

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Chapter 11

PHIL'S CAKE BOX BAKERIES, INC.
d/b/a Alessi's Bakery,

Case No. 8:12-bk-13635-KRM

Debtor.

**ORDER CONFIRMING DEBTOR'S
AMENDED PLAN OF REORGANIZATION, AS MODIFIED**

THIS CASE came on for hearing on May 23, 2013, at 1:30 p.m. (the "**Confirmation Hearing**") to consider confirmation of the Debtor's Amended Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code, dated as of April 4, 2013 (Doc. No. 221) (the "**Amended Plan**"), as modified by the Motion to Modify Amended Plan (Doc. No. 262) and the Notice of Modification of Debtor's Amended Plan of Reorganization, as Modified, for Treatment of Class 2 Claims (Doc. No. 277) (together, the "**Modification**"), and the Objections to the Amended Plan filed by BB&T (Doc. No. 247) (the "**BB&T Objection**") and the Federal Deposit Insurance Corporation, as Receiver for Heritage Bank of Florida (the "**FDIC**") (Doc. No. 251) (the "**FDIC Objection**"). ABRTL LLC and AM CERT LLC Partnership 1026 and B Low, LLC and CBBTL, LLC Partnership (the "**Tax Certificate Holder**"), filed a Joint Objection (Doc. No. 227) (the "**Tax Certificate Holder Objection**"), which was withdrawn prior to the Hearing. The Court having considered the Amended Plan (as amended by the Modification, and as further modified by this Order, the "**Plan**"), the Modification, the record, and having heard the argument of counsel and the proffers by counsel, and being otherwise fully advised in the premises, makes the following findings:

A. This Court has jurisdiction over the Debtor, the Debtor's Chapter 11 case, all of the Debtor's properties, contracts and assets, wherever located, all Claims against and Equity Interests in the Debtor, and all Holders of Claims against and Holders of Equity Interests in the Debtor pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a "core proceeding" pursuant to, without limitation, 28 U.S.C. §§ 157(b)(2)(A), (L) and (O), and this Court has jurisdiction to enter a final order with respect thereto. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. All capitalized terms used in this Confirmation Order but not defined herein shall have the meaning ascribed to such terms in the Plan.

C. On September 5, 2012, Phil's Cake Box Bakeries, Inc., d/b/a Alessi's Bakeries, (the "**Debtor**") filed a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**").

D. On April 22, 2013, the Court entered its Order Approving Disclosure Statement and Setting Deadlines with Respect to Confirmation Hearing (Doc. No. 235) (the "**Disclosure Statement Order**"), approving the Amended Disclosure Statement for the Amended Plan (Doc. No. 233) (the "**Disclosure Statement**"), scheduling the Confirmation Hearing, and setting deadlines for objections to the Plan and other deadlines in connection with the Confirmation Hearing.

E. Pursuant to the Disclosure Statement Order, a package containing copies of the Disclosure Statement, the Amended Plan, the Disclosure Statement Order, and a ballot form (the "**Ballot**") was mailed by the Debtor to all Creditors of the Debtor as set forth on the Court's master mailing matrix for this Chapter 11 case and to certain other parties in interest. An appropriate affidavit and certificate of service have been filed by the Debtor (Doc. No. 238).

F. The Tax Certificate Holder Objection was withdrawn, conditioned upon the modifications to the Plan as set forth in a separate agreement between the Tax Certificate Holder and the Debtor. As set forth herein and on the record at the Confirmation Hearing, the BB&T Objection is overruled as moot, based on the Modification, and the FDIC Objection is overruled.

G. The Debtor announced on the record at the Confirmation Hearing the following modification with respect to the Secured Claim of Ford Motor Credit: Ford shall be paid the remaining Claim amount of \$31,036.69 at 5.25% interest over a period of 22 consecutive months, consistent with the contractual maturity date of the loan. The ongoing monthly payment will be \$1,476.3 per month. The payments shall commence beginning with the June 28, 2013 payment.

H. On May 20, 2013, the Debtor filed its ballot tabulation (Doc. No. 253). As reflected therein, Classes 3, 4, 6, 7, 8, and 11 voted to accept the Plan.

I. At the Confirmation Hearing, in consideration of the agreements reflected in the Modification and announced on the record and to be incorporated into the Plan, SCB and BB&T, as the Holders of the Claims in Class 2 and Class 10, respectively, orally and on the record revised their ballots (the “**Revised Ballots**”), accepting the Plan in Class 2 and in Class 10, respectively.

J. The Plan classifies Claims and Equity Interests into twelve (12) separate Classes. The Court finds that, with the acceptances reflected by the Revised Ballots, with the exception of Class 9 (Baytree Leasing) all impaired classes have accepted the Plan in the requisite number and amount required under § 1126 of the Bankruptcy Code. In particular, Creditors in Class 2 and Class 10 have now accepted the Plan.

K. The Debtor filed its Motion for Cramdown (Doc. No. 257) (the “**Cramdown Motion**”), seeking confirmation of the Plan notwithstanding the rejection of the Plan by Class 2 and Class 10, and notwithstanding the lack of a vote or objection to the Plan by Class 9. As reflected in the Revised Ballot, Classes 2 and Class 10 have accepted the Plan. The Court finds that the Plan meets the requirements of § 1129(b) as to Class 9.

L. The Court held the Confirmation Hearing to consider confirmation of the Plan in accordance with § 1129 of the Bankruptcy Code.

M. Appearances at the Confirmation Hearing were made as reflected on the record.

N. The Debtor filed an affidavit prior to the Confirmation Hearing (Doc. No. 254) (the “**Confirmation Affidavit**”). The Confirmation Affidavit summarized the principal features of the Plan, including the feasibility of the Plan; the means for implementing the Plan; and the distributions to Creditors and Holders of Allowed Claims made pursuant to the Plan. No objections to the proffers made in the Confirmation Affidavit were made at the Confirmation Hearing, and the Court accepted the proffers.

O. The Court finds that the Plan and this Confirmation Order are fair, equitable, reasonable and proper, are in the best interests of the Debtor’s Estate, and are binding upon all Creditors against and Holders of Equity Interests in the Debtor.

P. The Court finds that the Plan meets the applicable requirements of § 1129.
The above findings having been made by the Court, it is

ORDERED that:

1. The findings of fact and conclusions of law set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure (“**Bankruptcy Rule**”) 7052, made applicable to these cases pursuant to Bankruptcy Rule 9014.

2. The findings of fact set forth above in this Confirmation Order be, and the same hereby are, ratified and adopted as findings of this Court and are incorporated herein.

3. To the extent any of the findings of fact set forth above are deemed to be conclusions of law, then such findings of fact are hereby adopted as conclusions of law. To the extent any of the following conclusions of law are deemed to be findings of fact, then such conclusions of law are hereby adopted as findings of fact.

4. The Plan, including modified sections 5.3, 5.7, 5.10, and 5.11 of Article V, is confirmed in all respects, subject to the modifications described on the record at the Confirmation Hearing and in this Confirmation Order to be contained in the Plan.

5. The Modifications are approved, and the Plan as modified by the Modifications and as further modified by this Confirmation Order is confirmed. No further solicitations of the Plan are required.

6. The BB&T Objection is overruled as moot, and the Tax Certificate Holder Objection is overruled as moot based on the withdrawal of such objection prior to the Confirmation Hearing. The FDIC Objection is overruled. Any objections that could have been made to the Plan are overruled in all respects.

7. The Revised Ballots accepting the Plan are allowed and deemed filed.

8. The Debtor is authorized and directed to take all such steps as may be necessary to effectuate and implement the Plan and this Confirmation Order, and to take such steps as may be appropriate or necessary to consummate the transactions contemplated by the Plan and this Confirmation Order.

9. All rights of Holders of Claims or Equity Interests of all Classes under the Plan, shall be limited solely to the right to receive such distributions exclusively according to the Plan, the

provisions of which shall be binding on such Holders to the fullest extent provided by § 1141(a) of the Bankruptcy Code. After the date hereof, the Holders of such Claims or Equity Interests shall have no further rights against the Debtor or Reorganized Debtor, except as expressly provided in the Plan and this Confirmation Order.

10. On the Effective Date, except as otherwise expressly provided in the Plan, all Property of the Estate shall revert in the Reorganized Debtor free and clear of any and all Liens, Debts, obligations, Claims, Liabilities, Interests, and all other interests of every kind and nature, but subject to the terms and conditions of the Plan and the agreement between the Debtor and the Tax Certificate Holder.. The Reorganized Debtor is directed to take such actions necessary to effect such revesting.

11. The Plan and its provisions shall be and hereby are binding upon the Debtor, the Debtor's Estate, the Reorganized Debtor, all Creditors and all Interests Holders of the Debtor (whether or not the Claim or Interest of such Creditors or Interest Holders is impaired under the Plan and whether or not such Creditors or equity security holders have accepted the Plan), all parties to any executory contract or unexpired lease of the Debtors, all other parties in interest, and the respective successors and assigns of each of the foregoing.

12. On the Effective Date, the Interests in the Debtor shall be deemed cancelled, annulled, extinguished and surrendered without any further action by any party and shall be of no further force and effect.

13. On the Effective Date, the Reorganized Debtor shall issue and distribute, in accordance with the provisions of the Plan, the shares of the Reorganized Debtor Interests to the New Equity Holder, which shall be free and clear of any Liens, Claims, or Interests, but subject to the terms and conditions of the Plan.

14. Pursuant to § 1146(a) of the Bankruptcy Code, the issuance, distribution, transfer or exchange of any security or the making, delivery or recording of any instrument of transfer pursuant to, in implementation of or as contemplated by the Plan, or the vesting, re-vesting, transfer or sale of any assets or real or personal property of, by or in the Debtor or its Estate pursuant to, in implementation of or as contemplated by the Plan, or any transaction arising out of, contemplated by or in any way related to the foregoing, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangible or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall be, and hereby are, directed to forego the collection of any such tax or governmental assessment and to accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

15. All executory contracts and unexpired leases, including any modifications, amendments, supplements, restatements, or other agreements made directly or indirectly in connection with such executory contracts and unexpired leases that exist between the Debtor and any Person or Entity shall be deemed assumed by the Debtor (the “**Assumed Contracts**”), as of the Effective Date, except for any executory contract or unexpired lease (i) that has been rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a motion for approval of the rejection of such executory contract or unexpired lease has been filed and served prior to the Effective Date, or (iii) that is specifically designated as a contract or lease to be rejected in this Plan (the “**Rejected Contracts**”). This Confirmation Order shall constitute an order of this Court approving the assumption of each of the Assumed Contracts, pursuant to §§ 365 and 1123(b)(2) of the Bankruptcy Code.

16. This Confirmation Order shall constitute an order of this Court approving the rejection of each of the Rejected Contracts, pursuant to §§ 365 and 1123(b)(2) of the Bankruptcy Code.

17. Except as reflected in prior orders of the Court, no party to an Assumed Contract timely asserted a cure claim in connection with the assumption of such Assumed Contract as contemplated by § 365(b) of the Bankruptcy Code and Section 7.2 of the Plan. Specifically, no party filed a Cure Claim with the Bankruptcy Court on or before the Voting Deadline under the Plan, asserting all alleged amounts accrued or alleged defaults through the Effective Date. Absent the consent of the Debtor and the Reorganized Debtor, to any asserted Cure Claims, all lessors or other parties to an assumed contract that failed to file and serve a Cure Claim are and shall be forever barred from asserting, collecting, or seeking to collect any amounts or defaults relating thereto against the Debtor or the Reorganized Debtor.

18. All settlements, agreements and compromises provided for under the Plan, and all transactions, documents, instruments, and agreements referred to therein, contemplated thereunder or executed and delivered therewith, and any amendments or modifications thereto in substantial conformity therewith, are hereby approved, and the Debtor and the Reorganized Debtor and the other parties thereto are authorized and directed to enter into them and to perform thereunder according to their respective terms.

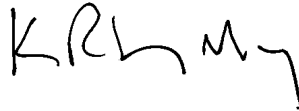
19. The Plan is confirmed in its entirety as if set forth in haec verba. The inclusion of decretal paragraphs in this Confirmation Order referring to specific provisions of the Plan or authorizing specific action by the Debtor shall not be construed to imply non-approval of other provisions or non-authorization of other actions.

20. The failure to reference or discuss any particular provision of the Plan in this Confirmation Order shall have no effect on the validity, binding effect and enforceability of such provision and such provision shall have the same validity, binding effect and enforceability as every other provision of the Plan.

21. Except as to the modifications provided herein, to the extent of any inconsistency between the terms of the Plan and this Confirmation Order, the terms of the Plan shall govern.

22. A copy of this Confirmation Order shall be served by counsel for the Debtor on (a) the parties set forth below who appeared at the Confirmation Hearing, (b) all creditors of the Debtor set forth on the Court's master mailing matrix for this case, and (c) all parties to any Assumed Contracts.

DONE AND ORDERED at Tampa, Florida on July 09, 2013.



K. RODNEY MAY
United States Bankruptcy Judge

Attorney Harley E. Riedel is directed to serve a copy of this order as set forth herein and file a proof of service within 3 days of entry of the order.