

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK

In re

Charles R. Livecchi, Sr., dba Sole Officer Bk. No. 09-20897
and Shareholder of CRL Management, Inc., Chapter 11

Debtor.

**THE UNITED STATES' OBJECTION TO THE APPROVAL
OF THE DEBTOR'S DISCLOSURE STATEMENT**

The United States of America, by its attorney, William J. Hochul Jr., United States Attorney for the Western District of New York, Jane B. Wolfe, Assistant U.S. Attorney, of counsel, on behalf of its agency the Department of Housing and Urban Development ("HUD"), hereby objects to the approval of the Disclosure Statement filed by the Debtor and in support of its objections, states the following:

1. The Disclosure Statement reveals that the debtor is the owner or co-owner of ten (10) parcels of real property, several of which he appears to operate as rental properties. The Disclosure Statement indicates that one source of plan funding is monthly payments from net funds of rental income. Disclosure Statement, III. D. 1. p. 9. However, the Disclosure Statement does not provide projections of future income from the debtor's rental properties. Accordingly, the Disclosure Statement does not provide

adequate information which would enable a creditor to make an informed judgment as to the reasonableness of the debtor's plan as required by 11 U.S.C. § 1125(a).

2. The Disclosure Statement does not contain a one year profit and loss statement, despite the fact that the debtor filed this Chapter 11 case more than 16 months ago on April 8, 2009. Accordingly, the Disclosure Statement does not provide adequate information which would enable a creditor to make an informed judgment as to the reasonableness of the debtor's plan as required by 11 U.S.C. § 1125(a).

3. The Disclosure Statement fails to provide a clear Chapter 7 liquidation analysis.

4. The Disclosure Statement indicates that the debtor's wife is paid compensation for management of the investment property, but fails to reveal the amount of compensation paid.

5. The Disclosure Statement fails to describe the Debtor's operations and the current physical conditions of the Debtor's rental properties in sufficient detail for his creditors to ascertain the likelihood that these assets will provide sufficient income for the Debtor to pay all claims in this Bankruptcy case.

6. The Disclosure Statement does not provide any information regarding the Debtor's operations, including how many people he employs to manage his business, and maintain and market his properties,¹ how are these individuals compensated, what are the expenses that he incurs in the management and operation of each property, how much cash are the properties generating, what are the receivables, and how much of that is uncollectible.²

7. The Disclosure Statement fails to provide adequate information concerning the secured claims (mortgage debt) in this case. The disclosure statement merely indicates that payments will be made outside the plan per the note and mortgage. However, there is no information as to whether these claims are current, whether the claims are on rental properties or co-owned properties. Further, it is submitted that without the terms of the payments

¹ The Monthly Operating Reports and Disclosure Statement, Exhibit D, make references to payroll expenses, but these references are not sufficient for one to determine how many employees the Debtor has, what work that they do, and how they are compensated.

² Not only is the vacancy rate for the Barrington high (35%), the rent rolls for the Barrington provided with the Monthly Operating Reports for April and May 2010 show that the rents for many of the tenants are in arrears. The Debtor stopped providing information regarding past due amounts after the Monthly Operating Report for May 2009, so creditors do not know the extent of the problem at this time. The Debtor has not explained what steps, if any, he has taken or intends to take, if any, to collect past due amounts.

being set forth in either the disclosure statement and plan, creditors cannot determine whether the plan is feasible.

8. The only expense that the Debtor specifically acknowledges that he will be incurring post-confirmation is compensation due to him and his wife as managers. See Disclosure Statement, III.D.2. However, the Disclosure Statement does not state the amount that the Debtor and his wife will receive.

9. The debtor lists among the source of payments proceeds from a legal malpractice lawsuit and reduction of the government's \$1,169,032.00 claim upon the successful completion of his appeal of the USA's Judgment (Disclosure Statement, III. D. 1. p. 9; Plan, Paragraph 7.01). However, the Debtor has provided very little information regarding the merits of his position in these cases, aside from a few conclusory statements, and has not estimated the potential amount of any recovery or a prospective date for recovery.

10. Significantly, it does not appear that the two lawsuits have been actively pursued during the pendency of the Bankruptcy case. On May 24, 2010, over a year after the filing of the petition, the debtor obtained permission to retain as special counsel, Jonathan Schapp and Lawrence Mattar, with the law firm

Mattar, D'Agostino & Gottlieb, LLP to pursue these two lawsuits. A check of the New York State Unified Court System free case information service available on the internet shows, however, that counsel has not yet appeared in the Debtor's malpractice case, Charles R Livecchi v. John Nacca, which is pending in the Supreme Court, State of New York, Monroe County, Index Number 002404/2007. Further, with respect to the Debtor's appeal of the USA's Judgment, on or about July 21, 2010, Assistant U.S. Attorney Robert Trusiak, who is handling the appeal for the government, contacted Mr. Schapp in an attempt to schedule a status conference with the Second Circuit Court Of Appeals. However, Mr. Schapp advised Mr. Trusiak that the firm had withdrawn its representation. The fact that the Debtor does not appear to have counsel and does not appear to be vigorously pursuing these cases is material to the implementation of the Plan, yet this information was omitted from the Disclosure Statement.

11. The Disclosure Statement does not contain adequate information about litigation pending against the debtor. It fails to advise creditors that the government filed an adversary proceeding on July 7, 2009, seeking to have its claim determined to be non-dischargeable. By Order entered on September 17, 2009, the adversary proceeding was adjourned indefinitely pending the outcome of debtor's appeal of the USA's Judgment to the Second Circuit.

However, the debtor's continuing failure to pursue the appeal, could result in the government requesting that the matter be placed back on the Court's calendar.

12. A Disclosure Statement should not be approved when it accompanies a plan which is unconfirmable on its face. In re Gingerella, 155 B.R. 3, 4 (Bankr. D.R.I. 1993); In re Filex, Inc., 116 B.R. 37, 40 (Bankr. S.D.N.Y. 1990). When a disclosure statement accompanies an unconfirmable plan, the court need not consider the adequacy of the disclosure statement and may consider confirmation issues so as not to subject the estate to the expense of soliciting votes and seeking confirmation of the plan. In re One Canandaigua Properties, Inc., 140 B.R. 616, 617 (Bankr. W.D.N.Y. 1992).

13. The Disclosure Statement provides that Class 3 General Unsecured Claims are "Unimpaired." See Disclosure Statement at p. 9. It further states that: "[t]he Plan Proponent believes that classes 1-4 are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan." See Disclosure Statement at p. 11. However, within the description of the treatment of Class 3 claims, the Disclosure Statement provides that the debtor's plan proposes to pay all unsecured creditors 100% with the exception of the Claim #

12 of the City of Grand Prairie in the amount of \$11,029.90, and Claim # 13 of the United States of America in the amount of \$1,169,032.00. Thus, the disclosure statement contains material misrepresentations and the plan improperly discriminates with respect to general unsecured claims.

14. The plan also provides that Equity Security Holders of the debtor, namely the debtor, will be paid 100% at the time of confirmation. No dollar amount is specified. Given the fact that unsecured creditors are to be paid over an indefinite time period, an uncertain amount due not only the risk of litigation, but due to the prejudicial delay with respect to said litigation, a provision that violates the distribution of property of the estate provided in Section 726, is clearly inappropriate and an indication of bad faith.

15. Based upon the debtor's financial statements filed with the Court, the plan does not appear to be feasible.

WHEREFORE, the United States of America prays that this Court
(1) deny approval of the Debtor's Disclosure Statement as proposed;
and (2) grant such other and further relief as the Court deems just
and proper.

DATED: Buffalo, New York, August 18, 2009.

Respectfully submitted,

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