

ORDERED.

Dated: July 24, 2020



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re: Case No. 8:19-bk-10198-CPM
Go-Go's Greek Grille, LLC, Chapter 11
Debtor.

ORDER ON CREDITOR'S AMENDED PLAN OF REORGANIZATION

THIS CASE came on for consideration of the Creditor's Amended Plan of Reorganization (the "Competing Plan") (Doc. No. 91) filed by Michael Anastasas. Under 11 U.S.C. § 1125(b), "[a]n acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." Subsection (f) of § 1125 provides that in "a small business case," which is what we have here, "the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary." The term "adequate information" is defined under subsection (a) of § 1125 as:

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, . . . that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, . . . and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

The Court has reviewed the Competing Plan and finds that most of the information typically required for a hypothetical investor to make an informed judgment about a plan, including, e.g., information about the Debtor's financial condition both prior to and since filing for bankruptcy relief, need not be included in the Competing Plan because it has already been provided to creditors in this case via the Debtor's Second Plan of Reorganization and corresponding Disclosure Statement (Doc. Nos. 79 and 80). However, the Court finds that the Competing Plan fails to provide adequate information with respect to feasibility.

The Competing Plan proposes to pay (over time) 100 percent of allowed secured and unsecured claims based on increased revenue anticipated following an injection of operating capital into the Debtor's business to "address areas of weakness, including delivery ordering and outdoor dining, which is believed will provide . . . a 15 to 20% increase in operating revenue in a short period of time." But this projection fails to provide sufficient information about the assumptions upon which the projection is based.¹

First and foremost, the Competing Plan does not describe the base revenue stream over which it anticipates the proposed increase. Does it expect to realize such increase over the Debtor's average sales for the past year, the past eight months since the Debtor filed for bankruptcy, the past four months since the impact of COVID-19, or some other time period?

¹ By contrast, the Debtor's projections are objectively conservative given that they are less than what the Debtor has actually achieved.

Such information is critical because since March 17, 2020, restaurants throughout Florida have experienced a partial closing, following by a complete shutdown, and then a gradual partial reopening. Florida restaurants are currently limited to operating at only 50 percent occupancy for indoor dining, seating all dining parties (indoor and outdoor) at least six feet apart, and allowing no more than ten people in a party.² And no certainty exists as to the occupancy rate at which restaurants in this state may operate for the foreseeable future.

In addition, although the Competing Plan refers to an injection of operating capital, it does not state the amount of such capital. It also fails to describe how an investment (and in what) to improve the delivery menu and expand the outdoor dining space will lead to the projected 15 to 20 increase—and again, an increase over what? On what business model is this projection based? The Competing Plan proposes to return the “original management team to run the Debtor’s operations and restore confidence to food quality,”³ suggesting that the Debtor would operate at a greater profit under the “original team” than it operates under the current management team. But the Competing Plan does not specify when the change in management occurred, nor does it provide financial information comparing the Debtor’s performance under the “original team” versus the current team. Moreover, it fails to disclose “the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan, or a successor to the debtor under the plan,” a confirmation requirement under 11 U.S.C. § 1129(a)(5).

² See State of Florida Office of the Governor Executive Order Numbers 20-68, 20-71, 20-112, and 20-139, <https://www.flgov.com/2020-executive-orders/>.

³ Does this mean the Debtor will need to increase its food inventory expense projections to purchase higher quality ingredients? Does this mean the Debtor will need to increase its payroll expense projections to hire a more credentialed chef?

Accordingly, it is

ORDERED that the Court finds the Competing Plan fails to contain adequate information as required by 11 U.S.C. § 1125 for purposes of plan solicitation. This order is without prejudice to Mr. Anastasas' ability to supplement or further amend the Competing Plan to provide additional information regarding feasibility, including information about:

- a) the base revenue (and associated period(s) of time) over which it proposed to realize a 15 to 20 percent increase;
- b) the amount of operating capital to be invested (and in what);
- c) how changes to the delivery menu and expansion of outdoor dining space are projected to increase revenue by 15 to 20 percent (e.g., is there evidence that demand is such that the Debtor is currently turning away prospective diners due to lack of available outdoor seating space);
- d) how the Debtor performed financially under the original management team compared to its performance under the current team before the COVID-19 shutdown; and
- e) the identity and affiliations of proposed directors, officers, and other persons described in § 1129(a)(5) who would serve post-confirmation.

The Clerk is directed to serve a copy of this order on interested non-CM/ECF users.