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Central District of California
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CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re

R44 LENDING GROUP, LLC,

Chapter 11 Debtor and Debtor-In-Possession.

Chapter 11 Debtor and Debtor-In-Possession.

Case No. 2:18-bk-15559-NB

Chapter 11

ORDER CONFIRMING DEBTOR'S FIFTH AMENDED PLAN OF REORGANIZATION

Confirmation Hearing

Date: March 5, 2021
Time: 10:00 a.m.
Place: Courtroom 1545
255 East Temple Street
Los Angeles, CA

The hearing on confirmation of chapter 11 debtor and debtor-in-possession R44 Lending Group, LLC's (the "Debtor") Fifth Amended Chapter 11 Plan (ECF #134) as modified by the Debtor's plan modifications (ECF#s 197, 216) (the "Plan") came regularly for hearing on March 5, 2021, (the "Confirmation Hearing"), appearances were noted on the record, the Honorable Neil W. Bason, United States Bankruptcy Judge, presiding. The Court, having considered and reviewed the Plan, the Fifth Amended

Disclosure Statement (the "Disclosure Statement," which was approved by Order of this Court on March 23, 2020, at ECF #152), the documents, testimony and pleadings filed in support of and in opposition to confirmation of the Plan (*see generally* Stipulation (ECF # 218) (listing key documents) and order approving same (ECF # 221)), as well as this Court's order determining the values of Debtor's property (ECF # 151), this Court's order regarding voting procedures and balloting (ECF # 152), Debtor's notice to creditors (ECF # 191), Debtor's ballot summary (ECF # 196), this Court's order regarding remote trial procedures (ECF # 194), and the other relevant filed documents and records of this Court (*e.g.,* Tenants' exhibits at ECF # 222), and having heard testimony and cross-examination of witnesses and argument of counsel, and having made findings of fact and conclusions of law as stated on the record at time of the Confirmation Hearing (as authorized by Federal Rule of Civil Procedure 52(a)(1), incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014(c)), and for the additional reasons stated below and in this Court's December 17, 2019 tentative ruling on its interpretation of California law (ECF# 225), and good cause existing, hereby Orders as follows:

1. The Plan and exhibits thereto and each and all of the provisions contained therein and the provisions set forth in the Disclosure Statement and exhibits thereto, are hereby approved and confirmed under the following provisions of the United States Bankruptcy Code.

2. The Plan contains all mandatory provisions of § 1123.

a. The Plan properly classifies claims as required by 11 U.S.C. § 1123(a)(1).

b. The Plan specifies those classes of claims or interests that are unimpaired under the plan as required by 11 U.S.C. § 1123(a)(2).

c. The Plan specifies the treatment of those classes of claims or interests that are impaired under the plan as required by 11 U.S.C. § 1123(a)(3).

d. The Plan provides the same treatment for each claim or interest in a particular class, except where a member of a particular class agrees to less favorable treatment as required by 11 U.S.C. § 1123(a)(4).

e. The Plan provides adequate means for the Plan's implementation as required by 11 U.S.C. § 1123(a)(5).

f. 11 U.S.C. § 1123(a)(6) is not applicable because no equity securities are being issued under the Plan.

g. The Plan has no provisions with respect to the selection of officers and directors, thus 11 U.S.C. § 1123(a)(7) is not applicable.

h. The Debtor is not an individual, therefore 11 U.S.C. §1123(a)(8) is not applicable.

3. The Debtor has met its burden of proving compliance with all of the elements of 11 U.S.C. § 1129(a).

a. The Plan complies with the applicable provisions of the Bankruptcy Code pursuant to 11 U.S.C. § 1129(a)(1).

b. Debtor, as the proponent of the Plan, has complied with the applicable provisions of the Bankruptcy Code pursuant to 11 U.S.C. § 1129(a)(2).

c. The Plan was proposed in good faith pursuant to 11 U.S.C. § 1129(a)(3), which provides that this Court "shall confirm" the Plan only if (in addition to the other requirements of § 1129(a)) "[t]he plan has been ***proposed in good faith*** and not by any means forbidden by law." (Emphasis added.) The sole objection to confirmation was made under this statutory provision, by certain tenants (the "Tenants") at the Park Granada mobile home park owned and operated by Debtor. The Tenants assert that Debtor's "secured creditors are not at arm's length and that this Chapter 11 Petition has been brought in bad faith for the purpose of stripping the Property [of the Tenants' asserted rights under their tenancies] and avoiding [the] relocation costs afforded to the Park Granada

Tenants." Tenants' Obj. (dkt. 205), p. 2:6-9. Debtor points out that the Plan includes payments to the Tenants (in dollar amounts greater than the Tenants' relocation costs, according to the unrebutted evidence at trial). *See* Plan (dkt. 134), Ex. A, at PDF p. 10 (Class 6) and PDF pp. 14-16, *and* 2d Modif. (dkt. 216). Debtor also points to a provision of California law that takes away the municipality's authority to require the normal park closure procedures "[i]f the closure or cessation of use of a mobilehome park ***results from the entry of an order for relief in bankruptcy*** …" Cal. Gov't Code § 65863.7(f) (emphasis added). Debtor asserts, and the Tenants have not disputed, that Debtor can close the park if this statutory exception is applicable and the Plan is confirmed. *See id.*, Cal. Civ. Code §§ 798.55 *and* 798. 56, *and* Carson Municipal Code § 9128.21. As this Court has expressed in various ways, it interprets the above-quoted statutory words "results from" to mean that Debtor must establish that the bankruptcy process is not being used ***simply as an "end run"*** around the normal requirements to close a mobile home park. Debtor has responded that it intends no such end run, and instead its debts, including attorney fees in the range of $2 million that Debtor incurred in (successfully) defending litigation with current and former Tenants, were the reasons for its resort to bankruptcy and proposal of its Plan. This Court treated all of the foregoing issues as being properly raised by the Tenants because all those issues are subsumed within the main issue about whether the Plan has been proposed in good faith. Specifically, at the confirmation hearing this Court ruled and found as follows.

i. Although the Tenants did not file proofs of claim, they do have standing to raise their objection under § 1129(a)(3).

ii. On the one hand, the Tenants are correct that under § 1129(a)(3) this Court should consider "the process of plan development" and whether the Plan "achieves a result consistent with the objectives and

purposes of the Code." *In re Garvin,* 922 F.3d 1031, 1036 n.3 (9th Cir. 2019) (citations omitted). That consideration includes whether the Plan has been used simply as an end run around otherwise applicable requirements to close the mobile home park.

iii. On the other hand, Debtor is correct that there is no *per se* rule against taking advantage of statutory provisions that exempt Debtor from requirements that would apply outside of bankruptcy. *See In re Sylmar Plaza,* 314 F.3d 1070, 1074 (9th Cir. 2002).

iv. Based on the totality of the circumstances of this case, including the credibility of the witnesses and the other findings of fact stated on the record, the Tenants have not established anything improper about Debtor borrowing funds from affiliates to pay for the (enormous) expenses of litigating with former and current Tenants. In fact, supposing for the sake of discussion that an arm's length third party would not have loaned Debtor the money, that only reinforces the conclusion that Debtor staved off bankruptcy longer than it could have done if it relied only on third party lenders, and staving off bankruptcy is the opposite of filing a bankruptcy petition just to do an end run around the requirements to close a mobile home park.

v. This Court is acutely aware that the Tenants are desperate to save their homes and that if the mobile home park closes then effectively they will lose their homes, or have to move to a location distant from family, friends, and current jobs. But as set forth above Debtor had no choice but to address its enormous debt arising from litigation with former and current Tenants. Both the process of plan development and the results of the Plan are consistent with the objectives and purposes of the Bankruptcy Code, especially because

the Plan went through multiple revisions and the Plan "shares the hurt" among the Tenants, the general unsecured creditors who are only being paid a small fraction of what they are owed, the secured creditors who are promised less than what they are owed, and other stakeholders.

vi. For all of the foregoing reasons, this Court concludes under § 1129(a)(3) that ***the Plan has been "proposed in good faith*** and not by any means forbidden by law" (emphasis added).

d. The Plan provides that payment of fees is subject to Court approval and therefore satisfies 11 U.S.C. § 1129(a)(4).

e. The Plan discloses the identity and affiliations of any individual proposed to serve as a director, officer, or voting trustee of the debtor as required by 11 U.S.C. § 1129(a)(5)(A)(i).

f. 11 U.S.C. § 1129(a)(6) is not applicable.

g. Pursuant to 11 U.S.C. § 1129(a)(7), all holders of a claim or interest in such impaired class either (i) accepted the plan, or (ii) shall receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

h. Pursuant to 11 U.S.C. § 1129(a)(8), all creditors that voted on the Plan voted in favor of the Plan and therefore, the Plan complies with 11 U.S.C. § 1129(b).

i. The Plan provides for payment of administrative claims in full on the effective date unless otherwise agreed as required by 11 U.S.C. § 1129(a)(9)(A).

j. The Plan satisfies the requirements for deferred cash payments to be made to accepting holders of non-priority tax claims pursuant to 11 U.S.C. § 1129(a)(9)(B)(i)-(ii) and 11 U.S.C. § 1129(a)(9)(C).

k. All classes of claims that are impaired under the plan, Class 2A, 2B, 2C, 2D, 4A, 5A, have accepted the Plan, as required by 11 U.S.C. § 1129(a)(10). True, the Tenants are designated in Class 6 (Plan, dkt. 134, Ex. A, at PDF p. 10), and Class 6 did not vote to accept the Plan, but the Tenants did not file any proofs of claim and they have no allowed claims so § 1129(a)(10) is inapplicable to Class 6. Alternatively, Debtor qualifies for "cramdown" as set forth in paragraph "4" of this order, below.

l. The Plan is feasible pursuant to 11 U.S.C. § 1129(a)(11).

m. The Plan provides that all fees payable under 28 U.S.C. § 1930 shall be paid on or before the Effective Date as required by 11 U.S.C. § 1129(a)(12).

n. Debtor has represented that it has ~~The Plan provides~~ no retiree benefits provision, and 11 U.S.C. § 1129(a)(13) is not applicable.

o. The Debtor is not an individual and 11 U.S.C. § 1129(a)(14) is therefore not applicable.

p. The Debtor is not an individual, and 11 U.S.C. § 1129(a)(15) is therefore not applicable.

q. The Plan provides that all transfers of property of 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 as required by 11 U.S.C. § 1129(a)(16).

4. Because the Tenants did not file any proof of claim or interest and have no allowed claims or interests, and because the nondiscrimination and "fair and equitable" requirements of 11 U.S.C. § 1129(b) apply only "with respect to each class of *claims* or *interests*" that is impaired and non-accepting (emphasis added), those requirements are inapplicable. Alternatively, even if ~~Pursuant to~~ 11 U.S.C. § 1129(b) were to apply to the

Tenants, the Plan does not discriminate unfairly and is fair and equitable as to the Tenants, for the reasons stated above regarding 11 U.S.C. § 1129(a)(3).

5. The Effective Date (as defined in the Plan) shall be ~~as~~ fifteen days after entry of this Order.

6. In accordance with Local Bankruptcy Rule 3020-1(b), within 120 days of the entry of this order, the Debtor shall file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report shall be served on the United States Trustee, the 20 largest unsecured creditors, and those parties who have requested special notice. Further reports shall be filed every 120 days thereafter and served on the same entities, unless otherwise ordered by the court. A post-confirmation status conference will be held on June 30, 2021, at 2:00 p.m. in Courtroom 1545.

7. The provisions of this Order, as well as all provisions of the Plan and the exhibits thereto and the Disclosure Statement and the exhibits thereto are binding in all respects upon the Debtor, each creditor, and each party-in-interest, including, without limitation, any and all occupants of the Debtor's real property commonly known as 218 W. Carson Street, Carson, California, whether or not such creditor or party-in-interest voted in favor or against the Plan.

8. Except as provided in the Plan, all persons or entities who have held, hold, or may hold claims against Debtor shall be permanently enjoined on and after the Effective Date, from: (i) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against Debtor, Reorganized Debtor, Debtor's property, the Estate, or the proceeds of such property, on account of any such claim or interest; (ii) creating, perfecting or enforcing any encumbrances of any kind against Estate property or the Estate's interests in such property, on account of any such claim or interest; (iii) asserting any right of setoff, subrogation, or recoupment of any kind

due to Debtor or against the property or interest in property of the Estate on account of any claim or interest; and (iv) asserting any claim or interest against Debtor or the Estate.

9. The Debtor is hereby authorized, as set forth in the Plan and the Disclosure Statement and at the time of Confirmation Hearing, to obtain exit financing without further Order of this Court and the recordation of a deed of trust in favor of the exit financing lender shall be subordinated only to liens of the Los Angeles County Treasurer & Tax Collector and to no other liens and/or encumbrances.

10. If the case is converted to one under chapter 7, the property of the reorganized debtor, or of any liquidation or litigation trust, or of any other successor to the estate under the Plan, that has not been distributed under the Plan will be vested in the chapter 7 estate, except for property that would have been excluded from the estate if the case had always been one under chapter 7.

IT IS SO ORDERED.

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Date: March 15, 2021

Neil W. Bason
United States Bankruptcy Judge