

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

LYDIA CLADEK, INC.,

Debtor.

CASE NO. 3-10-bk-02805-PMG

Chapter 11

**OBJECTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO CONFIRMATION OF THE
CHAPTER 11 TRUSTEE'S PLAN OF LIQUIDATION**

The Official Committee of Unsecured Creditors (the "Committee") appointed and serving in the bankruptcy case of Lydia Cladek, Inc. (the "Debtor" or "LCI") objects to confirmation of the Amended Plan of Liquidation of Michal Phelan, as Chapter 11 Trustee of Lydia Cladek, Inc. and, in support thereof, states as follows:

BACKGROUND

1. On April 2, 2010, several petitioning creditors filed an involuntary Chapter 11 petition against the Debtor, Case No. 10-bk-02800-PMG, in the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division (the "Involuntary Case"). Subsequently, on April 5, 2010, the Debtor filed the instant voluntary Chapter 11 petition (the "Voluntary Case").

2. On April 7, 2010, several creditors filed an Emergency Motion to Consolidate the Involuntary and Voluntary Chapter 11 cases of Lydia Cladek, Inc. (Doc. No. 13) along with an Emergency Motion to Appoint a Chapter 11 Trustee (Doc. No. 11).

3. On April 12, 2010, the Court entered its Order Granting Motion to Consolidate providing that the Voluntary Case shall be the lead case. On that date, the Court also entered its Order Granting Motion to Appoint Chapter 11 Trustee (Doc. No. 32), appointing Michael Phelan as Chapter 11 Trustee (the "Trustee").

4. On June 1, 2010, the Court entered a Notice of Appointment of an Unsecured Creditors' Committee of Lydia Cladek, Inc. (Doc. No. 111).

5. On December 2, 2010, the Committee filed its Amended Plan of Reorganization (Doc. No. 356)(the "Committee Plan") and the Amended Disclosure Statement (Doc No. 354).

6. On December 3, 2010, the Trustee filed his Amended Plan of Liquidation (Doc. No. 361)("Trustee Plan") and Amended Disclosure Statement in Support of Amended Plan of Liquidation of Michael Phelan as Chapter 11 Trustee of Lydia Cladek, Inc. (Doc. No. 362).

OBJECTION TO CONFIRMATION

7. Pursuant to Section 1129(a)(7), a plan may only be confirmed if, with respect to each impaired class of claims or interests, *each holder of a claim or interest* of such class: (i) has accepted the plan; (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is *not less than* the amount that such holder would so receive or retain of the debtor were liquidated under chapter 7 of this title on such date; or (iii) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holders interest in the estate's interest in the property that secures such claims. Confirmation of the Trustee Plan will result in a lower distribution to creditors than in a Chapter 7 bankruptcy case as the liquidation of the assets under a Chapter 11 plan will require the payment of United

States Trustee's fees which would not have to be paid if the estate was liquidated under Chapter 7.

8. Moreover, the Committee objects to confirmation of the Plan to the extent that confirmation of the Plan would be prohibited by 11 U.S.C. § 1129(a)(10) and/or 11 U.S.C. § 1129(a)(8).¹

9. Additionally, assuming, *arguendo*, the result of the ballot tabulation renders both the Committee Plan and the Trustee Plan confirmable pursuant to the Bankruptcy Code, the Committee objects to confirmation of the Trustee Plan as confirmation of the Committee Plan would be in the best interest of creditors. Pursuant to 11 U.S.C. § 1129(c) the court may confirm only one plan and, to the extent that two competing plans are eligible for confirmation, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

10. Courts have considered four factors when determining which competing plan to confirm: (i) the type of plan; (ii) the treatment of creditors and equity security holders; (iii) the feasibility of the plan; and (iv) the preferences of creditors and equity security holders. In re Holley Garden Apartments, Ltd., 238 B.R. 488, 493 (Bankr. M.D. Fla. 1999).

11. The Committee's plan of reorganization is clearly preferable over the Trustee's plan of liquidation. In fact, Judge Briskman specifically noted in Holley Garden Apartments, that

"A reorganization plan is usually preferable to a liquidation plan. The policy of Chapter 11 is to successfully rehabilitate the debtor. The

¹ In addition, the Committee reserves its rights to supplement this objection and/or file a motion with respect to any voting and solicitation issues pursuant to 11 U.S.C. § 1126(e), if applicable.

fundamental principles of Chapter 11 include the desire to maximize the value of the estate for the benefit of all creditors, to promote equal distribution among creditors, and to avoid piecemeal, preferential dismemberment of a debtor's assets. Another purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources. A viable reorganization plan typically provides greater payment to creditors while preserving the economic life of the entity." Id at 495 (internal citations omitted).

The Committee Plan provides for the reorganization of the business of Lydia Cladek Inc. into a company which is projected to be profitable and which will provide creditors, as shareholders, the opportunity to manage and grow the business.

12. In considering the completing plans, the Court should confirm the plan that provides better treatment for the creditors and is more feasible than the other proposed plan. See, The treatment of creditors and the feasibility of the plan. Holley Garden Apartments, 238 B.R. at 495-6. As evidenced by the projections prepared by the Committee, the Committee's plan is feasible and provides for a better treatment for the creditor, especially when compared with liquidation of the assets.

13. When considering competing plans, the Court should consider the preferences of creditors, but does not have to obey those preferences. Id at 496.

WHEREFORE, the Committee respectfully requests that this Court enter an order denying confirmation of the Trustee's Plan and granting such other and further relief as is just and proper under the circumstances.

DATED this 18th day of January, 2011.

/s/ Jon E. Kane, Esq.

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**ATTORNEYS FOR THE OFFICIAL
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been served on January 18, 2011 via the court's electronic CM/ECF electronic mail and/or on January 19, 2011 via U.S. Mail upon all parties and counsel on the attached Amended Official Service List (amended as of December 20, 2010).

/s/ Jon E. Kane

Jon E. Kane, Esq.

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