

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:	:	
	:	
JOSEPH'S TRANSPORTATION,	:	CHAPTER 11
	:	CASE NO. 18-14282-FJB
Debtor.	:	
	:	
	:	
	:	

OBJECTION TO DISCLOSURE STATEMENT

Customers Bank (“Customers Bank”), a secured creditor having a first priority security interest in personal property of Joseph’s Transportation, Inc. (the “Debtor”), by and through its undersigned counsel, hereby objects to the Disclosure Statement filed on September 18, 2019 (Dkt. No. 293) (the “Disclosure Statement”), which relates to the proposed Plan of Reorganization (Dkt. No. 292) (the “Plan”). As set forth more fully below, the Court should deny approval of the Disclosure Statement because it lacks adequate information as required by Section 1125 of the Bankruptcy Code.

FACTUAL BACKGROUND

1. On November 16, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor continues to operate and manage its business and property as a debtor in possession.

2. Customers Bank is the holder of a commercial note in the principal amount of \$525,900.00 executed by the Debtor on or about June 27, 2017 (the “Note”). On the same date, the Debtor executed a Master Security Agreement granting Customers Bank a first position security interest in a 2017 Van Hool CX45 Series Bus.

3. The terms of the Note required the Debtor to pay monthly installments of principal and interest in the amount of \$6,316.07 for 84 months commencing on August 6, 2017, with a final installment payment in the amount of \$105,100.00 due and payable on the maturity date of August 6, 2024.

4. The Disclosure Statement filed by the Debtor properly identifies \$13,053.17 as the amount of the arrearage owed to Customers Bank as of the Petition Date. It also correctly identifies the total balance of \$465,355.34 due and owing under the Note as of the Petition Date.

5. The Debtor has continued to make post-petition monthly installment payments to Customers Bank, albeit not on a regular basis and currently is short one post-petition payment.

6. Article III of the Disclosure Statement identifies the treatment of Customers Bank's claim in Class III as an unimpaired claim for which the outstanding arrearage amount of \$13,053.17 is proposed to be paid in six equal monthly installments of \$2,175.52¹. (Disclosure Statement, p. 6.) The Debtor further proposes that arrearage payments will begin April 15, 2020, and that post-petition and post-confirmation payments will continue to be paid to Customers Bank until the loan is fully paid. (Id.)

OBJECTIONS

A. The Disclosure Statement Lacks Adequate Information On Several Material Aspects of the Plan.

7. First, the Disclosure Statement lacks adequate information concerning the arrearage payments to Customers Bank. Although the Disclosure Statement identifies when arrearage payments will begin (i.e., April 15, 2020), the Disclosure Statement

¹ This amount actually equals \$13,053.12-hence 5 cents short.

does not state when each monthly arrearage payment would actually be made. The Disclosure Statement also proposes a 15-day grace period to the Debtor for monthly arrearage payments (see footnote 1, at page 6), which is contrary to the Note terms. The arrearage payment should be made monthly by the 6th of each month with, a 5-day grace period.

8. Second, the Disclosure Statement fails to adequately describe when the normal post-petition payments would be made. The Disclosure Statement simply states that the post-petition payments “will continue to be paid to Customers until the loan to Customers is paid in full.” (Disclosure Statement, p. 6.)

9. The terms of the Note provide that the monthly payments are due by the 6th of each month with a 5-day grace period, after which Customers Bank is entitled to assess a late charge of 5% of any unpaid installment. Accordingly, the Disclosure Statement, and accompanying Plan, should provide for post-petition payments to Customers Bank in accordance with the terms of the Note, as set forth above (and Customers Bank clearly objects to the 15-day grace period proposed by the Debtor, to the extent that applies to post-petition payments).

10. Relatedly, the Disclosure Statement states that the “Debtor will restore ACH payments to Secured Creditors” (Disclosure Statement, p. 12), but fails to state when that will take place. Customers Bank believes ACH payments should resume with the first post-confirmation, post-petition payment.

11. Third, the Disclosure Statement also fails to disclose the rights and remedies available to Customers Bank upon the Debtor’s default under the Plan (assuming it is confirmed). In the event of a default, the Disclosure Statement and Plan

should make clear that Customers Bank may pursue all rights and remedies available to it under the Note and Security Agreement, including but not limited to rights and remedies against non-debtor guarantors of the Debtor's obligations (*and clearly without any implication of a stay or discharge injunction*).

12. The Disclosure Statement also fails to reaffirm the Debtor's obligations under the Note and Security Agreement, and Customers Bank's rights and remedies thereunder. Both the Disclosure Statement and Plan should specifically provide that Customers Bank's security interest and lien ride through confirmation and are not altered or impacted, and only shall be released upon payment in full to Customers Bank.

13. Finally, Article V of the Disclosure Statement, which sets forth the Debtor's Means of Implementation, provides that the Debtor has "storage lots on Mystic Avenue and Winchester Street, Medford, Massachusetts." (Disclosure Statement, p. 9.) Beyond this cursory statement, the Debtor provides no further information about such storage lots in the Disclosure Statement or the Plan and fails to articulate how such lots would factor into the implementation of the Plan. The Debtor has informed Customers Bank that the lots are owned by a trust affiliated with the Debtor. Customers Bank has further learned that the Mystic storage lot property is listed for sale *and may be under contract*. Assuming said Mystic storage lot is sold, there is no information regarding what happens to the approximate \$67,800 in annual rent.

14. A review of the financial projections attached to the Disclosure Statement show substantial projected annual occupancy charges totaling of \$143,000² for such

² Customers Bank believes that the Debtor erred in failing to include the total annual occupancy charge for the Randolph parking lot, and thus the total occupancy charge should actually be \$178,200.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:

JOSEPH'S TRANSPORTATION, INC.,

Debtor.

CHAPTER 11

CASE NO. 18-14282

CERTIFICATE OF SERVICE

I, Taruna Garg, hereby certify that on the 17th day of October, 2019, a copy of the Objection to Disclosure Statement was served through the Court's electronic filing system on all parties registered to receive electronic notice.

Respectfully Submitted,

/s/ Taruna Garg

Taruna Garg, Esq., BBO #654665

Murtha Cullina LLP

99 High Street

Boston, MA 02110-2320

617.457.4000

tgarg@murthalaw.com