

U.S. Bankruptcy Court - District of Kansas  
Court Room Minute Sheet  
11/28/2012  
Hon. Dale L. Somers, Presiding

09:30 AM

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Case Information:

12-22602 Dickinson Theatres, Inc. Chapter: 11

Judge: DLS Filed: 09/21/2012 Pln Confirmed:

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Appearances:

XXX Paul M. Hoffmann, Sharon L. Stolte, Timothy M. Swanson representing  
Dickinson Theatres, Inc. (Debtor)  
X Robert J. Rayburn, General Corporate and Conflicts Counsel for Debtor  
XX Benjamin Blaustein, Cynthia F. Grimes representing Unsecured Creditors Committee  
X Wesley F. Smith representing Peoples Bank  
X Michael D. Fielding representing Hawthorn Bank  
XXX Scott M. Brinkman, Douglas Bacon, Alicia C. Davis representing  
Spirit Master Funding LLC  
X Bruce E. Strauss representing Equity Bank fka First Community Bank  
X Brian T. Fenimore representing John W. Hartley, Jr., John W. Hartley Jr.  
Revocable Trust  
X Carl R. Clark representing Ron Horton; Ron Horton Revocable Trust  
Also Present: Ronald J. Horton, CEO/President of Debtor;  
Jeff Koerperick with Spirit Master Funding LLC

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**Issue#1:** [12] Motion for /Motion of Debtor for Entry of Interim and Final Order: (A) Authorizing Debtor to Obtain Post-Petition Financing From People's Bank; (B) Granting Liens and Superpriority Claims In Favor of People's Bank; (C) Authorizing Use of People's Bank's Cash Collateral; (D) Granting Adequate Protection to People's Bank; and (E) Scheduling a Final Hearing Filed on behalf of Debtor Dickinson Theatres, Inc..(Stolte, Sharon) (Filed: 09/21/2012)

[100] Interim Order: (A) Authorizing Debtor to Obtain Post-Petition Financing From People's Bank; (B) Granting Liens and Superpriority Claims In Favor of People's Bank; (C) Authorizing Use of People's Bank's Cash Collateral; (D) Granting Adequate Protection to People's Bank; and (E) Scheduling a Final Hearing (Related Doc # 12) Signed on 10/5/2012. (ksf)

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[125] Objection to (related document(s): 12 Motion for /Motion of Debtor for Entry of Interim and Final Order: (A) Authorizing Debtor to Obtain Post-Petition Financing From People's Bank; (B) Granting Liens and Superpriority Claims In Favor of People's Bank; (C) Authorizing Use of P filed by Debtor Dickinson Theatres, Inc.) Filed by Creditor Hawthorn Bank (Attachments: # (1) Exhibit 1# (2) Exhibit 2# (3) Exhibit 3# (4) Exhibit 4) (Fielding, Michael)

**Notes/Decision: Agenda No. 2 - Addressed by Ms. Stolte. Interim and Final Order entered. Stipulation between the parties that extends the budget through 12/31/2012 and modifies the budget for attorney fees. Proposed Stipulated and Supplemental Order circulated. Court will approve supplemental order.**

**Issue#2:** [13] Motion for /Motion of Debtor for Entry of Interim and Final Orders: (A) Authorizing Debtor to Obtain Post-Petition Financing from 6801 West 107th, LLC; (B) Granting Liens and Superpriority Claims In Favor of 6801 West 107th, LLC; and (C) Scheduling a Final Hearing Filed on behalf of Debtor Dickinson Theatres, Inc., with Certificate of Service. (Stolte, Sharon) (Filed: 09/21/2012)

[99] Interim Order (A) Authorizing Debtor to Obtain Post-Petition Financing From 6801 West 107th LLC; (B) Granting Liens in Favor of 6801 West 107th LLC; (C) Scheduling Final Hearing (Related Doc # 13) Signed on 10/5/2012. (ksf)

[126] Objection to (related document(s): 13 Motion for /Motion of Debtor for Entry of Interim and Final Orders: (A) Authorizing Debtor to Obtain Post-Petition Financing from 6801 West 107th, LLC; (B) Granting Liens and Superpriority Claims In Favor of 6801 West 107th, LLC; and (C) Scheduling a filed by Debtor Dickinson Theatres, Inc.) Filed by Creditor Hawthorn Bank (Attachments: # (1) Exhibit 1# (2) Exhibit 2# (3) Exhibit 3# (4) Exhibit 4) (Fielding, Michael)

**Notes/Decision: Agenda No. 1 - Addressed by Ms. Stolte. Interim order entered. Proposed Final Order circulated. Court will approve final order.**

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**Issue#3:** [16] Motion to Reject Lease or Executory Contract /Motion for Order Under Sections 105(a), 365(a) and 554 Authorizing the Debtor-in-Possession to (A) Reject Certain Unexpired Leases and Executory Contracts, and (B) Abandon Certain Property at the Premises Filed on behalf of Debtor Dickinson Theatres, Inc. (Attachments: # (1) Exhibit A Allied Waste Services# (2) Exhibit B Olathe Christian School). (Stolte, Sharon) (Filed: 09/21/2012)

[83] Order Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases (Related Doc # 16) Signed on 10/2/2012. (ksf)

[170] Order Authorizing the Rejection of that Certain Executory Contract with Allied Waste Services and Adjourning Hearing with Respect to the Real Estate Contract with Olathe Christian Schools Inc to November 5, 2012 (Related Doc # 16) Signed on 10/27/2012. (kns)

**Notes/Decision: Agenda No. 3 - Addressed by Ms. Stolte. Debtor requests contract for deed with Olathe Christian School be rejected. Court will approve motion. Order by Ms. Stole.**

**Issue#4:** [24] Motion to Reject Lease or Executory Contract of Real Property Located in (I) Port Arthur, Texas; (II) Hutchinson, Kansas; (III) Mesa, Arizona; and (IV) Muskogee, Oklahoma Filed on behalf of Debtor Dickinson Theatres, Inc., with Certificate of Service. (Stolte, Sharon) (Filed: 09/22/2012)

[250] Notice of Stipulation to Extend the Date by Which the Debtor Must Assume a Certain Unexpired Nonresidential Real Estate Lease Regarding Arrowhead Lease (Doc #24). Filed by Sharon L. Stolte on behalf of Dickinson Theatres, Inc. . (Stolte, Sharon) (Entered: 11/27/2012)

[251] Notice of Stipulation to Extend the Date by Which the Debtor Must Assume a Certain Unexpired Nonresidential Real Estate Lease Regarding Gateway Lease (Doc #24). Filed by Sharon L. Stolte on behalf of Dickinson Theatres, Inc. . (Stolte, Sharon) (Entered: 11/27/2012)

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**Notes/Decision: Agenda No. 4 - Addressed by Ms. Stolte. Debtor has negotiated an amended and restated lease on Port Arthur property. Proposed order circulated. Court will approve order. Debtor requesting extension of time to assume or reject to the effective date of confirmation on other leases. Stipulations filed with three landlords, Arrowhead Mall Theatre in Muskogee OK; Chenel IMAX Theatre in Little Rock AR; and the Gateway 12 IMAX Theatre in Mesa AZ., agreeing to the extension to the effective date . Debtor still negotiating and working on stipulation with two other landlords; requesting to extend date to assume or reject to the effective date of confirmation as to Imperial 3 Theatre in Hastings NE and the Mall 8 Hutchinson Theatre in Hutchinson KS. Mr. Bacon states for the record that the relief requested does not affect the Spirit Master Lease - debtor agrees. Tentative effective date is 12/31/2012. Proposed order circulated. Court will approve motion. Order by Ms. Stolte.**

**Issue#5:** [30] Motion to Abandon /Debtor's Motion For The Entry Of An Order, Pursuant To Sections 105(a) And 554 Of The Bankruptcy Code, Authorizing The Debtor To Abandon Its Right, Title, And Interest In, And To, Certain Real Property And All Improvements Located Thereon In Favor of First Community Bank. Filed on behalf of Debtor Dickinson Theatres, Inc., with Certificate of Service.(Stolte, Sharon) (Filed: 09/24/2012)

**Notes/Decision: Agenda No. 5: Addressed by Ms. Stolte. Property located at K-7. Debtor moving to abandon pursuant to best interest of the estate. No objections filed. Proposed order circulated. Addressed by Mr. Strauss. Court will approve motion. Order by Ms. Stolte.**

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**Issue#6** [194] First Amended Chapter 11 Plan / Filed by Debtor Dickinson Theatres, Inc. (RE: related document(s)29 Chapter 11 Plan of Reorganization Filed by Debtor Dickinson Theatres, Inc..). (Stolte, Sharon) (Entered: 11/05/2012)

[197] Order Approving (I) The Form and Manner of Notice of the Disclosure Statement Hearing, (II) The Disclosure Statement, (III) Cure Procedures for Executory Contracts or Unexpired Leases to be Assumed Pursuant to the Plan, (IV) The Record Date, Voting Deadline and Certain Other Procedures, (V) The Form and Manner of Notice of the Confirmation Hearing and Procedures for Filing Objections to the Plan, and (VI) Solicitation Procedures for Confirmation (Related Doc # 26) Signed on 11/5/2012. (ksf) (Entered: 11/05/2012)

[217] Notice of Filing of Exhibits to Amended and Restated Plan of Reorganization. Filed by Sharon L. Stolte on behalf of Dickinson Theatres, Inc. . (Attachments: # 1 Exhibit A - Schedule of Rejected Leases and Executory Contracts# 2 Exhibit B - Nonexclusive List of Retained Actions/Avoidance Claims# 3 Exhibit C -Schedule) (Stolte, Sharon) (Entered: 11/14/2012)

[240] Objection to Confirmation of Plan , with Certificate of Service. Filed by Creditor Maricopa County Treasurer (RE: related document(s)194 First Amended Chapter 11 Plan / Filed by Debtor Dickinson Theatres, Inc.). (kns) (Entered: 11/21/2012)

[243] Objection to (related document(s): 194 Amended Chapter 11 Plan filed by Debtor Dickinson Theatres, Inc.) Filed by Creditor Spirit Master Funding LLC (Brinkman, Scott) (Entered: 11/21/2012)

[252] Notice of Stipulation to Extend the Date by Which the Debtor Must Assume a Certain Unexpired Nonresidential Real Estate Lease Regarding Chenal 9 Imax Theatre Lease. Filed by Sharon L. Stolte on behalf of Dickinson Theatres, Inc. . (Stolte, Sharon) (Entered: 11/27/2012)

[253] Notice of Declaration of Sharon L. Stolte Certifying Voting on and Tabulation of Ballots Accepting and Rejecting the First Amended and Restated Plan of Reorganization. Filed by Sharon L. Stolte on behalf of Dickinson Theatres, Inc. . (Stolte, Sharon) (Entered: 11/27/2012)

[254] First Amended Chapter 11 Plan , as Modified Filed by Debtor Dickinson Theatres, Inc. (RE: related document(s)29 Chapter 11 Plan of Reorganization Filed by Debtor Dickinson Theatres, Inc..). (Hoffmann, Paul) (Entered: 11/27/2012)

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[255] Document filed in support of : Chapter 11 Plan, Amended Chapter 11 Plan, Amended Chapter 11 Plan with Certificate of Service on 11/27/12. Declaration of Ronald J. Horton in Support of Confirmation of the Debtor's First Amended and Restated Plan of Reorganization, as Modified Filed by Debtor Dickinson Theatres, Inc. (RE: related document(s)29 Chapter 11 Plan, 194 Amended Chapter 11 Plan, 254 Amended Chapter 11 Plan). (Hoffmann, Paul) (Entered: 11/27/2012)

[256] Document filed in support of : Chapter 11 Plan, Amended Chapter 11 Plan, Amended Chapter 11 Plan with Certificate of Service on 11/27/12. Debtor's Memorandum of Law in Support of Confirmation of the Debtor's First Amended and Restated Plan of Reorganization Dated November 5, 2012, as Modified Filed by Debtor Dickinson Theatres, Inc. (RE: related document(s)29 Chapter 11 Plan, 194 Amended Chapter 11 Plan, 254 Amended Chapter 11 Plan). (Hoffmann, Paul) (Entered: 11/27/2012)

**Notes/Decision: Agenda No. 6: Addressed by Mr. Hoffman. Status of case. Objection of Maricopa County to plan addressed - claim for \$15,000.00 will be filed paid in full on the effective date of the plan. Summary of evidence, argument and procedure. Debtor requests the Court take judicial notice of all proceedings held to date and all filed pleadings. Specifically Horton First Day Declaration, Disclosure Statement and Order Approving, Horton Declaration in support of the plan [Doc#255]. Ballot Summary filed [Doc#253]. Amended and Restated Plan of Reorganization filed; summary of modifications are read into the record. Mr. Bacon addresses Spirit position on confirmation, deferred maintenance, legal fees and proposed confirmation order. Argument by Mr. Bacon, Mr. Hoffman on legal issue of assuming lease and preserving pending appeal and appeal rights. Mr. Smith addresses Peoples Bank's position on confirmation. Court takes recess and resumes in session at 2:20 p.m.. Report by Mr. Hoffman on debtor and Spirit "hand-shake" agreement on deferred maintenance items with a list and dates by which the items on that list will be completed and a draft of an amendment to the master lease agreement that addresses both that list and those dates. Spirit acknowledges possession of \$172,000.00 insurance over-payment and agrees that can be applied to cost of deferred maintenance items; if this amount does not cover the total cost, debtor will pay the difference. Parties have made progress on language of lease amendment. Ms. Davis presents evidence of deferred maintenance issues. Spirit's Exhibit No. A, B, C, D, E and F, identified, offered, admitted into evidence.**

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**Mr. Bacon presents evidence on attorney fee issue; Spirit's Exhibit No. G and H - identified, offered and admitted into evidence. Mr. Hoffman presents evidence on attorney fee issue. Debtor's Exhibit No. 1 (Amended and Restated Master Lease Agreement between Spirit and Dickinson) in debtor's exhibit notebook entitled "Spirit's Exhibits from Debtor" - identified, offered and admitted into evidence. Mr. Hoffman's brief due 12/03/2012 as to what portion of bill is not reasonable. Mr. Bacon's reply brief due by 12/06/2012.**

**Court needs to make an independent finding on feasibility. Mr. Hoffman, Mr. Bacon address feasibility of plan. Ron Horton, President and CEO of debtor, is called and sworn. Direct examination by Mr. Hoffman. Mr. Bacon voir dices witness. Horton declaration identified (attachments marked as "Exhibit B and Exhibit D"). Appendix 4 to [Doc#195] disclosure statement identified, offered and admitted into evidence. Cross-examination by Mr. Bacon. Re-direct by Mr. Hoffman. Testimony concluded. If the Court needs more evidence on feasibility, he will inform counsel on same.**

**Issues that need to be addressed:**

- 1. Can the plan be confirmed with the debtor trying to reserve its right to appeal the previous decision. Court rules, based upon testimony, debtor is attempting to extend the time to reject or accept this lease until the BAP rules.**
- 2. Court does not believe the attorney fee question is an impediment to plan confirmation. Briefs are to be filed.**
- 3. Court will have to make a finding of feasibility. Court reserves the right to rule further, but is very much inclined to find that the plan is feasible on a full assumption.**
- 5. Parties to work on issues concerning proposed confirmation order.**

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**Issue#7:** [242] Motion to Allow Claims Filed on behalf of Creditor Spirit Master Funding LLC, with Certificate of Service.(Brinkman, Scott) (Filed: 11/21/2012)

**Notes/Decision: Agenda No. 7: Addressed by Mr. Hoffman. Parties have reached an agreement. Debtor does oppose temporary allowance of claim in the amount of \$934,586.00 for the purpose of voting only. Ms. Davis in agreement.**

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