

SIGNED.



Dated: January 26, 2010

James M. Marlara

JAMES M. MARLAR
Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

STADIUM HOLDINGS, LLC,

Debtor.

Chapter 11

No. 2:09-bk-03675-JMM

MEMORANDUM DECISION

A hearing on confirmation of the Debtor's plan was held on January 21 and 25, 2010. After consideration of the evidence, the court holds that the Debtor's plan cannot be confirmed, as it has not been proven to be feasible. This is because the Debtor's only plan is to sell its 46-acre parcel of real estate. To date, its only previous sale attempt was to HB Equities, which the court approved. HB Equities defaulted. HB Equities is again the proposed and only buyer, and HB Equities' promise to now perform, sometime in the indefinite future, lacks credibility. HB Equities has not even offered to put up the same non-refundable \$200,000 that it could not pay the last time around. A precise closing date to fully pay the \$25,000,000 balance was never expressed with clarity.

Thus, the plan is not confirmable, because the Debtor has not proven feasibility. 11 U.S.C. § 1129(a)(11).

The Debtor purchased the property in November, 2007, for approximately \$16,265,000. It borrowed all or most of that money from Stearns Bank National Association,

1 which has a lien on the property. Stearns Bank has not been paid since October, 2008. Stearns
2 Bank has filed a claim for \$17,540,971.86.

3 The proposed buyer's "offer" to purchase (again) is contingent on many
4 unpredictable events, out of its control, which must occur before any sale closes and creditors can
5 be paid.

6 The risk, at this time, is entirely on Stearns Bank. For its part, Stearns Bank has
7 waited long enough for the Debtor to propose something concrete and tangible. The Debtor's
8 promises, optimism and hopes are not sufficient pillars upon which to base a confirmable plan.
9 The law of the Ninth Circuit prohibits confirmation of speculative plans such as this one. *In re*
10 *Pizza of Hawaii*, 761 F.2d 1374 (9th Cir.1985).

11 HB Equities' "offer" is contingent, unpredictable, elusive, and not backed up by an
12 additional non-refundable deposit to secure performance. Nor do Debtor's principals have the
13 means to make the plan's proposed payments of approximately \$100,000 per month to Stearns
14 Bank, beginning in June, 2010, as acknowledged by its member-principal, Norman J. Bashkingy.
15 Therefore, this court will cause two orders to be entered. The first order will deny confirmation
16 of the Debtor's proposed plan (DN 35), and any amendments thereto. The second order will lift
17 the automatic stay in favor of Stearns Bank (DN 29).

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19 DATED AND SIGNED ABOVE.

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21 Copies to be sent by the Bankruptcy Notification
22 Center ("BNC") to the following:

23 Robert Behrens and Adam D. Melton, Attorney for Debtor

24 John A. Shannon, Attorney for Washington & Jefferson, LLC

25 Sean P. O'Brien, Attorney for Stearns Bank National Association

26 Office of the U.S. Trustee