

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re: BCT Deals, Inc.,
Debtor.

Case No.: 2:21-bk-18156-ER
Chapter: 11

**MEMORANDUM OF DECISION
CONFIRMING CHAPTER 11 PLAN
[RELATES TO DOC. NO. 71]**

[No hearing required pursuant to Federal Rule
of Civil Procedure 78(b) and Local Bankruptcy
Rule 9013-1(j)(3)]

Before the Court is the motion of BCT Deals, Inc. (the “Debtor”) for an order confirming the Debtor’s *Plan of Reorganization for Small Business Under Chapter 11* [Bankr. Doc. No. 52] (the “Plan”). See Doc. No. 71 (the “Confirmation Motion”). No opposition to the Confirmation Motion is on file. Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),¹ the Court finds this matter to be suitable for disposition without oral argument.² For the reasons set forth below, the

¹ Unless otherwise indicated, all “Civil Rule” references are to the Federal Rules of Civil Procedure, Rules 1–86; all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all “Evidence Rule” references are to the Federal Rules of Evidence, Rules 101–1103; all “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

² The Court has reviewed the following pleadings in adjudicating this matter:

- 1) Plan of Reorganization for Small Business Under Chapter 11 [Bankr. Doc. No. 52];
- 2) Motion to Confirm Debtor’s Subchapter V Chapter 11 Plan of Reorganization [Bankr. Doc. No. 71];
- 3) Plan Ballot Summary [Bankr. Doc. No. 72].

Confirmation Motion is **GRANTED**, and the hearing on the Confirmation Motion, set for March 23, 2022 at 10:00 a.m., is **VACATED**.

I. Background

On October 22, 2021 (the “Petition Date”), BCT Deals, Inc. (the “Debtor”) filed a voluntary Chapter 11 petition, and elected treatment under Subchapter V of Chapter 11. On October 26, 2021, the United States Trustee (the “UST”) appointed M. Douglas Flahaut to serve as the Subchapter V Trustee.

The Debtor sells Halloween costumes and toys, primarily online through channels such as Amazon Marketplace. Michael J. Ward (“Ward”), who founded the Debtor in January 2013, owns 100% of the Debtor’s equity. The Debtor sought bankruptcy protection as the result of litigation commenced by trade creditors. Specifically, prior to the Petition Date, two trade creditors had filed or were in the process of filing applications to attach the Debtor’s assets.

The Debtor’s secured creditors are FC Marketplace, LLC (“FC Marketplace”) and Penske Truck Leasing Co., LP (“Penske”).³ The Plan provides for the Debtor to pay FC Marketplace \$8,000 per month for 18 months. FC Marketplace voted in favor of the Plan. Penske was not entitled to vote on the Plan because its claim is unimpaired.

Under the Plan, unsecured creditors will be paid \$3,948.06 per month for 60 months, an amount that equals 12% of their claims. Unsecured creditors holding 83.33% of claims in number and 89.14% of claims in amount voted to accept the Plan.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Plan satisfies all applicable provisions of § 1129. Therefore, the Court will confirm the Plan.

SECTION 1129(A)(1)

Section 1129(a)(1) requires that the “plan compl[y] with the applicable provisions of this title.” According to the leading treatise, the “legislative history suggests that the applicable provisions are those governing the plan’s internal structure and drafting: ‘Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.’” *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev’d ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that “a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.” “A claim that is substantially similar to other claims may be classified separately from those claims, even though section 1122(a) does not say so expressly.” *In re Rexford Props., LLC*, 558 B.R. 352, 361 (Bankr. C.D. Cal. 2016).

The Plan’s classification structure complies with § 1122(a). Claims are placed in different classes based upon differences in the legal or factual nature of those claims, and each of the claims in a particular class is substantially similar to the other claims in that class.

³ The secured claim of Commercial Collections of America, LLC, an assignee of PayPal/Swift Financial, LLC was withdrawn pursuant to a Court-approved settlement agreement. *See* Doc. No. 49.

2. Section 1122(b)

Section 1122(b) provides that “a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.”

The Plan does not contain any convenience classes. Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan “designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest.” There are no involuntary gap claims because this is a voluntary chapter 11 case. The Plan appropriately classifies administrative expense claims and priority tax claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan “specify any class of claims or interests that is not impaired under the Plan.” The Plan appropriately specifies that Class 2B is unimpaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan “specify the treatment of any class of claims or interests that is impaired under the Plan.” The Plan appropriately specifies the treatment of Class 2A, Class 3, and Class 4, all of which are impaired. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan “provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.” The Plan provides the same treatment to claims of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan “provide adequate means for the plan’s implementation.” The Plan provides for payments to be made from the net income derived from the continued operation of the Debtor’s business. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: “[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends.”

The Debtor represents that it will amend its Articles of Incorporation as necessary to satisfy § 1123(a)(6). The Court finds that § 1123(a)(6) has been satisfied.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Plan contains no provisions which violate public policy with respect to the selection of any officer, director, or trustee. The Plan satisfies § 1123(a)(7).

10. Section 1123(a)(8)

Section 1123(a)(8) requires that in a case in which the debtor is an individual, the Plan "provide for the payment to creditors ... of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan."

Because the Debtor is a corporation, § 1123(a)(8) does not apply.

10. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required, in a plan. The Plan contains certain of § 1123(b)'s optional provisions. The Plan is consistent with § 1123(b).

SECTION 1129(A)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Debtor has obtained approval of the employment of professional persons and has solicited votes on the Plan in accordance with procedures approved by the Court. The Debtor has satisfied the requirements of § 1129(a)(2).

SECTION 1129(A)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

Where, as here, no objections to a plan have been timely filed, the Court "may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues." Bankruptcy Rule 3020(b).

The Plan received overwhelming support from the creditor body. The Court finds that the Plan has been proposed in good faith and not by any means forbidden by law.

SECTION 1129(A)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." The

Plan provides that all professional fees are subject to review by the Court. The plan satisfies § 1129(a)(4).

SECTION 1129(A)(5)

Section 1129(a)(5) requires that the Plan disclose “the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan.” Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan provides that the Debtor’s principal and sole shareholder, Michael Ward, shall remain the principal and owner of the Reorganized Debtor, and shall serve as the disbursing agent for all obligations of the Reorganized Debtor. Ward will not receive any compensation for serving as the Reorganized Debtor’s disbursing agent. The Plan satisfies § 1129(a)(5).

SECTION 1129(A)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(A)(7)

Section 1129(a)(7), known as the “best interests of creditors test,” provides in relevant part: “With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.”

In a hypothetical Chapter 7 liquidation, general unsecured creditors would receive approximately 7.38% of their allowed claims. *See* Doc. No. 52, Ex. D (liquidation analysis). Under the Plan, general unsecured creditors are projected to receive approximately 12% of their allowed claims. The Plan satisfies § 1129(a)(7).

SECTION 1129(A)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. All impaired classes have voted to accept the Plan. Section 1129(a)(8) has been satisfied.

SECTION 1129(A)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

Administrative expense claims and priority tax claims will be paid in full on the later of the Effective Date or the date upon which the claim becomes allowed. The Plan satisfies § 1129(a)(9).

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SECTION 1129(A)(10)

Section 1129(a)(10) requires that “at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.” Classes 2A and 3, which are both impaired, have voted to accept the Plan. Section 1129(a)(10) has been satisfied.

SECTION 1129(A)(11)

Section 1129(a)(11), known as the “feasibility requirement,” requires the Court to find that “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.”

Having reviewed the income projections submitted by the Debtor, the Court finds that the Plan is feasible. Section § 1129(a)(11) has been satisfied.

SECTION 1129(A)(12)

Section 1129(a)(12) requires that all fees assessed under 28 U.S.C. § 1930 be paid prior to confirmation, unless the Plan provides for the payment of such fees on the effective date. Since this is a case under Subchapter V, no fees are owed under 28 U.S.C. § 1930, and § 1129(a)(12) does not apply.

SECTION 1129(A)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(A)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(A)(15)

Section 1129(a)(15), which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(A)(16)

Section 1129(a)(16) provides: “All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.”

Because the Debtor is **not** a non-profit entity, § 1129(a)(16) does not apply.

SECTION 1129(D)

Section 1129(d) provides: “Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.” No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan’s purpose is the avoidance of taxes. The Plan satisfies § 1129(d).

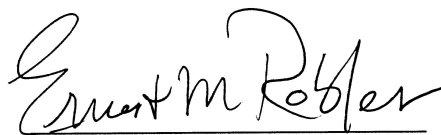
III. Conclusion

Based upon the foregoing, the Plan is **CONFIRMED**. The Confirmation Hearing, set for March 23, 2022 at 10:00 a.m., is **VACATED**. A Post-Confirmation Status Conference shall take place on **July 12, 2022 at 10:00 a.m.** A Post-Confirmation Status Report shall be filed by no later than fourteen days prior to the hearing.

Within seven days of the issuance of this Memorandum of Decision, the Debtor shall submit a proposed order confirming the Plan.

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Date: March 22, 2022

A handwritten signature in black ink, appearing to read "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles
United States Bankruptcy Judge