

**IN THE UNITED STATES BANKRUPTCY COURT
OF THE DISTRICT OF DELAWARE**

In re:	Chapter 11 (Subchapter V)
STICKY’S HOLDINGS LLC, <i>et al.</i> ,	Case No. 24-10856 (JKS)
Debtors. ¹	Jointly Administered

STATEMENT AND RESERVATIONS OF RIGHTS OF SUBCHAPTER V TRUSTEE AS TO REORGANIZED DEBTORS’ MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING ENTRY INTO PROPOSED LETTER OF INTENT WITH HARKER PALMER INVESTORS LLC; (II) AUTHORIZING REORGANIZED DEBTORS AND THEIR PROFESSIONALS TO PERFORM OBLIGATIONS THEREUNDER; AND (III) GRANTING RELATED RELIEF

Natasha M. Songonuga, the Subchapter V Trustee (“SCV Trustee”) appointed in the above-referenced chapter 11 cases (the “Chapter 11 Cases”), states as follows:

A. Case Background

1. On April 25, 2024 (the “Petition Date”), the Reorganized Debtors commenced voluntary cases under Subchapter V of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On November 13, 2024, the Bankruptcy Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Subchapter V Debtors’ Modified First Amended Plan of Reorganization* [D.I. 398] (the “Confirmed Plan”) and thereafter, on December 2, 2024, the Reorganized Debtors filed the Notice of Effective Date with respect to the Confirmed Plan,

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 I LLC (0423); Sticky’s NJ I 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 I 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 21 Maiden Lane, New York, NY 10038.



providing that the Effective Date of the Confirmed Plan occurred on November 29, 2024 [D.I. 431].

3. On February 10, 2025, the Reorganized Debtors filed the Motion of Reorganized Debtors to Convert the Chapter 11 Cases to Cases under Chapter 7 of the Bankruptcy Code [D.I. 481] (the “Motion to Convert”). Hearings or status conferences with respect to the Motion to Convert have been held and further continued by the Court to April 29, 2025.

4. After the April 1, 2025, withdrawal of a prior motion seeking approval for the Debtors to enter into a letter of intent, two days later on April 3, 2025, the Reorganized Debtors filed the *Motion For Entry of an Order (I) Authorizing Entry Into Proposed Letter of Intent with Harker Palmer Investors LLC; (II) Authorizing Reorganized Debtors and their Professionals to Perform Obligations thereunder; and (III) Granting Related Relief* [Docket No. 545] (the “Motion”).

5. The Motion seeks approval for the Reorganized Debtors to enter into a letter of intent (the “LOI”) with Harker Palmer (“HP”), an insider of the Debtors, for the sale of substantially all of the Reorganized Debtors’ assets (except the Reorganized Debtors’ real property leases or financed equipment) for a total purchase price of \$2 million plus the assumption by HP of the Debtors’ payment obligations under the loan the Debtors received from the Small Business Administration as part of the Economic Injury Disaster Loan (“EIDL”) program.

B. General Statement

6. At the outset, the SCV Trustee acknowledges the difficult post-confirmation position the Debtors have found themselves in and appreciates the significant efforts of the Reorganized Debtors’ professionals in pursuing a value-maximizing transaction under the circumstances. From all indications, the LOI represents the only actionable path forward and the

best opportunity to generate any return for creditors. For those reasons, the Trustee does not oppose entry of an order approving the LOI. However, several issues arising from the terms of the LOI—particularly as they relate to the proposed structure of a modified plan—raise significant concerns that should be addressed as the case proceeds.

a. Return of Unused Portion of the \$400,000 Deposit

7. The LOI provides that \$400,000 of the earnest money deposit already made by HP will be allocated to pay the landlords' rent for March 2025 (\$250,000) and the Reorganized Debtors' professionals and the Subchapter V Trustee for fees and expenses incurred after the Effective Date (\$150,000). (Motion ¶27(a)). The documents further state that “[a]ny excess amount not so used as specified in the [LOI will be] returned to Harker Palmer.” (Motion ¶27(a); *see also* LOI attached to the Proposed Order filed with the Motion at p. 8 of 18 under “Second Earnest Money Deposit”).² This is a sale transaction — funds deposited by the buyer that constitute a portion of the sale price should not be returned to the buyer. Any unused amounts should remain with the estates and be available to pay allowed claims. As structured, this provision effectively reduces the purchase price. Clarification on the appropriateness of this refund provision is warranted.

b. Use of General Unsecured Claims Reserve

8. The LOI sets a reserve of \$260,840 to be used to make distributions on account of Class 3 Allowed General Unsecured Claims. LOI, p. 13-14. However, this reserve is also the source of payment for the Debtors' professionals' fees and costs related to the claims reconciliation and distribution process for such claims. This structure significantly dilutes—if not entirely eliminates—recoveries for unsecured creditors and undermines the purpose of the reserve. Those

² The LOI pages are not numbered and thus, page references used herein for the LOI will refer to the page number at the top of the LOI referencing “Page _ of 18” of the Proposed Order.

professional expenses should be treated as separate administrative obligations of the Debtors' estates, not carved out of funds designated for unsecured creditor distributions.

c. *Inclusion of Post-Effective Date Claims in the Class 3 General Unsecured Claims Pool*

9. The LOI expressly provides that post Effective Date rejection damages resulting from executory contracts and unexpired leases assumed by the Debtors under the Confirmed Plan, will be classified and paid *pro rata* along with the Class 3 Allowed General Unsecured Claims from the General Unsecured Claims Reserve. LOI, p. 11-12. It is unclear under what provisions of the Bankruptcy Code such claims would constitute general unsecured claims especially given that as for lease rejection, the lease is deemed breached as of the date of rejection rather than before bankruptcy (§ 365(g)(2), Bankruptcy Code). Arguably, such proposed treatment in the modified plan may not meet the requirements for confirmation under § 1191(b), and thus, the Debtors could incur additional administrative expense claims in the process and not have a confirmable modified plan based on the LOI's proposed modified plan provisions.

d. *Clarification on SCV Trustee Fee Cap*

10. The LOI references a \$10,000 cap on the post-effective date SCV Trustee's fees. LOI, p. 8. It is unclear whether that is intended to cover fees incurred for the month of April and possible thought confirmation of a modified plan, as the SCV Trustee understands. However, if the intent is to cap the Trustee's total fees since the Effective Date at \$10,000, that is not acceptable. Clarification of this point is requested, as the SCV Trustee continues to perform fiduciary duties and will through the confirmation of any modified plan. In addition, there should also be clarification on whether the \$140,000 set aside for the Debtors' professionals' fees in the LOI for April will also cover the May fees of such professionals to get the case to confirmation on a modified plan.

C. **Conclusion**

11. The SCV Trustee acknowledges that the LOI appears to represent the only actionable opportunity currently available to the Reorganized Debtors and does not oppose its approval. However, the concerns outlined above stem from the specific terms of the LOI that are expected to form the foundation of a modified plan. These terms directly impact creditor treatment, administrative expenses, and whether a modified plan based on the LOI can meet the standards for confirmation. While the SCV Trustee is not objecting to approval of the LOI, these issues will need to be addressed if the proposed plan structure is going to be confirmable.

12. Accordingly, the SCV Trustee submits this Statement to raise these concerns as the case proceeds toward a modified plan and reserve her rights to be heard at the hearing on the Motion.

Dated: April 22, 2025

ARCHER & GREINER, P.C.

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Subchapter V Trustee