

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

Sticky's Holdings LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10856 (JKS)

Jointly Administered

Re. D.I. 6, 48, 53 and 58

**FINAL ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING,
REFUSING OR DISCONTINUING UTILITY SERVICES, (II) APPROVING
PROPOSED ADEQUATE ASSURANCE OF PAYMENT TO UTILITY
PROVIDERS AND AUTHORIZING DEBTORS TO PROVIDE ADDITIONAL
ASSURANCE, (III) ESTABLISHING PROCEDURES TO RESOLVE REQUESTS
FOR ADDITIONAL ASSURANCE AND (IV) GRANTING RELATED RELIEF**

Upon the motion the (“Motion”)² of the above captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (the “Interim Order”) and a final order (this “Final Order”) pursuant to sections 105(a), 363 and 366 of the Bankruptcy Code, Bankruptcy Rules 6003(b) and 6004, and Local Rule 9013-1(m): (i) prohibiting Utility Providers from altering, refusing, discontinuing services or discriminating against the Debtors solely on the basis of the commencement of these cases or that the Debtors did not pay a debt when due prepetition; (ii) determining that adequate assurance of payment for postpetition utility services has been furnished to the Utility Providers providing services to the Debtors and authorizing the Debtors to provide additional adequate assurance of payment to the Utility Providers; (iii)

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number are as follows: Sticky's Holdings LLC (3586); Sticky Fingers LLC (3212); Sticky Fingers II LLC (7125); Sticky Fingers III LLC (3914); Sticky Fingers IV LLC (9412); Sticky Fingers V LLC (1465); Sticky Fingers VI LLC (0578); Sticky's BK 1 LLC (0423); Sticky's NJ 1 LLC (5162); Sticky Fingers VII LLC (1491); Sticky's NJ II LLC (6642); Sticky Fingers IX LLC (5036); Sticky's NJ III LLC (7036); Sticky Fingers VIII LLC (0080); Sticky NJ IV LLC (6341); Sticky's WC 1 LLC (0427); Sticky's Franchise LLC (5232); Sticky's PA GK I LLC (7496); Stickys Corporate LLC (5719); and Sticky's IP LLC (4569). The Debtors' mailing address is 24 E. 23rd Street, New York, NY 10010.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



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establishing procedures for resolving requests by any Utility Provider for additional adequate assurance of payment; and (iv) granting related relief, all as more fully described in the Motion; and the Court having previously entered the Interim Order; and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. Absent compliance with the Additional Assurance Procedures set forth in the Motion and this Final Order, the Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these Chapter 11 Cases and/or any unpaid prepetition charges in accordance with section 366 of the Bankruptcy Code.
3. Consolidated Edison Company of New York, Inc. ("Con Ed") held a prepetition cash deposit in the amount of \$650 that it recouped against prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code. Any bonds or other security deposits that were in place prior to the Petition Date shall remain in place and shall continue to be held by those Utility Providers holding the same, except upon written agreement(s) between the Debtors and Utility Providers without further order of the Court.
4. To the extent not previously funded, the Debtors shall fund within three (3) business days of the entry of this Final Order the Adequate Assurance Deposit of \$5,857.79³ by depositing such amount in the Utility Deposit Account. The foregoing amount may be adjusted

³ An additional \$26,134.00 will be used to fund a post-petition cash deposit to be paid to Con Ed as set forth below.

by the Debtors as follows: (i) reducing the amount held in the Utility Deposit Account to account for the payment and termination of Utility Services by the Debtors for any given location or account, only if it has provided two weeks advance notice to such Utility Provider, and has not received any objection from such Utility Provider. If an objection is received, the Debtor shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtor and the Utility Provider may agree. The Debtors shall not deduct from the Utility Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from Schedule 1 unless and until the two week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company; (ii) modifying the amount held in the Utility Deposit Account on the basis of agreements reached with Utility Providers regarding Additional Assurance Requests, including, to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, reducing the Adequate Assurance Deposit maintained in the Utility Deposit Account on account of such Utility Provider by the amount of such other value; and (iii) adding additional amounts in the event that the Debtors amend the Utility Providers List to add one or more additional Utility Providers.

5. The obligation to maintain the Adequate Assurance Deposit shall terminate upon the earlier of: (i) the effective date of a chapter 11 plan; or (ii) the date these cases are dismissed or converted to chapter 7 of the Bankruptcy Code.

6. The following Additional Assurance Procedures are hereby approved in their entirety on a final basis:

- (a) Absent compliance with the Additional Assurance Procedures, no Utility Provider may alter, refuse or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges, or request payment of a deposit or receipt of other security in connection with any unpaid prepetition charges.

- (b) In the event that any Utility Provider has been omitted from the Utility Providers List, the Debtors will supplement the Utility Providers List and promptly serve copies of the Motion and this Final Order on such Utility Provider upon learning of such omission.
- (c) The Debtors will deposit the Adequate Assurance Deposit into the Utility Deposit Account within 20 days of the Petition Date. In the event of a postpetition default and payment, each Utility Provider shall be entitled to the funds in the Utility Deposit Account in the amount set forth for such Utility Provider in the column labeled “Adequate Assurance Deposit” on the Utility Providers List; provided that to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Utility Deposit Account on account of such Utility Provider by the amount of such other value.
- (d) Any Utility Provider desiring Additional Assurance must serve a written request (an “Additional Assurance Request”) on: (i) the Debtors, Sticky’s Holdings, LLC, 24 E. 23rd Street, New York, NY 10010; and (ii) proposed counsel to the Debtors, Pashman Stein Walder Hayden, P.C., 1007 North Orange Street, 4th Floor, Suite 183 Wilmington, DE 19801-1242, Attn: John W. Weiss (jwess@pashmanstein.com); Joseph C. Barsalona II (jbarsalona@pashmanstein.com) Richard C. Solow (rsolow@pashmanstein.com) and Katherine R. Beilin (kbeilin@pashmanstein.com) (the “Notice Parties”).
- (e) Any Additional Assurance Request must: (i) be made in writing; (ii) set forth the type of Utility Service(s) provided as well as the Debtors’ location(s) to which such Utility Service(s) is provided and the applicable account number(s); and (iii) include a proposal for what the Utility Provider believes would constitute adequate assurance from the Debtors, along with an explanation as to why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of postpetition payment in light of the circumstances.
- (f) Upon the Debtors’ receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have until (i) the greater of fourteen (14) days from receipt of the request or thirty (30) days from the Petition Date or (ii) such other date as the parties mutually agree (the “Resolution Period”) to negotiate with such Utility Provider to resolve such Additional Assurance Request.

- (g) The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with Additional Assurance in the form of, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such Additional Assurance is reasonable. To the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Utility Deposit Account on account of such Utility Provider by the amount of such other value, provided that there is no dispute regarding postpetition payments for services.
- (h) If the Debtors determine that an Additional Assurance Request is not reasonable and/or they are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors will schedule a hearing (the “Determination Hearing”) before this Court on the next scheduled omnibus hearing date to determine the adequacy of assurances of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- (i) During any Resolution Period, and, if applicable, pending the outcome by final order of any Determination Hearing, the relevant Utility Provider shall be restrained from discontinuing, altering or refusing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; (iii) any objections filed in response to the Proposed Adequate Assurance or to the Additional Assurance Procedures; or (iv) the commencement of these Chapter 11 Cases.
- (j) Unless and until a Utility Provider makes an Adequate Assurance Request for additional adequate assurance of payment, each Utility Provider shall be deemed to have adequate assurance of payment based on the establishment of the Proposed Adequate Assurance.

7. On May 9, 2024, Con Ed filed the *Objection of Consolidated Edison Company of New York, Inc. To the Debtors’ Motion For Entry of Interim and Final Orders (I) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Utility Services, (II) Approving Proposed Adequate Assurance of Payment To Utility Providers and Authorizing Debtors To Provide Additional Assurance, (III) Establishing Procedures To Resolve Requests For*

Additional Assurance and (IV) Granting Related Relief (the “Objection”) (Docket No. 79). The Objection is deemed to be resolved pursuant to the terms set forth herein:

- (a) Within five (5) business days of entry of this Order, the Debtors shall provide Con Ed with a one-month cash deposit in the amount of \$26,134.00 (the “Con Ed Deposit”) as adequate assurance within the meaning of Section 366(c) of the Bankruptcy Code. The Con Ed Deposit shall be sent to the following address: Consolidated Edison Company of New York, Inc., Attn: Bankruptcy Customer Operations, Specialized Activities, 9th Floor, 4 Irving Place, New York, New York 10003.
- (b) The Debtors shall pay all undisputed post-petition bills received from Con Ed, and from any post-petition Utility Provider, for post-petition utility charges on or before the applicable due date, which is a due date in accordance with applicable state laws, regulations and/or tariffs.
- (c) If the Debtors no longer require service at an account(s) for any reason, the Debtors shall promptly contact Con Ed to close the account(s). Upon being contacted to close the account(s), Con Ed shall promptly close such account(s) and promptly refund the deposit related to such account(s) once all final post-petition charges for such account(s) are satisfied. If the Debtors fail to close their accounts when they no longer require post-petition utility service, the Debtors shall remain administratively obligated to pay related utility charges until the Debtors close the applicable account(s).

(d) Con Ed shall not have access to the Utility Deposit Account and the Debtors are not required to deposit any amounts on behalf of Con Ed into the Utility Deposit Account.

8. The Debtors are authorized, in their sole discretion, to amend the Utility Providers List to add or delete any Utility Provider, and this Final Order shall apply to any Utility Provider that is subsequently added to the Utility Service List. Any such amended Utility Service List shall be filed with the Court and served with this Final Order.

9. The inclusion of any entity in, or the omission of any entity from, the Utility Providers List shall not be deemed an admission by the Debtors that such entity is or is not a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors’ rights and defenses with respect thereto are reserved and preserved.

10. Nothing in the Motion, the Interim Order or in this Final Order is intended or should be construed as (a) an admission as to the validity or priority of any claim against the Debtors, (b) a waiver of the Debtors’ rights to dispute any claim, including the validity or priority thereof or (c) an approval or assumption of any agreement, contract or lease whether under section 365(a) of the Bankruptcy Code or otherwise. Likewise, any payment made pursuant to this Final Order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors’ rights to subsequently dispute such claim.

11. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Final Order.

12. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon entry hereof.

13. This Court shall retain jurisdiction to hear and determine all matters related to the interpretation or implementation of this Final Order.

Dated: May 16th, 2024
Wilmington, Delaware


J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE