

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)
)
) Case No. 12-22602
DICKINSON THEATRES, INC.,)
a Kansas corporation,) Chapter 11
)
Debtor.)

**SPIRIT MASTER FUNDING, LLC'S OBJECTION TO THE
DEBTOR'S PROPOSED DISCLOSURE STATEMENT**

Spirit Master Funding, LLC (“Spirit”) objects to the Debtor’s proposed Disclosure Statement, filed on September 22, 2012 [Docket No. 25] (the “Disclosure Statement”),¹ and requests that the Court require the Debtor to make certain modifications to the Disclosure Statement or to delay its approval altogether for the reasons set forth below.

I. BACKGROUND

1. Spirit and the Debtor are parties to an Amended and Restated Master Lease Agreement dated August 1, 2009 (as amended, the “Master Lease”). Through the Master Lease, the Debtor leases from Spirit four properties on which it operates some of its most profitable movie theaters.

2. Additionally, Spirit and the Debtor’s wholly-owned non-debtor subsidiary, Palazzo 16 Theatres, LLC (“Palazzo”), are parties to a Lease Agreement dated March 1, 2012 (the “Palazzo Lease”) through which Palazzo leases from Spirit a property on which it operates a movie theater.

3. An affiliate of Spirit, Spirit Master Funding IV, LLC, and the Debtor are parties to a Promissory Note dated as of April 11, 2012 (the “Note”), pursuant to which the Debtor owes

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Disclosure Statement.

Spirit's affiliate \$500,000, which amount was loaned to the Debtor to enable the Debtor to make technological updates to its theaters.

4. The Master Lease, the Palazzo Lease and the Note are all cross-defaulted such that a breach or default under the Note is an event of default under the Master Lease and the Palazzo Lease, a breach or default under the Palazzo Lease is an event of default under the Master Lease and the Note, and a breach or default under the Master Lease is an event of default under the Palazzo Lease and the Note.

5. On September 21, 2012, the Debtor filed a motion to reject, in part, the Master Lease [Docket No. 15] (the "Motion to Reject"), which sought to sever one of the four properties leased under the Master Lease. Spirit objected to the Motion to Reject on October 3, 2012 [Docket No. 86], and an evidentiary hearing was held on October 4, 2012. On October 12, 2012, this Court issued its opinion and judgment denying the Motion to Reject [Docket No. 129]. The Debtor has since filed a notice of appeal of the Court's judgment [Docket No. 160].²

II. ARGUMENT

6. Section 1125 of the Bankruptcy Code requires a debtor to provide to each holder of a claim or interest in the debtor "adequate information" to enable holders of claims or interests to make an informed judgment about the plan. 11 U.S.C. § 1125. The Disclosure Statement fails to provide such adequate information for the reasons set forth below.

7. As an initial matter, the Debtors' proposed Disclosure Statement was filed on September 22, 2012 and has not been amended to address the Court's denial of the Motion to Reject. Furthermore, the Debtor has not made clear to Spirit or any other party in interest how its pending appeal of the Court's ruling affects its Plan or the timeline for confirmation of the

² Spirit reserves all rights with respect to the appeal, including the issue of whether the order denying the Motion to Reject is an interlocutory order.

Plan. Section 365(d) of the Bankruptcy Code provides that “an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of (i) the date that is 120 days after the date of the order for relief; or (ii) the date of the entry of an order confirming a plan.” 11 U.S.C. § 365(d)(4)(A).³ Accordingly, the Debtor cannot simultaneously proceed with confirmation of the Plan and its appeal of the ruling on the Motion to Reject, because such appeal would be mooted by confirmation of the Plan. Instead, the Debtor must determine, as an initial matter, whether it intends to proceed on its current timeline for Plan confirmation and moot its appeal or whether it intends to delay confirmation and proceed with its appeal. This fundamental and critical issue needs to be addressed in the Disclosure Statement because either approach will significantly impact the Debtor’s future financial performance and thus the feasibility of the Plan.

8. Assuming the Debtor elects to move forward with confirmation of its Plan rather than proceed with its appeal, the Debtor has not stated whether it intends to assume or reject the Master Lease and reinstate or pay off the Note.⁴ The proposed “Exhibit Filing Date” under the Plan requires the Debtor to file a schedule of rejected leases and executory contracts a mere five days prior to the Voting Deadline. Five days is an unreasonably short period of time, and Spirit requests that the Exhibit Filing Date be modified to require the Debtor to file the Exhibits at least ten business days prior to the Voting Deadline. Ten business days is the minimum amount of time necessary to enable Spirit to seek estimation and/or temporary allowance for voting

³ The Court may extend the period determined under Section 365(d)(4)(A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause. 11 U.S.C. § 365(d)(4)(B).

⁴ Spirit reserves all rights with respect to the Debtor’s ability to assume the Master Lease or to reinstate the Note.

purposes of its rejection damages claim in accordance with Section 502(c) of the Bankruptcy Code.

9. Furthermore, the Debtor should not be permitted to alter, amend or modify the Exhibits that could impact the treatment of the Master Lease at any time prior to the Confirmation Hearing as set forth in Section 14.2 of the Plan. This provision would essentially require Spirit to wait until the last possible minute to determine the Debtor's intention with respect to the Master Lease and the Note. Not only would this leave Spirit with insufficient time to object to protect its rights, it would also effectively disenfranchise Spirit because Spirit would not be able to vote on account of its substantial rejection damages claims and its claim for the Note. Similarly, the Disclosure Statement's voting procedures do not address the rights of holders of Disputed Claims. If Spirit ultimately has a disputed or liquidated claim, there is nothing in the Disclosure Statement that allows Spirit to seek estimation or temporary allowance for voting purposes on an expedited basis. On information and belief, Spirit is already the largest unsecured creditor in the case by virtue of the Note. If the Debtor rejects the Master Lease, Spirit will be the largest unsecured creditor in this case by a much wider margin, and the Debtor should not have the ability to disenfranchise Spirit. Moreover, the loss of the theaters operated on the properties leased from Spirit will significantly impact the Debtor's projections, and that impact should be explained in the Disclosure Statement.

10. As discussed above, the Master Lease, the Note and the Palazzo Lease are all cross-defaulted and, accordingly, if the Debtor intends to assume one of the agreements, it must assume all of the agreements. The Disclosure Statement should reflect that the Master Lease, the Note and the Palazzo Lease are cross-defaulted. If the Debtor disagrees with Spirit's position on this critical issue, the Debtor should explain why. Spirit's potential rejection claims against the

Debtor may be dispositive of the Debtor's ability to successfully reorganize. It is therefore critical not only for Spirit to know whether the Debtor intends to assume or reject the Master Lease and reinstate or pay off the Note, it is critical for all parties in interest in this case.

11. Second, the financial projections provided in the proposed Disclosure Statement are woefully inadequate. For a plan to be confirmable, a debtor must show that confirmation of the plan is not likely to be followed by a liquidation or further reorganization. To demonstrate that its Plan is feasible, the Debtor attached as Appendix 4 to the Disclosure Statement certain financial projections. The projections, however, are merely a 15-week cash flow projection. To make an informed decision, Spirit and other creditors require more substantive information than what has been provided.

12. Third, it is unclear to Spirit whether its claim under the Note is included in the Debtor's claim calculations.⁵ As such, Spirit is unable to make an informed decision about the Plan with respect to the proposed claim under the Note.

13. Fourth, the provision stating that "interest shall not accrue or be paid on any Disputed Claim or Disputed Interest in respect of the period from the Effective Date to the date such Disputed Claim or Disputed Interest becomes an Allowed Claim or Allowed Interest" is unsupportable. See Disclosure Statement, § VII.E.1. This provision would enable the Debtor to object unilaterally to any claim and thereby delay making payments on it indefinitely, which would be patently inequitable and would provide the Debtor with undue negotiation leverage. A proof of claim is *prima facie* evidence of the validity and amount of the claim. If the Debtor disputes a claim, it should nonetheless be required to (i) make payments under the Plan as though the claim were fully allowed at least until it has paid the creditor 100% of the undisputed amount

⁵ Spirit notes that the Debtor's descriptions of Unsecured Claims on page vi and page 12 of the Disclosure Statement are inconsistent and therefore cause confusion.

of the claim and (ii) pay the creditor interest in accordance with the applicable post-judgment interest rate under Federal law on the disputed portion of the claim that is ultimately allowed. This provision should be excised from the Plan and the Disclosure Statement before the Disclosure Statement is approved.

14. Lastly, the third bullet point at the top of page 15 of the Disclosure Statement contains an incomplete sentence regarding the Motion to Reject. Such partial sentence should be deleted, and additional disclosure should be provided regarding the Court's denial of the Motion to Reject and the Debtor's intentions with respect to the Master Lease.

15. Spirit raised its concerns regarding the Disclosure Statement with the Debtor approximately two weeks ago, but the Debtor has been unable or unwilling to adequately address Spirit's concerns.⁶ Spirit is also concerned about the extremely expedited timeline on which the Debtor is proceeding, which significantly affects Spirit's ability to protect its interests, and is unclear as to the reasons supporting such an expedited timeline.

16. Spirit reserves any and all rights to object to the Plan in accordance with the Bankruptcy Code.

III. CONCLUSION

17. For the foregoing reasons, Spirit respectfully requests that the Court require the Debtor to modify the Disclosure Statement as necessary to address the issues raised in this objection or delay its approval altogether.

⁶ Spirit understands that an amended disclosure statement may be filed prior to the November 5 hearing on the adequacy of the Disclosure Statement. Two days prior to the date of filing this objection, Spirit received from the Debtor's counsel a revised Disclosure Statement and Plan. Spirit does not understand the revised documents to be final, however, and is therefore filing this objection to preserve all of its rights with respect to the proposed Disclosure Statement and any proposed amendments thereto. Spirit notes that the revised Disclosure Statement and Plan circulated by the Debtor's counsel sought to separately classify and treat as unimpaired Spirit's claim under the Note. The revised documents, though, do not address the cross-default provisions of the Note, which would constitute impairment.

Dated: November 1, 2012

Respectfully submitted,

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ATTORNEYS FOR SPIRIT MASTER
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CERTIFICATE OF SERVICE

Spirit Master Funding, LLC's Objection to the Debtor's Proposed Disclosure Statement
was electronically filed and served on all interested parties requesting electronic notification.

/s/ Scott M. Brinkman

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