

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

ONE FAT FROG, INCORPORATED,

Debtor
_____ /

Case No.: 6:24-bk-02620-LVV

Chapter 11
Subchapter v

TRUSTEE IN POSSESSION'S FIRST REPORT

The Debtor, One Fat Frog, Incorporation, by and through the Trustee-in-Possession, L. Todd Budgen (hereinafter the "TIP" or the "undersigned"), hereby files this status report and states as follows:

Background

1. L. Todd Budgen ("Trustee") is the duly appointed, qualified and acting Subchapter v Trustee of the above styled bankruptcy estate. The Debtor's Chapter 11, Subchapter v bankruptcy petition was filed on May 24, 2024. This honorable court entered an order on July 12, 2024 transferring the control and management of the Debtor to the Subchapter V Trustee herein (Doc. No. 71.). The Court further requested the Trustee to evaluate the Debtor's options for financing, auctioning, or sale of the Debtor to potential buyers and provide a report to the Court.
2. The undersigned continued to receive information contained in this report as late as 11 p.m. the evening before the hearing in this matter. It is the most current information available to the undersigned.

Executive Summary

The Trustee explored three options for the future of the Debtor, as detailed herein.

The undersigned has determined the only significant mechanism of recovery for customers of the Debtor would be a pathway which utilizes the reach of the federal court system to pursue bad actors.

Any other pathways to recovery are either illusory or de minimis for customers and general unsecured creditors, in the opinion of the undersigned. Recovery made from bad actors may be complicated and returns are difficult to quantify, but that possible return is the only pathway that is both: 1) unencumbered; and, 2) of any possible significant return for unsecured creditors.

The undersigned's best suggestion of how to enable an estate to pursue bad actors is a four-prong approach:

- 1) The sub v trustee, chapter 7 trustee, chapter 11 trustee or liquidating agent (hereinafter the "facilitator") should negotiate or otherwise take action to end administrative rent, post-petition power bills and all other administrative operating claims as soon as possible.

Value proposition: potentially eliminate a possible \$100,000 per month in rent by negotiating an early termination for all 3 landlords. The building owner has expressed in interest in such negotiations, which would include each of the two sub-leaseholders.

- 2) An Agreement has been reached and should be preserved with the primary secured creditor (Newtek, Proof of Claim no. 11 at \$2.1 million), whereby that creditor will allow use of cash collateral to operate and liquidate the estate. Possible cash collateral includes pursuing money held by merchant processors, preference payments made or

taken before the filing, including MCA's, and some miscellaneous claims. The primary creditor makes no claim on the estate's causes of action.

Value proposition: recover \$150,000 to \$250,000 in funds (from preference and turnover actions).

- 3) The primary secured creditor has *preliminarily* agreed, subject to final approval by the SBA, to a 10% "carve-out" of the possible \$1.1 million to \$1.9 million in anticipated proceeds from auction, after auction expenses. **The primary creditor has a blanket lien for \$2.1 million.** Note: the primary creditor's lien includes including third party real-estate that may yield an additional \$500,000 for that creditor's benefit.

Value proposition: \$100,000 to \$180,000 in funds.

- 4) The undersigned has located competent bankruptcy counsel that may be willing to pursue estate causes of action against bad actors based, wholly or partially, on contingency.

Value proposition: unknown. The first \$6 million in recovery is more likely than the potential remaining \$18 million for jurisdictional and specific legal reasons.

This is the best legitimate pathway, in the undersigned's opinion, for any significant recovery benefiting the aggrieved customers of the Debtor.

Actions Taken

The details of actions taken to date, the facts which give rise to the undersigned opinion and other material details are explained herein.

The undersigned took possession of all cash on hand and the Debtor's warehouse on the day after the last hearing¹. The undersigned has changed the locks, taken over administrator access

¹ The Debtor turned over \$23,183.11 from its DIP account, and a \$4000 and \$202.11 check, yielding \$27,385.22. The undersigned expects an incoming wire of \$25,000 to post the day of this Report.

of the alarm and limited access to two individuals (and those who accompany them). Internet and cameras were installed to monitor access and movement in the Debtor's facility. The undersigned took possession of a server which contains the books and financial information of the Debtor. The undersigned completed a four-corner walk-through of the city block-long facility. The undersigned posted signage on the facility announcing its complete closure and giving his contact information.

The undersigned then began a series of meetings with the various landlords, the potential auctioneer, employees of the Debtor, potential investors, the primary secured creditor and Debtor's counsel. The undersigned, through direct conversations, emails, closely directed staff correspondence and email blasts communicated with several customers of the Debtor.

The undersigned reviewed pending A/Rs, customer accounts, customer lists and completion cost spreadsheets provided by the Debtor.

The undersigned requested the services of a restaurant equipment distressed asset specialist, both to complete an inventory and to give an indication of what assets (excluding third party property) may fetch at auction. That report is separately filed in the docket at the same time as this report.

Based upon these meetings, inspections, interviews, reports and the undersigned's investigation, three possible paths forward were formulated for further investigation.

Range of Pathways Forward

In the opinion of the undersigned, three possible pathways exist for a facilitator (ie. A sub v, ch 11, or ch 7 trustee or a liquidating agent): 1) an "asset sale", 2) a piecemeal auction; and 3) causes of action against third parties for the recovery of money, combined with the two prior options or stand alone.

Option 1 – Asset Sale

An asset sale was the single best option for customers of the Debtor. The undersigned met with potential investors who proposed a model that would lead to the completion of pending orders. Meetings took place across two half-days, including on-site meetings and a complete open-book review of financials.

The estimated cost of completing existing open contracts is subject to disagreement, but the compliance and operations director of the Debtor estimated this cost to be \$1.8 million. The undersigned has reviewed the data from which that estimate is derived and believes it is a good faith estimate.

The investors proposed making a profit from: 1) adding a 10% to 15% premium to existing contracts; 2) some sort of yield spread or money back from financing companies who were working with customer to financing remaining future payments due; and, 3) factoring those existing A/R's to increase current operating capital.

The undersigned intended to utilize the auctioneer's opinion to broker a deal between the primary secured creditor and the investors for a transfer of those assets necessary to complete the existing work orders. To that end, the undersigned asked for proof of funding on or before July 26, 2024 in the amount of \$800,000 to \$1.2 million. The investor would have become a stalking horse bidder. The caveat would have existed that any competitive bidder would have to complete a minimum number of contracts, including those where all funds were already paid.

The undersigned has not received the proof of funds as of the date of this Report.

Option 2 – Piecemeal Auction

As stated above, the undersigned sought the opinion of the auctioneer as to what assets on hand could fetch at a proper auction. **The proceeds from an auction is estimated between \$1.1**

million and \$1.9 million, with a \$2.1 million blanket lien encumbering those assets and a proposed 10% carve-out. The recovery depends on time-constraints, marketing and other constraints. That report is filed separately at the same time as this Report.

Option 3 – Causes of Action Against Third Parties

The undersigned took control of a DIP account with approximately \$23,000. Another approximately \$4000 in checks were negotiated. The undersigned has recovered \$25,000 as of the time of this report. **At the time of hearing, there should be \$52,000 in the Trustee in Possession account.** Merchant processing companies may currently hold another \$60,000 in funds. MCAs may have taken \$150,000 during the preference period. **Money in the bank, preferences and turnover actions could total \$262,000.** Pursuing bad actors *could* yield \$6 million to \$18 million.

Option 3 could dovetail Option 2 to give as much as \$452,000 to cover admins, to pursue bad actors and to yield some return to unsecured's.

Option 4 – Dismissal and / or Conversion with Abandonment of Assets

The undersigned estimates option 4 would yield no meaningful return for customers of the Debtor.

Recommendation

As detailed in the executive summary, the undersigned believes whatever “facilitator” is chosen, **the most recovery, albeit speculative, is a combination of Option 2 and Option 3, ie. Fund the estate to pursue bad actors, with some return for unsecureds, while then pursuing ‘meaningful’ funds.**

Additional Pertinent Details Learned in this Case

The undersigned includes the following as pertinent information, but these are not items necessarily relevant to the pathway forward.

Attorney General

The Florida Attorney General is actively investigating this matter. The undersigned has committed to assist that effort for as long as he is appointed, to the extent allowed.

Items Not On-Site

Many calls have been received requesting the return of trucks and trailers. **There is only one food trailer on-site near completion** (see DE 89), no matter what Debtor salespersons told customers. All other trucks and trailers on site have widely varying degrees of incompleteness. **MANY TRAILERS DO NOT EXIST ON SITE.**

Third Party Assets

Several third-party assets, including trucks and generators are on site and available for pick up from whatever facilitator is chosen. The undersigned urges the primary secured creditor to take on this function if a facilitator is unwilling to handle the responsibility.

Conclusion

The fact pattern presented in this case is deeply troubling. Scores of customers have contacted the undersigned with devastating stories and nothing but their own indebtedness to show for it.

The undersigned thanks this Court for the opportunity to serve in this unique and to be of service in helping provide what is likely dispositive information.

Dated this 7th day of August, 2024.

/s/ L. Todd Budgen
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