



IT IS ORDERED

Date Entered on Docket: July 31, 2014

The Honorable Robert H Jacobvitz
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

MUNDY RANCH INC.,

Debtor.

Case No. 11-12-13015-JA

**ORDER CONFIRMING DEBTOR'S SECOND
AMENDED PLAN OF REORGANIZATION DATED MAY 2, 2014,
AS MODIFIED ON JUNE 2, 2014 AND BY THIS ORDER**

A final hearing was held on July 18, 2014, at 9:00 a.m., pursuant to 11 U.S.C. § 1128(a) and Bankruptcy Rule 3020(b)(2), to consider the confirmation of Debtor's Second Amended Plan of Reorganization Dated May 2, 2014 (the "Second Amended Plan"), filed by the Debtor on May 2, 2014 (Docket No. 283), as modified by the Modification to Debtor's Second Amended Plan of Reorganization (the "Modification") filed on June 2, 2014 (Docket No. 296). Except as otherwise indicated, capitalized terms used in this Order have the meanings ascribed to those terms in the Plan (as defined below). Parties present were represented by the undersigned counsel.

The Court, having reviewed the Tally of Ballots (with ballots attached), filed July 17, 2014, having reviewed and considered the Debtor's offer of proof, and being sufficiently advised, FINDS:

- A. This is a core proceeding.
- B. The Debtor filed its voluntary petition under chapter 11 of the Bankruptcy Code on August 10, 2012.
- C. On May 2, 2014, the Debtor filed the Second Amended Plan.
- D. Also on May 2, 2014, the Debtor filed a disclosure statement to the Second Amended Plan (the “Disclosure Statement”). The Disclosure Statement was approved by the Court on May 29, 2014 (Docket No. 295). The Amended Order approving the Disclosure Statement fixed the deadlines for filing objections to the Second Amended Plan and for casting ballots to accept or reject the Second Amended Plan, and set the hearing on confirmation of the Plan.
- E. As set forth in the Certificate of Service and the mailing matrix attached thereto, filed with the Clerk of the Court on June 2, 2014 (Docket No. 297), plan packages containing copies of each of the following documents were served on each of the persons on the Court supplied updated mailing matrix maintained by the Clerk of the Court in this Chapter 11 Case (after deleting certain duplicate listings on the mailing matrix): (i) the Amended Order approving the Disclosure Statement; (ii) the Modification; (iii) the amended modification to the Disclosure Statement; (iv) the Disclosure Statement; (v) the Second Amended Plan; (vi) a ballot for each class of claims that the recipient belonged to for voting to accept or reject the plan; and (vii) the Certificate of Service.
- F. Proper and sufficient notice of the final hearing on confirmation of the Plan, the deadline to object to the Plan and to cast ballots to accept or reject the Plan, with a ballot proper in form and content, was served on all parties entitled to notice. No further notice to any creditors or other parties in interest is necessary or appropriate in the circumstances prior to entry of this Order.
- G. The following creditors filed objections to the Plan:
 - 1. The Pension Benefit Guaranty Corporation (“PBGC”); and
 - 2. Valley National Bank (“VNB”).

H. Both objections have been resolved by modifications to the Second Amended Plan set forth in this Order, and thus have been withdrawn.

I. The Plan complies with the requirements of the United States Bankruptcy Code (“Bankruptcy Code”), including but not limited to each of the requirements of 11 U.S.C. § 1129(a). Without limiting the foregoing, the Court finds that:

(1) The Plan, as modified by the Modification and this Order, complies with the applicable provisions of the Bankruptcy Code;

(2) The Debtor has complied with the applicable provisions of the Bankruptcy Code;

(3) The Plan has been proposed in good faith and not by any means forbidden by law;

(4) Any payment made or to be made under the Plan for services or for costs and expenses in or in connection with this Chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, has been approved by, or is subject to the approval of, the Court as reasonable;

(5) The Debtor has fully disclosed the identity and affiliations of any individuals proposed to serve, after confirmation of the Plan, as a director, officer or voting trustee of the Debtor; the appointment to, or continuance in, such office of such individuals, is consistent with the interest of creditors and equity security holders and with public policy; and the proponent of the Plan has disclosed the identity of any insider who will be employed or retained by the reorganized debtor and the nature of the compensation to such insiders;

(6) The Debtor does not charge any “rate” that is subject to the jurisdiction of any regulatory commission which would require him to seek such commission’s approval of any rate charged;

(7) With respect to each impaired class of claims or interests each holder of a claim or interest of such class that cast a ballot voted to accept the Plan and each such

holder will receive or retain under the Plan on account of such claim or interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on such date;

(8) With respect to each class of claims or interests (i) such class has accepted the Plan, or (ii) is not impaired under the Plan;

(9) The Plan complies with the requirements of Bankruptcy Code § 1129(a)(9);

(10) At least one class of claims against the Debtor that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider;

(11) The Plan, as modified by the Modification and this Order, is feasible, and is not likely to be followed by the liquidation or the need for further financial reorganization, of the Debtor, except to the extent such liquidation is proposed in the Plan;

(12) All fees payable pursuant to 28 U.S.C. § 1930 either have been paid, or the Plan provides for the payment of such fees on the Effective Date or when allowed or approved by the Court (if such allowance or approval is required);

(13) The Debtor does not make payment of retiree benefits, as that term is defined in Bankruptcy Code § 1114;

(14) The Plan, as modified by the Modification and this Order, contains adequate means for its implementation.

J. No complaints objecting to the discharge of the Debtor or dischargeability of any debts were filed within the time fixed by the Court pursuant to Bankruptcy Rules 4004 and 4007.

K. All applicable requirements for confirmation of the Plan have been duly satisfied.

L. The Court, having reviewed the Plan, Modification, and this Order, finds that the modifications contained in the Modification and this Order do not adversely affect holders of

claims that have not participated in the confirmation hearing and / or approved this Order. No further notice or modification of Debtor's Disclosure Statement is required.

It is therefore ORDERED, ADJUDGED, and DECREED as follows:

1. Any of the foregoing findings of fact which are deemed to constitute conclusions of law are hereby incorporated as conclusions of law. Any of the following conclusions of law which are deemed to constitute findings of fact are hereby adopted as findings of fact.

2. Pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157, jurisdiction of this Chapter 11 Case is vested in this Court.

3. Notice and hearing with respect to Plan, as required by the Bankruptcy Code and Bankruptcy Rules, has been duly given. Notice of the confirmation hearing, the date fixed for filing acceptances or rejections of the Plan, the date fixed for filing objections to confirmation of the Plan, was adequate and appropriate as required by Bankruptcy Code § 102(1), Bankruptcy Rules 2002 and 3017, and other applicable law.

4. The Plan complies with the applicable provisions of the Bankruptcy Code. The Plan contains all mandatory provisions required by Bankruptcy Code § 1123, and contains only such other provisions as are permissible under Bankruptcy Code § 1123 and consistent with the Bankruptcy Code.

5. The Debtor's solicitation with respect to the Plan complied with Bankruptcy Code § 1125 and all other applicable provisions of the Bankruptcy Code.

6. All applicable requirements for confirmation of the Plan have been duly satisfied in this Chapter 11 Case. Accordingly, the Second Amended Plan, as modified by the Modification and by Order, shall be, and the same hereby is, confirmed. To the extent that there is any conflict between the Second Amended Plan or the Modification and this Order, this Order controls. **Collectively, the Second Amended Plan, the Modification, and this Order constitute the "Plan."**

7. The provisions of the Plan shall bind the Debtor and all holders of Claims against the Debtor, whether or not the respective Claims of such holders are impaired under the Plan,

whether or not such holders have accepted the Plan, and whether or not such holders have filed proofs of claim or are deemed to have filed proofs of claim.

8. Debtor is hereby released and discharged, to the fullest extent permitted by Bankruptcy Code § 1141, from (a) any Claims or debts that arose before the Confirmation Date, and (b) any debt of a kind specified in Section 502(g), 502(h) or 502(i) of the Bankruptcy Code. This release and discharge does not affect any obligations arising under the Plan.

9. All persons and entities whose Claims or debts are discharged by this Order are permanently enjoined from commencing or continuing any action or employing any process or engaging in any act to collect, recover or offset any such Claim or debt as a personal liability of the Debtor to the fullest extent provided by Bankruptcy Code § 524.

10. Pursuant to the Plan, without limiting the provisions thereof: (a) the Debtor shall not be required to file any operating reports after the Effective Date of the Plan; and (b) Bankruptcy Court approval of fees of professionals employed by the Debtor shall not be required for any services rendered after the Effective Date to the estate by professionals.

11. Approval of the Plan also constitutes approval of the Motion for Approval of Compromise of Controversy Pursuant to Bankruptcy Rule 9019(a), filed by the Debtor on January 7, 2014 (Docket No. 260).

12. The Plan is modified as follows (and any provisions in the Plan to the contrary are superseded):

1) Paragraph 3.6 shall be modified to read as follows:

3.6. Class 6: The allowed unsecured claim of VNB resulting from the deficiency judgment entered in the foreclosure action styled *Valley National Bank v. Aldrich Building, LLC, et. al.* (Case No. D-117-CV-2014-00071).

2) Paragraph 6.2.4 shall be replaced in its entirety with the following:

The priority claim of the PBGC shall be resolved as follows:

6.2.4.1 The Debtor shall complete a standard termination of the Pension in accordance with 29 U.S.C. §§ 1341(a) and (b), and the regulations thereunder (“Standard Termination”). The Debtor shall execute and deliver to PBGC a Standard Termination Notice (PBGC Form 500, including the Schedule EA-S) within 30 days after the Effective Date. PBGC will audit the Standard Termination and issue findings with respect to the Standard Termination. For purposes of this Plan, the Standard Termination will not be deemed complete until PBGC determines in writing that all benefits have been paid to participants as required under the Pension, 29 U.S.C. §§ 1341(a) and (b), and the regulations thereunder (“Determination of Compliance”).

6.2.4.2 All of the Debtor’s liabilities to PBGC on account of the Pension will be secured by a lien on all of the Reorganized Debtor’s currently owned and after-acquired assets (the “PBGC Lien”). The PBGC lien will be senior to all liens and/or security interests held by any other party now or in the future for the term of the PBGC Lien and will be valid and perfected without the necessity of filing or recording any mortgage, deed of trust, financing statement or other instrument. The PBGC Lien will be deemed granted and become effective on the Effective Date, but will not attach to property that is earmarked for transfer, and is actually transferred, to Mundy Brothers as set forth in paragraph 7.8.2 herein. Effective on the Effective Date, the Reorganized Debtor will be deemed to have granted a security interest under the Uniform Commercial Code-Secured Transactions of New Mexico (“Article 9”) in all of its currently owned and after-acquired personal property including, without limitation, all general intangibles, accounts, chattel paper, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, commercial tort claims, and all supporting obligations, products and proceeds arising from or relating to any of the foregoing, with the exception of the funds currently sequestered in Debtor’s counsel’s trust account in excess of the \$360,000.00 to be sequestered to fund the completion of the Standard Termination. The provisions of this paragraph 6.2.4 are intended to constitute, and shall be treated as, a “security agreement” within the meaning of Article 9 on and after the Effective Date. PBGC need not, but is authorized to, file financing statements and other documents and to take such other actions as it may from time to time deemed necessary or desirable in order to maintain a perfected security interest in the Reorganized Debtor’s personal property. Any financing statement filed by PBGC may be filed in any filing office in any jurisdiction and may (A) indicate PBGC’s collateral (i) as all assets of the Reorganized Debtor or words of similar effect, regardless of whether any particular asset comprised in the collateral falls within the scope of Article 9 of New Mexico or such other jurisdiction, or (ii) by any other description which reasonably approximates the description contained in this paragraph 6.2.4, and (B) contain any other information required by Part 5 of Article 9 for the sufficiency or filing or acceptance of any financing statement or amendment, including without limitation (i) whether the Reorganized Debtor is an organization, the type of organization and any organization identification number issued to the Reorganized Debtor, and (ii) in the case of a financing statement filed as a fixture filing or indicating PBGC’s collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which such collateral relates. Reorganized Debtor shall do and perform all acts and things which PBGC deems necessary or appropriate to perfect, or to give any necessary or any desirable notice of, PBGC’s security interest in the collateral.

6.2.4.3 On the Effective Date, the Reorganized Debtor shall execute and at its sole expense record mortgages in favor of PBGC on all real property owned by the Reorganized Debtor.

6.2.4.4 If a Determination of Compliance does not issue before 160 days after PBGC receives the PBGC Form 500 (as provided in paragraph 6.2.4.1) from the Reorganized Debtor, then PBGC may enforce the PBGC Lien against any and all of the Reorganized Debtor's assets; *provided, however*, that PBGC may not enforce the PBGC Lien if (i) the Debtor has timely and fully provided to PBGC information responsive to any and all of PBGC's information requests in connection with any audit of the Standard Termination, and (ii) PBGC has not made a determination that the Standard Termination is not compliant.

6.2.4.5 Upon the Reorganized Debtor's completion of the Standard Termination and PBGC's issuance of a Determination of Compliance, the Reorganized Debtor shall file a notice to that effect with the Court and, ten (10) days later, in the absence of an objection, the PBGC Lien will be deemed released for all purposes and any financing statements shall be terminated. If an objection is timely filed, the PBGC Lien will continue in full effect until the dispute is resolved by the Court.

6.2.4.6 Notwithstanding anything to the contrary herein, until such time as the Reorganized Debtor (1) files the PBGC Form 500 as provided in paragraph 6.2.4.1, and (2) sequesters \$360,000 for the sole purpose of funding the completion of the Standard Termination, neither the Debtor nor the Reorganized Debtor may take any action pursuant to paragraph 7.8.2 herein and no transfer of the Debtor's or Reorganized Debtor's property may be made to any Class 9 claimant.

6.2.4.7 The Debtor's or Reorganized Debtor's completion of a Standard Termination will fully resolve Case No. 1:13-cv-01137-MCA-KBM in the United States District Court for the District of New Mexico. Upon issuance of a Determination of Compliance by the PBGC, the Debtor may submit an Order dismissing the District Court case with prejudice.

6.2.4.8 Nothing in the Plan of Reorganization will be construed as discharging, releasing, or relieving Debtor, or its successors, including the Reorganized Debtor, or any party, in any capacity, from any liability imposed under any law or regulatory provision with respect to the Pension or PBGC. Neither PBGC nor the Pension will be enjoined or precluded from enforcing such liability as a result of any provision of the Plan of Reorganization or the Confirmation Order.

6.2.4.9 Notwithstanding anything to the contrary herein, if the Pension has not been terminated prior to the entry of the Order confirming the Plan of Reorganization, all obligations of the Debtor under the Pension as of the Effective Date will become obligations of the Reorganized Debtor and the Reorganized Debtor's controlled group, as defined the Employee Retirement Security Act of 1974, as amended ("ERISA"), and nothing in the Plan of Reorganization will release any person or entity from any duties or obligations under ERISA. Moreover, notwithstanding anything to the contrary herein, the Plan of Reorganization will not

release any claim that the PBGC or the Pension may have relating to fiduciary duties under ERISA.

3) Paragraph 6.5 shall be modified to read:

6.5. The allowed **Class 5** claim, the PBGC's claims relating to termination of the Pension, shall be resolved as set forth in paragraph 6.2.4 herein.

4) Paragraph 6.6 shall be replaced in its entirety with the following:

6.6. The unsecured claim of VNB resulting from the judgment (the "VNB Judgment") entered in VNB's favor and against Debtor in the First Judicial District Court, County of Rio Arriba, State of New Mexico, Case No. D-117-CV-2014-00071, is allowed in the amount of \$115,425.78, and shall be paid in full, with interest at 7.50% per annum, on or before July 31, 2015 (the "VNB Claim"). To secure payment of the VNB Claim, VNB is permitted, without further order of the Court, to record on the Effective Date a transcript of the VNB Judgment (the "Transcript of Judgment"). Prior to the Effective Date, Debtor will execute and deliver to VNB a mortgage (the "VNB Mortgage") on all the property that is to remain with Debtor after the Split-Off is consummated. The VNB Mortgage will include the following terms in addition to other standard mortgage terms: (1) The VNB Mortgage shall secure the full amount of the VNB Claim in the amount of \$115,425.78, plus interest accruing at the rate of 7.50% per annum; (2) If Debtor defaults on its obligation to pay the VNB Claim by July 31, 2015, (a) a late fee of 20% of the unpaid balance of the VNB Claim will be added to VNB Claim and, (b) Debtor shall pay all costs and fees, including court costs and attorney's fees, incurred by VNB to enforce the VNB Claim; (4) Debtor shall keep all property taxes on the property covered by the VNB Mortgage current and, if the property taxes are more than thirty (30) days past due, the Debtor will be in default under the terms of the Mortgage. Debtor shall provide the legal description for the property covered in the Mortgage. The Transcript of Judgment and the Mortgage both will be junior to the PBGC Lien. VNB will release the Transcript of Judgment, but not the Mortgage, on the date of closing of the Split-Off. After the Debtor completes its standard termination of the Pension pursuant to Section 6.2.4 of the Plan and has satisfied its obligations to PBGC, Debtor will pay any money remaining from the \$360,000 sequestered funds, after funding of the Pension and paying all necessary cost associated with terminating the Pension, to VNB until the VNB Claim is paid in full. VNB will partially release the Transcript of Judgment and/or the VNB Mortgage equal to the amount of payment from the sequestered funds. Once the VNB Claim is paid in full, VNB will fully release the Transcript of Judgment and/or the VNB Mortgage.

5) The first sentence of paragraph 7.8.2 shall be modified to read:

Except as provided in paragraph 6.2.4 herein, Debtor will transfer certain assets to Mundy Brothers in exchange for Mundy Brothers' issuance to Debtor of 990 additional shares of Mundy Brothers' single class of voting common stock no later than thirty (30) days after the Effective Date.

6) Paragraph 7.8.3 shall be modified to read:

7.8.3. Split-Off. After the Assets are transferred to Mundy Brothers pursuant to paragraph 7.8.2 herein, Debtor will split-off Mundy Brothers by distributing the stock of Mundy Brothers (and only the stock of Mundy Brothers) to the Brothers Group in exchange for the Brothers Group's shares of stock in Debtor (the "Brothers Group Stock") no later than twenty (20) days after the transfer of assets described in paragraph 7.8.2. Debtor shall consummate all steps necessary to resolve Class 9 claims within forty-five (45) days after the Effective Date to the extent that such is reasonably feasible, or such other time frame as is agreed upon by the Debtor and the holder of the equity interests. **The Debtor shall not effect the "split-off" until it has made payment of Class 1 and 7 claims and has taken all actions required by paragraph 6.2.4.6 herein.** To the extent that any Class 7 claimants agree to a treatment that differs from that set forth in the Plan, i.e., payment over time, payment on said claim shall not delay the acts required to satisfy Class 9 claims.

END OF ORDER

Submitted by:

LAW OFFICE OF GEORGE "DAVE" GIDDENS, P.C

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