UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 23, 2021 at 11:30 a.m.

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1. 21-21153-E-11 REHANA HARBORTH

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 3-30-21 [1]

Debtor's Atty: Marc Voisenat

Notes:
Continued from 7/22/21

[SW-1] Order granting Motion for Relief re Stipulation for Adequate Protection filed 7/22/21 [Dckt 91]

Order Approving Final Report and Account and Discharging Trustee filed 7/26/21 [Dckt 94]

Amended Schedule A/B and C filed 7/29/21 [Dckt 95]

[KL-2] Order continuing Motion for Relief from Stay and Adequate Protection Order filed 8/13/21 [Dckt 102], to be heard 9/23/21 at 11:00 a.m.

U.S. Trustee Report at 341 Meeting filed 8/25/21

The Status Conference is xxxxxxx

SEPTEMBER 23, 2021 STATUS CONFERENCE

The court has set for hearing on the court's September 23, 2021 calendar the continued hearing on the Motion for Relief From the Automatic Stay filed by Wilmington Savings Fund Society, FSB ("Creditor WSFS"). DCN KL-1. The court has issued an adequate protection order requiring the Debtor in Possession to make the current post-petition payments to Creditor WSFS and an additional amount of $400 a month to be held in an impound for payment of real property taxes on the property that secures Creditor WSFS claim. Order, Dckt. 102.

On September 13, 2021, Creditor WSFS filed a Supplemental Declaration in support of the Motion for Relief From the Stay. Dckt. 103. The testimony provided therein is that the Debtor in

Possession tendered payment for August 2021 (which payment is due by the 10th day of each month), but the check was returned for insufficient funds. *Id*., ¶ 5. Additionally, the testimony is that as of the September 13, 2021 declaration, no payment had been made for the September current payment and the $400 impound. *Id*.

No updated status report has been filed by the Debtor in Possession. As of the court's September 22, 2021 review of the Docket, no plan or disclosure statement has been filed. No monthly operating reports have been filed by Debtor in this case, with the first being due for March 2021 and each month thereafter.

Though the Debtor and Debtor in Possession lay blame on Debtor's ex-husband for failing to make the required payments on Creditor WSFS secured debt, the file does not reflect Debtor in Possession enforcing any rights against the ex-husband arising under any marital settlement agreement or dissolution order.

At the Status Conference, **xxxxxxx**

July 22, 2021 Status Conference

This Chapter 11 case was filed on March 30, 2021. This case was originally filed under Chapter 13 of the Bankruptcy Code, with the court entering an order converting it to Chapter 11 on May 26, 2021. Order, Dckt. 38. In the Civil Minutes from the hearing on the Motion to Convert, the court identified some challenges Debtor and her counsel might have to address. Debtor in Possession filed a Status Report on July 14, 2021. Dckt. 83. The Debtor in Possession anticipates hiring special counsel to prosecute litigation concerning rights of the Bankruptcy Estate. One will be asserting a breach of the marital settlement agreement with Debtor's ex-spouse. The second is to protect the estate's 20% interest in the Jerry Davale Trust.

Debtor in Possession reports that she is current on all mortgages, except that of Wilmington. The Docket discloses that Wilmington Savings Fund Society, FSB filed a Motion for Relief From the Stay on July 12, 2021. Dckt. 75. In the Motion it is alleged that the loan secured by the Debtor's property, which is now property of the Bankruptcy Estate, has been in default for more than eight and one-half years. Debtor in Possession projects having a plan and disclosure statement filed by September 15, 2021.

2. **16-90157-E-7 DARYL FITZGERALD** **CONTINUED TRIAL RESCHEDULING**
18-9011 **CONFERENCE RE: COMPLAINT**
FITZGERALD V. TRELLIS COMPANY **6-25-18 [1]**

Plaintiff's Atty: Pro Se
Defendant's Atty: Robert Scott Kennard

Adv. Filed: 6/25/18
Answer: 7/26/18

Nature of Action:
Dischargeability - student loan
Dischargeability - other

Notes:
Continued from 8/31/21. On or before September 14, 2021, counsel for Defendant Trellis Company shall deliver to Plaintiff-Debtor Daryl Fitzgerald copies of all promissory notes and loan documents that Defendant asserts document obligations of Plaintiff-Debtor for loans made to Plaintiff-Debtor and not for student loans made to Plaintiff-Debtor's. Defendant and counsel for Defendant to appear in person at continued hearing.

The Trial Scheduling Conference is xxxxxxx

SEPTEMBER 23, 2021 TRIAL SCHEDULING STATUS CONFERENCE

On September 16, 2021, Defendant Trellis Company filed a Status Report for this Adversary Proceeding. Dckt. 181. At the heart of this dispute is Plaintiff-Debtor's assertion that his purported signature on the refinanced consolidated student loans of his ex-wife and Plaintiff-Debtor (if any) was forged. Plaintiff-Debtor asserts that he never had any student loans in his name.

Defendant states that Plaintiff-Debtor was obligated on Perkins and Stafford student loans during the period 1991 through 1994 for his attendance of California State University Chico. Exhibit A is a printout of the alleged student loans. Dckt. 182. These appear to total $55,648.00. The court says "appears" because Defendant does not provide a computation of such amounts.

Then, later in the Status Report Defendant states that the total of the consolidated loan (Debtor's ex-wife's loans and Debtor's personal loans) was only $35,997.91, with $16,102.48 attributable to Plaintiff-Debtor's loan. Thus, it would appear that Debtor made substantial payments on his loans that Defendant asserts he obtained.

Defendant then states that the balance on the consolidated loan has grown to $81,949.19 as of March 2, 2015.

Though the parties have attempted a judicial mediation, they were unable to successfully

schedule such with the designated judicial mediator.

The Status Report states that Defendant has tendered an offer to accept a reduced loan amount which it computes to be the $19,845.93 balance on Plaintiff-Debtor's prior to the asserted consolidation, which effectively waives 24 years of accrued interest. A deadline of September 21, 2021 was imposed on the settlement offer.

No further pleadings regarding settlement have been filed as of the court's review of the Docket on September 22, 2021 at 4:56 p.m.

On Plaintiff-Debtor's Schedules from 2016 when his bankruptcy case was filed, he reported having gross monthly income of $6,934.90 from his employment at UC Merced. 16-90157; Schedule I, Dckt. 1 at 36. After deducting taxes, mandatory retirement contribution, repayment of retirement loans, and other expenses, Plaintiff-Debtor computes his monthly take home income to be $4,678.28. *Id*., at 37. On Schedule J Debtor lists a spouse as a dependent (for which no income is listed on Schedule I) and two children who now, in 2021, are adults. *Id*., at 38. Debtor lists ($6,486.00) in monthly expenses, stating that he runs ($1,807) a month in the red.

These expenses include making a $586 a month payment for student loans; two car payments of $556 and $480 a month; $500 for transportation; and $400 for cell phone, cable, and internet. With the adult children out of the house by 2021 and a spouse (if it is not Debtor's ex-spouse who is listed) who may well be able to work to contribute for her monthly expenses, it appears that Plaintiff-Debtor's current monthly expenses may be substantially different than they were in 2016.

Though this judge is not a settlement or mediation judge, he does have some observations dating back to that portion of his former legal practice in representing creditor and the debt collection industry (as well as debtor who needed to effectively communicate with the creditor and "educate" the creditor on what a reasonable repayment plan was on an economic basis).

Defendant has constructively come forward and proposed reducing the claim to the balance it was in the mid-1990's – $19,845.93. It is proposed that this obligation be amortized over 15 years at 8% interest. Status Report, p. 8:3-6; Dckt. 181. Using the Excel Loan Amortization Program, the court computes the monthly payment on this amount to be $189.65.

At the hearing, Scheduling Status Conference, **xxxxxxx**

July 29, 2021 Trial Scheduling Status Conference

This Adversary Proceeding is one to determine whether a student loan obligation is nondischargeable. Plaintiff-Debtor appearing in pro se, the parties (with the court concurring) did not set this matter for a Zoom trial while the courthouse was closed.

The Parties expressed a desire to avail themselves of a judicial mediation while the trial date was being trailed pending the reopening of the Courthouse. The court ordered the appointment of a mediation judge (after confirming with that judge he would so serve). Unfortunately, it is reported that the parties have not been able to get the mediation process started. There have been some extraordinary

matters assigned to the mediation judge by the Ninth Circuit, which may play into the "challenges" presented to the parties.

At the Status Conference, the court addresses with the parties what issues remain for trial, what factual determinations would exist for the court, and how much of what remains are "merely" legal conclusions and rulings of the court.

At the Status Conference, Defendant asserted that is in addition to the Vanessa student loans, it was asserted that Plaintiff-Debtor has personal loans he is obligated on. Plaintiff-Debtor stated that he has not been provided with documentation of such.

The court continued the Scheduling Conference to allow Defendant to provide documentation of the asserted personal loans of Plaintiff-Debtor and for the parties to focus on such obligations, if any, rather than the disputed Vanessa loans.

August 31, 2021 Trial Scheduling Status Conference

No updated pleadings were filed prior to the Status Conference. The Parties addressed the outstanding issues with the court at the hearing, reporting that Creditor did not provide the documents and computation of the obligation, but did send him the computation today. Counsel for Defendant stated that Defendant (acting through its counsel) presumed Plaintiff-Debtor had the notes and loan documents for student loans alleged to have been made to Plaintiff-Debtor personally and not his ex-wife's student loans. This is contrary to what was stated at the Status Conference that Defendant would provide copies of the documents to help the Plaintiff-Debtor understand what alleged personal debtors, not those based on the debt consolidation agreement for which Plaintiff-Debtor alleges his signature was forged.

Confusion over the obligations was apparent. Rather than have the parties, who appear to have the ability to communicate, stumble to trial, the court continues the status conference, orders a representative of Defendant and Defendant's counsel appear in court at the continued status conference, and to serve prior to the continued Status Conference copies of all notes and other loan documents upon which claims against Plaintiff-Debtor are asserted for loans made to him personally

3. 20-25398-E-11 ALEJANDRO ALEJANDRO/ GRISELDA GONZALEZ

APPROVAL OF DEBTOR'S PROPOSED COMBINED PLAN AND DISCLOSURE STATEMENT FILED BY DEBTORS 7-19-21 [63]

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on July 20, 2021. By the court's calculation, 65 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Disclosure Statement is xxxxxxx.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: December 1, 2020

Background: This case involves the Debtors' Alejandro C. Alejandro and Griselda Gonzalez ("Debtor") second mortgage and an old Chapter 7. In 2010, Debtor filed a Chapter 7 and received a discharge.

The original second mortgage lender, Cal State 9, was listed in the schedules. After completion of the Chapter 7, Debtor received no monthly statements from Cal State 9. Debtor assumed the mortgage "was no longer a concern."

In 2019, Debtor received a "notice and intent to foreclose." To prevent foreclosure, Debtor filed for Bankruptcy.

Creditor/Class	Treatment	
Class 1A: SPS	**Claim Amount**	$361,079.03
	Impairment	No
Class 1B: Franklin Credit	**Claim Amount**	$162,370.24
	Impairment	Yes
	Interest Rate: 4.27%; $873.13 per month; 360 months term	
Class 2A: None	**Claim Amount**	
	Impairment	
Class 2B: Wells Fargo Bank, N.A.	**Claim Amount**	$2,500.00
	Impairment	Yes
	Amount to be paid: $0.00	
Class 2B: Mellen Law Firm	**Claim Amount**	$1,000.00
	Impairment	No

A. C. WILLIAMS FACTORS PRESENT

__Y__Incidents that led to filing Chapter 11

__Y__Description of available assets and their value

__**N**__Anticipated future of 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

__**N**__Identity of the accountant and process used

__Y__Future management of Debtor

__Y__The Plan is attached

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

OBJECTIONS

Bosco Credit LLC, Secured Creditor

Bosco Credit LLC, Creditor with secured claim classified as Class 1B ("Creditor"), is objecting to Debtor's proposed combined plan of reorganization for the following reasons:

> (1) Debtor have failed to provide "adequate information" as required by 11 U.S.C. § 1125(b); and
>
> (2) Debtor's proposed interest rate of 4.25% does not propose a fair and equitable treatment of Creditor's claim as required by 11 U.S.C. § 1129(b)(2)(A).

Dckt. 70.

Adequate Information

Regarding Debtor's lack of adequate information, Creditor claims Debtor has failed to remit a payment to Creditor since June of 2008. Additionally, Debtor has failed to make post-petition payments and has accrued interest on the loan since the filing date.

The plan fails to cure the default and provides for a new thirty-year loan without adequate interest.

Interest Rate

Regarding Debtor's proposed interest rate, Creditor claims Debtor severely understate the fair market interest rate. Debtor's current interest rate is set at 9.25%. The proposed fixed rate is 4.25%. Creditor disputes the proposed interest rate by stating it is not fair and equitable.

Fair and Equitable

Creditor further asserts that Debtor has failed to propose fair and equitable treatment of its claim by Debtor's: (1) lack of evidence as to why 4.25% is fair and equitable; (2) loan being in substantial default; (3) lack of evidence of a rental agreement on the property; (4) lack of evidence of reliable rental income; and (5) high risk of defaulting.

APPLICABLE LAW

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).

"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).

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

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. Servs., Inc.*, 39 B.R. 567 (Bank. 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. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

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).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide "adequate information." The term "adequate information" is defined in 11 U.S.C. § 1125(a)(1) to be,

> (1) "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;...

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert. denied* 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

DISCUSSION

On its face the disclosure statement shows that adequate information has been provided. However, the court notes there are serious questions as to whether the plan will be confirmable. [Fn.1.]

FN.1. The court is concerned regarding Debtor's ability to pay the proposed plan. There being a negative monthly cash-flow of $625.40 on the rental property and only $996.21 of disposable income from wages. This leaves Debtor with less than a $400.00 cushion. Thus, should anything unexpected happen to Debtor or the property, Debtor may fail to make payments. The court further notes that expenses for the Rental Property do not include any maintenance, repairs, fees, or the like. Additionally, Debtor's expenses relating to shelter, food, and transportation raise questions as to the reasonableness or accuracy of the expenses to care for three adults.

With respect to Creditor's, Bosco Credit, LLC's opposition of the Disclosure Statement, Creditor first fails to provide the court with the Bankruptcy Code basis which states the Debtor cannot modify the interest rate or loan term for the rental property. But notes Creditor's concern that in terms of the future status of Debtor, no future rental agreement has been provided which would account for the future income.

The court refrains from further discussion of Creditor;'s opposition where the objections raised are more akin to grounds for objecting to the confirmation of the plan. This being for approval of the Disclosure Statement, at this point, the court cannot rule on the merits claimed by Creditor.

At the hearing, **xxxxxxx**

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 for Approval of the Disclosure Statement filed by Alejandro C. Alejandro and Griselda Gonzalez ("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 **xxxxxxx**