UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 16, 2016 at 10:00 a.m.

1.	15-29600-A-11 NCK-1	ANTIGUA CANTINA & GRILL, INC.	MOTION TO APPROVE AMENDED DISCLOSURE STATEMENT 3-22-16 [36]

Tentative Ruling: The motion will be denied.

The debtor seeks approval of its first amended disclosure statement filed on March 22, 2016. Docket 35.

Secured creditor Charles Travers IRA #887220801 et al., the holder of the sole mortgage against the debtor's real property, opposes the motion.

The disclosure statement will not be approved for the following reasons:

(1) The disclosure statement does not contain a table of contents, despite it being 26 pages long.

(2) The disclosure statement contains many vague and superficial statements, unaccompanied with concrete information. For instance, in addressing the debtor's ability to initially fund a plan, the disclosure statement says that the debtor "believes [it] will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date." Docket 35 at 24.

What the debtor believes about its ability to fund a plan is irrelevant. It is the creditors who must make an informed decision about whether the debtor has the cash to initially fund the plan, based on concrete information that includes the debtor's cash on hand and the necessary funds to initially fund the plan.

The same is true with respect to the debtor's ability to fund the plan in the future. While the disclosure statement refers to Exhibit E, where the debtor has made projections spanning the next five years, the projections are mere numbers on a paper. There is nothing in the disclosure statement stating who came up with the projections, whether the person who prepared the projections is qualified to make such financial projections, what are the underlying assumptions of the projections, are the assumptions upon which the projections are based reasonable in light of the debtor's prior performance. Docket 35 at 25; Docket 35, Ex. E.

(3) The disclosure statement says virtually nothing about the debtor's background, including pre-petition business history, operations, financial issues, reasons for its inability to pay creditors pre-petition, etc. Just because the debtor was formed only in November 2015 - one month before filing

this bankruptcy case - purportedly to own and lease a commercial property previously owned and operated by 2019 O Street Investors, Inc., does not mean that the court and creditors should overlook issues with the previous owner of the property.

On its face, the debtor filing for bankruptcy approximately one month after being formed and being the transferee of a real property with substantial encumbrances (totaling over $1.15 million) begs the question of whether the debtor was formed to own and lease the property or it was formed to take the property into bankruptcy.

The above is especially important as the court suspects that the same individual(s) is behind both the debtor and 2019 O Street Investors, Inc.

Also, even though the disclosure statement admits that the debtor acquired the subject commercial real property in November 2015, it does not state whether the debtor acquired the property and assumed the encumbrances on the property with the consent of the voluntary lien holders.

(4) The disclosure statement does not answer a fundamental question about the debtor's ability to fund the proposed plan, namely: if the debtor and its predecessor in interest were unable to make mortgage payments on the real property pre-petition, what is significantly different in the debtor's current operations to allow it to make mortgage payments under the proposed plan?

(5) The disclosure statement admits that the debtor has not completed its investigation of avoidance claims. Docket 35 at 4. Such claims, if any, are an asset of the estate and the creditors are entitled to know their value.

(6) The disclosure statement does not say what the debtor has been doing with the rents it is receiving from the real property post-petition. The debtor has not obtained a court order to use cash collateral.

On the other hand, someone appears to be paying the expenses associated with the debtor's property, including utilities, property, taxes, insurance, etc. If the debtor is not using cash collateral to pay such expenses, the disclosure statement should identify the source of funds for the payment of such expenses post-petition.

(7) The disclosure statement does not apprise of a deadline for the filing of objections to proofs of claim.

(8) The court sees no information in the disclosure statement about the debtor's unexpired leases and executory contracts. While the disclosure statement refers to a section 6.01 for such information, the court has been unable to find this section in the disclosure statement.

Future amendments of the debtor's disclosure statement and plan should be accompanied by black/red-lined versions of the documents.

2.	15-25213-A-11 ET-4	BLU COMPANIES, INCORPORATED	MOTION TO SELL FREE AND CLEAR OF LIENS 4-18-16 [31]

Tentative Ruling: The motion will be denied without prejudice.

The debtor in possession requests authority to sell 430,200 share units it owns

in Bluon Energy, LLC, to Strathspey Crown Holdings, L.L.C., in exchange for 322.65 share units in Strathspey. The debtor asserts that the 322.65 units in Strathspey have a value of over $3 million.

The debtor requests that the sale be approved free and clear of the $1,691,235.79 lien of Debra Fletter, Harry Duncan, Philip Duncan and Harry Duncan, as trustee of the Louis M. and Jacqueline G. Duncan Trust, under 11 U.S.C. § 363(f)(4). The $1,691,235.79 lien is based on a stock pledge agreement, giving the lien creditors security interest in the debtor's 430,200 share units in Bluon Energy.

The debtor also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to sell property of the estate pursuant to section 363. Section 363(b) allows, then, a debtor-in-possession to sell property of the estate, other than in the ordinary course of business. The sale must be fair, equitable, and in the best interest of the estate. Mozer v. Goldman (In re Mozer), 302 B.R. 892, 897 (C.D. Cal. 2003). Sale of property outside the ordinary course of business requires the estate to show good faith and valid business justification for the sale. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). Good faith "encompasses fair value, and further speaks to the integrity of the transaction." Id.

Pursuant to 11 U.S.C. § 363(f), the debtor in possession may sell the personal property free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The court agrees with the debtor that the $1,691,235.79 lien is in bona fide dispute. The lien is unperfected. According to the debtor, there is nothing filed with the California Secretary of State to perfect the lien creditors' interest in the 430,200 share units in Bluon Energy.

"*(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--*

"*(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;*

"*(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or*

"*(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.*"

11 U.S.C. § 544(a).

"Upon the filing of the bankruptcy petition, therefore, [the debtor] obtained the right to avoid [the creditor's] interest under 11 U.S.C. 544(a)(1), leaving [the creditor] with an unsecured claim for the amounts due it for the Original Equipment."

Pac. Exp., Inc. v. Teknekron Infoswitch Corp. (In re Pac. Exp., Inc.), 780 F.2d 1482, 1486 (9th Cir. 1986).

Given that the $1,691,235.79 lien is unperfected and given the debtor's powers to avoid such unperfected liens under section 544(a)(1), the lien is in bona fide dispute for purposes of section 363(f)(4). Accordingly, the court can approve the sale free and clear of the $1,691,235.79 lien.

Nevertheless, the motion will be denied as the debtor has not established that the sale is in the best interest of the estate and creditors of the estate.

According to the debtor, it is a holding company, holding interest in Bluon Energy, a company developing a lucrative refrigerant product. But, due to regulatory issues, Bluon will be unable to take the refrigerant "to the mass market" probably for another "several years." Docket 33 at 2. And, the debtor alleges, until Bluon becomes profitable by selling its refrigerant, the debtor will be unable to fund a plan.

The debtor seeks to sell its equity interest in Bluon in exchange for equity interest in Strathspey because, according to the debtor's President, Todd Wille, Strathspey "should be able to make cash distributions to its unit holders within the next six to eighteen months," thus eventually providing the debtor with funds to prosecute a plan in this case. Docket 33 at 2.

However, the above information is insufficient for the court to determine whether this sale is in the best interest of the estate and creditors.

First, the court does not have admissible, sufficient or probative evidence on the value of the Strathspey share units being offered in exchange for the Bluon equity interest. While the motion claims that the Strathspey share units have a value of over $3 million, the only supporting declaration, of Mr. Wille, says nothing about the value of the Strathspey share units.

Even if the court can take the $3 million assertion in the motion as admissible evidence, the court cannot tell who, how, when and on what basis the Strathspey equity has been valued.

Second, even if the court had proper evidence of the Strathspey equity, nothing in the motion record even attempts to value the debtor's interest in Bluon being sold by this motion. As such, the court cannot tell even whether the proposed purchase price is fair and reasonable.

Third, the debtor offers no assurances that Strathspey will ever pay anything on account of its shares it is paying for the Bluon equity. Mr. Wille's six-

to-eighteen month projection of Strathspey making cash payments to its equity holders appears to be merely a conjecture. Mr. Wille does not state the basis for his opinion of when Strathspey will make payments, much less his personal knowledge of facts that would establish such a basis.

Finally, the conjecture of Strathspey making payments six-to-eighteen months into the future is not far removed from the conjecture of when Bluon would become profitable – several years into the future. With such vague time lines, the court cannot conclude that this sale is in anyone's best interest. The motion will be denied.

3.	15-25213-A-11 UST-1	BLU COMPANIES, INCORPORATED	MOTION TO CONVERT OR TO DISMISS CASE 4-18-16 [35]

Tentative Ruling: The motion will be granted and the case will be converted to chapter 7.

The U.S. Trustee moves for conversion to chapter 7, pursuant to 11 U.S.C. § 1112(b), arguing: (1) unexcused failure to timely file form B26 (report as to value, operations, and profitability of a non-debtor in which the estate owns substantial or controlling share); (2) failure to comply with court order requiring plan and disclosure statement to be filed by February 22, 2016; (3) failure to prosecute the case causing a delay that is prejudicial to creditors; and (4) absence of reasonable likelihood of rehabilitation.

The debtor - a holding company for various investments in other businesses - responds, contending it has been unable to formulate a plan due to uncertainty of when its investments will start producing income. The debtor argues that the motion should be denied because it has negotiated a sale of the debtor's equity interest in Bluon Energy, L.L.C., which would allow the debtor to formulate a plan within 45 days.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; . . . ; (E) failure to comply with an order of the court; (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter . . . ." 11 U.S.C. § 1112(b)(4)(A), (E), (F).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

The debtor filed this case on June 29, 2015 but has not yet filed a plan and disclosure statement. The deadline the court set in its August 24, 2015 status conference order was February 22, 2016. Docket 22.

Further, from the debtor's failure to file Form B26 for Bluon Energy (the company representing the debtor's principal investment) in January 2016, the court infers that the debtor either does not know or does not want to disclose the *present* value of its interest in Bluon. As mentioned in the court's ruling on the debtor's sale motion, also being heard on this calendar, the debtor has proffered no evidence in that motion as to the present value of its investment in Bluon either.

And, the debtor's response to this motion does not even attempt to explain its failure to file Form B26 for Bluon.

The delay in filing a plan and disclosure statement, when taken into account with the denial of the debtor's sale motion and its failure to file Form B26 for Bluon Energy, constitutes unreasonable delay that is prejudicial to creditors. Although the one-year anniversary of the petition date is fast approaching, the filing of a plan and disclosure statement is nowhere in sight for the debtor.

The totality of the foregoing also indicates to the court an absence of reasonable likelihood of reorganization, within reasonable time.

The above is cause for dismissal or conversion to chapter 7 under section 1112(b).

As the debtor lists in its schedules approximately $5.36 million in unencumbered personal property assets and it has substantial unsecured debt, totaling approximately $7.253 million, conversion to chapter 7 would be in the best interest of the estate and the unsecured creditors. Docket 1, Schedules B, D, F.

4. 15-29421-A-12 JERRY WATKINS — MOTION TO VALUE COLLATERAL
CA-1 — 3-21-16 [26]
VS. OCWEN LOAN SERVICING, L.L.C.

Final Ruling: Pursuant to a stipulation between the parties, the court will continue the hearing on this motion to June 13, 2016 at 10:00 a.m. Docket 38.

5. 15-29421-A-12 JERRY WATKINS — MOTION TO CONFIRM PLAN
CA-4 — 2-29-16 [19]

Final Ruling: Given the continuance of the hearing on the related valuation motion (Docket 26) to June 13, 2016 at 10:00 a.m., the court will continue the hearing on this motion to the same date and time.

6. 14-30833-A-11 SHASTA ENTERPRISES — STATUS CONFERENCE
10-31-14 [1]

Tentative Ruling: None.

7. 15-29136-A-12 P&M SAMRA LAND INVESTMENTS LLC — MOTION TO DISMISS CASE
JPJ-1 — 4-5-16 [80]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 12 trustee moves for dismissal because the debtor has failed to

cooperate with the trustee in providing information about: the condition of its real property, including trees and any other crop-producing plants; rental income generated from the property; how the rented portion of the property is being used; and the value of the property.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including - (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors."

As the debtor responds that it has provided the above information to the trustee, subject to hearing from the trustee, the motion will be denied.

Lastly, the court rejects the response filed by IRA Services Trust Co. CFBO (second mortgage holder on the debtor's farm real property) and trust settlor Shankuntala Saini. The court has been asked to dismiss the case under 11 U.S.C. § 1208(c), which – unlike 11 U.S.C. § 1112(b) - does not allow the court to consider whether conversion to chapter 7 is in the best interest of the estate and the creditors.

A party in interest, including a chapter 12 trustee, may request conversion to chapter 7 only where the debtor has committed fraud. 11 U.S.C. § 1208(d). Hence, where there is no fraud committed by the debtor, the chapter 12 trustee's only option is to seek dismissal under section 1208(c).

8.	15-29136-A-12 NCK-2	P&M SAMRA LAND INVESTMENTS LLC	MOTION TO CONFIRM PLAN 3-24-16 [65]

Tentative Ruling: The motion will be denied.

The debtor seeks confirmation of its first amended chapter 12 plan, filed on March 24, 2016.

Each of the following parties has filed an opposition to plan confirmation:

- the chapter 12 trustee;

- CEL Holding, L.L.C. (secured by the debtor's two Caterpillar tractors);

- the Socotra Fund, L.L.C. along with Gary E. Roller, trustee of the Gary E. Roller Profit Sharing Plan and the Petit Revocable Trust, dated March 29, 1999 (first mortgage holder on the debtor's farm real property);

- IRA Services Trust Co. CFBO (second mortgage holder on the debtor's farm real property) and trust settlor Shankuntala Saini;

- unsecured creditor Ag-Seeds Unlimited; and

- unsecured creditor Paul Hundal.

Plan confirmation will be denied for the following reasons, among others:

(1) While the debtor agrees that unsecured creditors would be pain in full in a chapter 7 liquidation, the plan does not pay them in full. The plan proposes to pay $50,000 a year for five years to unsecured creditors, totaling $250,000, whereas the filed unsecured claims exceed $300,000. The plan then violates the

best interest of creditors test of 11 U.S.C. § 1225(a)(4).

(2) The plan does not state unequivocally that the secured creditors are retaining their interest in the collateral securing their claims.

(3) The plan does not set a deadline for the filing of objections to proofs of claim. The plan does not state that the debtor will not be filing such objections.

(4) The debtor has not established that the plan is feasible. The record on this motion is plagued with inadmissible or insufficient evidence, inconsistencies, vague assertions, and ambiguities.

For instance, the debtor's motion does not contain any financial background for the debtor's operations. Nor does the motion provide any experience or qualification information for the debtor in the growing of organic crops, much less organic corn. This is quite important as the debtor is seeking now to grow only organic corn.

The debtor's five-year financial projections are not helpful, admissible or probative. There is nothing in the supporting declaration of the debtor's principal establishing the bases for his projection conclusions. Docket 67. The court also does not know what assumptions the debtor employed in preparing the projections.

While the motion asserts that the debtor has 162 farmable acres, the debtor's loan with Socotra Fund in May 2014, just two years ago, represented only 136 farmable acres. This undermines the debtor's income projections by at least 15%.

More, in its application with Socotra, the debtor represented having a long term plan of growing walnuts.

But, the subject motion represents that the debtor has been growing and selling organic corn at least since 2014. It states that the debtor has been selling organic corn to the same buyers since 2014. Docket 65 at 2.

In yet another twist, despite seeking now to cultivate only organic corn, at the meeting of creditors in this case, the debtor represented that it would be planting walnuts. Docket 97 at 3.

The debtor's principal, Paul Sarma, seems unable to make up his mind about what crops the debtor will be farming.

Further, there is admissible evidence from at least two creditors, whose agents have inspected the debtor's real property, that the debtor is far from having even prepared the ground for planting corn, much less the necessary crop to produce the yield income projected by the debtor. Docket 96 at 3; Docket 93 at 2-3. The inspections were in March and April 2016.

On the other hand, at its meeting of creditors, the debtor had represented that it would start planting crop in February.

(5) In its financial projections, the debtor includes a $60,000 annual contribution toward its budget from an "affiliate" entity, Stone Lake. Docket 73.

However, there is no evidence or information in the record of: what is the debtor's affiliation with Stone Lake; why would Stone Lake simply give $60,000 a year to the debtor; what agreement is there between the debtor and Stone Lake respecting the contribution; whether Stone Lake is able to make the $60,000 annual contribution.

(6) The plan says nothing about the debtor's pre and post-petition arrearages as to each of the secured claims.

(7) The court questions the abilities and experience of the debtor's principal, Mr. Samra, to farm the debtor's property and manage the debtor's affairs.

At the meeting of creditors, Mr. Samra had limited knowledge of the debtor's operations. He was not even certain what equipment is owned by the debtor. Docket 92 at 2. Also, while Mr. Sarma represented that the debtor would be planting walnuts, he did not know how long it would take for the walnuts to ripen for harvest. Docket 97 at 3.

Also, Mr. Samra stated at the creditors' meeting that the debtor's operations have been funded by income from his other business entities in the past. Docket 92 at 2.

(8) The record before the court indicates that Mr. Samra owns more than one entity related to the debtor. The court would like the debtor to produce information, backed by admissible and probative evidence, on: all its related entities; the relationship between the debtor and such related entities; whether equipment owned by the debtor is being used in the operation of other entities; whether equipment owned by other entities is being used in the debtor's operation.

Mr. Samra stated at the creditors' meeting that the debtor's operations have been funded by income from his other business entities in the past. Docket 92 at 2.

(9) The debtor's financial projections say nothing about the debtor's rental income from Mr. Thiel.

(10) The debtor has provided no information about the condition of its property, including planted trees or any other crop-producing plants.

The court finds it unnecessary to address other basis for plan confirmation denial.

9. 16-21585-A-11 AIAD/HODA SAMUEL STATUS CONFERENCE
3-15-16 [1]

Tentative Ruling: None. Given the appointment of a trustee, it is anticipated that the conference will be continued to give the trustee an opportunity to come up to speed.