

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
JOHN FREDERICK MILLEVILLE and) Bankruptcy Case No. 94-30976
ALEDA MAUDE MILLEVILLE,)
)
Debtors.)

OPINION

This matter having come before the Court on the Disclosure Statement of First Mid-Illinois Bank and Trust, Motion to Strike filed by the Debtors, Debtors' First Amended Disclosure Statement, and Objection thereto filed by First Mid-Illinois Bank and Trust; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The Court will first address the Motion to Strike the Disclosure Statement filed by First Mid-Illinois Bank and Trust. In this regard, the Court finds that, on September 16, 1994, the Debtors filed for relief under Chapter 11 of the Bankruptcy Code. On January 25, 1995, 131 days after the order for relief was entered, the Debtors filed a Plan of Reorganization and Disclosure Statement. On March 14, 1995, some 179 days after the order for relief was entered, First Mid-Illinois Bank and Trust filed a Liquidating Plan of Reorganization and a Disclosure Statement. It is this Disclosure Statement to which the Debtors object and wish to have stricken on the basis that the disclosure was filed prematurely given the requirements of 11 U.S.C. §

1121(c).

In considering whether the Disclosure Statement and Liquidating Plan of First Mid-Illinois Bank and Trust were filed prematurely, the Court has carefully examined the provisions of 11 U.S.C. § 1121(c) and has also reviewed the cases cited by the parties and cases which the Court on its own has located. In reviewing these cases, the Court finds that the requirements under § 1121(c) are disjunctive requirements and that, if any one of those requirements has been met, a creditor may file a liquidating plan of reorganization and a disclosure statement. See: In re Trainer's, Inc., 17 B.R. 246 (Bankr. E.D. Pa. 1982); In re Barker Estates, Inc., 14 B.R. 683 (Bankr. W.D. N.Y. 1981); In re Button Hook Cattle Company, Inc., 747 F.2d 483 (8th Cir. 1984); In re Jasik, 727 F.2d 1379 (5th Cir. 1984); and In re Tranel, 940 F.2d 1168 (8th Cir. 1991). The Court finds that, pursuant to § 1121(c)(2), the Debtors in this case did not file a plan of reorganization before the expiration of 120 days after the order for relief was entered. As such, the door was open for any party in interest, including the Creditor herein, to file its own plan of reorganization and disclosure statement at any time filing the expiration of the 120 day deadline. Based upon these findings of fact and conclusions of law, the Court finds that the Debtors' Motion to Strike Liquidating Plan of Reorganization and Disclosure Statement Filed by First Mid-Illinois Bank & Trust must be denied.

Having determined that the Debtors' Motion to Strike the Liquidating Plan and Disclosure Statement of Creditor, First Mid-Illinois Bank and Trust, must be denied, the Court notes that now creditors will be considering both the Debtors' Plan of Reorganization

and the Liquidating Plan filed by First Mid-Illinois Bank and Trust for confirmation. At present, there are objections to both the Disclosure Statement filed by First Mid-Illinois Bank and Trust and the First Amended Disclosure Statement filed by Debtors. The Court finds that both the Disclosure Statement of First Mid-Illinois Bank and Trust and the First Amended Disclosure Statement filed by Debtors must be amended, and the necessary amendments will be addressed individually.

As to the Disclosure Statement of First Mid-Illinois Bank and Trust, the Court finds that First Mid-Illinois Bank and Trust will be allowed a period of 21 days to file an amended disclosure statement which sets out a more complete liquidation analysis concerning the Debtors' assets, together with information concerning the use of a proposed liquidating and dispersing agent in the event the liquidating plan of First Mid-Illinois Bank and Trust is confirmed. Particularly, the Court finds that First Mid-Illinois Bank and Trust should indicate more fully information concerning how the agent will care for the dairy herd and what steps will be taken as to the continuation of grain farming operations should those operations be in mid-stream at the time of confirmation. Finally, the Court finds that the First Mid-Illinois Bank and Trust Disclosure Statement should be amended to include information supporting the Bank's position that the proposed tenant in the Debtors' Plan of Reorganization is financially insecure.

As for the Debtors' First Amended Disclosure Statement, the Court finds that the Debtors will be given a period of 21 days to amend said First Amended Disclosure Statement to include additional information concerning the financial condition of the proposed farm tenant under

the First Amended Plan of Reorganization and to provide information to demonstrate that the tenant will be able to obtain financing necessary to carry out his duties under the proposed lease.

Upon the filing of the amendments to the disclosure statements as set forth above, the Court will review said statements to determine whether a further hearing is necessary. In the event the Court determines that no hearing is necessary, appropriate orders will be entered approving both disclosure statements and setting the competing Chapter 11 Plans for confirmation hearing.

ENTERED: May 4, 1995.

/s/ GERALD D. FINES
United States Bankruptcy Judge