

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:)	Case No. 03-37759
)	Chapter 11
SHARK INDUSTRIES, LTD)	
)	
Debtor.)	

**LIMITED OBJECTION OF WELLS FARGO BUSINESS CREDIT, INC. TO DEBTOR'S
AMENDED PLAN OF REORGANIZATION**

Wells Fargo Business Credit, Inc. ("Wells Fargo"), by and through its undersigned counsel, hereby files this Limited Objection to the Debtor's Amended Plan of Reorganization dated as of August 18, 2004 (the "Plan") solely to clarify the status of and treatment of its liens and security interests. Debtor's Plan cannot be confirmed under 11 U.S.C. § 1129 if (i) Wells Fargo's liens and security interests securing its Class C Claims are not preserved between the confirmation date and the effective date of the Plan and (ii) Wells Fargo's liens and security interests are not preserved to secure its Class B distributions.

Background

On November 14, 2003, the Debtor commenced a voluntary Chapter 11 proceeding in this Court. Since that date, the Debtor has continued to operate its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is indebted to Wells Fargo under (i) that certain Construction and Term Loan Agreement and Term Note dated March 2, 2001 (the "Real Estate Loan") and (ii) that certain Credit and Security Agreement originally dated as of May 19, 2000 (as amended, the "Credit Agreement") and a Revolving Note in the original principal amount of \$2,000,000 issued pursuant to the terms of, and subject to the conditions of, the Credit Agreement. As security for the Real Estate Loan and the extension of credit under the Credit Agreement, the Debtor granted

Wells Fargo first priority liens and security interests in substantially all of the Debtor's property, including its real property. Wells Fargo, therefore, is a party in interest in this case and has standing to file this Objection.

On August 18, 2004, the Debtor filed its Plan which provides, in part, for the continuation of the Debtor's business with the existing equity ownership of the Debtor remaining unaffected. Wells Fargo's claims are treated as part of two classes. Wells Fargo's claims under the Real Estate Loan are treated as part of Class B under the Plan. Under the Plan, the Class B obligations to Wells Fargo would be paid out over a period of 2 years at a modified rate of interest. The Plan is silent as to its effect on Wells Fargo's security for the Real Estate Loan. The Plan treats Wells Fargo's claims under the Credit Agreement as part of Class C and provides that Wells Fargo will be paid in full on the effective date of the Plan. The Plan is silent as to the status of Wells Fargo's liens prior to the effective date of the Plan.

Legal Standards

The requirements for confirmation of a plan are codified at 11 U.S.C. § 1129. Section 1129(a)(7) provides that with respect to each holder of an impaired class of claims that each holder must accept the plan or receive or retain under the plan, on account of such claims, property that is no less than the amount the holder would receive as part of a Chapter 7 liquidation. Section 1129(a)(11) mandates that any proposed plan be feasible – that it is not likely to be followed by a need for further financial reorganization.

Even if the conditions of Section 1129 were satisfied other than (a)(8), a plan can only be confirmed under § 1129(b) of the Bankruptcy Code if it is fair and equitable with respect to each class of claims and that each class of secured claims either (i) retains its liens and receives

deferred cash payments, (ii) retains liens in sale proceeds or (iii) receives the indubitable equivalent of its claims.

Finally, Section 1141(c) of the Bankruptcy Code provides that “except as otherwise provided in the plan or in the order confirming the plan, after confirmation of the plan, the property dealt with by the plan is free and clear of all claims and interests of creditors . . .”

Argument

The Debtor’s Plan cannot be confirmed at this time because it fails to explicitly preserve the liens for either Wells Fargo’s Class B or Class C liens. Without the preservation of Wells Fargo’s Class B liens to secure its distributions under the Plan, Wells Fargo is not receiving what it would in a Chapter 7 liquidation, the Plan is not fair and equitable and does not provide for the indubitable equivalent to Wells Fargo.

Similarly, without the preservation of the liens securing Wells Fargo’s Class C claims between confirmation and the effective date, the Plan is not fair and equitable and does not provide Wells Fargo the indubitable equivalent of its claims. Upon information and belief, Wells Fargo asserts that the effective date of the Plan will not occur until well after entry of the order confirming the Plan. Additionally, Wells Fargo believes that the Plan may be withdrawn and hereby submits this Objection to preserve its rights.

In order to protect its interests between the entry of the confirmation order and the effective date of the Plan, Wells Fargo objects to confirmation of the Plan unless the Plan or the confirmation order confirms (i) that the liens and security interests of Wells Fargo are preserved until the promised consideration is exchanged on the effective date of the Plan and (ii) that Wells Fargo’s liens against the Debtor’s real property continue to secure its Class B distribution rights.

Dated: September 24, 2004

DORSEY & WHITNEY LLP

/e/ Steven J. Heim

Mark J. Kalla, Esq. (#159487)
Steven J. Heim, Esq. (#316994)
Dorsey & Whitney LLP
50 South Sixth Street
Minneapolis, MN 55402
(612) 340-2600
(612) 340-2643 (facsimile)

Counsel for Wells Fargo
Business Credit, Inc.

