

FILED
IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

DOUG WHITE, DIRECTOR OF THE OHIO
DEPARTMENT OF COMMERCE,

Plaintiff,

v.

JOANNE C. SCHNEIDER, et al.

Defendants.

2008 JUN 30 P 3:23

)
) **CASE NO. 04-548887**
) **GERALD S. FLETCHER**
) **CLERK OF COURTS**
) **CUYAHOGA COUNTY**
) **(consolidated with Cases**
) **560633, 559117, 558095,**
) **559879, 564814, 569073)**
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) **Judge José A. Villanueva**
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REVISED PROPOSED SCHEDULES OF ALLOWED UNSECURED CLAIMS

I. INTRODUCTION

On December 21, 2007, this Court entered its Findings and Order of Distribution (the "Order"). On January 18, 2008, The Home Savings & Loan Company of Youngstown, Ohio and Cleveland Construction, Inc. filed a Joint Notice of Appeal challenging the Order. On April 28, 2008, the Eighth District Court of Appeals, Cuyahoga County, Ohio granted the Receiver's Motion to Dismiss Appeal of Appellants Cleveland Construction, Inc. and The Homes Savings & Loan Company of Youngstown, Ohio. Accordingly, the Appeal challenging the Order is dismissed.

II. PROPOSED SCHEDULES OF ALLOWED UNSECURED CLAIMS

The Order required that within thirty (30) days of a Final Order approving the Plan the Receiver shall file with the Court the Unsecured Creditor's Schedule of Allowed Claims. Accordingly, on January 22, 2008, the Receiver submitted Proposed Schedules of Allowed Unsecured Claims on behalf of two classes of Unsecured Creditors: Investor and Non-Investor Unsecured Creditors. Attached hereto as Exhibit 1 is the Proposed Schedule of Allowed Unsecured Claims of Investors submitted to the Court on January

22, 2008. Attached hereto as Exhibits 2A and 2B are the Proposed Schedules of Allowed Unsecured Claims of Non-Investor Creditors submitted to the Court on January 22, 2008 - accounts payable by entity and payroll payables, respectively.

III. OBJECTIONS PROCEDURE

Pursuant to Section III(C)(2) of the Order, any Unsecured Creditors had thirty (30) days from the date of service of the Proposed Schedules of Allowed Unsecured Claims to object to the treatment of the Claim. The Order further provided that in the event that an Unsecured Creditor objects to the Proposed Schedules of Allowed Unsecured Claims, the Court will dispose of the Objection in a summary proceeding at a date and time to be set by the Court.

Set forth below is a summary of objections received from both classes of Unsecured Creditors: Investors and Non-Investors and the Receiver's response to each Objection.

A. Objections Filed by Investors

1. Definitions

An **Investor** is defined as any person or entity that invested with or lent money to Schneider or any Schneider Entity on the promise that they would receive a return on their investment, or interest on the amounts invested or lent in excess of 3% above the market interest rate as determined by the Federal Reserve at the time the money was invested or lent.

The **Allowed Unsecured Claim of an Investor** shall equal the principal amount invested or lent to any Schneider or Schneider Entity minus the amount of any payments received by that Investor prior to February 4, 2005.

2. Methodology

To calculate the Allowed Unsecured Claim of an Investor, the Receiver relied upon information provided by Investors on the Investor Claim Form and the reports prepared by Mr. Richard DiCicco. To the extent there were inconsistencies between the Investor provided information and Mr. DiCicco's reports, the Receiver reviewed the supporting documentation provided by the Investor to reconcile the inconsistency. If no supporting documentation was provided, the Receiver relied upon Mr. DiCicco's report for determining the Allowed Unsecured Claim of Investors as this report was compiled from bank records.

3. Summary of Objections Filed By Investors with the Court¹

Nineteen (19) Investor Objections were filed with the Court. A summary of those Objections, and the Receiver's recommended disposition is discussed below.

a) Objection Filed by Fred Scharfenort, Jr.

Fred Scharfenort, Jr. objected to the Proposed Schedule of Allowed Unsecured Claims of Investors ("Scharfenort Jr. Objection") on grounds that he was not listed on the Proposed Schedule. The Receiver has reviewed the supporting documentation and has determined that the Scharfenort Jr. Objection should be sustained. The revised Allowed Unsecured Claim of Fred Scharfenort, Jr. is \$62,167.78.

b) Objection Filed by Fred Scharfenort, Sr.

Fred Scharfenort, Sr. objected to the Proposed Schedule of Allowed Unsecured Claims of Investors ("Scharfenort Sr. Objection") on grounds that he was not listed on

¹ A review of the docket for Case No. 04-cv-548887 indicates that eighteen (18) Investors filed objections to the Receiver's Proposed Schedules of Allowed Unsecured Claims. The Receiver did not receive, and was unable to retrieve from the court copies of objections filed by three (3) Investors. The Receiver contacted these investors via telephone and/or electronic mail requesting copies of their Objections, and to date has not received copies of the Objections. In addition, one (1) Investor filed a notice withdrawing her Investor Unsecured Claim.

the Proposed Schedule. The Receiver has reviewed the supporting documentation and has determined that the Scharfenort Sr. Objection should be sustained. The revised Allowed Unsecured Claim of Fred Scharfenort, Sr. is \$43,754.08.

c) Objection Filed by Roberta Lane

Roberta Lane objected (“Lane Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors on grounds that the Allowed Unsecured Claim should have been \$34,486.00 instead of the \$15,590.13. The Receiver has reviewed the supporting documentation submitted with the Objection and has and has determined that the Lane Objection should be sustained. The revised Allowed Unsecured Claim of Roberta Lane is \$34,486.00.

d) Objection Filed by Cathy L. Dreifort

Cathy L. Dreifort objected (“Dreifort Objection”) to the Proposed Schedule of Allowed Unsecured Claims objecting to the amount of her Allowed Unsecured Claim. The Dreifort Objection sought to treat accrued interest as an amount invested or lent to any Schneider or Schneider Entity. The Dreifort Objection should be overruled. The Order is clear that the Allowed Unsecured Claim of an Investor is equal to the *principal* amount invested minus any interest payments received.

e) Objection Filed by Joseph J. Corso as Executor of the Estate of Peter A. Scrivens

Joseph J. Corso as Executor of the Estate of Peter A. Scrivens submitted an objection (“Scrivens Objection”) to the Proposed Schedule of Allowed Unsecured Claims objecting to the amount of his Allowed Unsecured Claim. The Receiver has reviewed the supporting documentation submitted with the Scrivens Objection and has determined that

the Scrivens Objection should be sustained. The revised Allowed Unsecured Claim of the Estate of Peter A. Scrivens is \$14,734.07.²

f) Objection Filed by Harold A. and Cecilia J. Laubenthal

Harold and Cecilia Laubenthal submitted their objection (“Laubenthal Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors objecting to the amount of their Allowed Unsecured Claim. The Receiver has reviewed the supporting documentation submitted with the Laubenthal Objection and has determined that the Laubenthal Objection should be sustained. The revised Allowed Unsecured Claim of Harold and Cecilia Laubenthal is \$157,666.69.

g) Objection Filed by Linda Sebek

Linda Sebek submitted her objection (“Sebek Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors objecting to the amount of her Allowed Unsecured Claim. The Receiver has reviewed the supporting documentation submitted with the Sebek Objection and has determined that the Sebek Objection should be overruled. A review of Mr. DiCicco’s report indicates that Linda Sebek received amounts in interest and/or principal payments that were in excess of the amounts invested.

h) Objection Filed by Timothy M., Katherine H. and Sandra K. Kreuzer

The Kreuzers submitted their Objection (“Kreuzer Objection”) to the Proposed Schedules of Allowed Unsecured Claims stating: “For unknown and unexplained reasons, the Receiver has proposed a preposterously low amount for the Kreuzer claims,

² Please note that two of the investments made by Mr. Scrivens were joint and/or P.O.D. to Mrs. Lilly Cleveland. Accordingly, the Allowed Unsecured Claim of the Estate of Mr. Peter A. Scrivens is \$3,000.28, and \$11,733.79 shall be added to the Allowed Unsecured Claim of Mrs. Lilly Cleveland.

and in fact the proposal is unclear as to whether this amount covers all claims of the Kreuzers collectively, or just for Timothy Kreuzer.”

This Court should overrule the Kreuzer Objection because the Kreuzers’ have failed to submit copies of source documents³ that would enable the Receiver to reconcile the inconsistency between Mr. DiCicco’s report and the Kreuzer’s alleged unsecured claim. Moreover, the spreadsheet submitted as supporting documentation includes interest due as part of the Kreuzers alleged unsecured claim. The Order clearly excludes any claims for interest.

i) Objection Filed by Jeff Pace

Jeff Pace submitted his objection (“Pace Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors objecting to the amount of his Allowed Unsecured Claim. The Receiver has reviewed the supporting documentation submitted with the Pace Objection and has determined that the Pace Objection should be sustained. The revised Allowed Unsecured Claim of Jeff Pace is \$12,925.36.

j) Objection Filed by Raymond M. and Patrice Stachowicz

Raymond and Patrice Stachowicz submitted their objection (“Stachowicz Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors objecting to the amount of their Allowed Unsecured Claim. The Receiver has reviewed

³ In or about April 2005, the Receiver mailed Investor Claim Forms to all known Investors, including the Kreuzers. The Investor Claim Form requested the following information: (1) date(s) investment(s) made; (2) amount invested; (3) interest payments received; (4) principal payments received; (5) documents provided to the Investor by Joanne and/or Alan Schneider; (6) copies of the Investors canceled check(s); and (7) copies of any checks the Investor received for payment of interest and/or principal. In addition, on January 22, 2008, in the cover letter enclosing the Proposed Schedules of Unsecured Claims for Review, the Receiver instructed Unsecured Creditors as follows: “**If you have an objection to the Allowed Unsecured Claim, you must submit a written objection, with source documents, to the Court for filing. Please note that a phone call, e-mail, or other correspondence sent to the Receiver and/or his staff is not sufficient notice of your objection.** Source documents include the following: copies of any documents, including acknowledgment of the receipt of funds, provided to you by Joanne and Alan Schneider; copies of your returned investment checks; copies of any checks you received as payment of interest or principal.”

the supporting documentation submitted with the Stachowicz Objection and has determined that the Stachowicz Objection should be sustained. The revised Allowed Unsecured Claim of the Raymond and Patrice Stachowicz is \$148,439.53.

k) Objection Filed by George and Lou Ann Duffield

George and Lou Ann Duffield submitted their objection (“Duffield Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors objecting to the amount of their Allowed Unsecured Claim. The Receiver has reviewed the supporting documentation submitted with the Duffield Objection and has determined that the Duffield Objection should be sustained. The revised Allowed Unsecured Claim of George and Lou Ann Duffield is \$33,864.60.

l) Objection Filed by Charles and Susan Glorioso

Charles and Susan Glorioso submitted their objection (“Glorioso Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors on grounds that he they were not listed on the Proposed Schedule. The Receiver has reviewed the supporting documentation and has determined that the Glorioso Objection should be sustained. The revised Allowed Unsecured Claim of Charles and Susan Glorioso is \$92,045.00.

m) Objection Filed by Virginia Heisler and/or Susan Glorioso

Virginia Heisler submitted her objection (“Heisler Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors objecting to the amount of her Allowed Unsecured Claim. The Receiver has reviewed the supporting documentation submitted with the Heisler Objection and has determined that the Heisler Objection should be overruled. Virginia Heisler invested or lent \$23,000.00 and received

\$13,091.32 in payments; accordingly, the amount of the Allowed Unsecured Claim for Virginia Heisler remains \$9,908.68.

n) Objection Filed by J. Michael and Diane Pinkos

J. Michael and Diane Pinkos submitted their objection (“Pinkos Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors, requesting that the Court direct the Receiver to accept their claim in the amount of \$6,400.00 and include the same in the final schedule of allowed claims. Because the Proposed Allowed Unsecured Claim for J. Michael and Diane Pinkos is \$6,400.00, the Pinkos Objection should be overruled.

o) Objection Filed by Helen Forster

Helen Forster submitted her objection (“Forster Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors, requesting that the Court direct the Receiver to accept her claim in the amount of \$6,200.00 and include the same in the final schedule of allowed claims. The Receiver has reviewed the supporting documentation submitted with the Forster Objection and has determined that the Forster Objection should be overruled. A review of Mr. DiCicco’s report indicates that Helen Forster received amounts in interest and/or principal payments that were in excess of the amounts invested.

p) Objection Filed by Elaine Scarpelli

Elaine Scarpelli submitted her objection (“E. Scarpelli Objection”) to the Proposed Schedule of Allowed Unsecured Claims of Investors, on grounds that the Allowed Unsecured Claim should have been \$18,933.36 instead of the \$13,555.63. The Receiver has reviewed the supporting documentation submitted with the E. Scarpelli Objection and has determined that the Allowed Unsecured Claim of E. Scarpelli should be revised. Elaine Scarpelli invested or lent \$25,000.00 and Mr. DiCicco’s report

indicates that she received \$6,444.37 in payments. Accordingly, the revised Allowed Unsecured Claim of Elaine Scarpelli is \$18,555.63.

4. Objections Submitted to the Receiver

The Receiver received numerous telephone calls and written objections from Investors. The Receiver has reviewed the objections and reported his determinations to the Investors. To the extent that there were changes to the amount of the Allowed Unsecured Claims, those changes are reflected in the Schedule of Allowed Unsecured Claims of Investors attached hereto as Exhibit A.

B. Objections Filed By Non-Investor Unsecured Creditors

1. Definitions

A **Non-Investor Unsecured Creditor** is any person or entity who provided goods or services to Schneider and/or any Schneider Entity in the ordinary course of their business and did not obtain a mortgage or lien to secure the amount due. A Non-Investor Unsecured Creditor shall also mean any person that has a claim against the Receivership Estate that does not qualify as an Administrative or Secured Claim as those terms are defined in the Order.

The **Allowed Unsecured Claim of a Non-Investor Unsecured Creditor** shall equal the total amount owed to each Non-Investor Unsecured Creditor prior to February 4, 2005, and shall not include any interest accrued after February 4, 2005.

2. Methodology

Following the appointment of the Receiver in this case, the books and records of Schneider and the Schneider Entities fell under the control of the Receivership. Professionals retained by the Receiver reviewed these business records and compiled the Proposed Schedules of Allowed Unsecured Claims of Non-Investor Creditors. These

same professionals also received periodic unpaid invoices from Non-Investor Unsecured Creditors and incorporated those non-duplicative Claims.

3. Summary of Objections.

Three Non-Investor Unsecured Creditors filed objections with the Court. A summary of those objections and recommended disposition is below.

a) BCN Maintenance Co.

BCN Maintenance Co. filed an objection (“BCN Objection”) objecting to (1) the amount of its Allowed Unsecured Claim; and (2) the treatment of the full amount of its claim as unsecured.

BCN first objection to the amount of the Allowed Unsecured Claim, and states that it is owed the total sum of \$23,591.82, instead of the \$20,466.72 as listed on Exhibit 2A submitted to the Court on January 22, 2008. The Receiver has reviewed the supporting documentation submitted with the BCN Objection and has determined that this objection should be overruled because: (1) a prior payment \$1,995.60 was made on Invoice #40029; and (2) the last two pages of Exhibit 3A to the BCN Objection are not invoices for work performed. Accordingly, the Allowed Unsecured Claim remains \$20,466.72.

BCN’s second objection is that \$9,715.00 of its claim should be treated as secured because it obtained Mechanic’s Liens in its favor against Schneider Management Co. This objection should be overruled. The Mechanic’s Liens are dated March 31, 2005 and April 8, 2005. Mechanic’s Liens filed on or after February 4, 2005, are void because the Receiver took possession and control of all Schneider and Schneider Entity assets on that date. Moreover, pursuant to this Court’s Amended Order Appointing Receiver dated February 28, 2005, the filing of liens or other conduct designed to take action against

Receivership property was specifically enjoined. Accordingly, BCN should be treated as a Non-Investor Unsecured Creditor.

b) R.W. Sidley, Inc.

R.W. Sidley, Inc. objected to the Proposed Schedules of Allowed Unsecured Claims of Non-Investor Creditors: Accounts Payable by Entity on grounds that its claims is a secured claim and should be recognized as such. R.W. Sidley, Inc. filed a secured claim in the amount of \$34,317.50 alleging that it held a mechanic's lien which it caused to be recorded on February 15, 2005 against certain property owned by Pearl Development. The secured status of R.W. Sidley, Inc. is addressed in the Receiver's Initial Proposed Distribution of Sale Proceeds to Secured Creditors filed on June 13, 2008.

c) LifeStyle Designs, Inc.

LifeStyle Designs, Inc. ("LifeStyle") objected to the Proposed Schedules of Allowed Unsecured Claims on grounds that it was omitted from the Proposed Schedule of Allowed Unsecured Claims of Non-Investor Creditors: Accounts Payable by Entity. The Receiver has revised the Proposed Schedule of Allowed Unsecured Claims of Non-Investor Creditors: Accounts Payable by Entity such that LifeStyle is listed as a Non-Investor Unsecured Creditor with an Allowed Unsecured Claim in the amount of \$113,665.65.

4. Mechanic's Lien Claimants

The Receiver has concluded that all mechanic's lien claimants are subordinate to the mortgage of Home Savings & Loan Company. See, The Receiver's Initial Proposed Distribution of Sale Proceeds to Non-Investor Claimants, filed on June 13, 2008. Accordingly, the Receiver has included the Non-Investor Claimants claiming secured

status by virtue of mechanic's liens and tax liens in Exhibit B, the Revised Proposed Schedule of Allowed Unsecured Claims of Non-Investor Creditors: Accounts Payable by Entity. To the extent that the information filed was insufficient for the Receiver to determine whether the amount is valid, the amount is marked as "insufficient information."

IV. PAYMENT OF CLAIMS

Court approval of the amount of the Allowed Unsecured Claim constitutes allowance of such Claim. **However, Unsecured Creditors should not interpret the allowance of such Claim as a guarantee of payment.** Section IV of the Order sets forth the procedure for the payment of claims and provides as follows: "Unsecured creditors will be paid Pro Rata from the Receivership Assets remaining after payment of Allowed Administrative and Secured Claims."

V. REVISED PROPOSED SCHEDULES OF ALLOWED UNSECURED CLAIMS


Attached hereto as Exhibit A is the Revised Proposed Schedule of Allowed Unsecured Claims of Investors. Attached hereto as Exhibit B is the Revised Proposed Schedule of Allowed Unsecured Claims of Non-Investor Creditors: Accounts Payable by Entity. Attached hereto as Exhibit C is the Revised Proposed Schedule of Allowed Unsecured Claims of Non-Investor Creditors: Payroll Payables.

VI. CONCLUSION

WHEREFORE, the Receiver recommends that this Court approve the following: (1) the Revised Proposed Schedule of Allowed Unsecured Claims of Investors, attached hereto as Exhibit A; (2) the Revised Proposed Schedule of Allowed Unsecured Claims of Non-Investor Creditors: Accounts Payable by Entity, attached hereto as Exhibit B; and

(3) the Revised Proposed Schedule of Allowed Unsecured Claims of Non-Investor Creditors: Payroll Payables, attached hereto as Exhibit C.

Respectfully submitted,



Jonathon M. Yarger (0043781)
Victor D. Radel (0075293)
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*Attorneys for the Receiver Matthew L.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *The Receiver's Revised Proposed Schedules of Allowed Unsecured Claims* will be served by the Receiver upon the following persons:

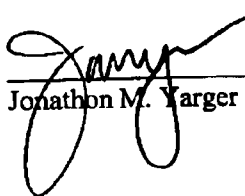
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Joanne C. and Alan C. Schneider
c/o Ian N. Friedman, Esq.
700 West St. Clair Avenue, #110
Cleveland, Ohio 44113

All persons requesting Notice who have served a request for Notice on Garden City, Inc. or the Receiver.

All Investor and Non-Investor Unsecured Creditors.

The Receiver's Revised Proposed Schedules of Allowed Unsecured Claims will be posted on the Receivership's website at <http://www.szd.com/schneider/>.

 6/30/06

Jonathon M. Yarger