Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
July 15, 2019

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * * *

In re:	)	Case No.: 18-17155-MKN
	)	Chapter 11
DANIEL H. ROSENBLUM,	)	
	)	Date: July 10, 2019
Debtor.	)	Time: 10:30 a.m.
	)	

ORDER REGARDING DEBTOR'S DISCLOSURE STATEMENT RE: DEBTOR'S PLAN OF REORGANIZATION – PLAN # 1[1]

On July 10, 2019, the court heard arguments on Debtor's Disclosure Statement Re: Debtor's Plan of Reorganization – Plan # 1. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On December 1, 2018, Daniel H. Rosenblum ("Debtor") filed a voluntary Chapter 11 petition for reorganization. (ECF No. 1).[2] He has filed schedules of assets and liabilities ("Schedules") as well as a statement of financial affairs, as well as various amendments to those

[1] In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to "AECF" are to the numbers assigned to the documents filed in any adversary proceeding identified in this Order. 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.

[2] Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the above-captioned Chapter 11 proceeding. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) ("The Court may consider the records in this case, the underlying bankruptcy case and public records.").

documents during this proceeding. (ECF Nos. 1, 47, 110, 230). All of the documents are executed under penalty of perjury.[3]

On December 21, 2018, Debtor filed an amended property Schedule A/B, in which he attested that he has an ownership interest in approximately 11,827,919 shares of stock in EDF Man Group PLC ("ED&F Man")[4] having a value of $47,311,676. (ECF No. 47). On the same date, Debtor's former spouse, Sheila Rosenblum, filed proof of claim number 3 in the amount of $190,787,212.18 ("POC 3"), of which she alleges that $65,038,695.31 is secured by the shares of stock in ED&F Man.[5] Also on the same date, Sheila Rosenblum filed an initial motion seeking various relief, including dismissal of the Chapter 11 proceeding ("Initial Chapter 11 Dismissal Motion"). (ECF No. 42).

On January 16, 2019, Debtor filed an opposition to the Initial Chapter 11 Dismissal Motion ("Debtor Dismissal Opposition"). (ECF No. 84).

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[3] On December 1, 2018, a Notice of Chapter 11 Bankruptcy Case was filed ("Bankruptcy Notice"). (ECF No. 3). It was served on all scheduled creditors. (ECF No. 10). The Bankruptcy Notice sets a meeting of creditors under Section 341(a) for January 3, 2019. It also sets forth a bar date of March 4, 2019, for parties to file complaints to determine the dischargeability of certain debts under Sections 523(a)(2), (4) and (6). The Bankruptcy Notice is consistent with FRBP 4007(c) ("[A] complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)"). The Bankruptcy Notice also references complaints to deny discharge under Section 1141(d)(3) and advises that the court will provide notice of the first date set for hearing on confirmation of a plan. The Bankruptcy Notice is consistent with FRBP 4004(a) ("In a chapter 11 case, the complaint [objecting to the debtor's discharge] shall be filed no later than the first date set for the hearing on [plan] confirmation.").

[4] During the course of this Chapter 11 proceeding, the stock at issue has been described by the parties and the court as being stock or interests in EDF Man Group PLC, ED&F Man Holdings Limited, EDF, Man Limited, and occasionally just Man. For the instant order, and perhaps subsequent orders, the court will use the reference ED&F Man.

[5] Debtor and Sheila Rosenblum are the subject of a marital dissolution proceeding ("Divorce Proceeding") that was commenced on September 27, 2013, in the Supreme Court of the State of New York, County of New York ("New York State Court"), denominated Case No. 350086/2013.

On January 29, 2019, Debtor's son, Russell Rosenblum, who also is the former step-son of Sheila Rosenblum, filed proof of claim number 10 in the amount of $4,261,512.16 ("POC 10"), all of which is alleged to be secured by shares of stock in ED&F Man.

On January 30, 2019, an order was entered terminating the automatic stay to permit Sheila Rosenblum and Russell Rosenblum to complete litigation pending in the High Court of Justice, Business and Property Courts of England and Wales, Business List (Chancery Division), Claim No. HC-2017-991678, in London, England ("London Action"),[6] with respect to their claims of priority to the shares of stock in ED&F Man. (ECF No. 102). That order specifically provides that the determination of the lien priority dispute would not include any disposition or sale of the subject stock absent an order from the bankruptcy court or a stipulation approved by the bankruptcy court.

On March 15, 2019, an order was entered denying Sheila Rosenblum's initial motion requesting, *inter alia*, dismissal of the Chapter 11 proceeding ("Chapter 11 Dismissal Order"). (ECF No. 130).

On March 26, 2019, Debtor filed a motion to extend the exclusivity period under Section 1121(b) for the Debtor to file a proposed plan of reorganization ("Exclusivity Motion"). (ECF No. 137).

On April 1, 2019, Debtor's 120-day exclusivity period under Section 1121(b) expired.

On April 2, 2019, Sheila Rosenblum filed a proposed Chapter 11 plan of liquidation (ECF No. 144) along with an accompanying disclosure statement. (ECF No. 143).

On April 10, 2019, an opposition to the Exclusivity Motion was filed, accompanied by the Declaration of Sheila Rosenblum ("Sheila Rosenblum Declaration"). (ECF Nos. 151 and 152).

[6] The London Action was commenced by Sheila Rosenblum to enforce the various judgments she obtained against the Debtor from the New York State Court. One of the claims in that London Action will resolve the priority dispute between Sheila Rosenblum and Russell Rosenblum as to their interest in the same shares of stock in ED&F Man.

On April 14, 2019, Debtor filed a reply in support of his Exclusivity Motion, accompanied by the declaration of his bankruptcy counsel, Vincent J. Aiello ("Aiello Declaration"). (ECF No. 158).

On April 17, 2019, a hearing was conducted on the Exclusivity Motion.

On May 10, 2019, an order was entered denying the Exclusivity Motion. (ECF No. 180). In addition to denying relief, the order set a deadline of June 3, 2019, for the Debtor to file a proposed plan of reorganization and accompanying disclosure statement. The same order scheduled a hearing for July 10, 2019, for the court to consider approval of the disclosure statement filed by Sheila Rosenblum as well as the disclosure statement to be filed by the Debtor.[7] The order also directed that a hearing on confirmation of Sheila Rosenblum's proposed plan of liquidation, as well as the Debtor's proposed plan of reorganization, would commence no later than August 26, 2019.

On June 3, 2019, Debtor filed his proposed plan of reorganization ("Debtor Plan") and proposed disclosure statement ("Debtor Disclosure Statement"). (ECF Nos. 200 and 201).

On June 14, 2019, Sheila Rosenblum filed redlined, first amendments to both her proposed plan ("Sheila Plan") and proposed disclosure statement ("Sheila Disclosure Statement").[8] (ECF Nos. 209 and 210).

On June 18, 2019, Sheila Rosenblum filed an objection to the Debtor Disclosure Statement. (ECF No. 212).

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[7] In addition to the two competing disclosure statements, on the same date the court heard two separate motions brought by Sheila Rosenblum: a motion confirming an exception to the automatic stay under Sections 362(b)(2)(B) and (C) and 362(b)(4), and another motion to dismiss the Chapter 11 proceeding under Section 1112(b)(4)(P). (ECF Nos. 191 and 193). On June 19, 2019, a separate motion to convert the case to Chapter 7 under Section 1112(b)(4)(I) was filed by the Internal Revenue Service ("IRS"). (ECF No. 214). That motion was noticed to be heard on July 31, 2019. (ECF No. 224). Separate orders will be entered regarding approval of the competing disclosure statements as well as the two separate motions filed by Sheila Rosenblum.

[8] In this Order, the court's references to pages of the Sheila Disclosure Statement is to the redlined version at Docket No. 209.

On June 20, 2019, an order was entered denying Sheila Rosenblum's ex parte request to advance the disclosure statement approval hearing to the week of June 24, 2019 ("Sheila Advancement Order"). (ECF No. 215).[9]

On July 3, 2019, Debtor filed an amendment to his exemption Schedule "C"and to his executory contract Schedule "G." (ECF No. 230). The cover sheet to the amendment certifies that notice of the amendments was given on the same date to all creditors on the creditor list.[10]

On July 3, 2019, the IRS, filed an omnibus objection to both the Debtor Disclosure Statement and the Sheila Disclosure Statement. (ECF No. 232).

On July 8, 2019, Sheila Rosenblum filed an omnibus reply to the various objections to her proposed disclosure statement. (ECF No. 237).

LEGAL STANDARD

Section 1125 requires the disclosure statement to provide "adequate information" to the creditors in order for them to make an "informed judgement about the plan." 11 U.S.C. § 1125(a)(1).[11] The adequacy of disclosure statement information has been evaluated using numerous factors, including the present condition of the debtor while in Chapter 11, the classes and claims within the reorganization plan, the estimated administrative expenses (including attorneys' fees), financial information and projections relevant to the decision to accept or reject

[9] On October 15, 2018, Sheila Rosenblum and ED&F Man entered into a confidential acquisition agreement ("Acquisition Agreement") for ED&F Man to purchase the subject shares on the condition that the purchase be completed no later than September 30, 2019. See Sheila Advancement Order at 3.

[10] Under FRBP 4003(b)(1), parties in interest must file any objection to the claimed exemptions within 30 days after the amended Schedule "C" was filed.

[11] In full, Section 1125(a)(1) states: "'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, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information."

the debtor's plan, and information relevant to the risks posed to creditors under the debtor's plan. See In re Reilly, 71 B.R. 132, 134-35 (Bankr. D. Mont. 1987). See generally 7 COLLIER ON BANKRUPTCY, ¶ 1125.02[2] (Richard Levin & Henry J. Sommer eds., 16th ed.). Even if a disclosure statement previously has been approved, the adequacy of disclosure may be revisited at plan confirmation. See Official Comm. of Unsecured Creditors v. Michelson (In re Michelson), 141 B.R. 715 (Bankr. E.D. Cal. 1992). As the Michelson court observed:

> Compliance with the disclosure and solicitation requirements is the paradigmatic example of what the Congress had in mind when it enacted section 1129(a)(2). According to both the House and Senate Reports, that section "requires that the proponent of the plan comply with the applicable provisions of title 11, such as section 1125 regarding disclosure." H.R.Rep. No. 595, 95th Cong., 1st Sess. 412 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 126 (1978); 1978 U.S.Code Cong. & Ad.News 5787 at 5912, 6368.
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> Reassessing the adequacy of disclosure from the vantage of the confirmation hearing is an efficient safeguard of the integrity of the reorganization process. When the adequacy of information is initially determined during the presolicitation phase, the court is acting in a context in which information may be sketchy and preliminary. The court does not conduct an independent investigation and relies upon its reading of the document for apparent completeness and intelligibility, as well as objections raised by parties in interest.

141 B.R. at 719. See, e.g., In re Samuel, 2018 WL 4739937, at *9 (Bankr. E.D. Cal. Sep. 27, 2018) (re-examining adequacy of disclosure at plan confirmation).

The plan proponent has the burden to show that its proposed disclosure statement contains adequate information. See Michelson), 141 B.R. at 719. "[T]he determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." Computer Task Group, Inc. v. Brotby (In re Brotby), 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (quotations and citations omitted).

DISCUSSION

The court having reviewed the Debtor Disclosure Statement as well as the written and oral arguments presented, concludes that the Debtor's disclosures are deficient in their accuracy, sufficiency, or both. As a result, the Debtor Disclosure Statement fails to provide adequate information for the reasons discussed below.

A. Lack of Adequate Information Regarding Debtor's Proposed Sale of ED&F Man Stock Shares and Purported Right to Sale Proceeds.

Debtor's primary basis to fund plan payments is more than eleven million shares of stock in ED&F Man, which he scheduled to be worth more than $47 million. His disclosure statement, however, contains several misleading statements about these shares that do not accurately portray pertinent pre-petition and post-petition events.

For example, Debtor states that he is entitled to 13.96% of the value of such stock pursuant to a December 11, 2017, agreement with Sheila Rosenblum ("December 2017 Agreement").[12] See Debtor Disclosure Statement § 3.3, at 5:22-24. His alleged entitlement is contradicted by a November 13, 2018, oral ruling by the New York State Court in the Divorce Proceeding that forecasted the appointment of a receiver to sell the shares in ED&F Man. See Chapter 11 Dismissal Order at 4-5. Debtor previously acknowledged that the Chapter 11 proceeding was commenced to avoid the appointment of a receiver. See Debtor Dismissal Opposition at 28:2-3 ("The Code permits debtors to file for bankruptcy at the eleventh-hour, in an ***admitted attempt*** to avoid the appointment of a receiver or liquidator.") (emphasis added). This information, though, is not mentioned in the Debtor Disclosure Statement. Debtor's omission provides a false impression that he is indisputably entitled to 13.96% of the proceeds from the sale of the shares in ED&F Man, which is not the case.

Debtor also states that his efforts "have focused on reorganization of his financial affairs by selling his interest in his ED&F Man Stock so the proceeds can be utilized in an equitable manner." See Debtor Disclosure Statement § 3.4, at 7:16-18. Debtor further states that "[b]y way of a structured sale of the Stock[, he] believes he generate [sic] enough cash proceeds to resolve the alleged secured and unsecured debts referenced in the Debtor's Schedules." Id. at 7:18-19. Debtor also includes a "Cash Flow Analysis" that projects an estimated $45,537,488.15 in proceeds from a "one-time sale of all of the Debtor's Stock by September 30, 2019." Schedule 1 to Debtor Disclosure Statement, at 10-12 & n.14. See also Debtor Disclosure Statement § 5.4, at 23:3-7 and § 7, at 33:1-2 (discussing a one-time sale of stock by September

[12] A copy of the December 2017 Agreement has been filed with the court under seal.

30, 2019). Debtor's purported post-petition efforts to sell the shares of ED&F Man, however, appear to be non-existent according to the uncontradicted evidence before the court.

On June 14, 2019, the Chief Operating Officer of ED&F Man attested that since the Acquisition Agreement was reached with Sheila Rosenblum in October 2018, ED&F Man has had no discussions with the Debtor, and has reached no agreement or understanding of any kind, for the sale of the subject shares. See Declaration of Laurie Foulds at ¶ 3 ("I can confirm that since the signing of the Agreement in October last year, ED&F Man has not engaged in any conversations with Mr. Daniel Rosenblum regarding the transfer of his shares, nor is there any agreement, arrangement or understanding, written or otherwise, for the transfer of those shares in a transaction with ED&F Man outside that Agreement."). (ECF No. 206). Moreover, on April 16, 2019, the Corporate Development Director of ED&F Man previously confirmed the importance of the Acquisition Agreement in the ability to sell the subject shares by the September 30, 2019 deadline. See Declaration of J. Alan Coughtrie ("Coughtrie Declaration"). (ECF No. 161).[13]

[13] On behalf of ED&F Man, its Corporate Development Director specifically attested:

> 3. ED&F Man Holdings Limited (the "Company") is aware that as a result of her possession of final charging orders over 10,530,072 shares and interim charging orders over 1,250,000 shares in the Company in the name of Mr. Daniel Rosenblum (which are the subject of lien priority litigation in London) (the "Shares"), and subject to the outcome of the proceedings in the Nevada Court, Mrs. Rosenblum will be entitled to priority in relation to the proceeds of any sale of the former, and either she and/or Mr. Russell Rosenblum will be entitled to priority in relation to the proceeds of any sale of the latter.
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> 4. Under an Agreement with the Company dated 15 October 2018 (the "Agreement"), the Company is obliged to acquire or procure the acquisition of the Shares from Mrs. Rosenblum on the terms set out in the Agreement and provided certain conditions are met. Mrs. Rosenblum is required to use reasonable efforts to satisfy these conditions by March 31, 2019, and must satisfy them in any event by no later than September 30, 2019 (the "Longstop Date"). One of the conditions for the transfer of the shares is the delivery to the Company by Mrs. Rosenblum of all court orders, approvals, waivers and/or consents as are required to effect the transfer of legal and beneficial title to the Shares.
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> 5. If Mrs. Rosenblum has not satisfied these conditions by the Longstop Date, then Mrs. Rosenblum's right to transfer the Shares is limited to the transfer provisions in the Company's Articles of Association.

Sheila Rosenblum attested that in the past three years, the sale of ED&F Man shares has been capped at $200,000 for any shareholder, regardless of the number of shares held by an individual shareholder. See Sheila Rosenblum Declaration at ¶ 25. At the disclosure statement approval hearing, Debtor's counsel had no basis to dispute Sheila Rosenblum's representation. In fact, Debtor's counsel previously had submitted evidence of his communications with counsel for ED&F Man, confirming the current cap on the sale of ED&F Man shares. See Aiello Declaration at ¶ 6 and Exhibit "A" thereto.[14] In other words, Debtor's representations that he has undertaken efforts to sell the shares in ED&F Man to meet the timing and estimated amount in his own Cash Flow Analysis are belied by the testimony from ED&F Man as well as the Debtor's own representations to this court.[15]

Not only do the Debtor's statements inaccurately characterize the events occurring prior to bankruptcy as well as after bankruptcy, he fails to mention critical provisions of his own plan that likely will prevent the ED&F Man shares from ever being sold by September 30, 2019. Debtor states that the "sale shall be made within 90 days of the Effective Date, after motion and hearing specifically set or as otherwise provided by the Court." Debtor Disclosure Statement § 4.4, at 11:14-15. Debtor also acknowledges that the "Effective Date" of his proposed plan of reorganization may never occur, but he does not disclose why. Id., § 5.13, at 25:5-10. The

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Coughtrie Declaration at ¶¶ 3 through 5.

[14] Exhibit "A" is a copy of an email message from ED&F Man's counsel dated February 7, 2019, in which counsel states, in pertinent part: "For the last four fiscal years, however, owing to the excess of "sell" orders over "buy" orders, the board has limited the volume of share sales to $200,000 per each selling shareholder, including DR. Whether there will be a cap and at what level for future annual share transfer rounds is not currently known." Earlier in the same message, "DR" is identified to be Daniel Rosenblum, i.e., the Debtor.

[15] In the same Cash Flow Analysis included as Exhibit 1 to the Debtor Disclosure Statement, there is an "[Alternative]" structure for the ED&F Man stock to be sold over a 5-year period for the total amount of $53,225,635. This alternative sale proposal, and the reasoning behind the approximately $8 million increase in sale proceeds, however, is not discussed anywhere else in the Debtor Disclosure Statement. Moreover, there is no suggestion that the Debtor has had any discussions with ED&F Man to reach any agreements or understandings of any kind to implement this alternative.

apparent reason is that the term "Effective Date" is strangely defined in his proposed plan as "The latest to occur of: (i) the first Business Day that is at least fourteen (14) days after the Confirmation Date and on which no stay of the Confirmation Order is in effect." Debtor Plan, Art. 1.1.28, at 6:20-21. But even that date is misleading because the proposed plan also includes several "conditions precedent" to the Effective Date ever taking place. See Debtor Plan, Art. 11.4. Only one of those conditions is that "all Claim Objections and Litigation as outlined in Exhibit "2" to the Disclosure Statement and any appeal period associated therewith shall have terminated and be resolved prior to any sale of the Debtor's ED&F Man Stock." Id. at 30:6-7 (Emphasis added.). Exhibit "2" to the Debtor Disclosure Statement lists seven different categories of unidentified actions, claims, disputes, and controversies involving unidentified parties, including Sheila Rosenblum. In other words, the Effective Date of the Debtor's proposed plan of reorganization may never occur, and the sale of the ED&F Man shares may not take place within any foreseeable time, much less before the September 30, 2019, date that the Debtor represents in his own disclosure statement.

B. Lack of Adequate Information Regarding Claims Asserted Against Debtor.

Despite stating that the "estimated liabilities of the Debtor" include amounts stated in proofs of claim "that have neither been, objected to, disallowed or settled yet," see Debtor Disclosure Statement § 4.2, at 10 n.5, he incorrectly represents the proofs of claims filed against the estate. In particular, Debtor fails to properly disclose and account for POC 3 filed by Sheila Rosenblum. Under Section 502(a), a proof of claim is deemed allowed unless and until an objection has been filed.[16] As previously discussed, POC 3 was filed on December 21, 2018, in

[16] Debtor previously commenced Adversary Proceeding No. 19-01015-MKN against Sheila Rosenblum in which he sought to challenge the prior judgments entered by the New York State Court in the Divorce Proceeding. Those judgments imposed various support and non-support obligations on the Debtor, in favor of Sheila Rosenblum and their children, all of which are encompassed by Sections 523(a)(5) and 523(a)(15). Because all of the Debtor's claims were encompassed by the Divorce Proceeding that remains pending, the court entered an order of abstention and dismissed the adversary proceeding without prejudice. (AECF No. 25). In the event that the Debtor files an objection to POC 3 disputing the same support and non-support obligations already pending before the New York State Court, the court indicated that it likely would grant relief from stay so that these disputes can be resolved in the Divorce Proceeding. At the hearing on disclosure statement approval, the parties acknowledged that the Debtor has not

the total amount of $190,787,212.18. POC 3 attests that $65,038,695.31 is secured by the ED&F Man shares, $14,102,391.78 is claimed as a priority domestic support obligation, $2,850.00 is entitled to priority status under Section 507(a)(7), and $111,643,275.09 constitutes a general unsecured claim for a non-domestic support obligation. Even though no party in interest, including the Debtor, has objected to POC 3, Debtor represents that the following accurately describes the claims against the bankruptcy estate:

Secured Claims Total:	$6,382,440.82
Priority Claims Total:	$7,484,531.82
Unsecured Claims Total:	$194,851,807.43
Total:	$218,334,916.16

See Debtor Disclosure Statement § 4.2, at 10:7-11.

Because POC 3 currently is deemed allowed under Section 502(a), Debtor's description of Sheila Rosenblum claim is wishful at best, but nonetheless misleading. Debtor offers no explanation for these numbers, although he is attempting to bypass the claim objection process under Section 502(a). As the Bankruptcy Appellate Panel for the Ninth Circuit has previously stated:

> [U]tilizing a plan confirmation proceeding as a method of objecting to a claim presents troubling policy issues in the face of rules of procedure that appear to require formal objections to claims. The construct of the statute and rules that is held out to the public is that claims are deemed allowed unless there is an objection in accordance with rules that prescribe a precise procedure for objecting. Neither the statute nor the rules say, "oh, by the way, we can also sandbag you by sneaking an objection into a reorganization plan and hoping you do not realize that we can use this device to circumvent the claim objection procedure mandated by the rules." That is not the law, and if it were the law, it would be a material disservice to public confidence in the integrity of the bankruptcy system.
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> While we do not hold that a plan can never be used to object to a claim of a creditor who does not actually consent to such an objection, by holding that the essence of Rule 3007 must be complied with, we are holding that considerations

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returned to the New York State Court to obtain relief from the support and non-support judgments.

> of due process mandate great caution and require that the creditor receive specific notice (not buried in a disclosure statement or plan provision) of at least the quality of specificity, and be afforded the same opportunity to litigate one-on-one, as would be provided with a straightforward claim objection under Rule 3007. In many chapter 11 cases, the only safe way to proceed will be by way of the separate claim objections that the rules of procedure and the Bankruptcy Code contemplate.

Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.), 293 B.R. 489, 497 (B.A.P. 9th Cir. 2003). While the Debtor may intend to object to POC 3 sometime in the future, his current description is inaccurate and misleading to all other creditors that might be entitled to vote to accept or reject his proposed plan of reorganization.

C. Lack of Adequate Information Regarding Classes of Claims.

Debtor's mischaracterization of the legal status of Sheila Rosenblum's POC 3 may be less disturbing that his characterizations of Russell Rosenblum, his children with Sheila Rosenblum, and the "lienholder on Audi Q5 Premium," as being "non-insiders." See Debtor Disclosure Statement at § 5.3.1 (Secured Class 1 – Russell Rosenblum; Secured Class 3 – lienholder on Audi Q5 Premium[17]); § 5.3.2 (Priority Unsecured Class 3 – Emancipated Children); § 5.3.3 (General Unsecured Class 6 – Russell Rosenblum; General Unsecured Class 8 – Henry Hackel and Russell Rosenblum). A relative of an individual debtor is an insider under bankruptcy law. See 11 U.S.C. § 101(31)(A)(i).

The distinction between an insider and a non-insider is critical in contested Chapter 11 proceedings because the acceptance of a proposed plan by an impaired class is "determined without including any acceptance of the plan by an insider." 11 U.S.C. § 1129(a)(10). Acceptance by an impaired class under Section 1129(a)(10) required for a plan proponent to seek cramdown of a Chapter 11 plan over the objections of an impaired, non-accepting class under Section 1129(b). Debtor's proposed plan of reorganization contains only four classes of claims

[17] On January 30, 2019, proof of claim number 11 in the amount of $45,893.15 was filed by Russell Rosenblum's bankruptcy counsel on behalf of an entity identified as RMR Capital. Attached to the proof of claim is a certificate of title evidencing that the claim is secured by a lien against the Debtor's vehicle. Debtor's creditor Schedule D previously identified Russell Rosenblum, rather than RMR Capital, as the creditor having a security interest in the vehicle. According to Sheila Rosenblum, RMR Capital is managed by Russell Rosenblum and is the Debtor's employer. See Sheila Disclosure Statement at 27:8-10.

and interests, and the creditors in the secured, priority unsecured, and general unsecured classes are entitled to vote because their rights are impaired.[18] Debtor's characterization of his son, his emancipated children, and perhaps his son's entity, as non-insiders is legally incorrect and occurs in each of the classes entitled to vote under his proposed plan. This misinformation is misleading to all other creditors, except perhaps Sheila Rosenblum (who is no longer an insider of the Debtor).

D. Other Issues.

In addition to the foregoing, Debtor's disclosure is rife with inaccurate legal statements that are simply misleading. For example, Debtor states that he "has claimed all available exemptions even if an exemption is not expressly noted on a filed Schedule." See Debtor Disclosure Statement at § 6.4.1 at 29:10-11. Only a week before the approval hearing, Debtor filed amendments to his Schedule "C" that identifies the specific assets he claims are exempt under Nevada law. Despite actually doing what FRBP 4003(a) expressly requires, Debtor offers no explanation of how he can exempt property under a Chapter 11 plan that is not previously claimed on an exemption Schedule "C," or, how he can exempt property that he has not previously disclosed in a property Schedule "A/B." More important, Debtor provides no information at all as to what unidentified exemptions might possibly be available.

Additionally, Debtor misstates the "fair and equitable" requirement that would apply to confirming his proposed plan of reorganization if an impaired class objects. He states that

> Bankruptcy Code section 1129(b) permits confirmation notwithstanding non-acceptance of an impaired class if that class and all classes junior to it are treated in accordance with the "absolute priority" rule, which requires either that the dissenting class be paid in full, or if it is not, that no junior class receives or retains property under the plan. In addition, the "fair and equitable" standard has

[18] Under Section 1124, a class of claims is impaired under a proposed plan unless the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim...entitles the holder of such claim…" 11 U.S.C. § 1124(1). Debtor describes the claims of his Emancipated Children as being both unimpaired and non-insiders. See Debtor Disclosure Statement at § 5.3.2 at Class 3 at 17:26 through 18:7. He also states, however, that the claims of the Emancipated Children are "subject to objection." Because the Debtor contemplates a possible alteration of the legal rights under their claims, the claims of the Emancipated Children are impaired rather than unimpaired.

> been interpreted to prohibit any class senior to a rejecting class from receiving under a plan more than 100% of its allowed claims.

Debtor Disclosure Statement at § 4.7, at 13:1-7. This is an incorrect statement of the requirements for cramdown of dissenting classes in Chapter 11.

Fair and equitable treatment of allowed secured creditor claims is governed by Section 1129(b)(2)(A) that does not include an "absolute priority rule." Fair and equitable treatment of allowed unsecured claims is governed by Section 1129(b)(2)(B), which does include the equivalent of the absolute priority rule. See 11 U.S.C. § 1129(b)(2)(B)(ii). Holders of allowed secured claims are entitled to be paid according to the value of the property securing their claims regardless of whether holders of allowed unsecured claims are paid at all. Debtor's inaccurate explanation of the absolute priority rule highlights the misleading effect of his characterization of Sheila Rosenblum's POC 3. At present, Sheila Rosenblum has an allowed secured claim in excess of the anticipated proceeds from the sale of the subject shares of ED&F Man, even if Russell Rosenblum's secured POC 10 is determined to have priority to a portion of the proceeds. Fair and equitable treatment of her allowed secured claim would require her claim, as well as her step-son's claim, to attach to all of the proceeds of the sale of those shares. See 11 U.S.C. § 1129(b)(2)(A)(ii). Under those circumstances, there would be no remaining proceeds available to pay the claims of unsecured creditors. By failing to identify his former wife as having a claim secured by the ED&F Man shares, Debtor encourages other creditors to accept his proposed plan of reorganization without knowledge that they may receive nothing at all from the sale of the shares.

Perhaps more disturbing than any of the foregoing, Debtor also represents to his creditors that:

> Regardless of which plan [i.e. the Debtor Plan or the Sheila Plan] is approved any sale of the Debtor [sic] interest in the ED & F Stock would be subject to the Debtor's approval which is contingent on his Plan of reorganization being confirmed. All creditors should note the Debtor has no obligation to sell the Debtor's Stock. The Debtor has not and will not consent to the sale of his interest in the ED & F Stock absent approval of his Plan which would control the pay out of any sales proceeds to creditors…

Debtor Disclosure Statement at 33:4-8. See also Debtor Disclosure Statement at 34:20-22 ("Again, it should be noted that a vote against the Plan leading to rejection of the Plan will not

alter the present status of the Debtor interest in the Stock as the Debtor is not under an obligation to sell his Stock."). Whatever may be the source of the Debtor's misguided belief, all of his legal or equitable interests in property became assets of the bankruptcy estate when he voluntarily filed his Chapter 11 petition for reorganization. See 11 U.S.C. § 541(a)(1) and § 1115(a). Likewise, his earnings from post-petition services also became property of the Chapter 11 bankruptcy estate. See 11 U.S.C. § 1115(a)(2). This court has exclusive jurisdiction "of all of the property, wherever located, of the debtor as of the commencement of the case, and of property of the estate." 28 U.S.C. § 1334(e)(1). As a Chapter 11 debtor in possession, Debtor has a fiduciary obligation to his creditors that take priority over his personal interests. See Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 614 (9th Cir. 1988) ("As a debtor in possession he is the trustee of his own estate and therefore stands in a fiduciary relationship to his creditors."). Debtor had a 120-day exclusive period to file his proposed plan of reorganization, but failed to obtain an extension of that period, thus permitting any creditor to propose a Chapter 11 plan, including Sheila Rosenblum. Thus, if either the Debtor Plan or the Sheila Plan requires the shares in ED&F Man to be sold, Debtor's consent is immaterial. Debtor's statement to the contrary is fundamentally misguided and is misleading to creditors.

For the reasons discussed above, the court concludes that the Debtor Disclosure Statement does not include information of a kind, and in sufficient detail, that would enable creditors to make an informed judgment about the Debtor Plan. Under these circumstances, a hearing on confirmation of the Debtor Plan will not be scheduled. Because a competing plan of liquidation has been proposed by Sheila Rosenblum, the Chapter 11 proceeding will not be dismissed at this time.

IT IS THEREFORE ORDERED that approval of Debtor's Disclosure Statement Re: Debtor's Plan of Reorganization – Plan # 1, Docket No. 200, be, and the same hereby is, **DENIED**.

Copies sent via CM/ECF ELECTRONIC FILING

Copies sent via BNC to all parties

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