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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

CHANGES MADE BY COURT

In Re:

OLINDA ESPERANZA LYTLE

Debtor-in-Possession

CASE NO.: 2:20-bk-12166-NB

Chapter 11

**ORDER CONFIRMING DEBTOR'S PLAN
OF REORGANIZATION**

PLAN CONFIRMATION HEARING

DATE: September 29, 2020

TIME: 1:00 p.m.

COURTROOM: 1545

PLACE: ~~255 E. Temple Street~~
Los Angeles, CA 90012

Telephonic Appearance
Judge: Honorable Neil W. Bason

At the above mentioned time and place, a plan confirmation hearing was held before the Honorable Neil W. Bason, United States Bankruptcy Judge, to determine whether or not the Amended Chapter 11 Disclosure Statement [Docket No. 96] and Amended Chapter 11 Plan of Reorganization [Docket No.95], proposed by Olinda Esperanza Lytle, debtor, (the "Plan") should be confirmed.

The Court having found that,

1. This plan confirmation hearing was duly noticed to all creditors, all interest holders, the Office of the United States Trustee, and all other parties entitled to notice;

1 2. The Court has found the Plan met all the requisite requirements for confirmation under
2 §1129(a) as to all classes.

3 3. The Plan is proposed in good faith and not by any means forbidden by law.

4 4. The Plan's provisions are consistent with the Bankruptcy Code.

5 5. The Plan is both feasible and not likely to be followed by the need for further
6 reorganization or liquidation.

7 6. The Effective Date of the Plan is the fourteen days following the date of the entry of the
8 order of confirmation.

9 For the reasons set forth above, and as stated in this Court's tentative ruling, a copy of which is
10 attached hereto as Exhibit 1 and incorporated as the final ruling, it is hereby ORDERED:

11 1. The Amended Disclosure Statement is approved on a final basis and the Plan is confirmed
12 under 11 U.S.C.1129(a) & (b), subject to incorporation of the terms of the stipulation with
13 PHH Mortgage Corporation (Docket #63, 79) per Fed. R. Bank. P. 3019(a),

14 2. Upon substantial consummation of the Plan, the debtor shall file an Application for Final
15 Decree as required by Federal Rule of Bankruptcy Procedure 3022;

16 3. If the above-referenced case is converted to one under chapter 7, the property of the
17 reorganized debtor, or of any liquidation or litigation trust, or of any other successor to the
18 estate under the plan, that has not been distributed under the plan shall be vested in the
19 chapter 7 estate, except for property that would have been excluded from the estate if this
20 case had always been one under chapter 7.

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1 4. A telephonic post-confirmation status conference will be held on January 12, 2021 at 1:00
2 p.m. ~~Status report is due~~ By no later than December 29, 2020, the Reorganized Debtor shall
3 file a status report explaining what progress has been made toward consummation of the
4 confirmed plan of reorganization. The initial report shall be served on the United States
5 trustee, the 20 largest unsecured creditors, and those parties who have requested special
6 notice. Further reports shall be filed every 120 days thereafter and served on the same
7 entities, unless otherwise ordered by the court.
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24 Date: October 8, 2020



Neil W. Bason
United States Bankruptcy Judge

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EXHIBIT 1

Tentative Ruling for 9/29/20:

Appearances required by counsel for the debtor.

(1) Current issues

(a) Debtor's Disclosure Statement (dkt. 83) and Plan (dkt. 82), PHH Mortgage Corporation's limited objection (dkt. 91), Debtor's amended Disclosure Statement (dkt. 96) and amended Plan (dkt. 95, "AmPI"), proof of service of solicitation package (dkt. 103), ballot summary (dkt. 104), no opposition is on file

As a preliminary matter, even though there is no opposition on file, this Bankruptcy Court has an independent obligation to review the Plan and Disclosure Statement for compliance with 11 U.S.C. 1129. Based on that review, the tentative ruling is to approve the Disclosure Statement on a final basis and confirm the Plan.

The starting point is Debtor's ballot summary (dkt. 104). Debtor has one consenting impaired class (Class 2A), and two classes that did not vote (Classes 2B and 4A), and Debtor requests "cramdown" (confirmation with fewer than all classes accepting, per 11 U.S.C. 1129(b)). One of the cramdown requirements is the "absolute priority rule" of section 1129(b)(2)(B)(ii), which essentially provides that Debtor cannot receive or retain any property - e.g., Debtor's rental property - "on account of" her prepetition interest in that property. The corollary is that Debtor can receive or retain property on account of "new value," and, as stated in the posted "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (the "Procedures"):

new value must be (among other things) "reasonably equivalent to the value or interest received" (*In re Bonner Mall P'ship*, 2 F.3d 899, 908 (9th Cir. 1993) (citations omitted)) but by definition \$0 is "reasonably equivalent" to whatever residual value exists in *fully encumbered* property (which is what debtors often retain).

The tentative ruling is that, because Debtor's rental property appears to be fully encumbered under the Plan, the "reasonably equivalent" element of the new value test is satisfied in this case. The Procedures go on to state:

[In addition,] new value must be "necessary" and "substantial" (*id.*), which requires whatever cash is "necessary" to the success of the proposed reorganization, as opposed to a "token" cash infusion. *In re Snyder*, 967 F.2d 1126, 1131-32 (7th Cir. 1992) (cited in *Bonner Mall*, 2 F.3d at 908). When a debtor is devoting all or almost all disposable income to the plan then it may be "necessary" for feasibility (§ 1129(a)(11)) to have a cash infusion to cover the type of unanticipated emergency expenses that typically arise, and Judge Bason has accepted this as "substantial" new value even if it does not increase the dividend to unsecured creditors. ... See also *In re Ambanc La Mesa L.P.*, 115 F.3d 650, 656-657 (9th Cir. 1997) (not deciding among various ways to measure if contribution is "substantial," but holding that \$32,000 contribution, less than 0.5% of unsecured debt, was *de minimus* as a matter of law).

The tentative ruling is that, for analogous reasons, Debtor's Plan satisfies the new value requirement. First, part of the funding for Debtor's Plan is "new" in that it is

1 not subject to the absolute priority rule: although *future* earnings do not count as "new
2 value," that is different from Debtor's cash in the bank accumulated from postpetition
3 earnings, which are not counted for purposes of the absolute priority rule. See 11
4 U.S.C. 1129(b)(2)(B)(ii) (exception providing that individual debtor "may retain property
5 included in the estate under section 1115"). Despite Debtor's right to "retain" such
6 property under section 1129(b)(2)(B)(ii), she proposes to use such cash to make
7 \$9,325.00 in payments on the Effective Date. See Disclosure Statement (dkt.96), Ex.C
8 (lines 1 & 11a).

9 Second, the tentative ruling is that this cash infusion is "necessary" because
10 otherwise there are insufficient funds to make the payments required on the Effective
11 Date under the Bankruptcy Code. See 11 U.S.C. 1129(a)(9)(A) &(a)(12).

12 Third, the tentative ruling is that the \$9,325 is "substantial" for two alternative
13 reasons. For one thing, Debtor's payment is approximately 4.4% of unsecured claims
14 (\$9,325 / \$212,238.88 (from dkt.95, Ex.A, Class 4A) = 4.39%). Although that
15 percentage is not huge, it is meaningful, and not *de minimus* as a matter of law. Cf.
16 *Ambanc La Mesa L.P.*, 115 F.3d 650, 656-657. Alternatively, the tentative ruling is that
17 comparing the dollar amount of new value to general unsecured claims is not the only
18 way to measure what is "substantial," and \$9,325 is very substantial in comparison to
19 (a) Debtor's modest earnings despite working two jobs, (b) Debtor's very modest
20 budget, including living in a rental apartment for only \$1,000 per month (while reserving
21 \$300 per month for "miscellaneous" contingencies), and (c) Debtor's modest retention of
22 property (she is not proposing to retain a mansion, for example). To illustrate the last
23 point, consider a hypothetical situation in which a debtor proposes to retain property
24 worth \$10,000 and contributes \$10,000 in new value. It is hard to conceive how that
25 could be a violation of the absolute priority rule, even if \$10,000 were some tiny fraction
26 of creditors' claims.

27 For all of these reasons the tentative ruling is that Debtor's proposed Plan
28 satisfied the absolute priority rule. In addition, based on this Court's review of Debtor's
29 proposed budget and monthly operating reports, the tentative ruling is that her Plan
30 meets the "feasibility" requirements of 11 U.S.C. 1129(a)(11). Finally, the tentative
31 ruling is that Debtor's Plan meets the "fair and equitable" requirements (11 U.S.C.
32 1129(b)), the "good faith" requirement (11 U.S.C. 1129(a)(3)), and all the other
33 requirements for confirmation.

34 *Proposed orders:* Debtor is directed to lodge two proposed orders via LOU
35 within 7 days after the hearing date: (i) an order approving the Disclosure
36 Statement on a final basis, and (ii) an order confirming the Plan and setting a
37 post-confirmation status conference on the date set forth below, and attach a
38 copy of this tentative ruling, thereby incorporating it as this Court's final ruling,
39 subject to any changes ordered at the hearing. In addition, the confirmation
40 order should include the language required by the local rules regarding post-
41 confirmation status reports and the effect of any future conversion. See LBR
42 3020-1(b), 9021-1(b)(1)(B).

43 (2) Deadlines/dates. This case was filed on 2/26/20.

44 (a) Bar date: 6/3/20 (dkt. 30; timely served, dkt. 35)

1 (b) Procedures order: dkt. 5 (not timely served, but eventually served which
gives notice of matters therein, dkt. 34)

2 (c) Plan/Disclosure Statement*: see above

3 (d) Post-Confirmation status conference: 1/12/21 at 1:00 p.m.

*Warning: special procedures apply (see order setting initial status conference).

4 If appearances are not required at the start of this tentative ruling but you wish to
5 dispute the tentative ruling, or for further explanation of "appearances required/are not
6 required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov)
7 then search for "tentative rulings." If appearances are required, and you fail to appear
8 without adequately resolving this matter by consent, then you may waive your right to
be heard on matters that are appropriate for disposition at this hearing. Pursuant to
9 Judge Bason's COVID-19 procedures, all appearances are telephonic via CourtCall at
(888) 882-6878.

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