debtor and Lenders are affiliates. Because Section 101(31) defines an insider as an "affiliate" and Lenders is an affiliate of Lenders is a per insider of Debtor.

BB&T Objection at 15:9-13. (Emphasis added.) On its face, the underscored language of

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[30] Under Section 101(41), a "person" includes an individual, partnership or corporation.

BB&T's argument is gibberish. BB&T appears to be arguing, however, that because Lenders is an affiliate of the Debtor under Section 101(2), Lenders is a per se insider of the Debtor under Section 101(31)(E).[31]

Not surprisingly, Debtor maintains that Lenders is not an affiliate within the meaning of Section 101(2). Debtor argues that while it shares common ownership with Lenders, i.e., Forouzan and RPN, neither the Debtor nor Lenders has an ownership interest in each other. See Debtor's Reply at 10:1-11, citing In re Enter. Acquisition Partners, Inc., 319 B.R. at 632. In Enter. Acquisition Partners, the Bankruptcy Appellate Panel reversed a trial court decision that expanded Section 101(31)(B)(vi) to treat a corporation as an insider merely because the relative of an insider owned the corporation. 319 B.R. at 632. Parsing through the language of Section 101(2), however, it appears that BB&T has the better argument.

It is clear that Lenders does not own, directly or indirectly, 20 percent or more of the voting interest in the Debtor. Under Section 101(2)(A), Lenders would be an "entity" but would not meet the rest of the language of that provision. Under Section 101(2)(B), however, an affiliate also means a corporation, 20 percent or more of whose outstanding voting securities are owned by an entity[32] that owns 20 percent or more of the outstanding voting securities of the debtor. There is no dispute that Lenders is a corporation that is equally-owned by Forouzan and RPN, which are entities that each own a 50% interest in the Debtor. Lenders therefore would be an affiliate of the Debtor under Section 101(2). As an affiliate, Lenders also would be an insider of the Debtor under Section 101(31)(E).

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[31] BB&T points out that the Debtor identified Lenders in the "pending bankruptcy case filed by any spouse, partner, or affiliate" section of the Debtor's bankruptcy petition. See BB&T Objection at 16:2. In that section, the petition describes Lenders' relationship to the Debtor as a "sister limited liability company." None of the affiliate language used in Section 101(2) appears in the description.

[32] Under the language of Section 101(2)(B), the subject corporation can be owned either "by the debtor" **or** "by an entity" that is separate from the debtor.

(ii) Lenders as a "Non-Statutory Insider".

BB&T also argues that certain "non-statutory" insiders are recognized where the debtor is "closely related" to another entity. It thus maintains that Lenders is a non-statutory insider of the Debtor even if it is determined not to be an affiliate. In this respect, it is the Debtor that has the better of the argument.

The Bankruptcy Appellate Panel ("BAP") for the Ninth Circuit recently addressed the determination of non-statutory insiders in In re Village of Lakeridge, LLC, 2013 WL 1397447 (B.A.P. 9th Cir. 2013). In that case, the BAP explained that non-statutory insiders "includes those individuals or entities whose business or professional relationship with the debtor 'compels the conclusion that the individual or entity has a relationship with the debtor, close enough to gain an advantage attributable simply to affinity rather than to the course of business dealings between the parties.'" Id. at *5, quoting Friedman v. Sheila Plotsky Brokers, Inc. (In re Friedman), 126 B.R. 63, 70 (B.A.P. 9th Cir. 1991). After examining the existing caselaw, including its previous decision in Enter. Acquisition Partners, the BAP concluded that "to find a party is a non-statutory insider as to a debtor, the bankruptcy court must consider: (1) the closeness of the parties and the relative control each has over the other, and (2) whether the degree of control is such that it would render its transaction with the debtor not arms-length." 2013 WL at *6.

In this case, Debtor concedes its closeness to Lenders and the possibility of control between the entities. See Debtor's Reply at 11:1-2. It maintains, however, that its underlying transaction with Lenders was arms length based on the findings and conclusions reached by the State Court, as set forth in the State Court Order. After ten days of trial involving multiple witnesses and documents, the State Court entered detailed factual findings ("State Court FF") which included the following:

> 5. To purchase the Property, [Debtor] obtained funds from three different sources: (1) Colonial Bank; (2) Centex non-refundable deposits; and (3) [Lenders], who obtained the funds from private lenders, including the plaintiffs, Murdock and

Keach.

7. [Debtor] also borrowed $12,300,000 from [Lenders].

9. [Debtor] and [Lenders] are each comprised of the same two members and the same two managers, those being Forouzan and RPN. The owner and/or president of Forouzan is Rad. The owner and/or manager of RPN is Nourafchan.

10. Rad and Nourafchan (individually and in their representative capacities) were/are the decision-makers and at all times herein they owned and/or controlled Forouzan, RPN, [Debtor], and [Lenders], respectively.

17. Nearly one month later and without the knowledge of Colonial, Rad and Nourafchan (individually, and in their representative capacities) signed a promissory note in favor of [Lenders] for $12,000,000.00 (the "[Lenders] Note") as well as a second position deed of trust in that amount recorded on September 16, 2006 as Document No. 02881 in Book 20050916 of the Official Records, Clark County, Nevada (the "[Lenders] DOT").

18. At that time, the First Colonial DOT was in first position on the Property and the [Lenders] DOT was in a second position lien on the Property.

19. Rad, Nourafchan, and/or their agents raised the $12,000,000 that [Lenders] loaned to [Debtor] to purchase the Property by soliciting private investors that included, among others, family members, friends, acquaintances, including Murdock and Keach (collectively referred to as "investors'). Each of the investors were told that they were investing in a second priority loan, subject to the First Colonial Loan. [This finding by the State Court is accompanied by the following footnote: While each investor apparently received a promissory note in the amount that R&S Lenders borrowed, each investor did not receive an individual deed of trust securing their interest against the Property. The R&S Lenders DOT only names R&S Lenders as the secured party. Rad and/or Nourafchan believe that the R&S Lenders DOT is a "collective" deed of trust that secures all of the investors that contributed funds for a second deed of trust.]

34. In late May or early June of 2007, Rad and Nourafchan approached Colonial with a request for a new loan to be used to repay the First Colonial Loan and for additional development funding to improve the Property. Rad and Nourafchan believed that by selling improved lots rather than raw land, [Debtor] could more easily sell the Property, repay the loans and make a return on their investment.

38. On June 20, 2007, Singer sent the Loan Approval Request and a preliminary title report (which discloses the [Lenders] DOT as exception 37) to Novacek, an outside attorney used by Colonial to draft loan documents. As the Loan Approval Request indicated that Colonial required a first position deed of trust on the Property as collateral for the new loan, Novacek prepared loan documents intended to create and secure a first position deed of trust on the Property.

40. Cheryl Fricker, the Portfolio Manager of the Commercial Real Estate Department and assistant to Yach, prepared a Loan Commitment letter dated July 24, 2007, which indicated that the security for the loan is a "First deed of trust on the subject property generally located at Seven Hills and St. Rose Parkway."

41. Singer testified that she sent the Loan Commitment letter to Rad and Nourafchan by facsimile transmission.

42. Rad and Nourafchan denied receiving the Loan Commitment letter.

43. Singer testified that she did not keep a copy of the fax confirmation.

44. Both Yach and Singer testified that they remembered seeing a copy of the Loan Commitment letter signed by Rad and Nourafchan; however, Colonial could not locate the signed copy. [This finding by the State Court is accompanied by the following footnote: Colonial's loan file is missing the signed copy of the Loan

Commitment letter as well as a signed copy of the lender's escrow instructions signed by Nevada Title. Nevada Title's escrow file contains the latter and Brenda Burns acknowledges her receipt of the same. Not surprisingly, Rad and Nourafchan deny ever receiving the Loan Commitment letter that indicates Colonial required a first position deed of trust on the Property as collateral for the new $43,980,000 construction loan.]

45. Rad and Nourafchan denied signing the Loan Commitment letter.

46. At trial, although BB&T presented an unsigned Loan Commitment letter dated July 24, 2007 which purports to indicate Rad and Nourafchan understood Colonial Bank wanted to have a First Deed of Trust on the property, there is no credible evidence to indicate the Loan Commitment Letter was seen or executed by Rad or Nourafchan.

47. Neither BB&T nor Colonial Bank produced a Loan Commitment Letter executed by Rad or Nourafchan.

48. While Singer testified that she saw a signed Loan Commitment Letter (a faxed copy) executed by Rad and Nourafchan, the Court finds the testimony to not be credible.

49. No credible evidence exists that the document was sent to Rad or Nourafchan.

50. Yach and Singer testified that the Construction Loan documents governed the understanding of the parties involved in the transaction and therefore the Loan Commitment Letter was superseded by the Construction Loan Documents.

51. As a condition of the Construction Loan, Colonial Bank did not request that [Lenders] reconvey or subordinate the [Lenders] Deed of Trust or convert the same to equity.

54. Novacek prepared July 27, 2007 escrow instructions to Nevada Title that stated that Nevada Title could close the transaction when it could issue a title policy to the bank showing only certain exceptions and [Lenders'] $12,300,000 Deed of Trust was not one of the permitted exceptions.

55. Colonial Bank's counsel testified he intended the escrow instructions to mean that the title company could not record and close the transaction if it could not issue a title policy subject to allowed exceptions only.

56. Novacek further testified that in order for Nevada Title to comply with his escrow instructions, it had to issue a title policy without showing the [Lenders] Deed of Trust as an exception.

58. Colonial Bank relied on the title company to issue the title policy as instructed by Novacek.

59. As long as Colonial Bank was provided a title policy that did not include the [Lenders] Deed of Trust as an exception, Yach testified that he did not care how it was accomplished.

61. The witnesses confirmed that Nevada Title satisfied the title policy parameters required by Colonial Bank.

62. Nevada Title insured the deed of trust as instructed, without [Lenders'] Deed of Trust as an exception.

63. Colonial Bank's attorney testified that the bank wanted a title insurance policy insuring the 2007 Colonial Bank Deed of Trust without showing the [Lenders] Deed of Trust as an exception, and this is what it received.

64. On July 27, 2007, Colonial Bank and [Debtor] entered into the Construction Loan.

65. On or about July 31, 2007, Colonial Bank closed the transaction in the approximate amount of $43,000,000 with the security of its Second Deed of Trust.

69. [Lenders] was not a party to the Construction Loan Documents. Moreover, [Lenders] was not a guarantor.
70. The Construction Loan was personally guaranteed by both Rad and Nourafchan.
71. Colonial Bank never communicated to Rad, Nourafchan, [Debtor] or [Lenders] that it required a first priority deed of trust for the Construction Loan.
72. The Closing Instructions were never transmitted or communicated to Rad, Nourafchan, [Debtor] or [Lenders].
73. Brenda Burns, the Nevada Title escrow officer who closed the loan transaction, never transmitted, communicated or discussed the Closing Instructions with Rad, Nourafchan, [Debtor] or [Lenders].
74. At no time prior to the closing of the Construction Loan did Brenda Burns discuss with Rad, Nourafchan, [Debtor] or [Lenders] that reconveyance of the [Lenders] Deed of Trust was a condition to closing the loan transaction.
75. At no time prior to the closing of the Construction Loan did Colonial Bank discuss with Rad, Nourafchan, [Debtor] or [Lenders] that reconveyance of the [Lenders] Deed of Trust was a condition of closing the loan transaction.
76. Yach testified he did not recall telling Rad or Nourafchan that Colonial Bank required a First Deed of Trust as a condition to providing the Construction Loan.
77. Yach also testified Rad never told him the [Lenders] Deed of Trust would be converted to equity and neither Rad nor Nourafchan said that the [Lenders] Deed of Trust would be released.
79. Rad testified that he was never told by anyone on behalf of Colonial Bank or Nevada Title that the [Lenders] Deed of Trust would have to be reconveyed, subordinated or converted to equity.
80. There is no evidence that Colonial Bank or BB&T informed Nourafchan that the [Lenders] Deed of Trust would have to be reconveyed, subordinated or converted to equity.
81. The Escrow Instructions were not given or shown to Rad, Nourafchan, [Debtor] and [Lenders].
83. Neither Rad, Nourafchan, [Debtor] or [Lenders] ever represented or agreed to a reconveyance of the [Lenders] Deed of Trust.
84. The evidence demonstrates no agreement was reached for [Debtor] or [Lenders] to reconvey the [Lenders] deed of trust.
86. Colonial Bank did not condition its extension of the Construction Loan on its receipt of a first deed of trust.
87. Colonial Bank did not convey any intent to receive a first deed of trust to either [Debtor], [Lenders], Rad, or Nourafchan.
88. Although loan documents for the 2005 loan and the modification stated Colonial Bank would have a first lien, the Construction Loan Agreement did not.
89. Colonial Bank did not negotiate the requirement for a first deed of trust in the Construction Loan Agreement, Deed of Trust or Promissory Note Secured by a Deed of Trust.
90. Colonial Bank relied on the issuance of an ALTA lender's policy of title insurance in the amount of $43,980,000.00 insuring the Deed of Trust as a lien on the property, which did not show as an exception the $12,300,000.00 [Lenders] Deed of Trust.
91. Colonial Bank received such a policy from Commonwealth Land Title Insurance Company on July 31, 2007 as Policy No. 562-Z093126.
92. The ALTA lender's policy of title insurance was purchased by [Debtor] for the benefit of Colonial Bank.
94. Following closing, Colonial Bank did not request confirmation that a

reconveyance had been obtained; it checked only to verify the title insurance policy did not include the [Lenders] Deed of Trust as an exception.

100. Reconveyance of the [Lenders] Deed of Trust was not a condition for closing the Construction Loan transaction.

103. There is no proof of any executed agreement or consent by [Lenders] to reconvey.

105. Nevada Title never had anything from [Lenders] in writing stating it would provide a reconveyance or release.

107. Only July 9, 2008, Brenda Burns contacted Rad and asked Rad to reconvey the [Lenders] Deed of Trust.

111. Subordination was brought up for the first time in June or July 2009 when it was proposed by Nevada Title.

112. Subordination of [Lenders'] Deed of Trust would have been inconsistent with Novacek's escrow instructions.

114. Nevada Title assumed the risk of closing the Construction Loan transaction without a reconveyance from [Lenders].

116. The [Lenders] Deed of Trust, which was recorded on September 2005, has priority over Colonial Bank's 2007 Deed of Trust, which was recorded nearly two (2) years later in July 2007.

117. On September 5, 2008, Nevada Title confirmed that [Lenders] Deed of Trust had priority over Colonial Bank's 2007 Deed of Trust.

118. There was no showing by BB&T that because the managing officers of Forouzan and RPN, and the managing members of [Debtor] and [Lenders] were the same, that they can be treated as the same entity.

119. A uniformity of owners or interest alone is insufficient to demonstrate that entities are anything other than valid, separate or independent corporate entities.

120. Colonial Bank and Nevada Title previously recognized that [Debtor] and [Lenders] were distinct and separate entities in dealing with modification of the first Colonial Bank loan when [Lenders] was required to agree to and execute the Subordination Agreement.

121. Since [Lenders], was not a party to either the 2007 Colonial Bank Deed of Trust or the Construction Loan Agreement, it is not required to subrogate its Deed of Trust.

122. An agreement which prejudices lien holders or impairs their security requires their consent.

123. [Lenders] did not consent to subrogate its Deed of Trust.

(Emphasis added.) Based on these findings and others, the State Court concluded that Lenders' deed of trust retains its priority over the Colonial Bank deed of trust. As previously noted, BB&T's appeal of the State Court Order failed as the Nevada Supreme Court affirmed the State Court's determination.

The State Court findings provide prima facie if not ample support for Debtor's argument that loan transaction between the Debtor and Lenders was arms length. The State Court made a factual determination that the Debtor had borrowed $12,300,000 from Lenders. See State Court

FF 7. The State Court made a factual determination that the Debtor executed a promissory note in the amount of $12,000,000 secured by a deed of trust against the Property. See State Court FF 17. The State Court made a factual determination that the funds loaned by Lenders was raised by Rad and Nourafchan from various private investors. See State Court FF 19. The State Court made a factual determination that BB&T had failed to show that the Debtor and Lenders can be treated as the same entity. See State Court FF 118. The State Court made a factual determination that uniformity of ownership alone is not sufficient[33] to demonstrate that the Debtor and Lenders are "anything other than valid, separate or independent corporate entities." See State Court FF 119.[34]

Because the State Court found that the Debtor and Lenders are separate and independent entities, this court cannot conclude that Lenders had such a degree of control that would render the $12,000,000 loan not arms length. It is readily apparent that events subsequent to the transaction improved Lenders' lien position with respect to the Property, but the responsibility for those events appears to lie elsewhere. Moreover, neither BB&T or CLT offered evidence with respect to this issue at the plan confirmation hearing, nor did they seek to examine the Debtor's principal on the issue even though the principal was present at the hearing. Under these circumstances, BB&T and CLT have failed to demonstrate that Lenders is a non-statutory insider of the Debtor.

Based on the foregoing, Lenders' acceptance in Class 2 cannot be considered as an additional impaired class because it is a "per se" or "statutory insider" under Section 101(31)(E). While Lenders is not a "non-statutory" insider under the current caselaw, its acceptance still

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[33] Arguably, this was a conclusion of law as well as a finding of fact.

[34] On appeal, BB&T argued that the State Court erred in concluding that the Lenders' deed of trust has priority over the Colonial deed of trust. See Order of Affirmance at 5. It appears that the Nevada Supreme Court concluded, without discussion, that BB&T's challenge to the State Court's factual and legal conclusions was without merit. Id. at 7.

cannot be counted under Section 1129(a)(10).

Debtor otherwise complies with Section 1129(a)(10), however, because Clark County in Class 1 has accepted plan treatment.

2. Compliance with Section 1129(a)(3).

Both BB&T and CLT argue that the Amended Plan is not proposed in good faith. BB&T specifically argues: (1) that the proposed plan simply "feeds insiders" because Lenders never provided any money to the Debtor[35], (2) that Clark County's secured claim is "artificially impaired" to obtain an accepting class, and (3) that the Amended Plan is an attempt to circumvent BB&T's efforts to appeal the State Court Order. See BB&T Objection at 9:4 to 11:2. CLT, which merely incorporated its arguments in connection with approval of the Disclosure Statement, also maintains that Clark County's secured claim is artificially impaired. See CLT Disclosure Objections at 7:25 to 9:1.[36]

In response, Debtor maintains that the Amended Plan does not benefit Lenders because it merely distributes proceeds from the sale of the Property in accordance with the priorities previously determined by the State Court and the sale proceeds then will be distributed through Lenders' proposed Chapter 11 plan. See Debtor's Reply at 3:30 to 4:8. It maintains that Clark County's claim is impaired within the meaning of Section 1124(1) and that similar treatments

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[35] BB&T's assertion that Lenders "*never* provided the Debtor with *any* money underlying the alleged secured claim", see BB&T Objection at 9:6-7, is based on certain exhibits it attached to the declaration of its counsel (ECF No. 117) in support of its previous Consolidation Motion. Those exhibits consist of transcripts of the examination of Rad pursuant to FRBP 2004(a) ("2004 Examination") taken in 2012 on January 31 ("January Transcript") and February 1 ("February Transcript") (Exhibits 2 and 1), unredacted copies of various checks payable to the Debtor between July 2005 and July 2006 (Exhibit 8), and portions of various tax filing documents for Lenders from 2006 through 2008 and for the Debtor in 2009 (Exhibit 13).

[36] In its Disclosure Statement objection, CLT separately argued that Debtor would not obtain acceptance from BB&T in Class 3 or from general unsecured creditors in Class 4. See CLT Disclosure Objections at 9:3-10. It also argued that Lenders in Class 2 and the Equity Holders in Class 5 are insider classes whose acceptance cannot be counted. Id. at 9:26 to 10:10. These arguments are more appropriately addressed in the discussion of Section 1129(a)(10).

have been upheld in other cases. Id. at 4:9 to 5:10, citing, e.g., In re Greenwood Point, LP, 445 B.R. 885, 904-909 (Bankr.S.D.Ind. 2011) and In re Village of Camp Bowie I, L.P., 454 B.R. 702, 707-711 (Bankr.N.D.Tex. 2011). Finally, it argues that the proposed Amended Plan does nothing to circumvent BB&T's appeal of the State Court Order in view of the Order of Affirmance and denial of rehearing. See Debtor's Reply at 5:11-15.

As a general rule, a Chapter 11 plan is proposed in good faith if it achieves "a result consistent with the objectives and purposes" of the Bankruptcy Code and exhibits "fundamental fairness" in dealing with creditors. See Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1046 (9th Cir. 2013); Jorgensen v. Fed. Land Bank of Spokane (In re Jorgensen), 66 B.R. 104, 108-09 (B.A.P. 9th Cir. 1986). The totality of the circumstances should be considered in determining good faith. See In re Stolrow's Inc., 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988).

BB&T's assertion that Lenders never provided any money to the Debtor is not supported by the record. BB&T asserts that "Debtor admitted in Debtor's 2004 exam that Lenders had not loaned Debtor $12,000,000." See BB&T Objection at 9:13-14 & n.41, citing January Transcript at 19:2-6. Assuming this is a reference to Rad's testimony, it is misleading because his testimony in context was that Lenders had provided no more than $10,050,000 to the Debtor as of August 23, 2005. See January Transcript at 19:2-11. Moreover, BB&T's assertion is contrary to the State Court's factual determination that Debtor borrowed $12,300,000 from Lenders. See State Court FF 7. It also is contradicted by the State Court's factual determination that Rad and Nourafchan raised the $12,000,000 that Lenders loaned to the Debtor by soliciting private investors. See State Court FF 19. Thus, it appears that under the guise of good faith, BB&T is attempting to re-litigate assertions that were or could have been presented to the State Court.

As to the treatment of Clark County's secured claim in Class 1, the court already has concluded that impairment of such a claim is not prohibited by Section 1123(a)(1) and that Clark County's claim is impaired within the meaning of Section 1124(1). As previously discussed at 10, supra, Class 1 provides for Clark County's secured claim to be paid in full from the proceeds

of the Property sale on the 90th day following the effective date of the Amended Plan. The amount of the claim is at least $48,794.91 and may be as high as $436,587.84. See note 16, supra. BB&T argues that delaying payment in full for 90 days is done solely to create an impaired class that would accept plan treatment. See BB&T Objection at 10:9-12. The argument ignores, however, that the Debtor has no operations and, according to its latest MOR, has no funds to pay Clark County's tax claim. Even if the Debtor was required to pay Clark County immediately upon plan confirmation, it has no funds to do so. And even if the Debtor was required to pay Clark County in regular cash installments, it has no cash flow to do so.

Moreover, BB&T also ignores that the effective date of the Amended Plan does not occur until the Property sale closes. Given that there is no fixed deadline under the Amended Plan for close of escrow, the Debtor is given significant latitude in effectuating a sale of the Property. Under these circumstances, confirmation of the Amended Plan would afford the Debtor more than sufficient time to complete a sale of the Property without the specter of Clark County taking steps to enforce its tax lien. Because a debtor is under no obligation "to use all efforts to create unimpaired classes," see In re Hotel Assocs. of Tucson, 165 B.R. 470, 475 (B.A.P. 9th Cir. 1994), and there are valid economic or business reasons for the proposed treatment in this case, no artificial impairment Clark County's claim exists.

BB&T correctly observes that in connection with the Consolidation Motion, the court "indicated that it is not inclined to re-determine priority between the 2007 Loan and Lender's purported loan because of the State Court Appeal." See BB&T Objection at 10:18-20. More than a year has elapsed, however, since the court issued its order denying the Consolidation Motion.[37] During that time, the Nevada Supreme Court has denied BB&T's appeal of the State

[37] In Edwards v. Ghandour, 123 Nev. 105, 115, 159 P.3d 1086, 1092 (Nev. 2007), overruled on other grounds, Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1053-54, 194 P.3d 709, 712-13 (Nev. 2008), the Nevada Supreme Court stated that a "final judgment has preclusive effect even while on appeal." As indicated in note 9 of this memorandum decision, after this court issued the order denying the Consolidation Motion, it subsequently indicated in the

Court Order and also has denied BB&T's petition for rehearing. No one asserts that a stay pending appeal of the State Court Order was ever sought or obtained from the State Court under NRCP 62(d) and NRAP 8(a)(1), or from the Nevada Supreme Court under NRAP 8(a)(2). As it now stands, BB&T failed to demonstrate to the State Court that it is entitled to priority over Lenders' claim, failed to seek or obtain a stay of the State Court Order pending appeal, failed to convince the Nevada Supreme Court to set aside the State Court's factual determinations, and failed to obtain a rehearing.[38] Under the circumstances, Debtor's proposed Amended Plan is consistent with the State Court Order and pursuit of confirmation while the petition for rehearing en banc is pending does not suggest a lack of good faith.

The court has considered the arguments of BB&T as well as CLT in reviewing the totality of the circumstances in this case. The proposed Amended Plan calls for liquidation of the Debtor's only asset and does not contemplate continued operations. Under Section 1141(d)(3), confirmation will not result in a discharge of the claims provided for under the Amended Plan. After sale of the Property is completed and Clark County is paid along with allowed administrative claims, Lenders' secured claim in Class 2 will be paid. Because Lenders is a debtor in possession, the funds it receives through the Amended Plan cannot be distributed except through confirmation of its proposed Chapter 11 plan or conversion to Chapter 7. As affiliates of Lenders, neither Forouzan or RPN could be accepting impaired classes under Section 1129(a)(10) for any Chapter 11 plan proposed by Lenders. Moreover, as the equity interest holders of Lenders, neither Forouzan or RPN could receive a Chapter 11 distribution unless unsecured creditors are paid in full. Thus, the structure of the proposed Amended Plan does not "feed insiders" and is fully consistent with the State Court's determination of the

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Disclosure Approval Order that there is no further reason to delay. Nothing has changed to make BB&T's position more persuasive.

[38] Under NRAP 41(a)(1), the petition for rehearing en banc stays the issuance of the remittitur, but does not stay enforcement of the underlying judgment.

priority between Lenders and Colonial Bank.

The court also has considered the declaration of Rad which attests, albeit in a conclusory fashion, that the Amended Plan has been proposed in good faith. See Rad Declaration at ¶¶ 3 and 4. Under FRBP 3020(b)(2), the court may determine that a plan is proposed in good faith without taking evidence on the issue if no objection is filed. Here, both BB&T and CLT have objected, but neither chose at the plan confirmation hearing to examine the Debtor's principal on issue of good faith.[39] As a result, the Rad Declaration is the only direct evidence before the court on the issue.

In view of the foregoing, the court concludes that the proposed Amended Plan permits a measured liquidation of the Debtor's assets while preserving the previously determined lien priorities of its creditors. This is fully consistent with the objectives of the Bankruptcy Code and visits no unfairness upon the dissenting creditors.[40] Based on all of the circumstances discussed above, including the uncontroverted testimony of the Debtor's principal, the court also finds that the Amended Plan is proposed in good faith within the meaning of Section 1129(a)(3).

3. Compliance with Section 1129(b)(2).

BB&T argues that the proposed Amended Plan is not "fair and equitable" to permit "cram down" over dissenting Class 3 and dissenting Class 4.[41] Under certain circumstances,

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[39] This is somewhat surprising because BB&T offered Rad's testimony from his 2004 Examination in an attempt establish that Lenders did not loan money to the Debtor, did not pay interest to its investors, and did not properly reflect the transactions in the tax returns from the entities. See BB&T Objection at 9:4-23.

[40] If the State Court had found Colonial Bank's lien to have priority ahead of Lenders, there seems to be little doubt that BB&T would not suggest unfairness if the Debtor proposed a Chapter 11 plan that followed such a determination.

[41] In Matter of Briscoe Enterprises, Ltd., II, 994 F.2d 1160 (5th Cir. 1993), the court addressed the evidentiary burden on a Chapter 11 plan proponent in seeking a cram down under Section 1129(b). The court examined the Supreme Court decisions discussing appropriate standards of proof in bankruptcy and other civil proceedings, along with the structure of the Bankruptcy Code, in concluding that a preponderance rather than clear and convincing evidence

Section 1129(b) permits plan confirmation even if all impaired classes do not accept under Section 1129(a)(8) as long as one impaired class has accepted in compliance with Section 1129(a)(10). Those circumstances require that "the plan does not discriminate unfairly" and that the plan is "fair and equitable" with respect to non-accepting classes. 11 U.S.C. § 1129(b)(1).

A. Fair and Equitable Treatment of the Class 3 Claim.

Section 1129(b)(2)(A) sets forth three examples of fair and equitable treatment of secured creditor classes, where the plan provides:

> (i) (I) that the [secured claimants in the class] retain the liens securing such claims...to the extent of the allowed amount of such claims; and
> (II) that each [claimant in the class] receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim...;
> (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
> (iii) for the realization by such holders of the indubitable equivalent of such claims.

11 U.S.C. § 1129(b)(2)(A). As to its secured claim in Class 3, BB&T maintains that because the Amended Plan provides for its collateral, i.e., the Property, to be sold, the plan must comply with Section 1129(b)(2)(A)(ii). See BB&T Objection at 18:5-13.

In that regard, BB&T maintains that the Amended Plan does not comply with Section 1129(b)(2)(A)(ii) because the Debtor's procedure for the sale of the Property does not comply with Section 363(k). See BB&T Objection at 18:14-23, citing RadLAX Gateway Hotel, LLC v. Amalgamated Bank, __ U.S. __, 132 S.Ct. 2065, 2067 (2012). Section 363(k) provides in relevant part as follows:

> At a sale...of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of

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standard applies to cram down. 994 F.2d at 1164-65. While BB&T relies on an earlier case that adopted, without discussion, the more stringent standard, see BB&T Objection at 17:20-21, citing In re Tri-Growth Centre City, Ltd., 136 B.R. 848, 851 (Bankr.S.D.Cal. 1992), the court is persuaded by the reasoning in Briscoe Enterprises and applies the preponderance standard in the instant case.

> such claim purchases such property, such holder may offset such claim against the purchase price of such property.

11 U.S.C. § 363(k). BB&T argues that the Amended Plan is contrary to the Supreme Court's decision in RadLAX because it does not provide for BB&T to be able to credit bid its secured claim. See BB&T Objection at 18:24 to 19:2.[42]

In RadLAX, the bankruptcy court denied the Chapter 11 debtor's motion to approve certain bid procedures for the sale of the secured creditors' collateral without allowing credit bids. 2010 WL 6634603 (Bankr.N.D. Ill. 2010). The debtors argued that such a sale would satisfy the "indubitable equivalent" alternative for cram down under Section 1129(b)(2)(iii). Alternatively, the debtors sought a determination of "cause" under Section 363(k) for the secured creditors not to be allowed to credit bid their claims as an offset against the purchase price. The bankruptcy court concluded that Section 1129(b)(2)(iii) could not be applied to circumvent the credit bid provision of Section 1129(b)(2)(ii). 2010 WL at *1. It then concluded that the debtors had failed to demonstrate "cause" under Section 363(k) to deny the secured creditors the chance of credit bidding on the sale of their collateral. Id. As one of their grounds for cause, debtors argued that the amount and priority of certain mechanics liens had not been resolved. Id. at *2. The bankruptcy court rejected the argument, however, noting that the concern could be alleviated "by placing conditions upon a secured creditor's right to credit bid without denying the rights altogether." Id. As an example, the court observed that "courts have required secured creditors to put cash in escrow, pay a portion of the bid in cash, or furnish a letter of credit when the amount and validity of an alleged senior lien is in dispute." Id., citing Johnson v. NBD Park Ridge Bank (In re Octagon Roofing), 124 B.R. 522, 526 (Bankr.N.D.Ill. 1991) (letter of credit in 363(k) sale); In re Diebart Bancroft, 1993 WL 21423, *5 (E.D.La. Jan.26, 1993) (ten percent deposit plus cash payment to close escrow in 363(k) sale). After certification for direct appeal to

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[42] BB&T's objection was raised earlier in connection with its opposition to the Procedures Motion. See Procedures Objection at 8:4 to 9:6. (ECF No. 158).

the circuit court, the bankruptcy court's decision was affirmed. See River Road Hotel Partners, LLC v. Amalgamated Bank, 651 F.3d 642 (7th Cir. 2011). On certiorari, the Supreme Court also affirmed, concluding that cram down under Section 1129(b)(2) through a sale of property free and clear of liens could not be achieved without permitting the secured creditor to credit bid at the sale. See RadLAX, 132 S.Ct. at 2073.

In response to this objection, Debtor maintains that the approved Bid Procedures complies with RadLAX because it permits Lenders to credit bid its secured claim under Section 363(k). See Debtor's Reply at 11:31 to 12:2.[43] It also argues that because the initial "stalking horse" bid on the Property was $11,425,000.00, see Bid Procedures at § 4, there is no value in the Property beyond Lenders' Secured Claim to secure any portion of BB&T's claim. See Debtor's Reply at 12:3-11. In essence, Debtor argues that BB&T does not have an allowed secured claim under Section 506(a) to offset against the purchase price of the Property pursuant to Section 363(k).

Unlike the situation for Lenders, the Bid Procedures approved in the instant case do not expressly permit BB&T to credit bid its secured claim, nor does it expressly prohibit BB&T from credit bidding its secured claim. In accordance with the Scheduling Order and Auction Sale Notice, the auction for the sale of the Property was conducted in conjunction with the

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[43] Section 3(e) of the Bid Procedures specifically states that Lenders, "the Debtor's secured creditor, may credit bid up to the amount of its secured claim, as set forth in its proof of claim filed in the bankruptcy case, to the full extent permitted by section 363 of the Bankruptcy Code..." In R&S Horizon, LLC, Case No. 12-11694-MKN, referenced by the Debtor in its Reply at 8:9-11, the court approved bid procedures allowing the Chapter 11 debtor's secured creditor to credit bid "up to the amount of its claim." See "Bidding Procedures" at § 3(e), attached as Exhibit "A" to Notice of Auction Sale filed in R&S Horizon proceeding at Docket No. 118. In that case, both the Chapter 11 debtor and its only secured creditor (except for property taxes) specifically sought an advance ruling on whether the creditor could credit bid its entire claim or only its allowed secured claim. Because the court determined at a hearing on August 15, 2012, that the entire claim could be credit bid, the language of the bid procedures reflected the amount of the claim rather than only the amount of the secured claim. No advance ruling was specifically requested in the instant case.

hearing on confirmation of the Amended Plan. At the hearing, BB&T did not participate in the auction and three potential purchasers, including the stalking horse, bid the sale price up to $13,500,000, with a "backup" offer of $13,400,000.[44]

In this case, Debtor's only rationale for not permitting BB&T to credit bid is that Lenders' $12,000,000 senior secured claim exceeds the value of the Property, rendering BB&T's junior claim wholly unsecured. In view of the bid price that exceeds the amount of Lenders' claim, however, that rationale is simply unsupported by the evidence adduced at the hearing. Moreover, there was no prior attempt by the Debtor during the Chapter 11 proceeding to determine the extent of BB&T's lien and the Debtor initially scheduled the Property as having a value of $16,800,000. Under these circumstances, the factual predicate for the Debtor's argument is absent.[45] Therefore, BB&T is correct that the Amended Plan may be confirmed only if BB&T is permitted to credit bid its secured claim during the sale of the Property.

B. Fair and Equitable Treatment of Class 4 Claims.

Section 1129(b)(2)(B) also sets forth two examples of fair and equitable treatment of unsecured creditors. In pertinent part, it requires:

> (i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
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> (ii) the holder of any claim or interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior claim or interest any property...

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[44] As of the date of this memorandum decision, no order has been submitted approving the results of the auction sale. The sale is, of course, subject to court approval. See Amended Plan, Article V.A.; Auction Sale Notice at 2:16-17. In view of the record developed at the hearing on sale approval and on plan confirmation, any order submitted based on the prior auction sale cannot be entered at this time.

[45] The court also notes that Section 363(k) refers to property that is subject to a lien that secures "an allowed claim." It also refers to the "holder of such claim" being permitted to credit bid upon sale of the property. The language does not appear to be restricted to secured claims determined under Section 506(a). Thus, Debtor's rationale may be without legal basis as well.

11 U.S.C. § 1129(b)(2)(B). As the holders of unsecured claims in Class 4, BB&T and CLT also argue that the Amended Plan is not fair and equitable because their unsecured claims are not being paid in full under Section 1129(a)(2)(B)(i) and the proposed Amended Plan can be confirmed only if it meets the requirements of Section 1129(b)(2)((B)(ii). See BB&T Objection at 19:8-13; CLT Objection at 4:7-26. Because the Equity Holders (Forouzan and RPN) retain their interests in the Debtor, both BB&T and CLT argue that the proposed Amended Plan violates the "absolute priority rule" codified by Section 1129(b)(2)(B)(ii).[46] See BB&T Objection at 19:14-25; CLT Objection at 4:27 to 5:14.

It is undisputed that holders of unsecured claims in Class 4 will not be paid in full.[47] Under the language of Class 5, however, Equity Holders can retain their equity interests in the Debtor only if they make contributions to fund the payment of Class 1 claims, i.e., Clark County. See Amended Plan, Art. III.B.5(b). The proposed treatment was summarized in the approved Disclosure Statement and the consequence of not making the contribution also was disclosed:

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[46] A simple statement of the absolute priority rule is that owners of a reorganizing entity cannot retain their ownership unless objecting unsecured creditors are paid in full. See In re Perez, 30 F.3d 1209, 1214 (9th Cir. 1994) ("because claims of equity holders are always junior to claims of creditors, this means that a bankruptcy court may not approve a plan that gives the debtor any interest in the reorganized estate unless the plan provides for full payment of claims of creditors in the objecting class."). This principle is reflected by the language of Section 1129(b)(2)(B)(i) and also is captured in the general bankruptcy distribution scheme set forth in Section 726(a). Case law recognizes, however, that owners may retain their interest, however, if they contribute "new value" in the form of money or money's worth equal to the value of the interest that is retained. See generally Case v. L.A. Lumber Prods. Co., 308 U.S. 106, 118, 60 S.Ct. 1 (1939). While the Supreme Court has not determined the validity of this "new value corollary" to the absolute priority rule, it has stated that it is tempered by concepts of marketing and exclusivity. See Bank of America Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle Street Partnership, 526 U.S. 434, 458 , 119 S.Ct. 1411, 1424 (1999).

[47] BB&T accurately notes that the claims register maintained in the Debtor's case reflects $68,052,825.13 in total claims for which a proof of claim was filed. See BB&T Objection at 19:15-16. Of that total, the claims register also reflects that $29,407,014.09 were filed as secured claims. Even if the Property was sold for the $13,500,000 currently offered, the total amount of allowed unsecured claims against the Debtor may well exceed $50,000,000.

"Should the Debtor's Equity Interest Holders fail to make any portion of their respective Equity Contributions, such Equity Interest Holders shall not retain any Equity Interests in the Reorganized Debtor." See Amended Disclosure Statement at 14.

In response, Debtor represents that the Equity Holders will not be making an equity contribution to pay the Class 1 claim of Clark County. See Debtor's Reply at 13:8-14. As a result, under Class 5, the Equity Holders will not retain their interests in the Debtor and the Property simply will be liquidated. At the confirmation hearing, Debtor's counsel reiterated that no contribution would be made and that no interest will be retained.[48] Under these circumstances, the treatment of unsecured creditors in Class 4 complies with the language of Section 1129(b)(2)(B)(ii). Moreover, as previously indicated at note 4, the plan exclusivity period in this case lapsed on August 2, 2011. BB&T, CLT and any other party in interest had more than sufficient opportunity to propose and seek confirmation of alternative Chapter 11 plans for reorganization or liquidation. No party availed itself of the opportunity to market the Property or the interests in the Debtor through their own proposed plan. Under these circumstances, the requirement that the proposed Amended Plan be fair and equitable with respect to unsecured creditors in Class 4 also has been satisfied.

4. Compliance with Section 1129(a) and Section 1129(b).

The court has independently reviewed the proposed Amended Plan to determine whether it satisfies the remaining requirements for confirmation. See In re Ambanc La Mesa Ltd. P'ship, 115 F.3d 650, 653 (9th Cir. 1997); In re Rand, 2010 WL 6259960 at *6 (B.A.P. 9th Cir. 2010); In re Las Vegas Monorail Co., 462 B.R. 795, 798 (Bankr.D.Nev. 2011); In re WCI Cable, Inc., 282 B.R. 457, 466 (Bankr.D.Or. 2002). Having addressed the specific objections raised by

[48] It is not clear whether this is because the amount of Clark County's secured claim may have increased significantly. See note 16, supra. No party in interest sought to examine Rad, who was present during the hearing, as to why the Equity Holders elected not to retain their interests.

BB&T and CLT, the court turns to the remaining requirements for confirmation under Section 1129(a) and Section 1129(b).

Section 1129(a)(1) has been met because the Amended Plan includes the provisions required by Section 1123(a) as well as provisions permitted by Section 1123(b). Because it also complies with Section 1122 in its designation of classes as required by Section 1123(a)(1), no more is required by Section 1129(a)(1).

Section 1129(a)(2) has been satisfied because the disclosures required by Section 1125(a) were provided in the manner required by Section 1125(b). See Disclosure Approval Order at 3:6-7; Solicitation Notice at 1:21 to 2:2; Certificate of Service (ECF No. 248). Additionally, class acceptances were properly determined under Section 1126. See Ballot Tabulation at 2:27 to 3:21.

Section 1129(a)(4) has been met because court approval of payments for professional services is required. See Amended Plan, Article II.A.2.

Section 1129(a)(5) has been satisfied by the disclosure of the identities of the potential future management of the Debtor even though the Debtor will liquidate rather than reorganize.

Section 1129(a)(6) does not apply as the Debtor is not subject to rate regulation in the operation of its business which, under the confirmed plan, will cease operations.

Section 1129(a)(7) has been met because the creditors in Class 3 and Class 4 will receive no less than what they would receive or retain in a Chapter 7 liquidation.

Section 1129(a)(11) has been satisfied because the Amended Plan proposes the liquidation of the Debtor's assets.

Section 1129(a)(12) has been met as the Amended Plan provides for payment of all statutory fees. See Amended Plan, Article XIII.A. Debtor's latest MOR reflects that it has made $2,925 in payment for United States Trustee fees through September 2013.

Section 1129(a)(13) does not apply as the Debtor has no employees for whom retiree benefits would be paid.

Section 1129(a)(14) does not apply as the Debtor is not under a court order to pay a domestic support obligation on behalf of any party.

Section 1129(a)(15) does not apply as the Debtor is not an individual.

Section 1129(a)(16) does not apply as the Debtor is not a nonprofit entity.[49]

Section 1129(b) has been met as the Amended Plan does not unfairly discriminate with respect to BB&T in Class 3 and unsecured creditors in Class 4.[50]

CONCLUSION

In light of the foregoing, the court will confirm the Debtor's proposed Amended Plan on the condition that a new auction sale of the Property is conducted wherein BB&T is allowed to credit bid its claim. In view of the State Court Order determining that BB&T is in junior priority to Lenders, BB&T will be permitted to participate in the auction of the Property on the further condition that it be required to deposit into escrow a letter of credit in favor of the bankruptcy estate or cash, equal to the amount of Lenders' senior claim plus five percent thereof[51], within three business days after conclusion of the auction, should BB&T be the successful bidder.

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[49] See 7 COLLIER ON BANKRUPTCY, supra, ¶ 1129.02[16].

[50] As previously discussed, BB&T and CLT objected to cram down on the grounds that the treatment in Classes 3 and 4 is not fair and equitable. No argument was made that the Amended Plan discriminated unfairly with respect to those classes. BB&T was properly placed into a separate secured class based on the claim priority determined by the State Court Order. General unsecured claims were properly placed in a class separate from secured claims and priority creditors. There is no unfair discrimination between classes.

[51] Debtor has taken the position that Lenders' secured claim is in the amount of $12,000,000 plus pre-petition and post-petition interest. See Debtor's Reply at 12:4-5. Assuming that is the correct amount, then any value of the Property above that figure would entitle Lenders to accrue interest on its allowed secured claim, as well as reasonable attorney's fees under Section 506(b). As indicated at note 13, the promissory note attached to Lenders' proof of claim includes provisions for interest and attorney's fees. Thus, the deposit requirement will reflect an additional amount to possibly accommodate those provisions.

Before the auction begins, BB&T must provide satisfactory proof that it has arranged for the letter of credit or has the cash available, to satisfy the deposit requirement. The new auction sale must be noticed to occur before the bankruptcy court within forty-five days from the entry of the order of confirmation. In the event BB&T declines to participate in the new auction, it must notify Debtor's counsel within ten days, in which case the Debtor may conclude the sale in accordance with the prior auction results.

This memorandum decision constitutes the court's findings of fact and conclusions of law entered pursuant to FRBP 3020(b), FRBP 9014 and FRBP 7052.

A separate order has been entered concurrently herewith.

Notice and Copies sent through:

CM/ECF ELECTRONIC NOTICING AND/OR
BNC MAILING MATRIX

and sent via FIRST CLASS MAIL BY THE COURT AND/OR BNC to:

R & S ST. ROSE, LLC
ATTN: OFFICER/AGENT
3140 S DURANGO DRIVE #103
LAS VEGAS, NV 89117

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