

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:

Case No. 3:12-bk-2468-PMG

Ocala Inn Management, Inc.,

\_\_\_\_\_ Debtor.

Chapter 11

**ORDER ON OBJECTION TO SECOND AMENDED PLAN AND SECOND AMENDED  
DISCLOSURE STATEMENT OF DEBTOR, OCALA INN MANAGEMENT, INC.**

**THIS CASE** came before the Court for hearing to consider the Objection of the Association for Disabled Americans, Inc. and Daniel Ruiz (the ADA Parties) to Second Amended Plan and Second Amended Disclosure Statement of Debtor, Ocala Inn Management, Inc. (Doc. 82).

Generally, a Disclosure Statement contains adequate information if it enables a hypothetical investor to make an informed judgment about the debtor's Chapter 11 plan. 11 U.S.C. §1125(a)(1). In this case, the Debtor's amended Disclosure Statement provides adequate information regarding the ADA Parties' litigation against the Debtor. Consequently, the Debtor's amended Disclosure Statement should be finally approved, and a hearing should be scheduled to consider confirmation of the Debtor's Second Amended Plan.

**Background**

On April 12, 2012, the Debtor filed a petition under Chapter 11 of the Bankruptcy Code. The Debtor owns and operates an independent hotel known as the Golden Palms Inn and Suites in Ocala, Florida. (Doc. 23).

On May 11, 2012, the Debtor filed a Plan of Reorganization and Disclosure Statement, and on May 17, 2012, the Debtor filed a First Amended Plan of Reorganization and Addendum to Disclosure Statement. (Docs. 34, 35, 41, 42).

On June 25, 2012, the United States Trustee (UST) filed an Objection to the Debtor's Disclosure Statement. (Doc. 61). In the Objection, the UST asserted that an action was pending against the Debtor in the United States District Court (the ADA Action), in which the ADA Parties had alleged that the Debtor was in violation of the Americans with Disabilities Act. According to the UST, the Debtor's Disclosure Statement failed to provide adequate information regarding the ADA Action, in that it did not disclose the ADA Parties' request for a permanent injunction, the issues in the ADA action, or the Debtor's proposal for resolving the ADA Action.

On July 9, 2012, the Court conducted a hearing to consider the Debtor's Disclosure Statement and the UST's Objection to the Disclosure Statement. At the hearing, the Court determined that the Debtor was required to file an amended Disclosure Statement to address the matters raised by the UST regarding the ADA Action. (Docs. 65, 79).

On August 9, 2012, the Debtor filed a Second Amended Plan of Reorganization and Second Addendum to Disclosure Statement. (Docs. 77, 78). The Second Amended Plan and Second Addendum to Disclosure Statement both include the following information regarding the ADA Parties:

This Creditor is a contingent creditor by virtue of an ADA lawsuit filed in the Middle District of Florida District Court, Case # 5-12-cv-158-oc-32TBS. The suit alleges that

the real property and/or facilities is in violation of the ADA statutory requirements. Debtor disputes such allegations due to the age of the facility and the cost to remedy any alleged violations. This creditor shall receive no distributions under the Chapter 11 Plan. Confirmation of the Plan shall constitute an affirmative finding pursuant to 42 U.S.C. §12182(b)(2)(A)(iv) that any allegedly necessary upgrades as a result of the suit are not readily achievable. Such Confirmation shall also constitute a finding that the following factors were explained by the Debtor in concluding such alleged upgrades were not readily achievable:

(A) The nature and cost of the action needed.

(B) The overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise on [sic] of such an action on the operation of the facility;

(C) The overall resources of the covered entity; the overall size of the business of the covered entity with respect to its number of employees; the number, type, and location of its facilities; and,

(D) The type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity.

(Doc. 77, p. 7; Doc. 78).

On August 19, 2012, the ADA Parties filed an Objection to Second Amended Plan and Second Amended Disclosure Statement. (Doc. 82). In the Objection, the ADA Parties assert that “no court has ever discharged a Debtor’s prospective obligation to comply with” the ADA, and that the Plan and Disclosure Statement fail to address the “specific items constituting barriers to access for individuals with disabilities and specify why removal of some or all of the barriers is not readily achievable.”

### **Discussion**

The ADA Parties primarily contend that the information contained in the Amended Plan and Disclosure Statement is inadequate because it does not fully disclose the Debtor’s obligation to comply with the ADA or the potential liability relating to the hotel property. (Transcript, p. 8).

Generally, §1125(b) of the Bankruptcy Code provides that a debtor may not solicit acceptances of its plan until after the Court has approved a disclosure statement as containing adequate information.

11 U.S.C. §1125(b). “Adequate information” is defined in §1125(a) as follows:

**11 U.S.C. §1125. Postpetition disclosure and solicitation**

(a) In this section—

(1) “adequate information” means 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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed 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.

11 U.S.C. §1125(a)(1). The Court considers the adequacy of information under §1125(a) on a case by case basis, with a view to deciding whether the information in the Disclosure Statement provides creditors with an accurate basis to determine their position on the plan. In re Construction Supervision Services, Inc., 2012 WL 4681414, at 2 (Bankr. E.D. N.C.). A determination under §1125(a) “is a practical and variable inquiry made on a case-by-case basis.” In re Sparta Surgical Corporation, 2008 WL 878948, at 3 (D. Colo.).

In this case, the issue is whether the Disclosure Statement includes sufficient information regarding the ADA Action to allow creditors to form a judgment regarding their treatment under the Plan. The Court finds that the information contained in the Debtor’s Disclosure Statement and Second Addendum to Disclosure Statement is adequate for at least three reasons.

First, the UST previously objected to the Debtor's Disclosure Statement because it lacked information regarding the ADA Action. In response to the UST's Objection, the Debtor amended the Disclosure Statement to add the ADA Parties as contingent creditors and to describe their proposed treatment under the Plan. The UST does not object to the Disclosure Statement as amended. (Transcript, p. 4). The only objection to the amended Disclosure Statement is asserted by the ADA Parties, who have knowledge of the substance and status of the ADA Action as the plaintiffs in the case.

Second, the information added by the Debtor in the Second Addendum to Disclosure Statement includes the identity of the ADA Parties, the case number of the ADA Action and the Court in which the litigation is pending, the nature of the claims asserted in the ADA Action, the fact that the Debtor disputes the claims, the factors considered by the Debtor in disputing the claims, and the Debtor's proposed treatment for the ADA Parties' claims under the Plan. "[A] disclosure statement is not required 'to speculate as to future uncertainties such as the consequences of possible outcomes of pending litigation.'" In re Puff, 2011 WL 2604759, at 5 (Bankr. N.D. Iowa)(Citations omitted). Under the circumstances of this case, the information is sufficient to allow creditors to take a position regarding their treatment under the Plan.

Third, the ADA Parties' objections are essentially objections to confirmation of the Plan rather than objections to the information contained in the Disclosure Statement. At the hearing on their Objection, the ADA Parties indicated that their primary concern is for the Debtor's property to be brought into compliance with the ADA over a period of time. (Transcript, pp. 6-8, 19-21). Issues involving compliance with the ADA are matters that may affect the confirmability or feasibility of the

Debtor's Plan. See In re R.L. Adkins Corp., 2013 WL 656090, at 2 (Bankr. N.D. Tex.)(Issues concerning feasibility are confirmation issues to be addressed at the confirmation hearing.).

For these reasons, the Court finds that Debtor's Second Addendum to Disclosure Statement provides adequate information regarding the ADA Parties' litigation against the Debtor. Consequently, the Debtor's Disclosure Statement should be finally approved, and a hearing should be scheduled to consider confirmation of the Debtor's Second Amended Plan.

Accordingly:

**IT IS ORDERED** that:

1. The Objection of the Association for Disabled Americans, Inc. and Daniel Ruiz to Second Amended Plan and Second Amended Disclosure Statement of Debtor, Ocala Inn Management, Inc. is overruled to the extent that the ADA Parties object to the information contained in the Debtor's Second Addendum to Disclosure Statement.

2. The Debtor's Disclosure Statement and Second Addendum to Disclosure Statement are finally approved.

3. A hearing to consider confirmation of the Debtor's Second Amended Plan of Reorganization will be scheduled by separate Order.

**DATED** this 15 day of May, 2013.

**BY THE COURT**

Paul M. Glenn

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PAUL M. GLENN  
United States Bankruptcy Judge