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APR 11 2011

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL**

**OF THE NINTH CIRCUIT**

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| In re: | BAP No. NV-10-1278-HKiD |
| VDG CHICKEN, LLC, Debtor. | Bk. No. 09-32607 |
| 2010-1 CRE VENTURE, LLC, Successor-in-Interest to the Federal Deposit Insurance Corporation, Receiver for Community Bank of Nevada, Appellant, | |
| v. | **M E M O R A N D U M**[1] |
| VDG CHICKEN, LLC; MRG-RC4, LLC; JOE MICATROTTA; UNITED STATES TRUSTEE, Appellee. | |

Argued and Submitted on February 18, 2011
at Las Vegas, Nevada

Filed - April 11, 2011

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Bruce A. Markell, Bankruptcy Judge, Presiding

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Appearances: John B. Marcin of Marcin Lambirth, LLP argued for the Appellant; Lenard E. Schwartzer of Schwartzer & McPherson Law Firm argued for Appellee VDG Chicken, LLC.

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Before: HOLLOWELL, KIRSCHER, and DUNN, Bankruptcy Judges.

[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Creditor 2010-1 CRE Venture, LLC, Successor-in-Interest to the Federal Deposit Insurance Corporation, Receiver for Community Bank of Nevada ("FDIC"), appeals the orders confirming the debtor's chapter 11[2] plan of reorganization and denying FDIC's motion for reconsideration. We AFFIRM.

## I. FACTS

VDG Chicken, LLC ("Debtor") was formed on January 11, 2008, by its principals, Chris Lattanzio and Matthew Bear, as well as trusts under their control ("Principals"). Debtor was formed to develop a single parcel of commercial property on Centennial Center Boulevard in Las Vegas, Nevada ("Property").

On February 5, 2008, Debtor entered into a 20-year, triple-net, build-to-suit lease with MRG-RC4, LLC ("Tenant"), for $24,909.51 per month, plus payment of all of the expenses on the Property. The Tenant's obligations under the lease were guaranteed by Joseph P. Micatrotto, Connie Micatrotto, and the Micatrotto Restaurant Group, LLC. The Micatrotto Restaurant Group operates five Raising Cane's Chicken Fingers restaurants in Las Vegas. The Tenant has been current on its lease payments.

On February 20, 2008, Community Bank of Nevada ("Bank") made Debtor a construction loan of $2,250,000 secured by a first position deed of trust and an assignment of rents and leases on the Property ("Bank Loan"). On June 11, 2008, the Bank advanced

[2] Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

Debtor an additional $270,000 on the Bank Loan. The interest rate during the term of the Bank Loan was prime plus 1%, and the default rate was prime plus 5%. The Bank Loan was personally guaranteed by the Principals. The Bank Loan included a covenant that required Bank approval for an equity transfer of more than 50%.

On February 19, 2008, Tyrone Rowland Havas, Trustee of the Tyrone R. Havas Defined Benefit Plan ("Havas Trust"), lent Debtor $250,000 secured by a second priority deed of trust on the Property ("Havas Loan").

On September 15, 2008, Applecart Ventures, LLC ("Applecart") loaned Debtor $850,000 secured by a third deed of trust on the Property ("Applecart Loan"). Applecart's equity holders are the members of High Desert Investment Group, Inc., and its president, Eli Applebaum ("Applebaum"). Applebaum is also the manager of Applecart.

The Bank Loan matured in April 2009, but was extended until June 30, 2009. At that time, Debtor owed the Bank approximately $2,460,000. After the Bank Loan matured, the Tenant paid rent directly to the Bank. Those payments exceeded the amount owed to the Bank at the default rate of the Bank Loan.

On May 5, 2009, the Principals transferred all their membership interests in Debtor to Applecart in order to satisfy the Applecart Loan. As a result, after May 5, 2009, Applecart held 100% of the equity interests in Debtor.[3]

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[3] On November 25, 2009, Debtor's manager was changed to VDG Chicken Management, LLC, an entity managed by Applebaum.

On August 9, 2009, the Bank failed and FDIC became the receiver and successor-in-interest with respect to the Bank Loan.[4] FDIC refused to extend Debtor's Bank Loan past June 30, 2009.

On November 30, 2009, Debtor filed for chapter 11 relief. Debtor's schedules listed one unsecured creditor and two secured creditors, FDIC and the Havas Trust.[5] Debtor filed its plan of reorganization and disclosure statement on December 18, 2009.

On January 26, 2010, FDIC filed an opposition to the disclosure statement. FDIC asserted, among other things, that the disclosure statement did not adequately disclose information about insiders and managing members and the amounts of their claims. On February 2, 2010, Debtor filed an amended disclosure statement ("Disclosure Statement") and an amended plan of reorganization ("Plan").

The bankruptcy court heard arguments on the adequacy of the Disclosure Statement on February 9, 2010 ("Disclosure Hearing").[6] On February 24, 2010, the bankruptcy court approved the Disclosure Statement ("Disclosure Order"). FDIC did not appeal the Disclosure Order.

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[4] Some time before FDIC filed its appeal, Debtor's Bank Loan was sold to 2010-1 CRE Venture, LLC.

[5] We have taken judicial notice of the bankruptcy schedules. See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989) (reviewing court may take judicial notice of underlying bankruptcy documents).

[6] There is no transcript of the Disclosure Hearing on the bankruptcy court's docket, nor has it been provided to the Panel in the record on appeal.

On March 2, 2010, Debtor filed the Disclosure Statement that was approved by the bankruptcy court and its Plan. The Plan proposed to fully pay secured and unsecured creditors' claims from Tenant's $24,909.51 monthly rental payments as follows:

- Treat the Bank Loan of $2,420,000[7] as a fixed 10-year loan with monthly payments amortized over 30 years at 6% interest, resulting in monthly payments of $14,514, with any remaining balance payable in full at the end of the 10-year term;
- Convert the Havas Loan of $290,000 into a 22.72% equity interest in Debtor;
- Convert the Applecart Loan of $850,000 into a 77.28% equity interest in Debtor;
- Fully pay the general unsecured creditor without interest at a rate of $500 each month pro rata for approximately 30 months; and
- Fully pay all administrative expenses on the effective date of the Plan.

FDIC opposed the Plan, contending it was proposed in bad faith, not feasible, and not fair or equitable. FDIC contended the Plan was filed in bad faith because the Disclosure Statement did not provide sufficient information about Debtor's managing members and that the equity ownership in Debtor had changed in violation of the loan covenants "shortly before" the bankruptcy. FDIC asserted that Debtor did not prove it could repay the balloon payment at the end of the 10-year term. Additionally, FDIC contended that the Plan was not fair and equitable because the default interest rate should have been applied and amortized over 20 years and the entire balance should have been paid in

[7] FDIC stipulated that its claim did not exceed $2,500,000.

four years rather than ten.

On May 5, 2010, the bankruptcy court held a contested confirmation hearing ("Plan Hearing"). At the Plan Hearing, FDIC did not dispute an appraisal of the Property which set its value at between $3,250,000 and $3,500,000. Debtor estimated that the liquidation value of the Property was $2,500,000, which was equal to or more than FDIC's claim. At the conclusion of the Plan Hearing, the bankruptcy court orally announced its findings of fact and conclusions of law. The bankruptcy court overruled FDIC's objections and concluded that Debtor had satisfied the elements for confirmation under §§ 1129(a) and (b). A confirmation order was entered on May 18, 2010 ("Plan Confirmation Order").

On June 1, 2010, FDIC filed a motion for reconsideration ("Reconsideration Motion"), which was denied on July 7, 2010. FDIC timely appealed.

## II. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(L). We have jurisdiction under 28 U.S.C. § 158.

## III. ISSUES

A. Did the bankruptcy court err when it confirmed Debtor's Plan?

B. Did the bankruptcy court err when it denied the Reconsideration Motion?

## IV. STANDARDS OF REVIEW

"The ultimate decision to confirm a reorganization plan is reviewed for an abuse of discretion." Computer Task Grp., Inc.

v. Brotby (In re Brotby), 303 B.R. 177, 184 (9th Cir. BAP 2003). A determination that a plan meets the requisite standards for confirmation necessarily requires the bankruptcy court to make certain factual findings and interpret the law. Id. Accordingly, whether a plan is filed in bad faith, feasible, or fair and equitable, are factual findings reviewed for clear error. Marsch v. Marsch (In re Marsch), 36 F.3d 825, 829 (9th Cir. 1994); Acequia, Inc. v. Clinton (In re Acequia, Inc.), 787 F.2d 1352, 1358 (9th Cir. 1986); Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.), 761 F.2d 1374, 1377 (9th Cir. 1985).

Compliance with the disclosure requirements of § 1125 is also a mixed question of law and fact that is reviewed de novo; however, issues identifiable solely as factual issues are reviewed for clear error. In re Brotby, 303 B.R. at 184; Duff v. U.S. Trustee (In re Cal. Fiduciary, Inc.), 198 B.R. 567, 570 (9th Cir. BAP 1996) (citing Rose v. United States, 905 F.2d 1257, 1259 (9th Cir. 1990) (to the extent an issue within a mixed question is one of fact, it is subject to the clearly erroneous standard of review)).

A factual finding is clearly erroneous when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573 (1985); see also United States v. Loew, 593 F.3d 1136, 1139 (9th Cir. 2010); United States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc) (holding that a court's factual determination is clearly erroneous if it is

illogical, implausible, or without support in the record).

We follow a two-part test to determine objectively whether the bankruptcy court abused its discretion. United States v. Hinkson, 585 F.3d at 1261-63. First, we determine de novo whether the bankruptcy court identified the correct legal rule to apply to the relief requested. Id. If it did, we next determine whether the bankruptcy court's application of the correct legal standard to the evidence presented was "(1) 'illogical,' (2) 'implausible,' or (3) without 'support in inferences that may be drawn from the facts in the record.'" Id. at 1262 (citation omitted). If any of these three apply, we may conclude that the court abused its discretion. Id.

A bankruptcy court's denial of a motion for reconsideration is reviewed for an abuse of discretion. Zimmerman v. City of Oakland, 255 F.3d 734, 737 (9th Cir. 2001).

## V. DISCUSSION

### A. The Bankruptcy Court Did Not Abuse Its Discretion In Confirming The Plan.

The proponent of a chapter 11 plan must satisfy, by a preponderance of the evidence, the requirements of § 1129. United States v. Arnold & Baker Farms (In re Arnold & Baker Farms), 177 B.R. 648, 654 (9th Cir. BAP 1994), aff'd, 85 F.3d 1415 (9th Cir. 1996), cert. denied, 519 U.S. 1054 (1997). FDIC contends that the Plan failed to satisfy § 1129 because it was not proposed in good faith, was not feasible, and was not fair and equitable. See 11 U.S.C. §§ 1129(a)(3), (a)(11), (b).

1. Good Faith

A determination of good faith is made on a case-by-case basis taking into account the totality of the circumstances of the case and considering whether the plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code. Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.), 314 F.3d 1070, 1074-75 (9th Cir. 2002); Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.), 84 B.R. 167, 171-72 (9th Cir. BAP 1998). FDIC argues that Debtor's Plan failed to satisfy § 1129(a)(3) because the Disclosure Statement and Plan contained inadequate information and because the case suffered from "new debtor syndrome."

FDIC argues that the Disclosure Statement did not provide adequate information about Debtor's new manager, Applebaum, such as his social security number and personal financial information. It contends that this lack of information disadvantaged creditors.

Section 1125 requires the disclosure of adequate information to those who are entitled to accept or reject the plan. "Adequate information" is:

> . . . 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 of the relevant class to make an informed judgment about the plan. . . .

11 U.S.C. § 1125(a)(1).

Adequate information is "a flexible concept that permits the degree of disclosure to be tailored to the particular

situation." Official Committee of Unsecured Creditors v. Michelson (In re Michelson), 141 B.R. 715, 718-19 (Bankr. E.D. Cal. 1992). However, at an "irreducible minimum," a disclosure statement must provide information about the plan and how its provisions will be effected. Id. What is adequate is a subjective determination to be made on a case-by-case basis. In re Brotby, 303 B.R. at 193 (quoting In re Tex. Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988)).

There is no transcript available of the Disclosure Hearing, where the bankruptcy court made oral findings of fact and conclusions of law that supported the Disclosure Order. In its objection to the Disclosure Statement, FDIC argued that there was insufficient information about Debtor's managers, but did not raise specific concerns about the lack of Applebaum's personal information. Debtor argues FDIC's failure to do so constitutes a waiver of that issue.[8] Because there is no record to demonstrate that FDIC raised the lack of Applebaum's personal information at the Disclosure Hearing, FDIC waived the issue.

Even if the argument was not waived, we find no abuse of discretion in the bankruptcy court's determination that the Disclosure Statement was adequate. At the Confirmation Hearing, the bankruptcy court considered FDIC's argument that creditors typically rely on a borrower's personal financial information; however, it found that FDIC's discomfort about the lack of Applebaum's personal information was relevant "only to the

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[8] FDIC did not challenge the bankruptcy court's findings of fact or conclusions of law that supported the Disclosure Order.

extent that the elements of its discomfort are the elements of fair and equitable."

We agree with the bankruptcy court because the Bankruptcy Code ordinarily does not require the disclosure of personal financial information of insiders. In re Michelson, 141 B.R. at 718. The Disclosure Statement properly identified Applebaum as an insider of Applecart and disclosed that Applecart was the equity owner of Debtor. Applebaum was not the borrower on the Bank Loan. The record reflects that Applebaum was not going to be an on-site manager of the reorganized Debtor. His role was primarily to receive and distribute rental income from his office in New York. Therefore, we conclude the bankruptcy court did not err in its determination that the Disclosure Statement was adequate and complied with the good faith requirement of § 1129(a)(3).

Another basis for FDIC's claim that the Plan was proposed in bad faith was its assertion that Debtor's case contained the hallmarks of "new debtor syndrome." Contrary to FDIC's assertion, the "new debtor syndrome" does not apply in this case. See Duvar Apt. v. FDIC (In re Duvar Apt.), 205 B.R. 196, 200 (9th Cir. BAP 1996). In In re Duvar Apt., the debtor filed chapter 11 after he created a shell corporation and transferred ownership in a distressed property to the corporation, without consideration, for the purpose of retaining the property and avoiding personal liability. Id. at 201.

Unlike the debtor in In re Duvar Apt., who parked a debt in a newly created entity for personal protection and to abuse the purposes of the Bankruptcy Code, Debtor, here, provided

consideration for the transfer of ownership by exchanging the Applecart Loan for an equity interest in Debtor. The transfer of interest in Debtor occurred after the Bank Loan matured and seven months before the petition was filed.

The bankruptcy court found that "the change of ownership was perfectly appropriate under the circumstances and that there was no ulterior motive or no intent to harm the holder of the loan originated by Community Bank." Additionally, it found that there was no evidence demonstrating that the secured creditor was harmed by the equity transfer. On review, we perceive no error in the bankruptcy court's findings that § 1129(a)(3) was satisfied because the pre-petition transfer of Debtor's equity interests occurred months after the Bank Loan matured, the transfer was not forbidden by the Bankruptcy Code, and the transfer of the equity was commercially reasonable because consideration was paid.

2. Feasible

FDIC argues the Plan is not feasible because there was no evidence that Debtor would be able to make the balloon payment required by the Plan. Under the feasibility requirement of § 1129(a)(11), a debtor must demonstrate that the plan "has a reasonable probability of success." Acequia, Inc. v. Clinton (In re Acequia, Inc.), 787 F.2d 1352, 1364 (9th Cir. 1986).

Bankruptcy courts consider several factors when evaluating the feasibility of a plan, including: (1) the adequacy of the capital structure; (2) the earning power of the business; (3) economic conditions; (4) the ability of management; (5) the probability of the continuation of the same management; and

(6) any other related matters which determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan. Wiersma v. O.H. Kruse Grain & Milling (In re Wiersma), 324 B.R. 92, 113 (9th Cir. BAP 2005), rev'd on other grounds, 483 F.3d 933 (9th Cir. 2007).

Additionally, a plan that proposes a final balloon payment requires credible evidence that obtaining future financing is reasonably likely. F.H. Partners, L.P. v. Inv. Co. of the Sw., Inc. (In re Inv. Co. of the Sw., Inc.), 341 B.R. 298, 311, 313-14, 316-17 (10th Cir. BAP 2006) (finding plan not feasible when debtor had negative and uncertain cash flow with which to fund proposed balloon payment).

FDIC relies on First Nat'l Bank v. Fantasia (In re Fantasia), 211 B.R. 420 (1st Cir. BAP 1997), to support its contention that Debtor failed to prove the feasibility of the Plan because it did not demonstrate exactly how it would make the balloon payment in 10 years. The First Circuit BAP, in In re Fantasia, found a debtor’s chapter 13 plan, which restructured rental property debt, not feasible because the property lacked equity, had uncertain cash flow and occupancy, and because there was no evidence presented to suggest the debtor could make the proposed balloon payment from other assets. Id. at 423-25.

Here, the parties stipulated that Debtor could make the Plan payments over the 10-year life of the Plan because the Tenant personally guaranteed the triple-net lease for 20 years. The Bank Loan was also secured by a high loan-to-value ratio. Furthermore, there was testimony that, in a normal market,

lenders would compete to do business with Debtor because the long-term Tenant’s business was profitable and stable. Therefore, the bankruptcy court found that it could reasonably infer that the proposed balloon payment would be made through a refinancing of the Bank Loan or sale of the Property. The finding is supported by the evidence in the record, and is neither implausible nor illogical.

3. Fair and Equitable

The bankruptcy court may confirm a plan without the consent of an impaired class of secured creditors if the plan meets the cramdown provisions of § 1129(b). Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.), 293 B.R. 489, 498 (9th Cir. BAP 2003). A plan proposing a cramdown of a secured claim may be confirmed if the plan is fair and equitable with respect to the objecting class. 11 U.S.C. § 1129(b)(1).

Fair and equitable treatment of a secured creditor requires that the creditor retain the lien securing its claim (§ 1129(b)(2)(A)(i)(I)) and that the creditor receive deferred cash payments with a present value at least equal to the value of its claim (§ 1129(b)(2)(A)(i)(II)). In re Arnold & Baker Farms, 85 F.3d at 1420. Deferred cash payments to an impaired class must be valued as of the effective date of the plan and “consist of an appropriate interest rate and an amortization of the principal which constitutes the secured claim." Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters. (In re Briscoe Enters), 994 F.2d 1160, 1169 (5th Cir. 1993).

The bankruptcy court found that the Plan met the requirement under § 1129(b)(2)(A)(i)(I) because “[t]he lien

stays in place and on the property that exists." The bankruptcy court also found that the Plan met the present value requirements of § 1129(b)(2)(A)(i)(II).

The Property was valued at between $3,250,000 and $3,500,000[9] and FDIC stipulated to a maximum claim of $2,500,000. Thus, at confirmation, FDIC had "something close to a 70-percent loan-to-value ratio." The Plan proposed to pay the FDIC monthly cash payments of $14,514, which was based on a 30-year amortization schedule at 6% interest. At the end of 10 years, Debtor would owe FDIC approximately $1,700,000. By that time, the Tenant would have paid Debtor approximately $2,989,141, which exceeds the value of FDIC's maximum claim. Furthermore, the Tenant's lease term would not have expired at the end of the 10-year term, so Debtor would still have an income stream.

Therefore, the bankruptcy court found that "under those circumstances even under this unusual real estate market one can say that the value of the residual there is going to be equal to or at least exceeding whatever the FDIC is owed at that point." The bankruptcy court found that although the Plan did not explain what would happen upon the termination of the 10-year term, it could be "fairly inferred that the debt will either be refinanced or the property sold at some point." We agree with the bankruptcy court's findings given that Debtor's residual value would at least equal the value of FDIC's claim at the end of 10 years.

FDIC relies on <u>Imperial Bank v. Tri-Growth Centre City,</u>

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[9] FDIC did not contest the Property value.

Ltd. (In re Tri-Growth Centre City, Ltd.), 136 B.R. 848, 852 (Bankr. S.D. Cal. 1992), to support its argument that fair and equitable treatment required that the Plan offer faster amortization and a shorter term so that the risks of operating real estate under a long-term lease would not be unfairly shifted to FDIC. Unlike the situation in Tri-Growth Centre City, Ltd., FDIC is oversecured and Debtor's income exceeds the proposed Plan payments to FDIC. Moreover, there was testimony at the Confirmation Hearing stating that a 10-year loan term was appropriate.

The bankruptcy court, using a formula approach, determined that a 6% interest rate for the flow of payments to FDIC was appropriate. That approach is consistent with the holding of Till v. SCS Credit Corp., 541 U.S. 465, 476 n.14 (2004).

In deciding on an interest rate in a chapter 11 case,

> a bankruptcy court should apply the market rate of interest where there exists an efficient market. And, when no efficient market exists for a Chapter 11 debtor, then the Bankruptcy Court should employ the formula approach endorsed by the Till plurality.

Mercury Capital Corp. v. Milford Conn. Assocs., L.P., 354 B.R. 1, 11-12 (D. Conn. 2006)(internal quotations and citations omitted); Bank of Montreal v. Official Comm. of Unsecured Creditors (In re Am. Homepatient, Inc.), 420 F.3d 559 (6th Cir. 2005)) (finding the bankruptcy court did not err as a matter of law when it applied the Till formula to a chapter 11 cramdown).[10]

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[10] This approach has been used by many courts in chapter 11 cases and has been widely discussed. For a discussion of trends following Till, see generally Gary W. Marsh & Matthew M. Weiss, Chapter 11 Interest Rates After Till, 84 AM. BANKR. L.J. 209 (continued...)

The bankruptcy court considered testimony regarding the efficiency of the market and the national prime rate, as required by Till. Id. at 11-13. First, the bankruptcy court found that traditional lenders were unavailable to provide term-loans after construction loans matured. The bankruptcy court found that a rate of 6% was reasonable because (1) it is 100-200 basis points above the current rate for 10-year treasuries; and, (2) consistent with expert testimony that reasonable rates, considering the risk, were between 4.59% and 6.09%.

As a result, the bankruptcy court determined that under the Plan, FDIC would receive payments totaling the present value of its claim. The bankruptcy court's findings are supported by the record. Accordingly, the bankruptcy court did not err in concluding that Debtor's Plan complied with the requirements for confirmation under § 1129(b) and did not abuse its discretion in entering the Confirmation Order.

**B. The Bankruptcy Court Did Not Abuse Its Discretion In Denying The Reconsideration Motion.**

The bankruptcy court has wide discretion in deciding whether to reconsider its own judgment or orders. A motion for reconsideration should not be granted absent highly unusual circumstances. Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). Amendment or alteration of a judgment is appropriate under Fed. R. Civ. P. 59(e) only if the court (1) is

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[10](...continued) (Spring 2010) (review of development of cramdown interest rates since 2004); C.B. Reehl & Stephen P. Milner, Chapter 11 Real Estate Cram-down Plans: The Legacy of Till, 30 CAL. BANKR. J. 405 (2010).

presented with newly discovered evidence that was not available at the time of the original hearing, (2) committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law. Id.; Zimmerman, 255 F.3d at 740. A motion for reconsideration is not permitted to rehash the same arguments made the first time or to simply express an opinion that the bankruptcy court was wrong; or, to assert new legal theories that could have been raised before the initial hearing. In re Greco, 113 B.R. 658, 664 (D. Haw. 1990), aff'd and remanded, Greco v. Troy Corp., 952 F.2d 406 (9th Cir. 1991).

FDIC's Reconsideration Motion did not present the bankruptcy court with new arguments or newly discovered evidence. FDIC simply reasserted its argument that the Disclosure Statement was inadequate and that its treatment in the Plan was not fair or equitable. As discussed above, the bankruptcy court addressed these issues, finding that the Plan met the requirements of § 1129. We do not find any error in the bankruptcy court's findings. Because we have concluded that the bankruptcy court did not abuse its discretion in entering the Confirmation Order, it follows that it did not commit manifest injustice by denying the Reconsideration Motion.

## VI. CONCLUSION

For the reasons stated above, we AFFIRM.