The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed May 12, 2011

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
KLAAS TALSMA,	§	CASE NO. 10-43790-DML-11
FRISIA FARMS, INC., and	§	CASE NO. 10-43791-DML-11
FRISIA HARTLEY, LLC,	§	CASE NO. 10-43792-DML-11
Debtors.	§	
	§	Jointly Administered under
	§	10-43790-DML-11

MEMORANDUM ORDER DENYING MOTION TO VACATE ORDER

Before the court is a *Motion to Vacate Order Approving Third Amended Disclosure Statement Dated May 9, 2011* (the "Motion") by which AgStar Financial Services, FLCA ("Agstar"), asks that this court vacate its May 9 order approving Debtors' disclosure statement. The principal reason AgStar seeks this relief, according to the Motion, is a reduction in the interest rate proposed for AgStar in Debtors' plan of reorganization. Though the Motion states that there "appear[] to be other material changes" to the disclosure statement, it provides no description of those changes.

The change in the interest rate payable to AgStar under the plan does not require further disclosure. Although AgStar suggests Debtors should explain the reason for the change, only

AgStar would be concerned with the reason, and as no general disclosure to all creditors of the original rate was made (the disclosure statement having been disseminated to date only pursuant to Fed. R. Bankr. P. 3017(a)), the reason for the change is not a proper subject for disclosure. AgStar has ample discovery tools to investigate Debtors' views respecting interest rates prior to confirmation, and the propriety of the interest rate is properly addressed at confirmation, not at a disclosure statement hearing.

The primary purpose of a hearing on a disclosure statement is to determine whether the document complies with section 1125 of the Bankruptcy Code (the "Code"); only facial, uncorrectable deficiencies in the terms of a plan should be raised at the hearing. *See In re Market Square Inn, Inc.*, 163 B.R. 64 (Bankr. W.D. Pa. 1994); *In re Atlanta West, VI,* 91 B.R. 620 (Bankr. N.D. Ga. 1988) (both denying approval of disclosure statement where the underlying plan was patently unconfirmable). In the case of the interest rate payable to AgStar, even if the rate is not determined to meet the requirements of section 1129 of the Code at confirmation, the rate most likely can be adjusted by modification, without further solicitation or disclosure, pursuant to Fed. R. Bankr. P. 3019. *See* 9 Collier on Bankruptcy ¶ 3019.01 (16th ed. 2010).

As to any additional changes that might be of concern to creditors generally, without specifics, the court cannot determine whether or not they are material. Certainly no other creditor (or the United States Trustee) has raised any objection to the disclosure statement as approved. In any event, if any changes resulted in a material misstatement or omission in the disclosure statement, Debtors and their counsel may lose the benefit of the "safe harbor" provided by section 1125(e) of the Bankruptcy Code. *See Yell Forestry Prods. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

Moreover, the court has some doubt that the Motion was truly motivated by a concern that Debtors' disclosure was inadequate. The court's observations during these chapter 11 cases suggest rather that the disclosure stage in the plan process may be being treated by AgStar rather as an opportunity to obtain tactical advantage. The court has previously cautioned the parties against that sort of conduct and might consider it, if proven, reason to consider imposition of sanctions.

For the foregoing reasons, it is

ORDERED that the Motion is DENIED.

#END OF MEMORANDUM ORDER # # #