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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re: SECURED DIVERSIFIED INVESTMENT, LTD., Debtor.	Case No.: BK-S-08-16332-LBR Chapter 11 **REPLY TO OBJECTIONS TO CONFIRMATION OF JOINT PLAN OF REORGANIZATION**

Joint plan proponent Cane Clark LLP hereby submits its Reply to the following Objections to plan confirmation:

1. The Objection purported to be filed on behalf of Strand, Biddle, and Trolf by unadmitted California counsel on December 1, 2008; and

2. The Objection prepared by Gernot Trolf as "Attorney Pro Per" for an entity known as "Seashore Diversified Investment Company Co." (As of the writing of this Reply, this Objection did not appear on the docket. It was, however, received in the mail by David Huston, Esq. on December 4, 2008).

The timing and manner of both of these objections is highly improper and in bad faith. In addition, both objections are based primarily upon bald assertions offered wholly without evidentiary support. More fundamentally, however, the objections seek to substitute the opinion of certain holders of admittedly worthless equity for the considered and unanimous judgment of the Debtor's general unsecured creditors. After casting aspersions on the business plan unanimously approved by creditors, these objections absurdly suggest that the Court entertain a vague scheme involving a Minnesota strip mall as an alternative the Plan which is before the Court and ready for confirmation.

The Joint Plan of Reorganization before the Court is feasible, lawful, and otherwise fit for confirmation. This Reply is supported by the following Memorandum of Points and Authorities, the other pleadings and papers on file herein, the Declarations of Munjit Johal and Robert Saucier, and the additional evidence to be presented at the hearing on this matter.

RESPECTFULLY SUBMITTED this 5th day of December, 2008.

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MEMORANDUM OF POINTS AND AUTHORITIES

A. The Timing and Manner of Both Objections is Improper and In Bad Faith

Both of the objections are filed improperly and, as a procedural matter, neither of them may be entertained by the Court. The Objection purportedly filed on behalf of equity holders Strand, Biddle and Trolf was paper-filed by unadmitted out-of-state counsel on the afternoon of the objection deadline. The header information indicates that counsel is "Appearing Pro Hac Vice." In violation of LR IA 10-1, however, no application to appear *pro hac vice* was filed, no local counsel was appointed, and no statement is given in the document that the attorney has complied or will comply with the local rules on *pro hac vice* admission. In addition, the document was filed on paper in violation of the Court's mandatory filing procedures. As a result, electronic service of the document was not made until nearly a day after the objection deadline had run. No motion to file on paper appears to have been submitted in the meantime, making the entire filing ripe for striking from the docket under the Court's e-file rules.

The objection purportedly filed by Gernot Trolf as "Attorney Pro Per" on behalf of a "Seashore Diversified Investment Company Co." also suffers from fatal procedural improprieties. As the Court is well-aware, no corporate entity may appear in federal court except through a licensed and admitted attorney. See, e.g., Rowland v. California Men's Colony, 506 U.S. 194, 202-208 (1993) (holding that entities must appear through counsel and cannot proceed *in forma pauperis*.) Further impediment to this objection arises from the fact that Mr. Trolf is himself purportedly represented by the unadmitted California counsel who authored the other objection. See, LR IA 10-6(a) ("A party who has appeared by attorney cannot while so represented appear or act in the case.").

Moving beyond the myriad technical defects of these objections, their manner and timing is also in clear bad faith. Strand, Biddle, and Trolf appeared at the Section 341 meeting in this matter through local attorney Robert Atkinson. Mr. Atkinson had with him the original Plan and Disclosure Statement, which were substantially similar to the final versions now before the Court. Mr. Atkinson asked numerous questions about the Plan and other matters. Mr. Biddle and Mr.

Strand were also present and asked several questions in addition to those asked by their attorney. Following the Section 341 meeting, Mr. Atkinson was copied on the substantial and detailed correspondence between Plan Proponents and the SEC regarding the Plan and Disclosure statement. Strand, Biddle, and Trolf have been fully informed about this matter and have been represented by proper counsel[1] at least since the Section 341 meeting. Despite being fully informed since the early stages of this case, these individuals have filed procedurally improper, last-second objections based on the supposed superiority of some other, to-be-written chapter 11 plan. These parties' alternative chapter 11 plan has never been presented to Debtor's management or creditors and is mentioned for the first time in their current papers. Beyond a vague allusion to a Minnesota shopping mall, the supposed superior plan remains a complete phantom. Given the circumstances and the tenor of the objections, they appear to be little more that a last-minute gambit to derail a legitimate reorganization process which has been pursued openly and good faith by all involved.

B. As the Holders of Admittedly Worthless Equity, Biddle, Strand, and Trolf Should Not Be Allowed To Substitute Their Opinion For the Unanimous Judgment of Creditors.

As discussed the Disclosure Statement, the liquidation value of the Debtor is minimal. Its sole non-cash asset is a 25% interest in a property in Arizona. The acquisition cost of that investment was $300,000. The Debtor has written it down to $150,000 and its current saleable value is doubtful. See, Disclosure Statement at 30-31. With general unsecured debts in excess of $430,000, the Debtor is plainly insolvent. The California attorney-drafted objection apparently agrees, and in fact it faults the Disclosure Statement for even mentioning the residual book value of the investment. See, Objection at 6 n.1. Despite holding admittedly worthless equity interests, Biddle, Strand, and Trolf apparently feel qualified to opine that the unsecured creditors ahead of

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[1] Indeed, these parties' representation by Mr. Atkinson raises various additional procedural problems. Until the filing of substitutions, pro hac vice applications, and other required documents, they may be unable to appear either *pro se* or through the California attorney. See, LR 2014 ("An attorney who appears in a case on behalf of a party is the attorney of record for the party for any and all purposes . . . until an order is entered permitting withdrawal."); See also, LR IA 10-6(a) ("A party who has appeared by attorney cannot while so represented appear or act in the case.")

them are taking an undue risk in voting to confirm the Plan. Why the opinion of these parties is superior to the unanimous judgment of the unsecured creditors is not explained in either of the objections. Seemingly oblivious to the fundamental absurdity of their position, Biddle et al. apparently believe that the simple mention of some vaguely described alternative plan should be enough to cast aside the clear preference of creditors to move forward with the plan before the Court. Although these parties may hold bare standing to object, they have no stake in the outcome of the Plan. Should Debtor fail post-confirmation, they will be no worse off. Should the debtor succeed post-confirmation, they will be no better off. If the Plan were denied and the Debtor liquidated, the outcome for these parties would still be the same.

After full disclosure, the debtor's creditors have unanimously decided to go forward with the risks and rewards of holding new common equity the reorganized debtor following its share exchange with Galaxy Gaming. Their judgment should not be usurped by the opinion of three dissident shareholders with nothing to lose.

C. Confirmation Of Some As-Yet-Undrafted Competing Plan To Be Offered By Biddle, et. al Will Be Difficult Or Impossible.

The objections confidently predict that the alternative plan will become available sometime within 30 or 60 days. See, Objection at 6. Setting aside the clear problems with the exclusivity provisions of 11 U.S.C. §1121(c) that would raised be raised at this time by a competing plan not sponsored by the Debtor, confirmation of any plan will be difficult or nearly impossible without the agreement of Cane Clark LLP, which holds just under half of the general unsecured debt. Acceptance by the class of general unsecured creditors is impossible without the vote of Cane Clark. See, 11 U.S.C. §1126(c). Given that there are no subordinated or priority creditors, the sole class of claims is the class of general unsecured creditors. Compliance with 11 U.S.C. §1129(a)(10), requiring approval by "at least one class of claims that is impaired," is therefore impossible without the approval of the class of general unsecured creditors. Even if the Biddle parties' phantom alternative plan somehow engineered a separate, accepting class of claims, they would receive nothing on account of their equity interests unless feasible provisions for full payment of all general unsecured creditors were made. See, 11 U.S.C. §1129(b)(2)(B).

Biddle, et. al offer no hint as to whether or how, from the position of old equity, they hope profit or retain any value from their as-yet-undisclosed plan. They give no clue as why they would bestow the gift of full payment to Cane Clark and others or how their phantom plan could feasibly do so. Most likely, they are simply oblivious to the realities of the claims and priority structure in this case and under the Code in general. In light of the behavior of Biddle, Strand, and Trolf thus far, Cane Clark will never vote for any plan which any of these parties may propose. Confirmation of the as-yet-unwritten Biddle plan will be extremely difficult or impossible.

D. The Debtor Has No Federal Tax Liability; The Cash Requirements Of The Plan Will Be Easily Met.

The sole statutory ground for the objections – alleged lack of feasibility – is based largely on the fact that the Debtor scheduled a disputed FUTA tax claim which, if allowed, may have consumed much of the Debtor's cash balance. See, Objection at 5-6. The objecting equity holders should have read the docket. The Plan Proponents objected to the IRS claim and, after analysis, the United States agreed that no FUTA tax was due. A stipulated order removing the claim was entered on November 19, 2008 [Docket no. 79]. The sole priority claim in the case is $47.24 owed to the Orange County Tax Collector [Claim no. 3]. The fees and costs sought by Mr. Huston will, when approved, be offset by just under half due to the retainer provided to him pre-petition. The Debtor will have no problem meeting the cash requirements of its plan.

E. The Evidence At Hearing Will Show That Plan Is Otherwise Feasible Within The Meaning Of 11 U.S.C §1129(a)(11).

Beyond their simple ignorance regarding the Debtor's lack of tax liabilities, the objections also opine that the larger post-confirmation business of the Debtor will not be feasible. This argument is based on the objectors' personal opinions regarding Las Vegas and the gaming industry in general, together with their criticisms of Galaxy Gaming's financial statements. The evidence at hearing will show that the business of Galaxy Gaming has been and is a viable business concern and that the relatively low threshold of 11 U.S.C §1129(a)(11) is comfortably met in this case. "To demonstrate that a plan is feasible, a debtor need only show a reasonable probability of success. The Code does not require the debtor to prove that success is inevitable, and a relatively low threshold of proof will satisfy." In re Brotby, 303 B.R. 177, 191 (9th Cir. B.A.P. 2003). See also, In re Patrician St. Joseph Partners Limited Partnership, 169 B.R. 669, 676 (Bankr. D. Ariz. 1994) ("A plan meets the feasibility standard if the plan offers a reasonable prospect of success and is workable. . . . The mere potential for failure of the plan is insufficient to disprove feasibility.")

At hearing, the evidence will show that the business of Galaxy Gaming has been operated continuously for over ten years, that the business is currently generating positive operating cash flow, that its sales and market share are significant and growing, and that it faces little or no danger of failure in the foreseeable future. The testimony at hearing will explain the basis for the projections offered in the disclosure statement and provide such additional detail as may be required by the Court.

The objections also mention the *Sherron Associates* litigation against Galaxy Gaming in support of their contention that the Plan is not feasible. The testimony at hearing will show that this litigation has been dismissed several times in various forums and that, while it remains a nuisance to the company, it offers minimal danger of proceeding to trial or resulting in judgment against the company.

"The purpose of section 1129(a)(11) is to prevent the confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." In re Pizza of Hawaii, Inc., 761 F.2d 1374, 1382 (9th Cir. B.A.P. 1985). Far from a "visionary scheme," the plan before the court is a serious, workable proposal that offers creditors a reasonable chance of success.

F. Many Assertions Made In The Objections Are Without Foundation Or Evidentiary Support, Or Are Irrelevant.

Many of the assertions made in the objections are simply that – assertions made without evidentiary support or foundation. The objections opine generally that local economic conditions make the plan unfit for confirmation, but no competent evidence of this contention is offered beyond citation to a *Las Vegas Sun* article. See, Objection at 4-5. Falling revenues at Harrah's are apparently the subject of the newspaper article cited. From this basis, the objection makes the asinine assertion that economic participation in the gaming industry is simply "gambling." Id. at 7. Apparently, the objections believe that Nevada's primary industry is far too speculative and creditors would do better by investing in the rock-solid opportunities offered by some type of real estate development in Minnesota. The "Pro Per" objection drafted by Trolf goes even further in this regard. Citing no evidence whatsoever, Mr. Trolf offers all sorts of opinions regarding time-to-market, capitalization requirements, and other issues in the gaming technology business. Mr. Trolf also has several wholly unsupported opinions regarding the quality Galaxy's Caribbean Stud product, the adequacy of Galaxy's R&D budget, and even the strength of its patent protections. See, Trolf objection at 3-4. No explanation is given regarding the source of Mr. Trolf's expertise in patent law, economics, the gaming industry, and the proprietary table games market segment.

The sole offer of proof made in the objections is the short Declaration offered by Mr. Trolf. Though filled with hearsay and undocumented factual assertions, the document is nonetheless revealing. As alluded to in the Declaration, Trolf, Strand, and Biddle were former principals of SDI who apparently left the company sometime in 2005. The declaration is dedicated to rehashing old grievances with company and successor management. Together with the timing and manner of the objections, the material in Trolf Declaration strongly suggests that that the objections are little more than a bad faith attempt to settle old scores by derailing the Debtor's plan at the last possible moment.

Mr. Trolf apparently believes that the Seashore entity is owed money from a 2005 asset purchase transaction, but he supplies no documentation or proof of the debt and no claim has been filed.[2] Allegations that a former president of the Debtor, Ms. Wallace, engaged in improper self-dealing are also made and also lack any documentation or proof.[3] More importantly, these assertions are largely irrelevant to matter before the Court. Biddle, Trolf, and Strand are free to seek whatever remedies they wish or to pursue such claims as they have to the extent permitted by

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[2] To the extent the Court deems it relevant, Mr. Johal can provide some testimony regarding the Debtor's accounting for the Seashore transaction and related matters.

[3] Mr. Trolf's attorney did raise questions regarding some Arizona real estate filings at the Section 341 meeting. After investigation, it was determined that the documents in question related to a refinance which resulted to no payment to anyone except mortgage holders on the property. Evidence on this matter can be adduced if necessary, but Plan Proponents believe it to be irrelevant to the issues at hand.

law. In the meantime, the Debtor's creditors are prepared to move forward the Plan before the Court.

G. <u>Conclusion</u>

For the reasons set forth above, the objections should be disregarded and the Plan should be confirmed.

DATED this 5th day of December, 2008.

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