UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re: TECHNOLOGY PROPERTIES LIMITED, LLC, Debtor.	Case No. 13-51589 Ch. 11

ORDER
(1) DENYING APPROVAL OF DISCLOSURE STATEMENT RE: MOORE MONETIZATION PLAN OF REORGANIZATION (OCTOBER 29, 2014), and (2) SETTING FURTHER PROCEEDINGS ON JOINT PLAN

The court conducted a hearing on approval of two vying disclosure statements on November 12, 2014. The first was filed on October 29, 2014, by contingent creditor Charles H. Moore, and is entitled Disclosure Statement Re: Moore Monetization Plan of Reorganization (October 29, 2014) ("Moore Disclosure Statement"). The second was filed October 29, 2014, by debtor Technology Properties Limited LLC ("TPL" or "Debtor") and the Official Committee of Unsecured Creditors ("Committee"), and is entitled Disclosure

Statement re: Joint Plan of Reorganization by Official Committee of Unsecured Creditors and Debtor ("Joint Disclosure Statement").

Debtor, the Committee, and the United States Trustee ("UST") filed written oppositions to the Moore Disclosure Statement. Moore filed a comment but no opposition to the Joint Disclosure Statement. The UST objected to the Joint Disclosure Statement.

Appearances were noted on the record. After argument by counsel, the court took the matter under submission. For the reasons noted, the court will not approve the Moore Disclosure Statement and will set the Joint Disclosure Statement for further proceedings.

I. BACKGROUND[1]

A detailed discussion of the background of this case can be found in the Order Denying Motion to Appoint Chapter 11 Trustee, entered concurrently with this order.

A. Moore Disclosure Statement

The Moore Disclosure Statement describes the Moore Monetization Plan of Reorganization (dated October 29, 2014) ("Moore Plan"). The Moore Plan would replace TPL management (Daniel Leckrone) with a chapter 11 trustee (if the court orders the appointment) or a plan administrator.[2] It calls for the operation of Debtor's business and the payment of claims over five years. The TPL board is to be reconstituted with the new plan administrator and two members of the Committee. TPL will investigate the viability of continuing with the commercialization of the non-MMP portfolios by retaining Alliacense, returning the portfolios to Daniel Leckrone, or managing them directly, possibly by creating separate companies (or, silos) to hold them.

The treatment of the MMP Portfolio is different. The Moore Plan proposes that a company called Moore Innovations Group, Inc. ("MIG"), a company owned by Moore, will

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[1] In making these findings, the court considered the declarations and materials submitted by the movant. No evidentiary hearing was requested by the moving party. The debtor made a number of evidentiary objections. However, a ruling on these objections is inappropriate given the result of this order.

[2] Because the court is not granting the motion to appoint a chapter 11 trustee, it will assume the Moore Plan would be carried out by the plan administrator.

step into the commercialization shoes of PDS, with proceeds from the commercialization to be distributed in accordance with prior agreements reached between PDS, Patriot, Moore, and TPL. The agreement between TPL and PDS which provides for TPL's role will be rejected.[3] The point is that Alliacense's role will be eliminated and replace by MIG.

B. Joint Disclosure Statement

The Joint Disclosure Statement describes the Joint Plan of Reorganization by Official Committee of Unsecured Creditors and Debtor (dated October 29, 2014) ("Joint Plan"). The Joint Plan calls for the replacement of Debtor's existing management and ownership structure with Committee-selected replacements. Under the Joint Plan, Arockiyaswamy Venkidu ("Swamy Venkidu") would replace Daniel Leckrone as chief executive officer of TPL, and the TPL board would be reconstituted with Committee members or appointees. TPL would then carry out the terms of the Joint Plan, which calls for payment of secured and unsecured claims, the subordination of insider claims (such as those of Daniel Leckrone), and a means of doing business going forward.

II. DISCUSSION

A. Standard for Approval of Disclosure Statement

A disclosure statement cannot be approved unless it contains "adequate information," as that term is defined in 11 U.S.C. § 1125(a)(1). Whether or not the information provided in the disclosure statement is adequate is determined by the Bankruptcy Code, and "is not governed by any otherwise applicable nonbankruptcy law, rule or regulation, . . ." 11 U.S.C. 1125(d). "Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis." *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D. N.J. 2005). Opinions contained in a disclosure statement must have factual support because "opinions alone do not provide the parties voting on the plan with sufficient information upon which to

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[3] The Moore Disclosure Statement refers to this contract being set aside as a fraudulent conveyance pursuant to 11 U.S.C. § 548. Prior to the hearing, Moore's counsel filed a pleading stating this terminology was a mistake; the agreement is an "executory contract" that will be rejected under 11 U.S.C. § 365.

formulate decisions." 7 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 1125.02[2] (16th ed. 2010).

"[W]here a plan is on its face nonconfirmable, as a matter of law, it is appropriate for the court to deny approval of the disclosure statement describing the nonconfirmable plan." *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D.Cal. 2000)(listing cases); *see also* 7 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 1125.03[4] (16th ed. 2011) ("most courts will not approve a disclosure statement if the underlying plan is clearly unconfirmable on its face").

B. The Moore Disclosure Statement Does Not Contain Adequate Information

The Moore Disclosure Statement cannot be approved because it is replete with unsupported and factually incorrect statements. As noted by Debtor in its November 5, 2014 Objection to Moore's Disclosure Statement, the document repeatedly misstates the roles played by Debtor, PDS, and Alliacense in regard to the MMP Portfolio. Alliacense has a role in litigating and evaluating patent claims but it does not grant licenses. That job belongs to PDS and PDS alone.

The document is also unduly argumentative and characterized by a snide tone. It repeatedly labels TPL as a "patent troll"[4] whose business practices have "been disastrous for Debtor TPL and its creditors" while "generating substantial, unshared receivables for Daniel Leckrone's Alliacense."[5] It blames low revenues on "toxicity associated with the Debtor's management by Daniel Leckrone and his insiders," by apparently includes current management.[6] It describes recent licensing efforts as "belated[] . . . with timing suspicious to

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[4] Disclosure Statement Re: Moore Monetization Plan of Reorganization, Oct. 30, 2014, pp. 5:6-9; 24:20-24; 39:4-5; 46:1-3; 46:14-15; and 86:18-21.

[5] *Id.* at 39:10-12.

[6] *Id.* 24:21-24. *See also Id*. at p. 15:11-13 ("It appears the Committee, for reasons that remain unclear, approved Daniel Leckrone's choice of Swamy Venkidu as TPL's replacement CEO.")

Mr. Moore"[7] and claims that the recent "resort to fire-sale license prices" should be blamed on Daniel Leckrone's personal cashflow requirements. Finally, in discussing the course of complicated and heavily contested litigation, the Moore Disclosure Statement concludes, "It gets worse."[8] Needless to say, Debtor disagrees with the substance of the allegations. This is just one of many parts of the Moore Disclosure Statement that could never pass muster.

The court generally is tolerant of hyperbole in connection with disputed matters which are heavily litigated. Usually, the solution is to ask counsel to revise the document. In this matter, however, the court previously told Moore's counsel that the document needed to be toned down and cleaned up so it presented a factual—not argumentative—case. For whatever reason, the document's present incarnation is worse than prior versions. The court cannot find that continued, substantial re-writes of documents that are declining in quality with each revision to be consistent with judicial economy.

C. The Moore Plan is Patently Not Confirmable

1. The Moore Plan Does Not Treat the CORE Flash and Fast Logic Portfolios Properly

TPL objects to the Moore Disclosure Statement on the grounds that the Moore Plan provides that the plan administrator will continue to commercialize the patents in the CORE Flash and Fast Logic portfolios. Those portfolios are owned by MCM and HSM, which are both Daniel Leckrone-controlled entities. Because Daniel Leckrone has settled his disputes with the parties through the Joint Plan, it appears he will not consent to the plan administrator taking over commercialization. Debtor's objection on this ground is sustained as Moore has not shown, despite TPL's objection, that he has overarching power to assign the rights to commercialize the portfolios to the plan administrator.

2. The Moore Plan Does not Deal Appropriately with PDS, Patriot, and TPL

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[7] *Id.* at 5:3-6

[8] *Id.* at 40:6

The Moore Plan states that the complicated arrangement between Patriot, TPL, and other parties will be set aside which will restore TPL's right to commercialize the MMP Portfolio. This provision grossly understates the mechanism in place and the effect it would have on the estate. As such, it does not provide adequate information to readers of the Moore Disclosure Statement.

To summarize the situation, prior to 2005 Moore and a company called Patriot Scientific Corporation were independently commercializing the MMP Portfolio. Moore was doing so with the help of TPL. Patriot later sued Moore, disputing that he owned any part of the MMP Portfolio, and TPL, contending it had no right to commercialize the portfolio. In June 2005, Moore, TPL, and Patriot entered into a settlement which was later reduced to a stipulated judgment. The settlement called for the creation of a joint venture they called Phoenix Digital Solutions, LLC, with ownership split between TPL and Patriot. PDS is governed by a PDS Operating Agreement, and the company has a separate board appointed by TPL and Patriot. The MMP Portfolio was transferred to PDS. PDS, Patriot, and TPL entered into a commercialization agreement which authorized TPL to commercialize the MMP Portfolio. Later, disputes arose between Patriot, PDS, and TPL about TPL's commercialization (and, apparently, its use of Alliacense in carrying out its work). The parties amended the commercialization agreement in July of 2012. Under that amendment, PDS licenses the MMP Portfolio, not TPL. Because of its expertise, PDS uses Alliacense to assist in that effort. Still later, Moore sued TPL and others contending that he was not being paid what he was due. This matter was settled on January 23, 2013, with the parties agreeing that PDS will distribute any funds due to Moore directly to Moore, rather than remitting those funds to TPL with TPL paying Moore.

The Moore Disclosure Statement explains that the 2012 agreements reached between TPL, Patriot, and PDS, will be terminated. Moore asserts that by setting aside these agreements, TPL will be restored to the role of commercializing the MMP Portfolio. Then, TPL will somehow transfer the right to commercialize the technology to MIG.

The Moore Disclosure Statement overlooks much in making this assertion. Assuming the agreement is executory and subject to rejection under 11 U.S.C. § 365, a point that has not been demonstrated, there are bound to be serious consequences to the estate. Presumably, Patriot and PDS, which negotiated the resolution reflected in the documents, will consider the rejection a breach. They would be entitled to damages for breach of the agreement, as well as a claim that they ought to be restored to their position prior to the 2012 resolution. In other words, the Moore Plan can be seen as an invitation to a lawsuit by disaffected parties. Moreover, MIG is not contemplated by the various agreements between Moore, Patriot, and TPL. Moore has not shown that Patriot, PDS, and TPL can be made to accept the terms outlined in the Moore Plan.[9] The Moore Plan neither identifies nor explains how these problems and their consequences might be resolved. Absent this analysis, the Moore Plan is not confirmable.

D. Further Proceedings on Joint Plan and Disclosure Statement

Debtor and the Committee represented they were prepared to make changes to the Joint Plan and Disclosure Statement that would resolve the U.S. Trustee's objection. Counsel should confer with the U.S. Trustee's counsel immediately to resolve the remaining objections.

III. CONCLUSION

The court finds that the Moore Disclosure Statement cannot be approved because it contains inadequate information and because it describes a plan that is not confirmable. Accordingly, approval of the Moore Disclosure Statement is DENIED.

Debtor and the Committee shall file a revised Joint Disclosure Statement and Plan by December 15, 2014, with a redlined copy to be lodged with the Courtroom Deputy. The approval of the Joint Disclosure Statement is CONTINUED to December 19, 2014 at 10:00 a.m. Objections to the revised documents may be raised orally at the hearing.

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[9] Sections 1123 and 1125 define the contents of a chapter 11 plan and the requirements for confirmation. Nothing in these sections allows a debtor to unilaterally force third parties to enter into new contractual relations of the type suggested by Moore.

IT IS SO ORDERED.

*** END OF ORDER***

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