

## **APPENDIX A**

FILED: August 24, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 19-2305  
(1:19-cv-00780-CMH-MSN)

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In re: PHILIP JAY FETNER

Debtor

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PHILIP JAY FETNER

Debtor - Appellant

v.

HOTEL STREET CAPITAL, L.L.C.; ROSZEL & BANG-JENSEN, CO-EXECUTORS; UNITED STATES OF AMERICA; WILMINGTON SAVINGS FUND SOCIETY, c/o Shellpoint Mortgage Servicing

Creditors - Appellees

and

JOHN P. FITZGERALD, III

Trustee - Appellee

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JUDGMENT

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In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed.

R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 19-2305**

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In re: **PHILIP JAY FETNER,**

**Debtor.**

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**PHILIP JAY FETNER,**

**Debtor - Appellant,**

**v.**

**HOTEL STREET CAPITAL, L.L.C.; ROSZEL & BANG-JENSEN, CO-  
EXECUTORS; UNITED STATES OF AMERICA; WILMINGTON SAVINGS  
FUND SOCIETY, c/o Shellpoint Mortgage Servicing,**

**Creditors - Appellees,**

**and**

**JOHN P. FITZGERALD, III,**

**Trustee - Appellee,**

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Appeal from the United States District Court for the Eastern District of Virginia, at  
Alexandria. Claude M. Hilton, Senior District Judge. (1:19-cv-00780-CMH-MSN)

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**Submitted: August 20, 2020**

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**Decided: August 24, 2020**

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Before **GREGORY, Chief Judge, WYNN, and QUATTLEBAUM, Circuit Judges.**

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Dismissed by unpublished per curiam opinion.

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Philip Jay Fetner, Appellant Pro Se. Beth Ann Levene, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Hugh Michael Bernstein, OFFICE OF THE UNITED STATES TRUSTEE, Baltimore, Maryland; William Davis Ashwell, MARK B. WILLIAMS & ASSOCIATES, PLC, Warrenton, Virginia; Andrew Justin Narod, BRADLEY ARANT BOULT CUMMINGS, LLP, Washington, D.C., for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Phillip Jay Fetner seeks to appeal the district court's orders dismissing his bankruptcy appeal for lack of jurisdiction and denying reconsideration. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order Fetner seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Under 28 U.S.C. § 158(d)(1), we have jurisdiction over a bankruptcy appeal when both the bankruptcy court and the district court enter final orders. Here, the bankruptcy court's order was interlocutory, *see In re Wallace & Gale Co.*, 72 F.3d 21, 25 (4th Cir. 1995), as well as the district court's order. *See In re Kassover*, 343 F.3d 91, 94 (2d Cir. 2003) (“[T]here is no jurisdictional provision authorizing a court of appeals to hear an appeal from a district court's decision regarding a bankruptcy court's interlocutory order, whether it denies leave to appeal or renders a decision on the merits.”). Accordingly, we dismiss the appeal for lack of jurisdiction.\* We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED*

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\* We note that even if we had jurisdiction over this appeal, it would be moot because the bankruptcy proceeding was converted to a Chapter 7 liquidation case, and parties do not file disclosure statements in Chapter 7 proceedings. *See In re Stadium Mgmt. Corp.*, 895 F.2d 845, 847 (1st Cir. 1990) (absent a stay of bankruptcy court transaction or proceeding, appellate court must dismiss an appeal as moot where there is no remedy to fashion).

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v.

**HOTEL STREET CAPITAL, L.L.C.; ROSZEL & BANG-JENSEN, CO-EXECUTORS; UNITED STATES OF AMERICA; WILMINGTON SAVINGS FUND SOCIETY, c/o Shellpoint Mortgage Servicing**

**Creditors - Appellees**

and

**JOHN P. FITZGERALD, III**

**Trustee - Appellee**

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**STAY OF MANDATE UNDER  
FED. R. APP. P. 41(d)(1)**

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Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

)  
PHILIP JAY FETNER, )  
                          )  
                          )  
Appellant,            )  
                          )  
                          )  
v.                    ) Civil Action No. 1:19-cv-780  
                          )  
                          )  
                          )  
WILMINGTON SAVINGS FUND )  
SOCIETY, ET AL.,    )  
                          )  
                          )  
Appellees.            )  
                          )

ORDER

THIS MATTER comes before the Court on Plaintiff's Motion for Reconsideration or Rehearing of this Court's September 9, 2019 Order. The Court is of the opinion that its previous ruling was correct for the reasons stated. Accordingly, it is hereby ORDERED that Appellant's Motion is DENIED.

*Claude M. Hilton*  
CLAUDE M. HILTON  
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia  
October 22<sup>nd</sup> 2019

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

)  
PHILIP JAY FETNER, )  
                          )  
                          )  
Appellant,            )  
                          )  
                          )  
v.                     ) Civil Action No. 1:19-cv-780  
                          )  
                          )  
                          )  
WILMINGTON SAVINGS FUND )  
SOCIETY, ET AL.,    )  
                          )  
                          )  
Appellees.            )  
                          )

ORDER

THIS MATTER comes before the Court on Appellee's Motion to Dismiss the appeal of the Bankruptcy Court's order rejecting the Appellant's proposed Chapter 11 disclosure statement.

On May 30, 2019, the Bankruptcy Court entered an order rejecting Appellant's proposed disclosure statement because it did not contain sufficiently "adequate information," as is required by 11 U.S.C. § 1125(b). The Bankruptcy Court's May 30, 2019 order also invited Appellant to file an amended statement by June 6, 2019, but Appellant filed the instant appeal instead. After Appellant filed this appeal, the Bankruptcy Court granted the Trustee's motion to convert Appellant's Chapter 11 case to a Chapter 7 "liquidation" case.

Appellee now moves to dismiss this appeal for lack of jurisdiction. Specifically, Appellee contends that the Bankruptcy Court's order denying approval of Appellant's proposed disclosure statement is interlocutory and that no "compelling reason" exists to warrant this Court's review. The Court agrees.

The Bankruptcy Court order rejecting Appellant's proposed disclosure statement but providing the opportunity to submit an amended statement was interlocutory. See Legal Rep. for Future Claimants v. Aetna Cas. & Sur. Co, 72 F.3d 21, 25 (4th Cir. 1995) ("the bankruptcy court's order denying approval of the [Chapter 11] disclosure statement was interlocutory."). As a result, under 28 U.S.C. § 158(a), the "decision whether to grant leave to appeal from a bankruptcy court's interlocutory order is committed to the district court's discretion." Legal Rep. for Future Claimants, 72 F.3d at 25.<sup>1</sup> Although § 185(a) does not proscribe any particular standard of review when considering an interlocutory appeal, 28 U.S.C. §158(c)(2) states that a reviewing court shall take bankruptcy appeals "in the same manner as appeals in civil proceedings generally taken to the courts of appeals from the district courts. . . [.]" Thus, courts reviewing appeals of interlocutory bankruptcy court

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<sup>1</sup> Although the Appellant has not sought leave to file an interlocutory appeal, the Court may consider the notice of appeal as a request for leave to appeal. Fed. R. Bankr. P. 8004(d).

orders regularly utilize the factors set forth in 28 U.S.C. § 1292(b). See First Owners' Ass'n of Forty Six Hundred v. Gordon Props., LLC, 270 B.R. 364, 371 (E.D. Va. 2012). That is, a court considering whether to take appeal of an interlocutory bankruptcy order will evaluate: (1) whether the order involves a controlling question of law; (2) as to which there is substantial ground for difference of opinion; and (3) whether an immediate appeal from the order would materially advance the ultimate termination of the litigation. First Owners' Ass'n of Forty Six Hundred v. Gordon Props., LLC, 470 B.R. 364, 371 (E.D. Va. 2012) (applying standard in 28 U.S.C. § 1292(b) to consider appeal of interlocutory bankruptcy order).

There is no controlling question of law at issue in this appeal. Although 11 U.S.C. § 1125(a) statutorily defines "adequate information" as "information of a kind, and in sufficient detail . . . that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan," the determination of whether the statement contains such information is primarily a factual one. Here, the Bankruptcy Court found that Appellant's proposed statement did not contain sufficiently adequate information regarding payment of certain administrative tax liabilities or the Appellant's 2018 tax return, among other reasons. This appeal would also not

materially advance the litigation. Appellant's bankruptcy case has been converted to a Chapter 7 case, and thus, whether Appellant's first proposed disclosure statement contained "adequate information" is no longer relevant. While the Court is mindful that Appellant has filed a separate appeal of the Bankruptcy Court's order converting the matter to a Chapter 7 case, even if that appeal were successful and the matter was converted back to a Chapter 11 case, Appellant would subsequently be allowed to submit an amended disclosure statement. For the aforementioned reasons, it is hereby

ORDERED that the Appellee's Motion to Dismiss is GRANTED and the case is DISMISSED for lack of jurisdiction.

Claude M. Hilton  
CLAUDE M. HILTON  
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia  
September 9, 2019

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

In re:

Philip Jay Fetner,  
Debtor.

Case No. 17-13036  
(Chapter 11)

**ORDER DENYING DISCLOSURE STATEMENT**

This case was before the Court on May 28, 2019 for a hearing on the Debtor's Disclosure Statement filed on April 30, 2019. (Docket No. 197). John Donelan, the Debtor's counsel and the Debtor, Philip Jay Fetner, both appeared for the hearing. Joseph A. Guzinski appeared on behalf of the Office of the United States Trustee. Robert K. Coulter filed an Objection to the Debtor's Disclosure Statement and appeared on behalf of the United States of America. (Docket No. 206). Andrew Narod filed an Objection to the Disclosure Statement on behalf of Wilmington Savings Fund Society and appeared for the hearing. (Docket No. 208). Robert M. Marino filed an Objection to the Disclosure Statement and appeared on behalf of Hotel Street Capital, LLC. (Docket No. 209). Upon review of the pleadings, testimony of the Debtor, arguments of counsel and for the reasons stated on the record, this Court finds as follows:

WHEREAS, the underlying Plan fails to comply with 11 U.S.C. §1129(b)(2)(A) for purposes of treatment of the claim of Wilmington Savings Fund Society, FSB because it does not provide that Wilmington retains its lien and receive cash payments equal to the value of its claim and because the Plan proposes to modify the terms of a loan secured by the Debtor's principal residence;

WHEREAS, the underlying Plan fails to comply with 11 U.S.C. §1123(b)(5) for purposes of treatment of the claims of Wilmington Savings Fund Society, FSB and Hotel Street Capital,

LLC, because it proposes to modify the terms of loans secured by the Debtor's principal residence;

WHEREAS, the Disclosure Statement fails to comply with 11 U.S.C. §1129(b)(2)(A)(i)(I) for purposes of the treatment of tax obligations to the Internal Revenue Service because it provides for an improper release of a federal tax lien;

WHEREAS, the Disclosure Statement fails to provide for the payment of administrative tax liabilities on the effective date, in full, and for the filing of the Debtor's 2018 federal income tax return before confirmation in accordance with 11 U.S.C. §1129(a)(9)(A);

WHEREAS, the Debtor bears the burden of proving feasibility and has failed to provide adequate financial information to support the Debtor's ability to generate income necessary to fund the Plan;

WHEREAS, the Disclosure Statement fails to satisfy the adequate information standard pursuant to 11 U.S.C. § 1125 because the Plan cannot be confirmed pursuant to 11 U.S.C. § 1129(a) due to incomplete and speculative financial information;

It is **ORDERED** that:

1. The Debtor's motion to approve the Disclosure Statement (Docket No. 197) is **DENIED**.
2. The Debtor may file an amended Disclosure Statement and Plan on or before June 6, 2019. Approval of the amended Disclosure Statement and Plan must be set for a hearing on June 11, 2019 at 11:00AM.
3. The Clerk shall mail a copy of this Order, or provide electronic notice of its entry, to the parties below.

Date: May 30 2019

/s/ Klinette Kindred

Klinette H. Kindred  
United States Bankruptcy Judge

Entered on Docket: May 30, 2019

**Copy electronically to:**

Robert K. Coulter  
John T. Donelan  
Joseph A. Guzinski  
Robert M. Marino  
Andrew Justin Narod

FILED: November 2, 2020

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FOR THE FOURTH CIRCUIT

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Shellpoint Mortgage Servicing

Creditors - Appellees

and

JOHN P. FITZGERALD, III

Trustee - Appellee

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O R D E R

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The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk