

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**December 10, 2018 at 10:00 a.m.**

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1. 15-29136-A-12 P&M SAMRA LAND MOTION TO  
NCK-15 INVESTMENTS L.L.C. MODIFY PLAN  
11-4-18 [635]

**Final Ruling:** This motion will be dismissed as moot as it is superseded by a subsequent motion to modify the chapter 12 plan filed on November 5. Docket 643.

2. 15-29136-A-12 P&M SAMRA LAND MOTION TO  
NCK-16 INVESTMENTS LLC MODIFY PLAN  
11-5-18 [643]

**Tentative Ruling:** The motion will be denied.

The debtor asks the court to modify its confirmed chapter 12 plan. Dockets 574 & 582. in order to delay payments to creditors. The modified plan seeks to delay plan dividends to creditors but it will not change the amounts of those dividends. This change is necessitated by the debtor's desire to its real property in Nicolaus, California, rather than continue business operations on it. The debtor maintains that a sale will pay all claims secured by the property in full. There are no unsecured creditors in the case. See Dockets 15 & 16.

The chapter 12 trustee and first deed of trust holders, Socotra Fund, L.L.C., Gary E. Roller Profit Sharing Plan, and Roller Family Living Trust, oppose the motion. Creditor Ag-Seeds Unlimited's opposition has been resolved by a stipulation.

The court may modify a plan after confirmation to alter the amount of payments on a class of claims, to alter the time for such payments, or to alter the amount of distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan. 11 U.S.C. § 1229(a)(1)-(3). 11 U.S.C. §§ 1222(a), 1222(b), and 1223(c), as well as the requirements of 11 U.S.C. § 1225(a), apply to any post-confirmation plan modification.

The motion will be denied. The debtor has not established feasibility of the proposed plan.

The debtor has not established that it can sell the property for \$2.7 million. The declaration from its real estate agent is to the effect that he believes the property can sell for "at least \$2,700,000." Docket 646. This is not admissible. There is no basis in the declaration for the agent's qualifications to render an opinion about the value of the property. Docket 646; Fed. R. Evid. 701 & 702.

Moreover, the assertion that there is a \$2,497,500 offer for the property is inadmissible hearsay. Docket 677; Fed. R. Evid. 801(c) & 802. There is no declaration from the debtor explaining or even mentioning the offer. See Dockets 645, 646, 675. There also is no evidence that the offer is an arms-length one.

Next, the debtor has not established that a sale for \$2.7 million would pay all secured claims in full. As mentioned earlier, there are no unsecured claims in the case.

The property is encumbered by five claims and there is conflicting or insufficient information about the amounts owed on each claim:

- 1) First deed of trust holder: Socotra Fund, L.L.C., Gary E. Roller Profit Sharing Plan, and Roller Family Living Trust; it is unclear whether the claim is for \$1,447,487.62 (plan) or \$1,197,474.29 (POC);
- 2) Second deed of trust holder: IRA Services Trust Company CFBO Shankutala D. Saina IRA Account No. 286181; it is unclear whether the claim amount is for \$154,557.20 (plan) or \$223,144.73 (4/28/17 POC);
- 3) Third deed of trust holder: Scott Chau; Mr. Chau did not file a proof of claim but the plan estimates the claim at \$200,000;
- 4) Fourth deed of trust holder: Thiel Family Trust did not file a proof of claim but the plan estimates the claim at \$528,080; and
- 5) Fifth priority claim: Ag-Seeds Unlimited; it is unclear whether the claim amount is \$170,000 (plan) or \$210,070.82 (POC).

As the claims potentially exceed \$2,608,783.17, with sales costs of approximately 8% (\$216,000 on a sale of \$2.7 million), there will insufficient funds to pay all creditors in full from a \$2.7 million sale. Accordingly, the motion will be denied.

3. 15-29136-A-12 P&M SAMRA LAND INVESTMENTS L.L.C. MOTION TO DISMISS CASE OR TO CONVERT CASE 9-24-18 [616]

**Tentative Ruling:** The case will be dismissed.

Secured creditors The Socotra Fund, L.L.C., Gary E. Roller Profit Sharing Plan, and Roller Family Living Trust seeks dismissal or conversion of the case to chapter 7.

The debtor and junior to movants secured creditor Ag Seeds Unlimited oppose the motion.

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 . . . (6) material default by the debtor with respect to a term of a confirmed plan."

The court denied the request for conversion on November 13. A farmer's chapter 12 case may not be converted to chapter 7 by anyone other than the farmer in the absence of the farmer's fraud in the chapter 12 case. See 11 U.S.C. § 1208(a) & (d). There is no evidence of fraud.

As to the request for dismissal, the movants contend that the debtor has defaulted under the terms of its plan. The plan payment due May 25, 2018 was paid late, on August 1, 2018. And, the debtor has not made the monthly payments due June 25, 2018 and thereafter.

The debtor does not dispute these defaults. Instead, the debtor's sole defense is that it wishes to confirm a modified plan that forgives the prior delinquencies and suspends all future payments except a lump sum payment to be derived from a sale of its principal asset . . . if there is a sale. The court has denied confirmation of that modified plan. Given this and the debtor's payment defaults under the existing plan, cause exists for dismissal. See 11 U.S.C. § 1208(c)(1), (2), (6).

Accordingly, the case will be dismissed.