

ORDERED.

Dated: March 18, 2020



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division
www.flmb.uscourts.gov

IN RE:

Chapter 11

JEFFREY A. ROTH
DAWN M. ROTH,

Case No.: 8:19-bk-02338-CPM

Debtor(s). _____ /

**ORDER APPROVING DEBTORS' DISCLOSURE STATEMENT
AND CONFIRMING DEBTORS' SECOND PLAN OF REORGANIZATION**

THIS CASE came on for hearing on February 27, 2019, to consider the following matters:

1. Final approval of the Debtor's *Disclosure Statement* (**Docket #50**) (the "Disclosure Statement");
2. Confirmation of the Debtor's *Second Plan of Reorganization* (**Docket #92**) (the "Plan");
3. The United States Trustee's *Limited Objection to Debtor's Plan of Reorganization* (**Docket #68**) (the "UST Objection");
4. Bank of America, N.A.'s *Objection to Confirmation of Chapter 11 Plan* (**Docket #72**) (the "BOA Objection");
5. Central Bank's *Objection to Confirmation of Debtor's Plan of Reorganization* (**Docket #77**) (the "Central Bank Objection"); and
6. The *Motion for "Cram-Down"* (**Docket #97**).

Changes made on the record in open court: During the hearing, the parties informed the Court that the parties had reached various agreements to resolve their disputes regarding confirmation issues, namely:

- A. Plan amendments made on the record in open court:
- i. The treatment of Class 2 shall be modified to state that the Debtors' payment to Bank of America, N.A. shall include an escrow component for insurance and ad valorem taxes.
 - ii. The treatment of Class 5 shall be modified to state that the *Settlement Agreement* attached as Exhibit "A" to the *Motion for Approval of Compromise of Controversy (Docket #91)* shall govern the treatment of Central Bank's claim with the caveat that the payment set forth in paragraph 2(f) shall be increased from \$30,000.00 to \$31,608.48.
- B. Withdrawal of objections/changes of votes made orally on the record in open Court:
- i. Central Bank withdrew the Central Bank Objection.
 - ii. Central Bank changed the vote of its Class 5 and Class 16 claims to accept the Plan.

After considering (a) the *Verified Confirmation Statement (Docket #98)*; (b) the votes of the creditors, as reflected in the *Ballot Tabulation (Docket #96)* and rulings concerning votes and claims made in open court; (c) the evidence proffered and the arguments of counsel; and (d) the entire record in this Chapter 11 case, and for reasons stated orally and recorded in open court that shall constitute the decision of the Court, the Court has concluded the following: (1) that the Disclosure Statement should be finally approved; and (2) that the Plan should be confirmed. Accordingly, it is

ORDERED:

1. Jurisdiction, Venue, Core Proceedings. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1334. Approval of the Disclosure Statement and confirmation of the Plan are core proceedings pursuant to 28 U.S.C. § 157(b), and this Court has jurisdiction to enter a final order with respect thereto. The Debtors are eligible debtors under 11 U.S.C. § 109.¹ Venue is properly before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The Debtors are the plan proponent in accordance

¹Subsequent cites to title 11 of the United States Code may sometimes be to "the Bankruptcy Code."

with 11 U.S.C. § 1121(a).

2. Final Approval of Disclosure Statement. On August 6, 2019, the Court entered its *Order Conditionally Approving Disclosure Statement, Fixing Time to File Objections to the Disclosure Statement, Fixing Time to File Applications for Administrative Expenses, Setting Hearing on Confirmation of the Plan, and Setting Deadlines with Respect to Confirmation Hearing*. (“Solicitation Approval Order”) (**Docket #55**); that order *inter alia* conditionally approved the Disclosure Statement as containing at least minimally adequate information within the meaning of 11 U.S.C. §1125 and Rule 3017, Federal Rules of Bankruptcy Procedure. The Disclosure Statement complies with 11 U.S.C. §1125 and is, therefore, finally **APPROVED** as containing adequate information within the meaning of that section of the Bankruptcy Code.²
3. Confirmation of Plan. The Plan is **CONFIRMED** pursuant to 11 U.S.C. § 1129.
4. Transmittal of Solicitation Packages. Copies of the Disclosure Statement, the Plan, the Solicitation Approval Order, and a ballot (together, the “Plan Solicitation Package”) were served on all creditors entitled to vote on the Plan. The Court finds that (a) timely and proper notice of the confirmation hearing, the time fixed for filing objections to confirmation, and the time for submitting ballots on the Plan was provided to all creditors and all parties in interest; (b) such notice was adequate and sufficient to notify all creditors and all parties in interest of the confirmation hearing and the objection and voting deadlines as to the Plan; and (c) such notice complied in all respects with the procedural orders of this Court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and otherwise satisfied the requirements of due process.
5. Ballot Tabulation. The Debtors filed the *Ballot Tabulation*, which reflected the acceptance of at least one impaired class of creditors. Therefore the Debtors have at least one impaired class voting in favor of the Plan.
6. Compliance with the Requirements of 11 U.S.C. §1129.
 - a. Compliance with 11 U.S.C. § 1129(a)(1). The Plan complies with the applicable provisions of the Bankruptcy Code, in particular:
 - i. Proper Classification. The Plan sets out separately numbered classes of impaired claims and interests. The claims and interests within each class are substantially similar to the other claims and interests, as the case may be, in the class. Valid business, factual, and legal reasons exist for separately classifying various classes of claims and interests

²The Solicitation Approval Order was amended on February 19, 2020 (**Docket #93**).

created under the Plan and such classifications do not unfairly discriminate between the holders of claims and interests. Therefore, the Plan satisfies 11 U.S.C. §§ 1122 and 1123(a)(1).

- ii. Specified Unimpaired Classes. The Plan properly designates unimpaired classes as unimpaired. Therefore, the Plan satisfies 11 U.S.C. §1123(a)(2).
 - iii. Specified Treatment of Impaired Classes. The Plan designates which classes are as impaired within the meaning of 11 U.S.C. § 1124. The Plan states the specific treatment of each class of impaired claimants or interests. Therefore, the Plan satisfies 11 U.S.C. § 1123(a)(3).
 - iv. No Discrimination within Classes. The Plan provides for the same treatment of each claim within each particular class of claims or interests. Therefore, the Plan satisfies 11 U.S.C. § 1123(a)(4).
 - v. Implementation. The Plan provides adequate means for the Plan's implementation. Therefore, the Plan satisfies 11 U.S.C. §§ 1123(a)(5).
 - vi. Corporate charter amendments. 11 U.S.C. § 1123(a)(6) does not apply to individual Chapter 11 debtors.
 - vii. Impairment/Unimpairment of Classes of Claims and Interests. The Plan designates certain classes as impaired, as permitted by 11 U.S.C. §1123(b)(1).
 - viii. Assumption or Rejection of Leases and Executory Contracts. The Plan provides for the assumption and rejection of leases and executory contracts, subject to 11 U.S.C. § 365, as permitted by 11 U.S.C. § 1123(b)(2).
 - ix. Modification of the Rights of Holders of Secured Claims. The Plan modifies the rights of holders of secured debt as permitted by 11 U.S.C. §1123(b)(5).
 - x. Cure of Defaults. The Plan provides for the assumption of unexpired leases and executory contracts pursuant to an order of the Court, thereby satisfying 11 U.S.C. §1123(d).
- b. Compliance with 11 U.S.C. § 1129(a)(2). The Debtors, as the Plan proponent, have complied with the applicable provisions of the Bankruptcy Code.

Specifically:

- i. The Debtors are eligible debtors under 11 U.S.C. § 109.
 - ii. The Debtors have complied with the applicable provisions of the Bankruptcy Code, unless such compliance was excused by order of this Court.
 - iii. The Debtors have complied with 11 U.S.C. §§ 1125 and 1126, the Federal Rules of Bankruptcy Procedures, the Court's Local Rules, and the Solicitation Approval Order in transmitting the Solicitation Package and in soliciting and tabulating the vote.
- c. Compliance with 11 U.S.C. § 1129(a)(3). The Plan has been proposed in good faith and not by any means forbidden by law. The good faith is evident from the record in this case, the facts as adduced or proffered at the confirmation hearing and other hearings during the course of this bankruptcy case, and the information contained in the Disclosure Statement. The Plan was proposed with the honest and legitimate purpose of maximizing the value of the Debtors' estate and the payments to creditors. The Plan was developed in good faith on the part of the and in good faith negotiations with various creditors. Therefore, 11 U.S.C. § 1129(a)(3) is met.
- d. Compliance with 11 U.S.C. § 1129(a)(4). Applications for fees and expenses of professionals were filed and have been approved by this Court or will be filed and are subject to approval by this Court. Separate orders will be entered thereon. Therefore, 11 U.S.C. § 1129(a)(4) is met.
- e. Compliance with 11 U.S.C. § 1129(a)(5). 11 U.S.C. § 1129(a)(5) does not apply to individual Chapter 11 debtors.
- f. Compliance with 11 U.S.C. § 1129(a)(7). As to impaired classes of claims, each holder of a claim or interest of such class has accepted the Plan or will receive or retain property of a value that is not less than it would receive or retain if the Debtors were liquidated under Chapter 7. Therefore, 11 U.S.C. § 1129(a)(5) is met.
- g. Compliance with 11 U.S.C. § 1129(a)(8). Not every class of creditors that is impaired under the Plan voted to accept the Plan. Classes 1, 2, 3, 6, 7, 9, 10, and 11 failed to accept the Plan. Therefore, 11 U.S.C. § 1129(a)(8) is not met.
- h. Compliance with 11 U.S.C. § 1129(a)(9). Priority tax claims will be paid in

accordance with 11 U.S.C. § 1129(a)(9)(C)(ii). The treatment of these and other allowed administrative expense claims meets the requirements of 11 U.S.C. § 1129(a)(9).

- i. Compliance with 11 U.S.C. § 1129(a)(10). The holders of claims in Classes 5, 8, and 16 voted to accept the Plan. Therefore, 11 U.S.C. § 1129(a)(10) is met.
 - j. Compliance with 11 U.S.C. § 1129(a)(11). Based upon the information contained in the Disclosure Statement and uncontroverted evidence proffered at the Confirmation Hearing that is both persuasive and credible, the Plan is feasible and not likely to be followed by liquidation or further financial reorganization. Therefore, 11 U.S.C. § 1129(a)(11) is met.
 - k. Compliance with 11 U.S.C. § 1129(a)(12). The Plan provides that fees required to be paid pursuant to 28 U.S.C. § 1930 are administrative expenses that will be paid on the effective date of confirmation. Therefore, 11 U.S.C. § 1129(a)(12) is met.
 - l. Compliance with 11 U.S.C. § 1129(b). The Court finds that the Plan does not discriminate unfairly and is fair and equitable as to non-accepting impaired classes, specifically:
 - i. The Class 1, 3, 6,7, 9, 10, and 11 claimants are realizing the indubitable equivalent of their claims. Therefore, 11 U.S.C. § 1129(b)(2)(A) (iii) is satisfied.
 - ii. The Class 2 claimant will retain its lien to the same extent, validity, and priority as existed pre-petition and receive deferred cash payments totaling at least the allowed amount of its claim as of the effective date of the Plan. Therefore, 11 U.S.C. § 1129(b)(2)(A)(i) is satisfied.
 - m. Principal Purpose of the Plan. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. No governmental entity has filed an objection to the Plan on these grounds. Therefore, 11 U.S.C. § 1129(d) is satisfied.
7. Executory Contracts. The Plan's assumption of any identified unexpired leases and executory contracts pursuant to 11 U.S.C. §§ 365 and 1123(b) is approved. The rejection of all or other executory contracts and unexpired leases is approved.
 8. Implementation. The Debtors are authorized to execute, deliver, file, or record any

documents, contracts, instruments, and other agreements and take all other actions as may be necessary to implement and effectuate the Plan.

9. Binding Effect. Upon entry of this order and subject to the occurrence of the Plan's effective date, the provisions of the Plan shall bind the Debtors, all holders of claims (irrespective of whether the claims are impaired under the Plan or whether the claimants have accepted the Plan), any and all non-debtor parties to executory contracts and unexpired leases with the , any party in interest in the bankruptcy case, and the heirs, administrators, executors, successors or assigns, if any, or any of them.
10. Liens survive. Except for liens and security interests avoided by separate order, the liens and security interests of creditors whose claims are secured by an interest in property of the will continue, for so long as the Debtors are obligated to the holder of the lien or security interest as a secured claimant.
11. Discharge. Pursuant to 11 U.S.C. Section 1141(d)(5), the Confirmation Order does not discharge the Debtors from any of pre-petition liabilities. The Debtors will receive a discharge upon completion of the Plan obligations, consistent with 11 U.S.C. § 1141.
12. Continued compliance with 28 U.S.C. § 1930. Any statutory fees due to the United States Trustee on or before the effective date shall be paid on the effective date. Thereafter, all fees required to be paid by 28 U.S.C. § 1930 shall accrue and be paid timely until the Chapter 11 case is closed, dismissed, or converted.
13. Compensation and expense reimbursement applications. Debtors' counsel and other professionals shall file their final applications for allowance of compensation and costs through the date of confirmation within thirty (30) days from the entry of the instant order.
14. Retained jurisdiction. Pursuant to the Plan and 11 U.S.C. §§ 105 and 1142, this Court retains jurisdiction subsequent to the entry of this order to enter orders necessary to facilitate the implementation of the Plan and to ensure that the purposes and intent of the Plan are carried out.
15. Repayment of Class 16 Claimants. The spreadsheet attached hereto as Exhibit "A" and incorporated herein by reference represents the Debtors' payments to the Class 16 claimants. These payments shall become final and binding thirty (30) days after the filing of the Certificate of Substantial Consummation by the Debtors.
16. UST Objection. The UST Objection is overruled as moot based on uncontroverted proffers made by the Debtors at the Confirmation Hearing.

17. BOA Objection. The BOA Objection is overruled as to the issue concerning the interest rate and sustained as to the escrow requirement. The amendment to Class 2 set forth above fully resolves the BOA Objection.
18. Motion for “Cram-Down”. The *Motion for “Cram-down”* is hereby Granted. No further order shall be issued from the Court.
19. Status Conference. A status conference will be held in, Courtroom 8B, Sam M. Gibbons United States Courthouse, 801 N. Florida Ave., Tampa, FL 33602 on **June 25, 2020, 1:30 p.m.**, before the Honorable Catherine Peek McEwen, United States Bankruptcy Judge.

Attorney for Debtor, Buddy D. Ford, Esquire, is directed to serve a copy of this order on interested parties who do not received service by CM/ECF and file a Proof of service within three (3) days of entry of the order.

Exhibit "A" Class 16 General Unsecured Creditor Repayment

Claim #	Creditor	Payment Address	Claim Amount	Pro Rata Share	Total Repayment	Quarterly Payment
2	TCF Equipment Finance	11100 Wayzata Blvd., Ste. 801, Hopkins, MN 55305	\$ 34,482.70	1.39%	\$ 416.06	\$ 20.80
4	SunTrust Bank	Support Services, Bankruptcy Department, P.O. Box 85092, Richmond, VA 23286	\$ 1,925.90	0.08%	\$ 23.24	\$ 1.16
6	SunTrust Bank	Support Services, Bankruptcy Department, P.O. Box 85092, Richmond, VA 23286	\$ 310.95	0.01%	\$ 3.75	\$ 0.19
10	American Express National Bank	Beckett and Lee LLP, PO Box 3001, Malvern, PA 19355-0701	\$ 14,694.40	0.59%	\$ 177.30	\$ 8.86
11	SunTrust Bank	c/o LightStream, a division of SunTrust Bank, P.O. Box 117320, Atlanta, GA 30368	\$ 34,263.23	1.38%	\$ 413.41	\$ 20.67
12	Thyssen Krupp Material, NA	8430 W. Bryn Mawr Ave., 3rd FL, Chicago, IL 60631	\$ 12,678.37	0.51%	\$ 152.97	\$ 7.65
15	Hancock Whitney Bank	PO Box 4019, Gulfport, MS 39502	\$ 37,639.68	1.51%	\$ 454.15	\$ 22.71
16	Bank of America, N.A.	PO Box 15102, Wilmington, DE 19886-5102	\$ 2,986.73	0.12%	\$ 36.04	\$ 1.80
17	U.S. Bank, N.A.	d/b/a U.S. Bank Equipment Finance, P.O. Box 954238, St. Louis, MO 63195	\$ 34,089.24	1.37%	\$ 411.31	\$ 20.57
18	Synchrony Bank	c/o PRA Receivables Management, LLC, PO Box 41031, Norfolk, VA 23541	\$ 198.09	0.01%	\$ 2.39	\$ 0.12
20	Central Bank	Attn: Scott Amatuuccio, 20701 Bruce B. Downs Boulevard, Tampa, FL 33647	\$ 2,053,822.95	82.60%	\$ 24,780.66	\$ 1,239.03
21	Central Bank	Attn: Scott Amatuuccio, 20701 Bruce B. Downs Boulevard, Tampa, FL 33647	\$ 216,388.47	8.70%	\$ 2,610.86	\$ 130.54
Scheduled	Bank of America	PO Box 982238, El Paso, TX 7998	\$ 24,251.00	0.98%	\$ 292.60	\$ 14.63
Scheduled	Chase Card Services	PO Box 15298, Wilmington, DE 19850	\$ 11,122.00	0.45%	\$ 134.19	\$ 6.71
Scheduled	Chase Card Services	PO Box 15298, Wilmington, DE 19850	\$ 6,049.00	0.24%	\$ 72.98	\$ 3.65
Scheduled	Hernando Beach Marina	4139 Shoal Line Blvd., Spring Hill, FL 34607	\$ 1,500.00	0.06%	\$ 18.10	\$ 0.90
Total			\$ 2,486,402.71	100.00%	\$ 30,000.00	\$ 1,500.00