

3. [12-91442-E-11](#) ALEXANDRINO/DURVALINA
TOG-6 VASCONCELOS

MOTION FOR APPROVAL OF
DISCLOSURE STATEMENT FILED BY
DEBTORS
6-10-13 [[134](#)]

Correct Notice Not 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 June 10, 2013. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to grant the Motion for Approval of Disclosure Statement. 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:

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: May 18, 2012

Background: Debtors are retired and receive pensions for Canada and U.S. Social Security. They have three rental properties, which are a single home, a duplex and a triplex. There are no second mortgages or unsecured debts. They have a primary residence with a mortgage and an arrearage on the first mortgage. Debtors lost renters on the rental properties and were not able to maintain payments on the rental mortgages. Debtors state the renters have now started paying rent, repairs have been made, and evictions prosecuted. Now stable renters are in the rental units. Debtor has been able to negotiate a reasonable modification for two of the rental mortgage loans.

Creditor/Class	Treatment	
Class 1: Administrative Claims	Claim Amount	U.S. Trustee Fees + \$25,000 Attorney Fees
	Impairment	
Class 2.1: Wells Fargo Home Mortgage	Claim Amount	contract payment + arrearage payments
	Impairment	

(1901 Carleton
Drive - Residence)

	<p>The amount of the loan and the monthly payment are not altered in any way. The arrearage shall be paid \$449.75 per month over a period of 5 years, no interest. The exact amount of the arrearage payments shall be adjusted between Debtor and Creditor. The real estate taxes and insurance shall be paid separately by Debtor. The current payment is \$1,228.00 a month, commencing February 1, 2012.</p>	
<p>Class 2.2: Wells Fargo Bank, N.A. (735 & 745 W. Olive Ave. - Rental)</p>	Claim Amount	\$170,000 secured, \$149,900 unsecured
	Impairment	Impaired
	<p>The debt will be amortized over 30 years at a rate of 4.25% interest per year. The monthly payment shall be \$836.30 per month commencing February 1, 2013. The unsecured part of the loan is about \$149,900 and will receive a pro rata share of the payment to the unsecured creditors, \$307.78 per month.</p>	
<p>Class 2.3: One West Bank, FSB (619 Wolfe Ave. - Rental)</p>	Claim Amount	\$88,500 secured, \$121,500 unsecured
	Impairment	Impaired
	<p>The debt will be amortized over 30 years at a 4.25% interest rate. The payment will be \$435.37 per month commencing February 1, 2013. The unsecured part of the loan will receive a pro rata share of the payment to the unsecured creditors, \$251.83 per month.</p>	
<p>Class 2.4: AmeriNational Company (219 and 221 South West Ave. - Rental)</p>	Claim Amount	contract payment
	Impairment	unimpaired
	<p>This claim is not modified by the plan. The claim will be paid in full in accordance with the promissory note. The payment shall be \$594.97 per month.</p>	
<p>Class 2.5: Boomers Audio (auto alarm)</p>	Claim Amount	\$531.40
	Impairment	impaired
	<p>Creditor will be paid \$45.74 a month for a period of one year. Payments shall commence one month after the effective date of the plan.</p>	
<p>Class 2.6: Valley Distributors, Inc. (Building supplies)</p>	Claim Amount	\$63
	Impairment	unimpaired
	<p>Creditor was owed \$63 and Debtor paid it in full post-petition.</p>	
Class 3: Reserved	Claim Amount	

	Impairment	
Class 4: Rental Deposits	Claim Amount	\$2,300
	Impairment	
	Rental Deposits will be held in trust and returned to renters at the end of their tenancy.	
Class 5: General Unsecured	Claim Amount	\$271,000.00
	Impairment	impaired
	There are no creditors with unsecured claims. The creditors who have had their secured claim bifurcated pursuant to 11 U.S.C. § 506(a) shall be reclassified as a class 5 claim. The total amount of the claims reclassified to unsecured is \$271,000.00.	

A. C. WILLIAMS FACTORS PRESENT

- Y Incidents that led to filing Chapter 11
- Y Description of available assets and their value
- Y Anticipated future of the Debtor
- Y Source of information for D/S
- Y Disclaimer
- Y Present condition of Debtor in Chapter 11
- Y Listing of the scheduled claims
- Y Liquidation analysis
- Y Identity of the accountant and process used
- N Future management of the Debtor
- Y The Plan is attached

In re A.C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); see also *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS:

No objections have been filed to date.

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so 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, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra.*

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

SERVICE

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1 Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:

United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:

August 1, 2013 at 3:30 p.m.

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

- (1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044
- (2) United States Attorney as specified in LBR 2002-1(a)
above; and,
- (3) Internal Revenue Service at the addresses specified on
the roster of governmental agencies maintained by the
Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

IRS
PO BOX 7346
Philadelphia, PA 19101-7346

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

A motion is a contested matter. See Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

However, a review of the Debtor's schedules shows that Debtors did not list a debt owing to the IRS, nor has the IRS filed a proof of claim in this case. Therefore, the court will waive the service deficiency.

After a review of the disclosure statement, the court finds that the proposed disclosure statement contains adequate information to solicit acceptance or rejection of a proposed plan. The Motion to Approve the Disclosure Statement is granted.

The court shall issue an order approving the disclosure statement and setting the following dates and deadlines:

- A. The Debtor in Possession shall serve the proposed plan, approved disclosure statement, ballot, notice of confirmation

hearing, and order approving disclosure statement on or before
-----, 2013.

- B. Objections to confirmation shall be filed and serve, and ballot returned to Counsel for the Debtor in Possession on or before
-----, 2013.
- C. Evidence in Support of Confirmation and responses to objections to confirmation shall be filed and served on or before -----
--, 2013.
- D. The confirmation hearing shall be conducted at 3:30 p.m. on ---
-----, 2013.

4. [11-94146](#)-E-11 DOMINIC/MARIA DEPALMA

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-2-11 [[1](#)]

Debtors' Atty: David C. Johnston

Notes:

Continued from 5/2/13

Operating Report filed: 5/14/13, 6/19/13, 7/11/13

[TJS-1] Motion for Relief from Automatic Stay [JPMorgan Chase Bank, N.A.] filed 7/1/13 [Dckt 340]; set for hearing 8/1/13 at 10:00 a.m.

5. [12-93049-E-11](#) MARK/ANGELA GARCIA

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-30-12 [[1](#)]

Debtors' Atty: Mark J. Hannon

Notes:

Continued from 5/23/13

Operating Report filed: 7/1/13, 7/29/13

[MJH-9] Objection to Claim #11-1 of YP Western Directory, LLC filed 3/7/13 [Dckt 91]; hearing continued to 10/31/13 at 10:30 a.m. Parties to file supplemental pleadings addressing the status of the State Court Action, if it has been dismissed, and whether such dismissal has been vacated on or before 10/17/13.

[MJH-11] Disclosure Statement and Plan filed 7/24/13 [Dckt 188 & 189]; set for hearing 9/26/13 at 10:30 a.m. [time incorrect - attorney to change]

6. [12-91564-E-11](#) POCH TAN AND SAMEAN CHUM

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-31-12 [[1](#)]

Debtors' Atty: Anthony D. Johnston

Notes:

Continued from 5/2/13 to be heard in conjunction with the plan confirmation hearing.

Operating Reports filed: 5/15/13, 6/19/13, 7/15/13

7. [12-91564-E-11](#) POCH TAN AND SAMEAN CHUM
RHS-1

CONFIRMATION OF PLAN OF
REORGANIZATION FILED BY DEBTORS
4-4-13 [[118](#)]

Correct Notice Not Provided. The Proof of Service states that the Order Approving Disclosure Statement, Amended Plan, Amended Disclosure Statement and Ballot were served on Debtor, all creditors, and Office of the United States Trustee on May 17, 2013. By the court's calculation, 76 days' notice was provided. 42 days' notice is required.

Tentative Ruling: The Motion to Confirm Plan of Reorganization has been set for hearing by the court's Order Approving Disclosure Statement and Fixing Time for Filing Acceptance or Rejections of Plan, Combined with Notice Thereof, dated May 3, 2013.

The court's tentative decision is to deny the Motion to Confirm Plan of Reorganization. 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:

Pursuant to the court's Order Approving Disclosure Statement and Fixing Time for Filing Acceptance or Rejections of Plan, Combined with Notice Thereof, dated May 3, 2013, Debtor was to file and serve its argument and evidence in support of confirmation, replies to any opposition and a ballot tabulation by July 12, 2013. No argument, evidence (such as a Declaration) or a ballot tabulation has been filed to date.

The Plan Proponent has not complied with the Service and Filing Requirements for Confirmation:

<u>May 17, 2013</u>	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
<u>June 21, 2013</u>	Last Day for Submitting Written Acceptances r Rejections
<u>June 21, 2013</u>	Last Day to File Objections to Confirmation
<u>July 12, 2013</u>	Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service. These have not been filed to date.

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
	For: Against:		

	For: Against:		

No tabulation of ballots has been filed to date.

No Declaration has been filed to date to support of confirmation or to provides evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. §1129.

Therefore, the Motion to Confirm is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

8. [11-90266](#)-E-11 JOHNNY/TAMARA MATTHEWS

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-24-11 [[1](#)]

Debtors' Atty: David C. Johnston

Tentative Ruling: The Status Conference is removed from the calendar, the court having converted the case to one pursuant to the motion of the U.S. trustee and the election of the Debtors. 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:

Notes:

Continued from 6/27/13

Operating Report filed: 7/12/13

[UST-2] Stipulation to Continue Hearing on Motion for Conversion or Dismissal of Chapter 11 Case [from 7/18/13 to 8/1/13 at 10:30 a.m.] filed 7/15/13 [Dckt 242]; civil minute order continuing filed 7/24/13 [Dckt 248]

[DCJ-2] Debtors' Motion to Convert Case Under Chapter 11 to Case Under Chapter 13 filed 7/26/13 [Dckt 249]; set for hearing 8/22/13 at 10:30 a.m.

9. [13-90284](#)-E-7 SAWYERS HEATING AND AIR
CONDITIONING, INC.

STATUS CONFERENCE RE:
INVOLUNTARY PETITION
2-15-13 [[1](#)]

Debtor's Atty: Pro Se

Notes:

Set by order of the court dated 7/17/13 [Dckt 34]

10. [13-90284-E-7](#) **SAWYERS HEATING AND AIR
CONDITIONING, INC.**

**ORDER TO APPEAR AND ORDER TO
SHOW CAUSE WHY BANKRUPTCY CASES
12-2905 AND 12-92191 SHOULD NOT
BE REOPENED AND CONSOLIDATED
WITH THE PRESENT CASE
7-17-13 [[34](#)]**

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on Debtor, Chapter 7 Trustee, all creditors and the Office of the U.S. Trustee on July 20, 2013. 12 days notice of the hearing was provided.

Tentative Ruling: None.

The present Chapter 7 involuntary case was commenced by the filing of a petition by Heating and Cooling Supply, LLC, as the sole petitioning creditor. Petition, Dckt. 1. No opposition to the commencement of this involuntary case was filed by the Debtor. This is not the Debtor's first foray into bankruptcy, having filed two prior voluntary Chapter 11 cases in this District - Case No. 12-92191 (filed August 9, 2012, dismissed September 24, 2012) and Case No. 12-92905 (filed November 8, 2012, dismissed November 20, 2012). In both prior cases the Debtor has been and is represented by counsel.

Though having ordered the Debtor to file Schedules and Statement of Financial Affairs (Dckt. 7) and the petitioning creditor when the Debtor failed to do so (Dckt. 22), no Schedules and Statement of Financial Affairs have been filed in this case.

Upon consideration of the Petition, the Debtor's two prior bankruptcy filings, the Debtor being represented by counsel in the two prior cases, the court ordered the parties and counsel to appear and show cause to address for the court the status of this involuntary Chapter 7 case, the failure of the Debtor and the principals of the Debtor to complete and file the necessary Schedules and Statement of Financial Affairs, and the failure of the petition creditors to file the necessary Schedules and Statement of Financial Affairs. The court also ordered the parties to show cause why this court should not reopen Cases Nos. 12-02905 and 12-92191, and consolidate all three cases, to be prosecuted as one proceeding.

11. [13-91189-E-11](#) MICHAEL/JUDY HOUSE

STATUS CONFERENCE RE: VOLUNTARY
PETITION
6-25-13 [[1](#)]

Debtors' Atty: Robert M. Yaspan

Notes:

Status Report filed 7/19/13 [Dckt 21]

[RMY-2] Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral; (B) Granting Adequate Protection to Prepetition Secured Parties; and (C) Scheduling a Final Hearing filed 7/23/13 [Dckt 23]; set for hearing 8/22/13 at 10:30 a.m.