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JUDGE WILLIAMS

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF WASHINGTON

THE CATHOLIC BISHOP OF SPOKANE a/k/a THE CATHOLIC DIOCESE OF SPOKANE, A Washington corporation sole, Debtor.	NO. 04-08822-PCW11 PARISHES' RESPONSE TO "JOINT BRIEF" [DOCKET NO. 1128] TELEPHONIC HEARING: Date: May 15, 2006 Time: 10:00 am

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I.

INTRODUCTION/PROCEDURAL HISTORY

> It is unlikely that the Code makes big economic effects turn on the parties' choice of language rather than the substance of their transaction; why bother to distinguish transactions if these distinctions can be obliterated at the drafter's will.
>
> United Airlines, 416 F.3d 609, 612 (7th Cir. 2005)

It cannot be rebutted that the Debtor's March 17, 2006, "Motion to 1) Approve Settlement Offer and 2) Authorize Debtor to Enter Into Proposed Stipulation of Settlement" [Docket No. 1031] ("Settlement"), proposed a transaction that requires the Debtor to:

1. Terminate rights of non-debtors;

2. Indirectly commit all assets to a liquidating plan; and

3. Discriminate between members of the same class of a mandatory plan of reorganization.

At hearing of April 21, 2006, the Court recognized the fundamental legal problems with the Settlement Offer. (Trans. p. 29-31) Although given an opportunity for further briefing on specific legal issues identified by the Court, the moving parties choose to change the form of relief requested and argue for the approval of an "aggregate allowed claim." (Joint Brief, p. 2, ll. 7-8)

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No matter how the argument is presented or how the relief is re-drafted, the substantive terms of the Settlement Offer control the transaction. Because the Settlement Offer is conditioned upon a subsequent plan that is unconfirmable, the Settlement Offer is self defeating.

A. The Terms Of The Settlement Offer And Pending Motion Result In An Unconfirmable Plan.

The Settlement Offer was the result of joint drafting between the Tort Litigants Committee and the Debtor. [1] However, the Debtor ultimately is responsible to ensure that the true nature of the transaction is fully disclosed and in the best interest of estate a whole. In re Intermagnetics Am., Inc., 926 F.2d 912, 917 (9th Cir. 1991) (officers of a debtor in possession are officers of the court because of their responsibility to act in the best interest of the estate as a whole and accompanying fiduciary duties).

When paragraph 21 of the Settlement Offer is read in conjunction with paragraphs 6, 12, 14, 9, and 19, it is apparent that the Settlement Offer is not in the best interest of this estate since it requires the Debtor to present a plan that is not confirmable.

[1] Discovery documents have revealed that the settlement terms were drafted and mailed in material part by the TLC.

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1. Termination Of Property Interests And Litigation Rights Of Non-Debtors Renders Any Plan Unconfirmable.

The Debtor's Settlement Offer mandates that through a subsequent plan of reorganization, the rights and interest of each Parish in property and in pending appeals be terminated, specifically:

> 9. . . . the Debtor shall execute and deliver to the Trust a standard long form Washington State deed of trust(s) in recordable form (the "Deed of Trust") whereby all of the real property: . . .
>
> (c) Vested in the name of the Debtor or any variant thereof (including any property in which the vesting purports to limit the use or sale of the real property or in which the vesting purports to be for the benefit of a third party)
>
> (d) Vested in the Parishes of the Diocese
>
> 19. . . . the Debtor and Parishes shall dismiss their appeal from the Bankruptcy Court's order in the Section 541 Litigation with prejudice and shall take any and all other actions required to dismiss the appeal . . .

As a result of the foregoing mandatory terms of the Settlement Offer, the Debtor must confirm a plan that extinguishes all Parish claims to property and enjoins each individual Parish from asserting its interests in property, by litigation or the appellate process. Such injunctive relief against non-debtors is impermissible under the legal holdings of In Re American Hardwoods, Inc., 885 F.2d 621 (9th Cir. 1989) and In Re Lowenschauss, 67 F.3d 1394 (9th Cir. 1995)(both cases holding that debtor did not have authority to release the

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liability of non-debtors and that a plan which contains such a provision may not be confirmed). Under the terms of the Settlement Offer, the Debtor is not only releasing non-debtor property interests and claims, it also is purporting to have the authority to terminate non-debtor litigation rights.

2. The Settlement Is Based Upon Illusory Funding Sources.

Paragraph 9 pledges all estate property to secure subsequent plan funding. The Debtor has no source of income and cannot presently pay administrative expenses. As such, the probability of default under paragraphs 12 and 14 of the Settlement Offer is extremely high. A plan based upon a promise that cannot be delivered is unconfirmable. See In Re Pizza of Hawaii, Inc., 761 F.2d 1374, 1382 (9th Cir. 1985) (proposed plan must be more than a visionary scheme which promises more than the debtor can deliver). See also, In Re Stuart Motel, Inc., 8 BR 48, 50 (S.D. Fl. 1980) (no cash flow of debtor and highly conjectural and optimistic projection made plan confirmation impossible since the plan was likely to be followed by liquidation or need of further financial reorganization). The plan required by the Settlement Offer cannot be funded with any certainty and is therefore unconfirmable.

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3. Allowing 75 Claims To Bypass The Claims Process Will Not Result In A Confirmable Plan.

It is important to note that the text of § 1123(a)(4) mandates that a confirmable plan provide the "same treatment" for class members. The Supreme Court has instructed lower courts to apply the plain language of the Bankruptcy Code. See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6, 120 S.Ct. 1942, 147 L.Ed.2d 1 (2000); U.S. v. Ron Pair Enters., Inc., 489 U.S. 235, 240-41, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989).

The substance of the Settlement Offer specifically provides for allowance and funding of one group of claims of the same class ahead of another. A 9019 Motion should not be allowed to be used as a vehicle to circumvent the claim analysis and plan process provided for in the Code.

II.

CONCLUSION

The substantive terms of the Settlement Offer control the transaction. As a matter of law, the Settlement Offer, by its terms, is self-defeating.

DATED this 10th day of May, 2006.

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