

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 13, 2014 at 3:00 p.m.

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1. [13-26159-E-11](#) IVAN RAVLOV CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-3-13 [[1](#)]

Debtor's Atty:

The Status Conference is continued to 3:00 p.m. on xxxxxx, 2014, to allow the Plan Administrator and professionals to file and have heard all necessary post-confirmation motions, including a motion to administrative close the case.

Notes:

Continued from 2/6/14 to be heard in conjunction with continued confirmation hearing.

Operating Report filed: 2/14/14

2. [13-26159-E-11](#) IVAN RAVLOV CONTINUED CONFIRMATION OF
Scott A. CoBen DEBTOR'S SECOND AMENDED PLAN OF
REORGANIZATION
11-12-13 [[289](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, and Office of the United States Trustee on January 21, 2013.

Tentative Ruling: The Motion to Confirm has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's tentative decision is to confirm the Second Amended Chapter 11 Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

<u>12-6-13</u>	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
<u>1-6-14</u>	Last Day for Submitting Written Acceptances or Rejections
<u>1-6-14</u>	Last Day to File Objections to Confirmation
<u>1-21-14</u>	Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

Class	Voting	Ballot Percentage Percentage Calculation	Claim Calculation
Class 1 507(a) (8) Priority	For: 0 Against: 0	0%	0%
Class 2 City of West Sacramento - Secured	For: 0 Against: 0	0%	0%
Class 3 Deutsche Bank National Trust Co, As Trustee - Secured	For: 0 Against: 1	0%	0%
Class 4 Chase - Secured	For: 0 Against: 0	0%	0%
Class 5 Bank of America, N.A. - Secured	For: 0 Against: 0	0%	0%
Class 6 Wells Fargo Bank, N.A. - Secured	For: 0 Against: 0	0%	0%
Class 7 Sacramento County Utilities - Secured	For: 0 Against: 0	0%	0%
Class 8 Allied Water Company - Secured	For: 0 Against: 0	0%	0%
Class 9	For: 0	0%	0%

Citrus Heights Water District - Secured	Against: 0		
Class 10 Deutsche Bank National Trust Co, as Trustee - Secured	For: 0 Against: 0	0%	0%
Class 11 Deutsche Bank National Trust Co, as Trustee - Secured	For: 1 Against: 0	100%	100%
Class 12 Chase - Secured	For: 0 Against: 0	0%	0%
Class 13 Golden One Credit Union - Secured	For: 1 Against: 0	100%	100%
Class 14 Sacramento County Utility District - Secured	For: 0 Against: 0	0%	0%
Class 15 Allied Water Company - Secured	For: 0 Against: 0	0%	0%
Class 16 Citrus Heights Water District - Secured	For: 0 Against: 0	0%	0%
Class 17 Wells Fargo Bank, N.A. - Secured	For: 1 Against: 0	100%	100%
Class 18 Sacramento County Utility District - Secured	For: 0 Against: 0	0%	0%
Class 19 Allied Water Company - Secured	For: 0 Against: 0	0%	0%
Class 20 California American Water Company - Secured	For: 0 Against: 0	0%	0%

Class 21 Union Bank - Secured	For: 1 Against: 0	100%	100%
Class 22 U.S. Bank, N.A. - Secured	For: 1 Against: 0	0%	0%
Class 23 General Unsecured Claims	For: 0 Against: 0	0%	0%
Class 24 Debtor's Equity Interest	For: 0 Against: 0	0%	0%

Declaration of Ivan Ravlov, Debtor-in-Possession, filed in support of confirmation provides evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. § 1129.

Opposition To Confirmation

Deutsche Bank National Trust Company, Trustee of IndyMac INDX Mortgage Loan Trust 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6, ("DBNTC, Trustee") filed an objection to confirmation with respect to its claim secured by the Lewiston Road Property (the Class 3 Claim). DBNTC, Trustee asserts that the Plan interest rate of 4,75% per annum is too low, failing the standards set by the United States Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). This creditor asserts that the interest rate should be 6.25% to 7.25% per annum (using a 3.35% prime rate and a 3% to 4% adjustment for the risk of the 100% loan to value).

This Creditor also objects based on the Second Amended Plan not expressly stating that the Plan Administrator/Debtor will comply with the obligations under the Note and Deed of Trust to protect the collateral (such as insuring and paying the property taxes). Currently monthly tax and insurance payments are escrowed with the Creditor.

Finally, Creditor asserts that it should be allowed to visit the issue of the value of the secured claim, based on a value as of confirmation as opposed to the value determined by the court pursuant to 11 U.S.C. § 506(a) previously, which was to determine the value for purposes of a Chapter 11 Plan in this case. Order filed September 20, 2013, Dckt. 272. Immediately upon that determination being made by the court the Debtor in Possession filed an amended plan.

The Debtor in Possession responds to this Opposition as follows:

A. The parties stipulated to the value of the secured claim. Stipulation, Dckt. 257. The language of the Stipulation provides,

1. The value of \$398,750.00 is agreed "for purposes of the Motion to Value only," and that Creditor does not waive

the right to assert a different value later for any purpose, including objecting to a Chapter 11 Plan.

- B. The Plan does not modify any rights of this Creditor or the Obligations of the Debtor under the loan documents, other than the interest rate, computation of monthly payment, and the amount of the secured claim based on the prior order of the court.
- C. The interest rate is properly computed under *Till*, and that contentions that the court should set a market rate are improper and unsupported by established Supreme Court case law. Based on a current prime rate of 3.25%, the 4.75% proposed interest rate provides a 1.5% "risk factor" adjustment. The Creditor has offered no evidence in opposition of any "risk factors" for which the court should increase the interest rate.

At the hearing **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

CHAPTER 11 CONFIRMATION STANDARDS

Confirmation of a Chapter 11 Plan is governed by 11 U.S.C. § 1129. The court begins its confirmation analysis of the proposed Chapter 11 Plan with the requirements of 11 U.S.C. § 1129(a).

- 1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Declaration, Dckt. 308, ("Declaration") ¶ 15-22

- 2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

Evidence: Declaration ¶ 15-22

- 3. The plan has been proposed in good faith and not by any means forbidden by law.

Evidence: Declaration ¶ 15

- 4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: N/A

- 5. (A) (I) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint

plan with the debtor, or a successor to the debtor under the plan;
and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy;
and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Evidence: Declaration ¶ 15

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence: N/A

7. With respect to each impaired class of claims or interests--

(A) each holder of a claim or interest of such class--

(I) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: Declaration ¶ 17

8. With respect to each class of claims or interests--

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

Evidence: Declaration ¶ 18

9. Except to the extent that the holder of a particular claim has

agreed to a different treatment of such claim, the plan provides that--

(A) with respect to a claim of a kind specified in section 507(a) (2) or 507(a) (3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: Declaration ¶ 18

(B) with respect to a class of claims of a kind specified in section 507(a) (1), 507(a) (4), 507(a) (5), 507(a) (6), or 507(a) (7) of the Bankruptcy Code, each holder of a claim of such class will receive--

(I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: Declaration ¶ 18

(C) with respect to a claim of a kind specified in section 507(a) (8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash--

(I) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a) (8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence: Declaration ¶ 18

10. If a class of claims is impaired under the plan, at least one class

of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Evidence: Ballots - Class 11 voted for the plan.

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence: Declaration ¶ 19

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: Declaration ¶ 21

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e) (1) (B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence: N/A

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

Evidence: N/A

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan--

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b) (2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Evidence: Declaration ¶ 19

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Evidence: N/A

11 U.S.C. § 1129(b) - "Cramdown"

The court notes that most of the creditors have not voted for the plan. Of the impaired classes, Class 1, Class 2, Class 4, Class 5, Class 6, Class 7, Class 8, Class 9, Class 10, Class 12, Class 14, Class 14, Class 15, Class 16, Class 18, Class 19, Class 20, Class 23 and Class 24 have not voted and Class 3 has rejected the plan. Therefore, confirmation must proceed by "cram down."

After a specific request for nonconsensual confirmation, and a showing that all other confirmation requirements of section 1129(a) are met, section 1129(b)(1) requires that the plan proponent prove, as to the dissenting class, that the plan is both fair and equitable and not unfairly discriminatory. 11 U.S.C. § 1129(b)(2) assists in this determination by providing specific examples of possible fair and equitable treatment. (Thereby "cramming down the throats" of the non-accepting creditors confirmation of the plan.) The Ninth Circuit has adopted the following test: after looking at all the facts and circumstances, the court examines (1) whether the discrimination is supported by a reasonable basis; (2) whether the debtor can confirm and consummate a plan without the discrimination; (3) whether the discrimination is proposed in good faith; and (4) the treatment of the classes discriminated against. *Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. Pshp. (In re Ambanc La Mesa Ltd. Pshp.)*, 115 F.3d 650 (9th Cir. Ariz. 1997).

Additionally, there is the requirement that if a class of claims is not paid in full, there cannot be any payment to a junior class of claims or interests, including the Debtor being revested with property based solely on his or her pre-petition interests.

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

11 U.S.C. § 1129(b)(2)(B)(ii). This is commonly referred to as the "Absolute Priority Rule."

While it otherwise appears to be a daunting task to confirm a Chapter 11 Plan over a non-accepting creditor, the court's have recognized the "New Value Exception," by which a debtor puts "new value" into a plan and thereby "buys" the revesting of the property based on the new value, not the pre-petition interests. A leading commentator defines the Absolute Priority Rule of 11 U.S.C. § 1129(b)(2)(B)(ii) as:

A plan of reorganization may not allocate any property whatsoever to any junior class on account of the members' interest or claim in a debtor unless all senior classes consent, or unless such senior classes receive property equal in value to the full amount of their allowed claims, or the debtor's reorganization value, whichever is less. In most cases, this formulation will not cause any problems.

7 COLLIER ON BANKRUPTCY ¶ 1129.03[4][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). To constitute new value, the contribution offered by the equity holders must be:

- A. New,
- B. Substantial,
- C. Money or money's worth,
- D. Necessary for successful reorganization, and
- E. Reasonably equivalent to the value or interest received.

In re Bonner Mall Partnership, 2 F.3d 899, 908 (9th Cir. 1993).

Debtor-in-Possession argues that the plan is fair and equitable because secured creditors retain their liens and receive full payment with interest and unsecured creditors will receive just as much as they would in a Chapter 7 Liquidation. Debtor-in-Possession also states that five classes of impaired unsecured creditors voted for the plan.

The evidence in support of this contention has been presented in the Debtor's Declaration and Supplemental Declaration (Dckt. 315).

CONSIDERATION OF NEW VALUE EXCEPTION EVIDENCE

On February 10, 2014, the Debtor-in-Possession filed a Supplemental Declaration, explaining his employment history and qualifications. Debtor-in-Possession states that in respect to the rental property located at 6035 Cheshire Way, Citrus Heights, California, which rents for \$1,550 per month, the typical property management fees during the five years of the plan would be as follows:

\$ 8,370 Management Fee (\$1,550 x 9% x 60 months)
\$ 1,937 Leasing Fee (\$1550 x 50% / 24 month x 60 months)
\$ 1,437 Inspection Fee (\$287.5 x 5 years)
\$11,744 Total Management Fees for Cheshire Way

Debtor-in-Possession states that with respect to the rental property located at 3490 Lewiston Road, West Sacramento, California, which rents for \$2,850 per month, the typical property management fees during the five years of the plan would be as follows:

\$15,390 Management Fee (\$2,850 x 9% x 60 months)
\$ 3,562 Leasing Fee (\$2850 x 50% / 24 month x 60 months)
\$ 1,437 Inspection Fee (\$287.5 x 5 years)
\$20,389 Total Management Fees for Lewiston Road

With respect to the rental property located at 7716 Belle Rose Circle, Roseville, California, which rents for \$2,825 per month, the typical property management fees during the five years of the plan would be as follows:

\$15,255 Management Fee ($\$2,825 \times 9\% \times 60$ months)
\$ 3,531 Leasing Fee ($\$2825 \times 50\% / 24$ month $\times 60$ months)
\$ 1,437 Inspection Fee ($\$287.5 \times 5$ years)
\$20,223 Total Management Fees for Belle Rose Circle

Debtor-in-Possession states that with respect to the rental property located at 7513-7515 Johanne Court, Citrus Heights, California, which rents for \$1,825 per month, the typical property management fees during the five years of the plan would be as follows:

\$ 9,855 Management Fee ($\$1,825 \times 9\% \times 60$ months)
\$ 2,281 Leasing Fee ($\$1,825 \times 50\% / 24$ month $\times 60$ months)
\$ 1,437 Inspection Fee ($\$287.5 \times 5$ years)
\$13,573 Total Management Fees for Johanne Court

Debtor-in-Possession states that with respect to the rental property located at 6819-6821 Barbara Lee Circle, Sacramento, California, which rents for \$1,700 per month, the typical property management fees during the five years of the plan would be as follows:

\$ 9,180 Management Fee ($\$1,700 \times 9\% \times 60$ months)
\$ 2,125 Leasing Fee ($\$1,700 \times 50\% / 24$ month $\times 60$ months)
\$ 1,437 Inspection Fee ($\$287.5 \times 5$ years)
\$12,742 Total Management Fees for Barbara Lee Circle

In sum, the Debtor-in-Possession states that the total value of the property management services he is providing in support of the plan of reorganization are as follows:

\$11,744 Total Management Fees for Cheshire Way
\$20,389 Total Management Fees for Lewiston Road
\$20,223 Total Management Fees for Belle Rose Circle
\$13,573 Total Management Fees for Johanne Court
\$12,742 Total Management Fees for Barbara Lee Circle
\$78,671 Total value of property management services

Debtor-in-Possession also states that he has reduced maintenance expenses by providing the services at without charge and the maintenance expense listed in the financial projections only reflects the projected cost of materials. Debtor-in-Possession estimates the cost to pay for the labor involved in the maintenance for each unit is approximately \$75 per month for a total savings as follows:

\$ 375 Cost per month ($\$100$ per unit $\times 5$ units)
60 Months of plan
\$22,250 Total value of labor

Lastly, Debtor-in-Possession states there is only a reserve of \$353 per month to cover unanticipated expenses or income interruptions.

Unanticipated expenses could be plumbing leaks or roof, water heater or HVAC failures. Substantial plumbing failures could lead to extended vacancies or even having to paying for a tenant's hotel room. Unanticipated income interruptions can occur with tenant evictions and bankruptcies. To the extent these issues arise, Debtor-in-Possession states that he will have to use his income from employment to pay for these items.

This individual Debtor has provided the court with evidence of substantial new value consistent with the standards set by the Ninth Circuit Court of Appeals in *Bonner Mall Partnership*. Though some of these activities could be called "sweat equity," they are necessary costs and expenses which must be undertaken for a successful reorganization. If not providing those services to the Plan Administrator, those services would have to be obtained from another service and paid for with monies generated under the Plan. The Debtor could be selling his services elsewhere, generating money in hand income. These are new, substantial, or monies worth, and necessary for a successful reorganization

The value of these services are reasonably equivalent to the value of the interest in the reorganized assets under the Second Amended Plan. Through the valuation of the secured claims, the liens against the assets of the estate are equal to the value of the properties. This has resulted from the court valuing the secured claims pursuant to 11 U.S.C. § 506(a), bifurcating creditors' claims into a secured portion (based on the value of the collateral) and unsecured portion (the amount in excess of any value in the collateral to secure that creditor's claim). Upon confirmation of the Plan, the Plan Administrator/Debtor is starting effectively at \$0.00 equity in the assets, buying any future appreciation by his work and services going forward (and "gambling" that there will be a sufficient increase in the equity to be worth his investment).

CONCLUSION

The court's decision is to confirm the Chapter 11 Plan of Reorganization.

Counsel for the Debtor in Possession shall prepare and lodge with the court an order confirming the Chapter 11 Plan, with a copy of such confirmed plan attached as an exhibit to the proposed order.