UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CHAPTER 11
	:	
WELLMADE FLOOR COVERINGS INTERNATIONAL, INC., et al.,[1]	:	CASE NO. 25-58764 - SMS
	:	
	:	
DEBTORS.	:	

BRIEF IN SUPPORT OF UNITED STATES TRUSTEE OBJECTION TO DEBTORS' CHAPTER 11 PLAN

Guy A. Van Baalen, Acting United States Trustee for Region 21, in furtherance of his responsibilities under 28 U.S.C. § 586, files this brief in support of the *United States Trustee's Objection to Debtors' Chapter 11 Plan* (the "Objection"). Dkt. No. 484.

I. Debtors' Plan should not be confirmed because it imposes improper non-consensual third-party releases

1. During the confirmation hearing on August 27, 2026, the Court raised the question of whether the Third-Party Releases in Debtors' Plan met the requirements set forth in *In re Pat McGrath Cosmetics, LLC*, 679 B.R. 591, 600-01 (Bankr. S.D. Fla. 2026). They do not.

2. In *Pat McGrath*, the bankruptcy court held that opt-out mechanisms satisfy consent for third-party releases under the following circumstances,

i. First the bankruptcy court must find that the inclusion of consensual third-party releases is "necessary or appropriate" to confirmation.
ii. Second, the bankruptcy court must determine whether the circumstances are appropriate to use opt-out. Considerations include –
   a. How large is the creditor class? Can affirmative consent be reasonably obtained;
   b. Is the relief that is being sought related to the creditors' status as a potential plaintiff/claimant against the party being released;
   c. Is there a benefit to the creditors for the release that is being included;
   d. Is the release consistent with the good faith requirements for confirmation?

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Wellmade Industries MFR. N.A LLC (1058) and Wellmade Floor Coverings International, Inc. (8425).

iii. Due process must be satisfied. Has adequate notice been provided to meet the constitutional prerequisites of notice?

3. Here, the proposed Third-Party Releases fail on both the first and second inquiries. As discussed at the hearing, the proposed releases are not necessary to confirmation – given the structure of the Debtors' Plan, including that this is a surplus case, the Plan meets the requirements for confirmation without the Third-Party Releases and confirmation is not dependent on any contribution being made by the Released Parties. Granting the releases is also not appropriate under the specific facts and circumstances of this case, including the nature of the claims Debtors seek to release.

4. As to the second inquiry, the relief sought is directly related to the Releasing Parties' status as known claimants against certain of the Released Parties and there is no benefit or consideration being given to the creditors in exchange for the Third-Party Releases.

5. The testimony at the hearing established that none of the Released Parties requested the releases contained in the Plan – the CRO testified he included the Third-Party Releases because he thought it was the right thing to do.

6. The testimony at the hearing also established that the Released Parties gave nothing in exchange for the Third-Party Releases. As to the CRO and the Debtors' Professionals, they contributed nothing beyond the duties required of any retained professional in a chapter 11 case. As to the Individual Defendants, as principals or employees of the Debtors, they contributed nothing beyond what they were legally required to do as representatives of a debtor-in-possession pursuant to 11 U.S.C. §§ 704 and 1106. As to the Staffing Agencies, while unidentified, the testimony at the hearing established they provided information and records which they would have been required to turnover without the Debtors' including them in the Released Parties.

7. The Third-Party Releases are also inconsistent with the good faith requirements of confirmation in that they are attempting, in part, to release claims related to the alleged forced labor of Debtors' former employees. This includes known creditors who were not permitted to file late claims are therefore will not participate in distributions made pursuant to the Plan.

8. The Third-Party Releases are distinguishable from the releases in *Pat McGrath* because in *Pat McGrath*, the monetary contribution that would fund the liquidating trust would not be contributed but for the release. *Pat McGrath*, 679 B.R. at 601. In this case, the Plan is fully funded, and provides for a significant distribution to equity, without any monetary contribution from the Released Parties.

II. Debtors' Plan should not be confirmed because it grants Debtors a discharge to which they are not entitled through an improper injunction provision.

9. Debtors' Plan should not be confirmed because it includes an improper injunction provision to enforce the Third-Party Releases and to obtain the effects of a discharge for the Debtors and others. The United States Trustee's argument regarding improper use of an injunction to enforce the Third-Party Releases is contained in the Objection.

10. As an initial matter, Debtors appear to have conceded they are not entitled to a discharge, pursuant to 11 U.S.C. § 1141, because the Plan does not include a discharge provision.

11. The Debtors argued at the August 27 hearing, however, that they are eligible for a discharge under section 1141 of the Bankruptcy Code because they will engage in business after consummation of the Plan.

12. Section 1141(d)(3) of the Bankruptcy Code states,

> The confirmation of a plan does not discharge a debtor if--
>
> (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
>
> (B) the debtor does not engage in business after consummation of the plan; and

> (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

11 U.S.C. § 1141(d)(3).

13. At issue in this case is subsection B and whether the Debtors will be engaged in sufficient business post-consummation of the Plan that they would be eligible for a discharge.

14. At the hearing on August 27, 2026, the Debtors represented that the Debtors *may* continue to operate through certain unspecified non-debtor subsidiaries or affiliates. The Debtors further represented that post-consummation, the Plan Administrator will have approximately $500,000 of inventory he will need to liquidate.

15. Pursuant to the Plan Administration Agreement, the Plan Administrator is to "direct and control the Wind Down under the Plan and in accordance with applicable law as necessary to maximize the value of the Remaining Assets" and "direct and control the dissolution, liquidation, striking off, or similar action to Wind Down and/or terminate each of the Debtors." Plan Administration Agreement, Art. III, Sec. D & F, Dkt. No. 477, pg. 10.

16. Whether the Debtors will be engaged in business post-consummation is a question of fact for which the Debtors must provide evidence. *See In re Am. Dental of LaGrange, LLC*, No. 24-1004, 2025 WL 384536, at *8 (Bankr. M.D. Ga. Feb. 3, 2025) ("[t]he Court similarly cannot rule, as a matter of law and in resolving the merits of this adversary proceeding, that the 'Reorganized Debtor' (as the plan refers to the post-confirmation Debtor) is 'not engag[ing] in business' in acting pursuant to its plan, exercising powers granted by its plan, and discharging duties imposed by its plan. These are questions of fact to be resolved upon proof . . . "). Debtors have provided no evidence of any business Debtors will undertake post-consummation of the Plan, except the liquidation of remaining inventory by the Plan Administrator. In a case where a court found 1141(d)(3)(B) was not satisfied,

> [t]he Debtor presented uncontroverted evidence of its intent to resume its business operations. It presents a business plan in its Disclosure Statement; core personnel are in place to recommence the business operations; and Debtor presented testimony of business relationships that will be key to the Debtor reentering the marketplace. In short, the Debtor has a plan to recommence its business and customers desire the services it can provide.

In re Global Water Technologies, Inc., 311 B.R. 896, 900 (Bankr. D. Colo. 2004). Debtors have made no similar disclosures or representations.

17. Furthermore, section 1141(d)(3)(B) doesn't just require the Debtors be engaged in *any* business but that they continue operating their *pre-petition* business. *See, e.g.*, *In re Parasram*, 647 B.R. 1, 16-17 (Bankr. E.D.N.Y. 2022) (*citing In re Grausz*, 63 Fed. Appx. 647, 650 (4th Cir. 2003); *see also In re First American Health Care of Georgia, Inc.*, 220 B.R. 720, 726 (Bankr. S.D. Ga. 1998) ("the merger specifically envisions that the business of each Debtor is to continue uninterrupted"); *Kalfin v. TST, Inc.*, 2007 WL 9837125, at *4 (S.D. Fla. June 8, 2007) (affirming the bankruptcy court's finding that debtor engaged in business post-confirmation where the plaintiff conceded the continuation of the debtor's core business when it stated, "'Northco' continues to operate . . . , engaged in the exact same business as the debtor, . . . with the same principal owners/operators, . . . has the same employees . . . .").

18. Pre-petition, Debtors designed, manufactured, and sold waterproof vinyl plank and tile, waterproof natural hardwood flooring, and waterproof strand woven bamboo flooring. Declaration of David Baker, Dkt. No. 14. By the time of filing, Debtors manufactured approximately 50% of all the stone plastic composite flooring made in the United States at their manufacturing facility in Cartersville. *Id.* Pursuant to the Court's order approving the private sale of Debtors' assets, the Debtors sold all their inventory, furnishings, equipment, supplies, machinery, fixtures, tools, vehicles, tangible personal property, and the Cartersville plant. Dkt. No.

220. As a result, even if Debtors could continue in some business, they cannot continue with their pre-petition business because they lack the materials, equipment, and facilities to do so.

19. Debtors' cases are also the types of cases to which Congress contemplated section 1141(d)(3) would apply. "Congress designed Section 1141(d)(3) to discourage trading in corporate shells. It achieves that goal by freighting the shell with all the claims, so that any claims or portions of claims not paid by the liquidation will attach to the shell, making the shell much less attractive for use in starting up another enterprise." *In re Fairchild Aircraft Corp.*, 128 B.R. 976, 982 (Bankr. W.D. Tex. 1991) (*citing* H.R. Rep. No. 595, 95th Cong. 1st Sess. 384 (1977), U.S. Code Cong. & Admin. News 1978, p. 5787). In the case of a liquidating corporate debtor, "even though a creditor has failed to file a proof of claim in such a case, and still cannot participate in the distribution of estate assets, . . . the creditor is not barred from proceeding against the corporation itself and whatever assets might subsequently come into its possession." *Id.*

20. The Court also previously found that section 1141(d)(3) bars discharge in Debtors' cases. In its *Order Regarding Creditors' Motions for Leave to File Late Proofs of Claim*, the Court stated,

> [t]he Bankruptcy Code does not grant a discharge to liquidating corporate Chapter 11 debtors, and Debtors' counsel has represented on the record that Debtors' Plan does not seek to circumvent this limitation. *See* 11 U.S.C. 1141(d)(3). The Plan contemplates that surplus funds will be available to Wellmade's owners after paying creditors of the bankruptcy estate. These bankruptcy cases do not prohibit claimants from asserting claims against Wellmade's owners or other non-debtor entities in U.S. District Court at any time, and **if Debtors retain surplus funds after paying creditors, claimants may be able to assert their claims against Wellmade post-bankruptcy**.

In re Wellmade Floor Coverings Int'l, et al., No. 26-58764, 2026 WL 2111451, at *9 (Bankr. N.D. Ga. July 20, 2026) (emphasis added).

21. Because section 1141(d)(3) applies to the Debtors, Debtors should not be able to engineer the functional equivalent of a discharge through an overly broad injunction provision.

WHEREFORE, the United States Trustee respectfully requests the Court sustain the United States Trustee's objection, deny confirmation of Debtors' Plan, and grant such further relief as the Court deems fair and equitable.

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing *Brief in Support of United States Trustee's Objection to Debtors' Chapter 11 Plan* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program.

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I further certify that on this day, I caused a copy of this document to be served via United States First Class Mail, with adequate postage prepaid, on the following parties at the address shown for each.

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