

Natalie M. Cox

Honorable Natalie M. Cox
United States Bankruptcy Judge



Entered on Docket
August 26, 2022

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

STOHO ENTERPRISES, INC., *dba*
DIAMOND A MOTEL,

Debtor.

Case No. 22-50151-NMC

Chapter 11 (Subchapter V)

Hearing Dates: June 14 and 15, 2022

Hearing Time: 9:30 a.m.

**ORDER CONFIRMING DEBTOR'S FIRST AMENDED SUBCHAPTER V
PLAN OF REORGANIZATION (ECF NO. 64)¹**

For the reasons stated by the court in its Findings of Fact and Conclusions of Law,
entered contemporaneously herewith,

IT IS HEREBY ORDERED that "Objection to Debtor's Amended Chapter 11 Plan"
(ECF No. 96) is **OVERRULED**, and Debtor's "First Amended Subchapter V Plan of
Reorganization" (ECF No. 64) is **CONFIRMED**.

IT IS SO ORDERED.

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¹ All references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the clerk of the court.

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING
DEBTOR'S FIRST AMENDED SUBCHAPTER V PLAN OF
REORGANIZATION (ECF NO. 64)¹**

The Court conducted a two-day plan confirmation hearing on June 14 and June 15, 2022, regarding the First Amended Subchapter V Plan of Reorganization ("Amended Plan"), filed by STOHO Enterprises, Inc. ("Debtor"). John Stockdale Jr., Esq. appeared on behalf of the Debtor, and Seth J. Adams, Esq. appeared on behalf of Linda and Ty Albisu (the "Albibus").

The court has reviewed and considered all pleadings on the court's docket, including, but not limited to, the Amended Plan (ECF No. 64), the Objection (ECF No. 96), Debtor's Brief in

¹ All references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the clerk of the court. All references to "Section" or "§" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "Bankruptcy Rule" are to the FEDERAL RULES OF BANKRUPTCY PROCEDURE.

1 Support of Confirmation (ECF No. 109), and Debtor’s Supplemental Brief Regarding
2 Evidentiary Issues (ECF No. 120). The court also has considered the arguments of counsel and
3 exhibits presented at the hearing. The court has reviewed and takes judicial notice of the docket.
4 See FED. R. EVID. 2019(c)(1). Findings of fact and conclusions of law are set forth below. See
5 FED. R. CIV. P. 52(a); FED. R. BANKR. P. 7052, 9014(c).

6 **FINDINGS OF FACT²**

7 **A. INTRODUCTION**

8 1. The Court has jurisdiction over the Case pursuant to 28 U.S.C. §§ 157 and 134.

9 2. Venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10 3. The confirmation of the Amended Plan is a core proceeding under 28 U.S.C. §
11 157(b)(2).

12 4. On March 24, 2022, Debtor filed its voluntary petition commencing this case
13 under Subchapter V of Chapter 11 of Title 11 of the United States Code. (ECF No.1). Debtor
14 was established in May 2002, to own and operate motel and rental real estate. Debtor owns four
15 parcels of real estate in Nevada from which it operates the Motel and one rental home in Los
16 Angeles, California. The Debtor is wholly owned by Illyssa I. Fogel (“Ms. Fogel”).

17 5. On March 25, 2022, Edward Burr was appointed as the Subchapter V Trustee.
18 (ECF No. 18).

19 6. On April 28, 2022, Debtor filed its Amended Plan. (ECF No. 64).

20 7. Under the Amended Plan, Debtor is not liquidating and is continuing in business
21 after consummation of the Amended Plan.

22 8. On May 27, 2022, Class I Creditor, the Albisus, filed an Objection to the
23 Amended Plan. (ECF No. 96). Specifically, the Albisus object as follows: 1) Confirmation is
24 premature because of the status of the Motel property, the valuation of the Motel is disputed, and
25 the Amended Plan is dependent on future events; 2) the Amended Plan’s proposed treatment and
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27 _____
28 ² Any finding of fact that should be a conclusion of law is deemed a conclusion of law. Any
conclusion of law that should be a finding of fact is deemed a finding of fact.

1 modification of the Albisus' claim should not be permitted; and 3) confirmation is not warranted
2 because the Amended Plan was not proposed in good faith pursuant to § 1129(a)(3) and it is not
3 feasible under § 1129(a)(11).

4 9. On May 31, 2022, the Debtor filed Report on Tabulation of Votes Cast on the
5 Debtor's First Amended Subchapter V Plan of Reorganization. (ECF No. 100).

6 10. On June 8, 2022, the Debtor filed First Amended Report on Tabulation of Votes
7 Cast on the Debtor's First Amended Subchapter V Plan of Reorganization. (ECF No. 113).
8 Class I voted to reject the Plan, Class II³ and Class III voted to accept the Plan, and Class IV and
9 V are deemed to accept the Plan.

10 11. On June 3, 2022, Debtor filed Debtor's Brief in Support of Confirmation of Its
11 First Amended Subchapter V Plan of Reorganization. (ECF No. 109).

12 12. On June 10, 2022, Debtor filed Supplemental Brief Regarding Evidentiary Issues
13 in Support of Confirmation of Debtor's First Amended Subchapter V Chapter 11 Plan. (ECF
14 No. 120).

15 CONCLUSIONS OF LAW

16 B. Confirmation Under §§ 1191(b) and 1129(a)

17 1. Section 1191(b) provides that "[n]otwithstanding section 510(a) of this title, if all
18 of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10) and
19 (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall
20 confirm the plan notwithstanding the requirements of such paragraphs if the plan does not
21 discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests
22 that is impaired under, and has not accepted the plan."

23 2. A debtor in bankruptcy bears the burden of proving each and every element of 11
24 U.S.C. §§ 1129(a) and (b) by a preponderance of the evidence in order to obtain confirmation of
25 its plan. In re Bashas' Inc., 437 B.R. 874, 902 (Bankr. D. Ariz. 2010).

26 _____
27 ³ Class II initially voted to reject the Plan, but pursuant to a Stipulated/Agreed Order (ECF No.
28 115), Debtor and the Neissani and Masachi Revocable Trust ("LA Lender") reached an
agreement regarding LA Lender's treatment under the Plan.

1 3. Here, as set forth below, the Amended Plan meets all the elements of § 1129(a)
2 except § 1129(a)(8):

3 **i. Section 1129(a)(1) is satisfied.**

4 4. The Amended Plan complies with all applicable provisions of the Bankruptcy
5 Code, as required by § 1129(a)(1), including §§ 1122 and 1123.

6 **ii. Section 1129(a)(2) is inapplicable.**

7 5. “The principal purpose of section 1129(a)(2) of the Bankruptcy Code is to assure
8 that the plan proponents have complied with the disclosure requirements of section 1125 of the
9 Bankruptcy code....” In re Trans World Airlines, 185 B.R. 302, 313 (Bankr. E.D. Mo. 1995),
10 cited by In re Art & Architecture Books of the 21st Century, 2016 Bankr. LEXIS 859, *40
11 (Bankr. C.D. Cal. Mar. 18, 2016) (citing cases). Because the court did not require the Debtor to
12 prepare a disclosure statement, the requirement of § 1129(a)(2) is inapplicable.

13 **iii. Section 1129(a)(3) is satisfied.**

14 6. Section 1129(a)(3) requires that a plan be “proposed in good faith and not by any
15 means forbidden by law.” 11 U.S.C. § 1129(a)(3). Under Ninth Circuit case law, a court need
16 only look to the circumstances surrounding the proposal of the plan for purposes of § 1129(a)(3).
17 Garvin v. Cook Investments NW, SPNWY, LLC, 922 F.3d 1031, 1035 (9th Cir. 2019). There are
18 two primary purposes to Chapter 11: (1) preservation of businesses as going concerns and (2)
19 maximizing the assets recoverable to satisfy unsecured claims. In re Waterford Hotel, Inc., 497
20 B.R. 255, 266 (Bankr. E.D. Mich. 2013).

21 7. Here, Debtors negotiated the Amended Plan with creditor constituents. Debtor
22 reached a settlement with Class II Creditors. (ECF No. 115). The Amended Plan will allow the
23 Debtor to reorganize and rehabilitate the business. There will be 100% distribution to all creditor
24 classes. (ECF No. 109, Decl. of Illyssa I. Fogel). These factors demonstrate the Amended Plan
25 has been proposed in good faith.

26 **iv. Section 1129(a)(4) is satisfied.**

1 8. The Plan provides for the payments of Administrative Claims through Group I,
2 including Professionals, to the extent allowed by this Court (including § 330 with respect to
3 Professionals). (ECF No. 64 at 16, ¶ 3.1).

4 v. **Section 1129(a)(5) is satisfied.**

5 9. The Amended Plan specifies that the Debtor will continue to be governed by Ms.
6 Fogel. As compensation for her services, she will continue to reside in the residence adjacent to
7 the Motel rent-free and receive a salary equal to \$1,000 per month. (ECF No. 64 at 26, ¶ 5.5).

8 vi. **Section 1129(a)(6) is inapplicable.**

9 10. No governmental regulatory commission approval is necessary in the case.

10 vii. **Section 1129(a)(7) is satisfied.**

11 11. Section 1129(a)(7)(A) is satisfied with respect to Class III because it has accepted
12 the Amended Plan meeting the requirement of § 1129(a)(7)(A)(i).

13 12. With respect to Class I and Class II, § 1129(a)(7)(A) is satisfied because Class I
14 and Class II “will receive or retain under the plan on account of such claim or interest property of
15 a value, as of the effective date of the plan, that is not less than the amount that such holder
16 would so receive or retain if the debtor were liquidated under chapter 7 of this title on such
17 date....” 11 U.S.C. § 1129(a)(7)(A)(ii).

18 13. Without invoking § 1129(a)(7), the Albisus contend Debtor’s valuation of the
19 Motel is inaccurate. Debtor estimates the value of the Motel to be \$780,000. (ECF No. 64, Decl.
20 of Illyssa I. Fogel). The Albisus estimate the value to be \$250,000. (ECF No. 59, Decl. of
21 Waylon Huber). The liquidation value according to the Amended Plan is \$491,400 (ECF No. 64,
22 “Liquidation Analysis”).

23 14. Here, the Amended Plan contemplates repayment of the Albisus’ Claim (Class I)
24 in full, whatever the allowed amount of that claim may be, with interest at the contractual rate of
25 5% per annum over the contractual period. (ECF No. 64 at 20, ¶ 4.1.1). The court does not have
26 to reach a conclusion regarding the value of the Motel because even if the property is valued at
27 \$250,000, the Albisus will receive more than they would in a Chapter 7 liquidation. The Albisus
28

1 will get paid more under the Amended Plan than they would receive according to their own
2 valuation.

3 15. Section 1129(a)(7)(B) is inapplicable because no party has elected treatment
4 under § 1111(b).

5 **viii. Section 1129(a)(8) is NOT satisfied.**

6 16. Section 1129(a)(8) is not satisfied because Class I did not vote to accept the Plan.

7 **ix. Section 1129(a)(9) is satisfied.**

8 17. The Amended Plan provides for treatment of allowed Administrative Claims,
9 Priority Tax Claims and Priority Claims in the manner required by § 1129(a)(9). (ECF No. 64 at
10 16-19, ¶¶ 3.1-3.3; ECF No. 64 at 23, ¶ 4.3).

11 **x. Section 1129(a)(10) is satisfied.**

12 18. Classes II and III, which are impaired, have voted to accept the Amended Plan.
13 (ECF No. 64 at 21-23, ¶¶ 4.2-4.3).

14 **xi. Section 1129(a)(11) is satisfied.**

15 19. Section 1129(a)(11) sets forth the “feasibility” requirement: confirmation is
16 permitted only if “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the
17 need for further financial reorganization, of the debtor or any successor to the debtor under the
18 plan, unless such liquidation or reorganization is proposed in the plan.” 11 U.S.C. § 1129(a)(11).
19 “The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which
20 promise creditors and equity security holders more under a proposed plan than the debtor can
21 possibly attain after confirmation.” In re Pizza of Haw., Inc., 761 F.2d 1374, 1382 (9th Cir.
22 1985). Every debtor is required to present “ample evidence to demonstrate that the Plan has a
23 reasonable probability of success.” In re Acequia, Inc., 787 F.2d 1352, 1364 (9th Cir. 1986).

24 20. In evaluating the feasibility of a plan, the Ninth Circuit’s BAP has directed courts
25 to consider several factors, including: 1) the adequacy of the capital structure; 2) the earning
26 power of the business; 3) economic conditions; 4) the ability of management; 5) the probability
27 of the continuation of the same management; and 6) any other related matters which determine
28 the prospects of a sufficiently successful operation to enable performance of the provisions of the

1 plan. In re Wiersma, 324 B.R. 92, 113 (9th Cir. BAP 2005), aff'd in part and rev'd in part on
2 other grounds, 83 F.3d 933 (9th Cir. 2007).

3 21. Debtor anticipates that ongoing operations shall be sufficient to fund Debtor's
4 operations. (ECF No. 64). Debtor earned revenue sufficient to operate the business in the years
5 prior to the Covid-19 outbreak and the cutting and capping of the shared sewer line. When the
6 Motel was closed in August 2021, the Motel was on track to generate approximately \$106,000,
7 which reflects 50% revenue growth from Motel operations from \$53,137 in 2020 to \$53,443 for
8 2021 through August (\$106,000 annualized), and revenue at that level was expected to continue.
9 The upward revenue trend can be attributed to Ms. Fogel's direct and ongoing involvement with
10 the Motel operations. The Motel is in an operable condition but for the cutting and capping of
11 the sewer line, which caused the Motel to close. Sewer service is expected to be restored this
12 summer (2022), and going forward, rents are expected to be received in an amount between
13 \$90,000 to \$100,000 annually. (ECF No.109, Decl. of Illyssa I. Fogel). These factors
14 demonstrate the Amended Plan is feasible.

15 **xii. Section 1129(a)(12) is inapplicable.**

16 22. Section 1129(a)(12) is inapplicable because 28 U.S.C. § 1930(a)(6)(A)
17 specifically exempts a Subchapter V debtor from paying any UST fees:

18 [subject to an inapplicable exception], in addition to the filing fee paid to the clerk,
19 a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury,
20 in each case under chapter 11 of title 11, other than under subchapter V. . . .

21 28 U.S.C. § 1930(a)(6)(A).

22 **xiii. Section 1129(a)(13) is inapplicable.**

23 23. This section is not applicable in the Subchapter V Case because the Debtor is not
24 required to pay any "retiree benefits" as defined in § 1114.

25 **xiv. Section 1129(a)(14) is inapplicable.**

26 24. This section is not applicable because the Debtor is not required to pay any
27 domestic support obligations.

28 **xv. Section 1129(a)(15) is inapplicable.**

1 25. This section is not applicable to the Subchapter V cases by virtue of § 1181(a).

2 **xvi. Section 1129(a)(16) is inapplicable.**

3 26. This section is not applicable because the contemplated transfers are not property
4 of a nonprofit entity. Notwithstanding the forgoing, transfers provided for under the Amended
5 Plan will be made in accordance with applicable non-bankruptcy law.

6 27. As a result of the foregoing, all subsections of § 1129(a) are satisfied or
7 inapplicable except § 1129(a)(8). As a result, confirmation must occur under § 1191(b).

8 **C. Fair and Equitable under Section 1129(b)(2)(A)(i)—Class I Treatment**

9 28. Section 1191(b) requests that the Plan “. . . does not discriminate unfairly, and is
10 fair and equitable, with respect to each class of claims . . . that is impaired under, and has not
11 accepted, the plan.” 11 U.S.C. § 1191(b).

12 29. The requirement that a plan not discriminate unfairly means that the class must “. . .
13 . . . receive treatment which allocates value to the class in a manner consistent with the treatment
14 afforded to other classes with similar legal claims against the debtor.” In re Monarch Beach
15 Venture, 166 B.R. 428, 437 (C.D. Cal. 1993). “A plan does not discriminate unfairly within the
16 meaning of the Bankruptcy Code if a dissenting class is treated equally with respect to other
17 classes of equal rank.” In re Art & Architecture Books of the 21st Century, 2016 Bankr. LEXIS
18 859, *66-67 (Bankr. C.D. Cal. March 18, 2016).

19 27. Here, the Amended Plan does not discriminate against Class I unfairly. Rather,
20 Class I’s treatment is substantially similar to Class II’s treatment under the Plan. (ECF No. 64, at
21 19-23, ¶¶ 4.1-4.2).

22 28. Section 1191(c)(1) provides, “[f]or the purposes of this section, the condition that
23 a plan be fair and equitable with respect to each class of claims or interests includes the
24 following requirements: (1) [w]ith respect to a class of secured claims, the plan meets the
25 requirements of section 1129(b)(2)(A) of this title.”

26 29. Section 1129(b)(2)(A)(i)(I) is satisfied because the Albisus are retaining their
27 deed of trust on the Motel property. (ECF No. 64 at 21, ¶ 4.1.4).

28

1 30. Section 1129(b)(2)(A)(i)(II) is satisfied because the Albisus will receive “deferred
2 cash payments totaling at least the allowed amount of such claim, of a value, as of the effective
3 date of the plan, of at least the value of such holder’s interest in the estate’s interest in such
4 property” Specifically, the Amended Plan provides for payments on the Albisus’ claim in
5 the same monthly amount, with the same interest rate, and over the same term as required under
6 the Loan Documents, followed by a balloon payment for the balance. (ECF No. 64 at 21, ¶
7 4.1.4).

8 31. To address the Albisus’ objection regarding the commencement date for payments
9 on their claim, Debtor has modified section 1.74 of the Amended Plan as follows:

10 **“Trigger Date”** means the second (2d) day of the month following of the earlier of
11 (i) the third (3d) consecutive full month where operations of the Motel generate
12 monthly revenues in excess of five thousand dollars (\$5,000.00) or (ii) the twelve
(12) month anniversary of the Effective Date.

13 32. As a result of the foregoing, § 1191(b) is satisfied.

14 **CONCLUSION**

15 For the foregoing reasons, the court finds and concludes that the Albisus’ Objection (ECF
16 No. 96) is OVERRULED, and Debtor’s Amended Plan (ECF No. 64) is CONFIRMED as
17 modified herein.⁴ The court will enter an order contemporaneously herewith.

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23 ⁴ The modification is allowed pursuant to 11 U.S.C. § 1193(a) as the Amended Plan as modified
24 meets the requirements of 11 U.S.C. §§ 1122 and 1123 (except where inapplicable under 11
25 U.S.C. § 1181(a)). Furthermore, the Amended Plan as modified does not adversely change the
26 treatment of any Claim or Interest under the Amended Plan. As a result, under Bankruptcy Rule
27 3019, the Amended Plan as modified shall be deemed accepted by all Creditors and Interest
28 Holders who have previously accepted the Amended Plan, and it is not necessary for the
Amended Plan to be re-noticed to Creditors.