

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

HUNTS POINT ENTERPRISES LLC,
FKA BKD HOLDINGS, LLC and
FEATHERSTONE DISTRIBUTION, LLC,

Case Nos. 20-42393 (AST)
20-42673 (AST)

(Jointly Administered)

Debtors.
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**ORDER FOR DE-DESIGNATION OF
DEBTOR HUNTS POINT ENTERPRISES, LLC,
AND SETTING FURTHER HEARINGS**

On June 24, 2020, Debtor Hunts Point Enterprises LLC (*fka* BKD Holdings, LLC) filed a proceeding under chapter 11 (the “HP Petition Date”). HP initially designated itself as a small business under Section 101(51D).

On July 20, 2020, Debtor Featherstone Distribution LLC filed a proceeding under chapter 11 (the “FD Petition Date”). FD initially made the election to be treated as a subchapter V debtor (a “subV debtor”). HP is the 100% parent company of FD.

On August 6, 2020, an Order granting Debtors’ motion for joint administration of HP and FD was entered, with HP as the lead case. [dkt item 29]

On August 27, 2020, HP filed its motion to convert its chapter 11 case to a subV case. [dkt item 53] No order was entered thereon.

On November 1, 2020, HP refiled its petition electing to proceed as a subV debtor, and filed a letter withdrawing the Motion to Convert. [dkt items 72-73]

Various motions have been filed in these cases, as well as adversary proceedings that have been filed and/or removed to this Court. These are highly litigious chapter 11 cases.

Now pending before the Court are the following: Motion to Dismiss filed by Featherstone Foods, Inc., Sesame Distribution, Inc., and Joel Schonfeld (collectively the “Creditors”) [dkt item 76]; Motion of the Debtors to Extend Deadline to Confirm SubV Plan (the “Extension Motion”) [dkt item 81]; UST’s Motion to Strike election of Debtor HP as SubV Debtor [dkt item 83] Joinder/Response of the Creditors to UST’s Motion to Strike [dkt item 95] and the various responses filed thereto (the “Matters” and the “Parties”).

This Court has held multiple hearings and status conferences in these cases. For the reasons to follow, and in accordance with 11 U.S.C. § 105(a)(d) and Bankruptcy Rule 1001, the Court proceeds and Orders as follows.

A chapter 11 debtor who elects application of subchapter V of chapter 11, codified in 11 U.S.C. §§ 1181-1195, receives specific treatment, and is subject to various reporting requirements. For example, pursuant to 11 U.S.C. §§ 1187(a), 1116(1)(A), and 1116(1)(B), a subV debtor shall file and serve the following documents with the petition for relief:

- a. Debtor’s most recent balance sheet;
- b. Debtor’s most recent statement of operations;
- c. Debtor’s cash-flow statement; and
- d. Debtor’s most recent federal income tax return.

The court will also hold a status conference early in the case under § 1188, and, at least fourteen (14) days prior to that conference, the debtor is required by 11 U.S.C. § 1188(c) to file a report which “details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.” Further, a subchapter V trustee is automatically appointed.

In addition, under § 1189(a), only the debtor may file a plan in a subV case; neither the subV trustee nor creditors are permitted to do so. Any such plan must conform to the requirements

of 11 U.S.C. §§ 1190 and 1191, along with the applicable provisions of 11 U.S.C. §§ 1123 and 1129 and, unless otherwise ordered, the debtor shall use Official Form 425.

The deadline to file a plan in a subV case is governed by § 1189(b), under which a subV debtor “shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.” 11 U.S.C. § 1189(b) (emphasis added). Here, the 90-day period for the HP Debtor to file its plan expired on September 22, 2020. HP did not file a plan by the 90-day statutory deadline, nor move to extend its time to do so prior to the expiry. Further, HP has failed to even allege in its Extension Motion that any late filed extension would be proper to grant, based on the absence of circumstances for which HP should not justly be held accountable. Both Debtors did note at a recent hearing that they have been engaged with Creditors in mediation for several months. While that is true, the fact that extended mediation did not result in a settlement makes the prospects for attaining a consensual plan of reorganization virtually nil.

Therefore, as Judge Scarcella of this Court recently decided in *Online King*, neither HP nor any other party-in-interest may now file a plan. *In re Online King LLC*, No. 1-20-42591-las Chapter 11, 2021 BL 30089 (Bankr. E.D.N.Y. Jan. 19, 2021). Thus, no purpose is served by HP remaining as a subV debtor, and its designation should be revoked.

The issue, then, is whether HP should be allowed to proceed as a “traditional” small business debtor, or instead whether the case should be dismissed; that decision should be based on the best interests of creditors and the estate. *See* 11 U.S.C. § 1112(b)(1); *see also In re Rubio*, No. 09-75163-AST, 2011 WL 124458, at *3 (Bankr. E.D.N.Y. Jan. 13, 2011) (finding that “Section 1112(b)(1) provides that once cause is established, the case shall be dismissed or converted unless


the Court specifically finds unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate.”); *In re Westhampton Coachworks, Ltd.*, No. 09-73008-AST, 2010 WL 5348422, at *5 (Bankr. E.D.N.Y. Dec. 21, 2010); *In re Tuscan Sun Ristorante, Inc.*, No. 8-10-73391-AST, 2010 WL 4929444, at *2 (Bankr. E.D.N.Y. Nov. 30, 2010); *In re Jude Thaddeus Partners I, Inc.*, No. 10-73014-AST, 2010 WL 4496836, at *7 (Bankr. E.D.N.Y. Nov. 1, 2010). Section 1181, general inapplicability of other sections, does not exclude Section 1112(b) from being applicable in subchapter V cases.

As to FD, the Court has yet to rule on the Creditors’ and UST’s requests to strike the subV designation of FD. Both parties have alleged that the combined debts of HP and FD exceed the \$7.5 million maximum for eligibility for Subchapter V relief. Affiliated debtors whose cases are jointly administered are ineligible to be subV debtors if their “aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief” exceed \$7.5 million. *See In re 305 Petroleum, Inc.*, 622 B.R. 209, 212 (Bankr. N.D. Miss. 2020). An “affiliate” includes an entity that owns 20% of the outstanding voting securities of a debtor. *See* 11 U.S.C. § 101(2). HP is the parent of FD, owning 100% of the outstanding stock, and these cases have been jointly administered. Thus, a hearing will be set to determine FD’s eligibility to proceed under subchapter V.

This Court will issue a separate order scheduling a hearing on (1) whether dismissal or conversion of HP to chapter 7 is in the best interests of creditors and the estate and (2) whether FD is eligible for subchapter V relief and, if not and instead its case is to be de-designated, (3) whether dismissal or conversion of FD to chapter 7 is in the best interests of creditors and the estate.

Dated: February 4, 2021
Central Islip, New York




Alan S. Trust
Chief United States Bankruptcy Judge