IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re STICKY'S HOLDINGS, LLC, *et al.*,[1] Debtors.	:	Chapter 11 (Subchapter V) Case No. 24-10856 (JKS) (Jointly Administered) **Hearing Date: To be determined.** **Obj. Deadline: To be determined.**

UNITED STATES TRUSTEE'S MOTION FOR ENTRY OF AN ORDER CONVERTING CASES TO CASES UNDER CHAPTER 7 PURSUANT TO 11 U.S.C. § 1112(b)

Andrew R. Vara, United States Trustee for Regions 3 and 9 ("U.S. Trustee"), through his counsel, moves the Court for entry of an order converting the above-captioned chapter 11 cases to cases under chapter 7 pursuant to 11 U.S. C. § 1112(b) ("Section 1112(b)") (the "Motion"), and in support of the Motion states:

JURISDICTION & STANDING

1. This Court has jurisdiction to hear this Motion.

2. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district. Specifically, the U.S. Trustee is authorized to seek conversion of a case under Section 1112(b). *See* 28 U.S.C. § 586(a)(8) ("[I]n any case in which the United States trustee finds material grounds for any relief under section 1112

[1] The Reorganized Debtors in these cases, along with the last four digits of each Reorganized 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 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 Reorganized Debtors' mailing address is 21 Maiden Lane, New York, NY 10038.

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of title 11, the United States trustee shall apply promptly after making that finding to the court for relief."); *United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys. Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc.* (*In re Revco D.S., Inc.*), 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

3. Pursuant to 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on this Motion.

FACTUAL BACKGROUND

4. On April 25, 2024, the Debtors filed the petitions which initiated the above-captioned cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors elected to proceed under Subchapter V of chapter 11.

5. On April 26, 2024, the U.S. Trustee appointed Natasha Songonuga of Archer & Greiner, P.C. to serve as the Subchapter V trustee (the "Subchapter V Trustee") in these cases pursuant to section 1183(a) [D.I. 26]. No official committee was appointed in these cases.

6. On December 2, 2025, this Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Subchapter V Debtors' Modified First Amended Plan of Reorganization* [D.I. 431] ("Confirmed Plan Confirmation Order").

7. Each condition precedent to the effectiveness of the *Subchapter V Debtors' Modified First Amended Plan of Reorganization* [D.I. 368] (the "Confirmed Plan") occurred in accordance with the provisions of the Confirmed Plan, and the Confirmed Plan went effective November 29, 2024 (the "Effective Date").

8. On February 10, 2025, the 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 "Debtors' Motion to Convert"). In the Debtors' Motion to Convert, the Debtors alleged:

> Here, both prongs of the conversion analysis are met. First, the Reorganized Debtors lack any meaningful positive cash flow and have not been able to obtain additional financing or a purchaser for the business. Administrative costs in the Chapter 11 Cases continue to accrue and there is insufficient cash to meet such expenses. For that reason, the Reorganized Debtors' estates are increasingly declining in value. Second, in light of the Reorganized Debtors lack of cash on hand to meet expenses, the Reorganized Debtors are administratively insolvent, can no longer make the committed Distributions under the Plan, and there is no possibility that the Chapter 11 Cases will lead to a successful rehabilitation. Accordingly, these Chapter 11 Cases must be converted to chapter 7 to preserve whatever value remains for the estates' assets.

Debtors' Mot. to Convert ¶¶ 29-31. The Debtors' Motion to Convert was initially scheduled for a hearing on February 26, 2025 [D.I. 491]. On February 24, 2025, the hearing on the Debtors' Motion to Convert was cancelled and, instead, a status conference regarding the filing was scheduled for March 4, 2025 [D.I. 500].

9. The Court held multiple status conferences following the filing of the Debtors' Motion to Convert.

10. On March 30, 2025, the Debtors received the proposed Harker Palmer Letter of Intent ("Harker Palmer LOI").

11. On April 3, 2025, the Debtors filed the *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* [D.I. 545] (the "LOI Motion").

12. On April 30, 2025, the Court entered the *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 [D.I. 585] (the "LOI Order").

13. Pursuant to the LOI Order, the Debtors filed the motion for authority to modify their Confirmed Plan ("Motion to Modify Plan") and Confirmation of the Modified Plan [D.I. 595] ("Modified Plan").

14. The Modified Plan includes the following material modifications to the Confirmed Plan:

a. The Purchased Assets will be sold to the Purchaser Free and Clear.

b. The Purchase Price will be used to fund the Modified Plan, including to establish an Administrative Expense Claims Reserve and an Allowed General Unsecured Claims Reserve.

c. The Administrative Expense Claims Reserve shall fund the costs and expenses of administering the Administrative Expense Claims Reserve and Pro Rata payments to Allowed Administrative Expenses Claims, including those on account of Unpaid Ordinary Course Expenses, Post-Confirmation Unpaid and Allowed Professional Fees and Expenses, Professional Fees as of the Confirmed Plan Effective Date, Administrative Tax Claims, the U.S. Foods Settlement, Cure Claims, and Lease Rejection Administrative Claims, to the extent such Claims are Allowed.

d. The General Unsecured Claims Reserve shall fund the costs and expenses of administering the General Unsecured Claims Reserve and Pro Rata payments to each holder of an Allowed General Unsecured Claim.

e. With respect to Allowed Secured Claims: (1) the SBA's Secured Claim will be assumed by the Purchaser and paid in accordance with the terms of the EIDL Loans; (2) each holder of Other Secured Claims shall receive in satisfaction of such Claim the collateral securing such Claim, and any remaining Allowed Claim shall be paid Pro Rata from the General Unsecured Claims Reserve.

f. The Reorganized Debtors will surrender all furniture, fixtures, and equipment subject to a lien in favor of the lessor of a furniture, fixtures, and equipment lease to such lessor (to the extent not earlier surrendered) and in the absence thereof, to the applicable landlord.

> g. The Reorganized Debtors other than Reorganized Sticky's will be dissolved, and Reorganized Sticky's will continue to exist for the purpose of implementing the Modified Plan.

Mot. to Modify Plan ¶ 21.

15. On June 6, 2025, the Court conducted an evidentiary hearing on the Motion to Modify Plan.

16. On June 9, 2025, the Court denied the Motion to Modify Plan. In concluding its bench ruling, the Court stated: "I encourage the parties to meet and confer in light of this ruling and report back to the Court." Ex. A (Tr. 6/9/25 [Bench Ruling on Mot. to Modify Plan] 13:25 – 14:2).

17. On June 18, 2025, Debtors' counsel Pashman Stein Walder Hayden PC ("Pashman") filed its motion to withdraw as counsel to the Reorganized Debtors [D.I. 639] ("Motion to Withdraw"). In the Motion to Withdraw, Pashman stated: "As a result of the failure to consummate a transaction to avoid conversion of the Chapter 11 Cases to chapter 7 and with administrative expenses continuing to accrue, Pashman believes that there now is a breakdown of communication and irreconcilable differences between Pashman and the Reorganized Debtors." Mot. to Withdraw ¶ 18.

18. On June 27, 2025, Pashman withdrew the Motion to Withdraw [D.I. 639].

BASIS FOR RELIEF

19. These cases should be converted pursuant to Section 1112(b), which provides:

> Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b).

20. "[C]ontinuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation" is grounds to convert or dismiss a chapter 11 case under Section 1112(b). 11 U.S.C. § 1112(b)(4)(A). "Rehabilitation," as the term is used in 11 U.S.C. § 1112(b)(4)(A), means "to put back in good condition; re-establish on a sound, firm basis." 5 COLLIER ON BANKRUPTCY § 1112.03(2) (15th ed. 1980) (quoted in re *L.S. Good & Co*., 8 B.R. 315, 317 (Bankr. N.D. W.Va. 1980)).

21. The examples of "cause" listed in Section 1112(b) are not exhaustive, and the Court has discretion in determining if cause exists. *See Matter of NuGelt, Inc.*, 142 B.R. 661, 665 (Bankr. D. Del. 1992); *see also* 7 COLLIER ON BANKRUPTCY ¶ 1112.04 (Alan N. Resnick & Henry J. Sommer eds., 16th ed). The Court may convert or dismiss a case for reasons that are not specifically listed in Section 1112(b). *See In re Brown*, 951 F.2d 564, 572 (3d Cir. 1991); *see also NuGelt*, 142 B.R. at 665.

22. Cause exists to convert the Debtors' cases under Section 1112(b)(4)(A) of the Bankruptcy Code because there is a "continuing loss to or diminution of the [Debtors'] estate[s] and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A) (bracketed text added). The first part of the analysis focuses on whether a debtor has suffered negative cash flows or declining asset values post-petition. *See In re Landmark Atlantic Hess Farm, LLC*, 448 B.R. 707, 713-14 (Bankr. D. Md. 2011). In determining whether there is "continuing loss" or "diminution of the estate," the Court can review a debtor's financial prospects and the financial records filed with the Court. *See Nester v. Gateway Access Solutions, Inc. (In re Gateway Access Solutions, Inc.)*, 374 B.R. 556, 564 (Bankr. M.D. Pa 2007). As to the second part of the analysis, "rehabilitation," as the term is used in 11 U.S.C. § 1112(b)(4)(A), "means 'to put back in good

condition; re-establish on a sound, firm basis.'" *In re L.S. Good & Co.*, 8 B.R. 315, 317 (Bankr. N.D. W.Va. 1980) (quoting 5 COLLIER ON BANKRUPTCY § 1112.03(2), at 14 (15th ed. 1980)).

23. "'Negative cash flow alone can be sufficient cause to dismiss or convert under § 1112(b).'" *In re TMT Procurement Corp.*, 534 B.R. 912, 918 (Bankr. S.D. Tex. 2015) (quoting *In re Miell*, 419 B.R. 357, 366 (Bankr. N.D. Iowa 2009)). A debtor should not be permitted to continue in control of its business beyond the point at which reorganization is no longer realistic. *See In re The AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003). To satisfy Section 1112(b)(4)(A), a loss may be substantial or continuing—it need not be both. *See In re Creekside Senior Apartments, L.P.*, 489 B.R. at 61.

24. These Debtors are experiencing a substantial and/or continuing loss to, or diminution of, their estates. In the Debtors' Motion to Convert, filed four months ago, Debtors conceded that they had no cash flow, their estates were administratively insolvent, and they were unable to meet their commitments under the confirmed plan. Debtors' Mot. to Convert ¶¶ 29-31. During the ensuing period, the Debtors' estates have deteriorated further. The professional fees associated with the LOI Motion and the litigation concerning the Motion to Modify Plan have resulted in significant administrative expenses. At the same time, administrative rent claims have soared due to Debtors' failure to meet their leasehold obligations. The breakdown in communications between the Debtors and their counsel has put additional stress on the Debtors' ability to operate their businesses and manage their affairs. Simply put, the Debtors' assets continue to lose value, to the detriment of their creditors.

25. The second part of Section 1112(b)(4)(A) – absence of a reasonable likelihood of rehabilitation -- is also met, given that the Debtors have ceased operations and have no cash flow. Most telling, Debtors have been unable to meet their commitments under the confirmed plan. As

the Debtors conceded: "There is no possibility that the Chapter 11 Cases will lead to a successful rehabilitation." Debtors' Mot. to Convert ¶ 30. Finally, despite months of effort, the Debtors were unsuccessful in modifying the Confirmed Plan with the proposed acquisition by Harker Palmer because they failed to obtain the affirmative consent of all unpaid administrative claimants to the modification. Consequently, the Debtors should not be entitled to a third bite at the confirmation apple.

26. Thus, the Debtors have a "continuing loss to or diminution of the[ir] estate[s] and the absence of a reasonable likelihood of rehabilitation," which constitutes cause for conversion. 11 U.S.C. § 1112(b)(4)(A) (bracketed text added).

27. For the reasons set forth above, "cause" to convert these cases has been established under 11 U.S.C. § 1112(b)(4)(A). If a movant establishes "cause," the Court "shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, unless the court determines that the appointment under § 1104(a) of a trustee or examiner is in the best interest of creditors and the estate." 11 U.S.C. § 1112(b)(1). The only exception to this rule is what is set forth in sections 1112(b)(2) and 1112(c) of the Code.

28. Section 1112(b)(2) of the Code provides:

> The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies ***unusual circumstances*** establishing that converting or dismissing the case is not in the best interests of creditors and the estate, ***and*** the debtor or any other party in interest establishes that—
>
> (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; ***and***

> (B) the grounds for converting or dismissing the case include an act or omission of the debtor ***other than under paragraph (4)(A)***—
>
> i. for which there exists a reasonable justification for the act or omission; and
>
> ii. that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2) (emphasis added).

29. By its terms, these cases do not fall within the exception set forth in Section 1112(b)(2) because cause does exist under Section 1112(b)(4)(A). Even if that were not the case, there are no unusual circumstances that establish that conversion is not in the best interests of the creditors of the Debtors' estates.

30. The party seeking conversion or dismissal has the initial burden of showing that cause exists. *See In re Products Int'l Co.*, 395 B.R. 101, 109 (Bankr. D. Ariz. 2008); *In re Schriock Constr., Inc.*, 167 B.R. 569, 575 (Bankr. D.N.D. 1994). The movant must satisfy its burden of proof by a preponderance of the evidence. *See In re Creekside Senior Apartments, L.P.*, 489 B.R. 51, 60 (6th Cir. BAP 2013).

31. If the movant establishes cause under Section 1112(b)(1), then the burden shifts to the debtor to show the existence of unusual circumstances, and that the other requirements of Section 1112(b)(2) have been met. *See In re Ramreddy, Inc.*, 440 B.R. 103, 112-13 (Bankr. E.D. Pa. 2009) (citing *DCNC North Carolina I, L.L.C. v. Wachovia Bank, N.A.*, Nos. 09-3775, 09-3776, 2009 WL 3209728, at *4 (E.D. Pa. 2009).

32. If the Court determines that cause to convert exists under Section 1112(b)(1), as the U.S. Trustee believes it does, in light of the inapplicability of the exception set forth in § 1112(b)(2), the Debtors' cases must be converted or dismissed. *See* 7 COLLIER ON

BANKRUPTCY ¶ 1112.04; *In re Gateway Access Solutions, Inc.*, 374 B.R. 556, 559-60 (Bankr. M.D. Pa. 2007) (noting that the 2005 amendments to Section 1112 changed the statute's language "from permissive to mandatory" and limited the Court's discretion not to dismiss or convert a case if cause exists).

33. Upon the determination that cause exists under Section 1112(b), the Court must decide between dismissal and conversion based on the best interest of creditors and the estate. *See In re Am. Cap. Equip., LLC*, 688 F.3d 145, 161 (3d Cir. 2012). The Court has "wide discretion to use its equitable powers to make an appropriate disposition of the case." *Id*. at 163 (quotation marks and citation omitted). In determining what is in the best interests of creditors, the Court may compare creditors' rights in bankruptcy with their rights under state law. *See NuGelt*, 142 B.R. at 669.

34. Because there appears to be assets of the Debtors' estates available for distribution to administrative creditors, the U.S. Trustee believes that conversion of the cases to cases under Chapter 7, rather than dismissal, is in the best interests of the creditors and the estates. To the extent that Harker Palmer remains interested in acquiring the Debtors' assets, it can make an appropriate offer to the chapter 7 trustee. Further, conversion will allow the Court to retain jurisdiction to ensure that similarly-situated creditors are treated fairly, consistent with the Bankruptcy Code's priority scheme.

RESERVATION OF RIGHTS

35. The U.S. Trustee reserves all rights to amend or supplement this Motion and to conduct discovery.

WHEREFORE, the U.S. Trustee respectfully requests that the Court enter an order converting the above-captioned cases to cases under chapter 7 of the Bankruptcy Code.

Dated: June 30, 2025
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 & 9

By: */s/ Jonathan W. Lipshie*
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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
Sticky's Holdings LLC, *et al.*,	.	Case No. 24-10856 (JKS)
	.	(Jointly Administered)
Reorganized Debtors.	.	
	.	
	.	June 9, 2025
. . . . .	.	3:01 p.m.

TRANSCRIPT OF RULING
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

Appearances:

Counsel to Reorganized Debtors:	Pashman Stein Walder Hayden, P.C. By: JOHN W. WEISS, ESQ. JOSEPH C. BARSALONA, II, ESQ. 824 North Market Street, Suite 800 Wilmington, DE 19801 Phone: (302) 592-6496 Email: jweiss@pashmanstein.com barsalona@pashmanstein.com KATHERINE R. BERLIN, ESQ. Court Plaza South, East Wing 21 Main Street, Suite 200 Hackensack, NJ 07601 Phone: (201) 488-8200 Email: kbeilin@pashmanstein.com
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

I N D E X

HEARING REGARDING COURT'S RULING:

Agenda Item No. 2: Reorganized Debtors' Motion for Entry of an Order (I) Authorizing the Reorganized Debtors to Modify, and Approving Modifications to, the Confirmed Plan of Reorganization, (II) Confirming the Subchapter V Reorganized Debtors Second Modified First Amended Plan of Reorganization, and (III) Granting Related Relief (D.I. 595)

(Recorded proceedings commence at 3:01 p.m.)

THE CLERK: Good afternoon, Zoom participants. You are live in Courtroom 6 with Judge Stickles, and the hearing is about to begin. Please remember to state your name for the record when you speak and every time you speak. Please stay muted if you are not speaking to the Judge. Thank you.

THE COURT: Good afternoon, everyone. This is Judge Stickles. We're on the record in Sticky's Holdings, Case No. 24-10856. This is the Court's ruling on the reorganized debtors' motion to modify its confirmed subchapter V plan of reorganization.

Bankruptcy Code Section 1193(c) permits a debtor to modify a subchapter V plan that has been confirmed under Section 1191(b) at any time during the three to five year period for the payment of projected disposable income.

To modify a confirmed subchapter V plan, the debtor must demonstrate the modification is warranted under the circumstances and must satisfy the confirmation requirements for subchapter V plan. See 11 U.S.C. Sections 1191(b) and 1193(c).

For reasons to explain, the Court finds that modification of s subchapter V is warranted under the circumstances, but that the debtors have failed to demonstrate that modification would satisfy the confirmation requirements for subchapter V plan including the requirement that the plan

comply with applicable provisions of Title 11.

As a threshold matter, the Court considers whether circumstances warrant modification. The uncontroverted Greer declaration establishes that subsequent to confirming the subchapter V debtors' first amended plan of reorganization in November 2024, which I'll refer to as the confirmed plan, the reorganized debtors made initial distributions under the plan on December 31, 2024.

Thereafter, in early January 2025, New York City implemented congestion pricing which had an immediate negative impact on the sales and traffic in Sticky's Restaurants. Further compounding the reorganized debtors' financial difficulties, in December 2024, the cost of case of chicken rose by 43.8 percent compared to the previous year and by 56.8 percent in January 2025 compared to the prior year.

Also there was a shortage of medium sized chicken which resulted in fewer pieces per pound. And because Sticky's sells by the piece, this was detrimental to the reorganized debtors' business and profit margins.

According to Ms. Greer, in response to these setbacks, the reorganized debtors implemented cost saving measures including laying off half of the corporate staff, but were unable to meet the expenditures and make plan payments.

The Court finds that the government imposed congestion pricing significantly increased chicken prices as

much as 56 percent increase, and the inability to market the anticipated number of chicken pieces per serving constitutes circumstances warranting modification of the confirmed plan. Importantly, no one disputes the evidence or circumstances warranting a modification.

On these facts, the Court finds the debtors have satisfied their evidentiary burden toward modification of the confirmed plan.

The Court next addresses whether the proposed modified plan satisfies the confirmation requirements for subchapter V. The confirmed plan provides the debtors' projected disposable income will be used to pay administrative expense claims and priority tax claims in full over the three year plan term and that allowed general unsecured claims will receive an estimated .1 percent distribution over the life of the plan. See Exhibit B to the confirmed plan liquidation analysis.

The financial projections establish a reasonable likelihood that the debtors would be able to make all plan payments under the plan. The proposed modified plan amends the confirmed plan in part to provide pro rata recoveries from applicable reserves. More specifically, on the effective date or the modified effective date allowed administrative claim holders would receive a pro rata payment from the administrative expense claims reserve which is estimated to be

31 percent, and allowed general unsecured claim holders would receive a pro rata payment from the allowed GUC claim reserves which is estimated to be the same as the confirmed plan, approximately or estimated at .1 percent.

First, with respect to administrative claims, while a subchapter V debtor does not have to pay all administrative claims on the effective date of the plan, the debtor must pay administrative claims in full over the life of the plan absent agreement to alternative treatment.

The debtors acknowledge this legal principle in the confirmed plan which specifically stated, "The debtors must pay administrative expenses in full unless the holder of an administrative expense claim agrees to a different treatment."

Now, relying on 11 U.S.C. Section 1191(e), the debtors and purchasers argue that administrative expenses need not be paid in full. The special rule in Section 1191(e) provides, notwithstanding Section 1129(a)(9)(a) of this title, a plan that provides for the payment through the plan of a claim of a kind special specified in paragraph 2 or 3 of Section 507(a) of this title may be confirmed under subsection (b) of this section.

Section 1129(a)(9) requires payment of administrative claims in cash on the effective date. Debtors and purchasers argue the natural meaning of "provides for" in Section 1191(e) does not mean pays in full. Rather, it simply means to make

available.

It argues Congress would have specified payment in a particular quantum if it wanted. The Court rejects this argument. The rationale for full payment of administrative expenses in chapter 11 cases is applicable in the context of subchapter V cases. The Third Circuit in Pennsylvania Department of Environmental Resources, 178 F.3d 685 (3d Cir. 1999), explained that the language of Section 503(b) suggests the quid pro quo pursuant to which the estate accrues a debt in exchange for some consideration necessary to the operation or rehabilitation of the estate. Priority, therefore, is afforded to such expenses to compensate the providers of necessary goods, services, or labor.

The Third Circuit went on to discuss the legislative history of administrative claims under the Bankruptcy Code noting, "Those who must wind up affairs of a debtor's estate must be assured of payment or else they will not participate in the liquidation or distribution of the estate." Absent the priority established under Section 503, a debtor in possession could not keep its employees nor obtain the goods and services necessary to its operation as it attempts to reorganize or wind down pending ultimate liquidation.

To adopt an opposite result in subchapter V which is in chapter 11 would turn the restructuring process under the Bankruptcy Code on its head. The argued outcome means a

subchapter V debtor can enter a bankruptcy, accrue administrative expenses to keep the business afloat during the case, and then disregard payment of those creditors.

The practical implication is that a subchapter V debtor would be excused for paying for post-petition expenses such as the wages of employees who manage the business, the invoices of vendors and contract counter-parties providing goods and services for the operation of the business, taxes accrued, professional fees incurred, all the parties necessary for the operation or rehabilitation of the estate.

If that were the case, no employee or professional would work for and no vendors would do business with a debtor in possession. The result would mean virtually no debtor in a subchapter V case could operate during the case and reach confirmation, a result that Congress could not have envisioned when drafting subchapter V.

The Court finds such a result is fundamentally inequitable and unfair to administrative creditors, goes against the clear legislate history of the Bankruptcy Code, is contrary to the rationale and case law in this circuit and is ultimately untenable without explicit statutory language from Congress saying that a debtor may forego paying its administrative creditors in full in subchapter V.

In fact, Section 1181(a) which identifies code sections that do not apply in subchapter V cases, does not

include Section 1129(a)(9)(a). If the intent was to exclude application of Section 1129(a)(9)(a) in its entirety, Congress would have listed that section under Section 1181(a).

Moreover, the Court finds that the special rule does not excuse the debtor from paying its administrative expenses in full. Rather the Court interprets notwithstanding in Section 1191(e) to eliminate the requirement that such claims are paid in cash in effective, excuse me, the Court interprets notwithstanding in Section 1191(e) to eliminate the requirement that such claims are not paid in cash on the effective date. It's a deferral provision.

Neither the debtors nor the purchasers cite any authority to the contrary. A review of cases addressing 1191(e) and the legislative history note that this provision allows for administrative claims to be paid over the life of a plan, but nothing states that a debtor need not pay administrative claims in full.

This is also consistent with legal treatise such as Judge Bonapfel's A Guide to the Small Business Reorganization Act of 2019, and Colliers. The Court therefore finds administrative claims in subchapter V cases must be paid in full absent agreement otherwise.

Second, allowed holders have a legal entitlement to the treatment provided for under the confirmed plan. It's a contract. Under Section 1129(a)(9), in order to pay

administrative claimants less than 100 percent to which they're entitled, those claimants must consent to the alternative lesser treatment.

Debtors argue that claimants were placed on notice of the pro rata payment of their administrative claims and that their failure to object to the modified plan would be deemed consent to their treatment under the modified plan.

The notice of hearing on the modification motion at Docket 600 in the middle of page 2 in regular font states, "The pro rata distributions proposed to be made under the modified plan will not result in payment in full of allowed administrative expense claims or allowed general unsecured claims. If you fail to file a timely objection, the reorganized debtors will seek an order deeming you to have consented to the modified plan."

The notice does not contain a prominent or a conspicuous warning that holders' rights are being impacted by the proposed modification if they did not timely object. Further, the disclosure was not adequate. The notice does not indicate the percentage reduction. It could have been 2 percent or it could have been a 98 percent reduction the way this provision is drafted.

Debtors rely on Teligent, 282 B.R. 765 (Bankr. S.D.N.Y. 2002) to argue silence is implied consent under Section 1129(a)(9)(a). In Teligent, however, the debtors sent

a court approved notice and consent form to each administrative creditor and provided the creditor with the option to adopt treatment under the plan, to opt in to a convenience class, or to decline to accept the treatment under the plan.

The Teligent court held that a creditor's failure to respond to the consent form amounted to acceptance y silence. Integral to Teligent court's ruling, however, was the fact that creditors were also given reason to understand the debtor intended to take a refusal to respond as an acceptance of the treatment. Teligent is distinguishable for the instant case.

Unlike Teligent, here there was no affirmative offer of an option to accept or decline the proposed treatment. Further, there's no evidence that administrative claimants were given reason to understand their silence would be interpreted as an acceptance of this particular treatment.

It's difficult to apply implied consent here where the modification eviscerates the treatment to which administrative claimants are entitled under the confirmed plan. To suggest the debtors could modify the relationship and unilaterally impose a reduced recovery by approximately 69 percent without affirmative action is not consent.

Other courts have found the general meaning of the word agrees suggests that express consent is required. See Cummins utility No. 01-47558 DML-11 2003, Bankr. LEXIS 2309 at 7 (Bankr. N.D. Tex. Apr 16, 2003); Digital Impact, 223 B.R. 1

(Bankr. N.D. Okla. 1998), and Mollycorp Inc. 562 B.R. 67 (Bankr. D.Del. 2017).

Likewise, courts interpreting a similar provision in Section 1322(a)(2) of the code have required express consent to different treatment. See in re Randolph 273 B.R. 914, 918, (Bankr. M.D. Fl. 2002); in re Northrop, 141 B.R. 171, (Bankr. N.D. Iowa, 1991).

In this Court's view in this context those courts requiring affirmative consent have the better interpretation of "agreed." Agreed can be done by a written notice, stipulation, or addendum to the plan itself. On the record, on this record, administrative claimants have not agreed to have their claims paid in a manner that does not comply with Section 1129(a)(9). Absent affirmative consent, administrative creditors are entitled to 100 percent of their allowed claim.

Class 3 holders of general unsecured claim was the only class entitled to vote under the confirmed plan and voted to accept the plan. The liquidation analysis attached as Exhibit B to the modified plan is unaltered and provides for the same recovery.

Next, Mr. Abrahamian argues the debtor should disclose the content of the termination or separation agreement and bear the burden of proving the agreement is executory being assumed in good faith and being assumed for a proper business purpose.

The issue before the Court is the proposed plan modification. The termination or separation agreement was included in the list of assumed contracts attached to the confirmed plan. The proposed modified plan does not change the treatment of a contract. The assumption of that contract is the law of the case and the treatment is not being changed under the proposed modification.

The objector confirmed that he is not, that he otherwise supports the modified plan because a contract was already assumed in the confirmed plan; the objection is overruled.

In light of the foregoing, the Court cannot approve the motion absent affirmative agreement by the remaining administrative claimants to the modified treatment or payment of the remaining administrative claimants in full.

Likewise, if the debtors seek extension of release provisions in the confirmed plan, or released provisions of the modified plan to the administrative claimants, to the extent the administrative claimants are impaired, they must have the ability to opt out of those releases.

Let me say, I appreciate the time and effort the parties expended to obtain consensus for a modified plan, including the subchapter V Trustee's efforts securing consent from each of the landlords and U.S. Foods.

I encourage the parties to meet and confer in light

of this ruling, and report back to the Court.

Does anyone want to be heard?

Okay. Hearing no one, I will wait. And I'm going to ask that debtors' counsel advise Mr. Lugano as to next steps, and we will wait to hear from the parties.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: Okay. Thank you all. Have a great afternoon. We stand adjourned.

(Proceedings adjourned 3:24 p.m.

* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ Theresa Pullan June 15, 2025

Theresa Pullan, CET-780

Certified Court Transcriptionist

For Reliable

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re STICKY'S HOLDINGS, LLC, *et al.*,[1] Debtors.	:	Chapter 11 (Subchapter V) Case No. 24-10856 (JKS) (Jointly Administered) **Re: D.I. _____**

ORDER CONVERTING CASES TO CASES UNDER CHAPTER 7

Upon consideration of the *Motion of the United States Trustee* ("U.S. Trustee") *for Entry of an Order Converting Cases to Cases Under Chapter 7 Cases Pursuant to 11 U.S.C. § 1112(b)* (the "Motion"); and finding that due and sufficient notice of the Motion was given; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and this is a core proceeding under 28 U.S.C. § 157(b)(2); and after due deliberation and sufficient cause appearing therefor, based upon the record, the Court finds that cause exists to convert the above-captioned cases to cases under chapter 7, pursuant to 11 U.S.C. § 1112(b). Based on the foregoing, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

1. The Motion is GRANTED.

2. The above-captioned cases are hereby converted to cases under chapter 7.

[1] The Reorganized Debtors in these cases, along with the last four digits of each Reorganized 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 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 Reorganized Debtors' mailing address is 21 Maiden Lane, New York, NY 10038.

3. The Debtors shall:

a. Forthwith turn over to the chapter 7 trustee all records and property of the estates under the Debtors' custody and control as required by Federal Rule of Bankruptcy Procedure ("FRBP") 1019(4); and

b. Within 15 days of the date of this Order file a schedule of unpaid debts incurred after commencement of the superseded cases including the name and address of each creditor, as required by FRBP 1019(5).

4. The Debtors shall, within 30 days from the date of this order, file and transmit to the U.S. Trustee a final report and account as required by FRBP 1019(5)(A).

5. The Court retains jurisdiction over all matters arising from or relating to the interpretation and enforcement of this Order.