Docket #0729 Date Filed: 05/21/2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

In Re: Vanity Shop of Grand Forks, Inc., Debtor.	Case No.: 17-30112 Chapter 11

DEBTOR'S REPLY MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF DEBTOR'S SECOND PLAN OF LIQUIDATION DATED APRIL 9, 2018 (AS MODIFIED)

Debtor[1] briefly writes to reply to The Official Committee of Unsecured Creditor's Limited Response to the Debtor's Omnibus Memorandum of Law in Support of Confirmation of the Debtor's Second Plan of Liquidation Dated April 9, 2018 (As Modified) [Doc. #720] (the "**Committee's Brief**"). For the reasons set forth herein, and for the reasons originally set forth, Debtor's Plan should be confirmed.

I. A SECTION 1122(b) CONVENIENCE CLASS MAY SATISFY SECTION 1129(a)(10)

The Committee argues a Section 1122(b) convenience class cannot fulfill the class approval requirement of Section 1129(a)(10). *See* Committee's Br., at 1-2. The Committee misstates the law. Section 1129(a)(10) requires: "If a class of claims in impaired under the plan, 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." 11 U.S.C. § 1129(a)(10). In other words, the plain language of Section 1129(a)(10) requires the plan to

[1] Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in the Plan or the accompanying Disclosure Statement.

be accepted by an impaired class that is not an insider. *Id.* Section 1129(a)(10) says nothing about the impaired class being a convenience class. *Id.* The plain language of Section 1129(a)(10) cannot be ignored for the Committee to receive its desired result. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) ("[W]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to the terms." (citations and internal quotations omitted)); *see also* William L. Norton, Jr., 6 *Norton Bankr. L. & Prac.* 3d ed. § 113:5 (explaining that cases reflecting the Committee's position "may have lost their precedential impact" over the past decade due to the "Supreme Court's more recent insistence on adherence to literal interpretation absent an ambiguity"). Indeed, "[t]he fact that claims are administratively consolidated and treated separate from other general unsecured claims does not diminish the fact that they may be impaired, and does not preclude them from being an impaired class for purposes of Plan confirmation pursuant to 11 U.S.C. § 1129(a)(10)." *In re Patrician St. Joseph Partners Ltd. P'Ship*, 169 B.R. 669, 679 (D. Ariz. 1994) (emphasis added). Approval by Class 2 satisfies the requirements of Section 1129(a)(10).

II. A CONVENIENCE CLASS DOES NOT NEED TO PAY CLAIMS IN FULL

The Committee appears to argue Class 2 is not an appropriate convenience class because Class 2 claims are not paid in full. *See* Committee's Br., at 2-3. The Committee's own cited authority, however, shows there is no requirement that convenience class claims are paid in full. *See In re Autterson*, 547 B.R. 372, 397 (Bankr. D. Colo. Feb. 26, 2016) ("Certainly, there is no requirement that all administrative convenience classes be paid in full."). Indeed, as originally cited by Debtor, convenience classes are routinely approved

when claims composing those classes are not paid in full. *See, e.g., In re United Marine, Inc.*, 197 B.R. 942 (Bankr. S.D. Fla. 1996) (upholding convenience class paying 10% distribution to class consisting of claims $1,000 or less); *In re Piece Goods Shops Co., L.P.*, 188 B.R. 778 (Bankr. M.D.N.C. 1995) (finding convenience class reasonable and necessary where convenience class claims were paid the greater amount of $200 or 50% of the claim). That Class 2 is not paid in full is inconsequential to the propriety of Class 2.

III. CLASS 2 IS REASONABLE AND NECESSARY

Finally, the Committee argues Class 2 is not a proper convenience class because the class is not "reasonable and necessary." *See* Committee's Br., at 3-5. The treatment of Class 2 claims as a convenience class is reasonable and necessary. "'It has always been assumed that the purpose of § 1122(b) was to allow special treatment for small claims, so that they could be eliminated early and reduce the number of claims that would have to be paid over time.'" In re Leser, 939 F.2d 669, 971 n.4 (8th Cir. 1991) (quoting *In re Storberg*, 94 B.R. 144, 146 n.2 (Bankr. D. Minn. 1988)). Accordingly, consolidation of small—but numerous—unsecured claims into a convenience class achieves the goal of Section 1122(b), and allows approval of the convenience class. *See, e.g., In re Jartran, Inc.*, 44 B.R. 331, 397 (Bankr. N.D. Ill. 1984) ("This Court also believes that the purpose and intended goal of § 1122(b) is the reduction of administrative costs accomplished by reducing the number of claims to be dealt with post-petition. The Court finds that Debtor's classification of administrative convenience claims into two classes achieves this goal, consistent with the purpose of the statute, and accordingly approves the classification as reasonable and necessary."). Here, creation of Class 2 allows Debtor to nearly halve the number of post-petition claims. The purpose of the statute is met, and the Court should approve the class.

The Committee appears to argue the Court should reject the creation of Class 2 because Class 2 was not convenient enough. Specifically, the Committee argues solicitation of Class 2 required incurring administrative expenses, so the solicitation expenses render the class inconvenient. *See* Committee's Br., at 4. Solicitation of Class 2 claimants cost Debtor approximately $7.00 per claimant for postal mailing expenses, or $3,829.00. By soliciting Class 2 claimants, rather than paying 100% of Class 2 claims as advocated by the Committee, and based on the Committee's cited numbers, the Debtor still saved the estate approximately $11,915.69 (*i.e.*, ($31,489.38/2 = $15,744.69) – $3,829.00 = $11,915.69).[2] Presumably, the Committee must admit that this actual savings to the estate is "reasonable."

Simply stated, Class 2 is reasonable and necessary as it accomplishes the goal of the statute—both in the abstract and in application.

[2] In fact, the Debtor believes it has saved significantly more than the Committee's estimate. As of the Record Date, the sum of $105,425.31 was the Allowed Claim Amount for the 547 claimants in Class 2. [Doc. 610, Ex. B] Accordingly, the Debtor believes it has saved approximately $48,883.65 (*i.e.*, ($105,425.31/2 = $52,712.66) - $3,829.00 = $48,883.65). Additionally, numerous creditors elected to be treated as Class 2 by electing to reduce their Claim to $1,500. For example, six creditors with claims totaling $177,680.93 elected to reduce their claim to $1,500 and be treated as Class 2. [Doc. 704, Ballot Nos. 1, 13, 17, 25, 126, and 234]. This would be an additional saving to the Debtor of $174,180.93 (*i.e.*, $177,680.93 – ($7,500/2 = $3,750) = $174,180.93).

Dated this 21st day of May, 2018.

VOGEL LAW FIRM

BY:/s/ Caren W. Stanley

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RE: **Vanity Shop of Grand Forks, Inc.**
Case No. 17-30112
Chapter 11 Case

STATE OF NORTH DAKOTA)
) ss CERTIFICATE OF SERVICE
COUNTY OF CASS)

Pam Armstrong, being first duly sworn on oath, does depose and say: She is a resident of Cass County, North Dakota, of legal age and not a party to or interested in the above entitled matter.

On May 21, 2018, affiant served the following documents:

DEBTOR'S REPLY MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF DEBTOR'S SECOND PLAN OF LIQUIDATION DATED APRIL 9, 2018 (AS MODIFIED)

by CM/ECF to all peoples listed through the Court's database in regards to this case and the following:

NONE

/s/ Pam Armstrong
Pam Armstrong

Subscribed and sworn to before me this 21st day of May, 2018.

/s/ Lori Thrall
(SEAL) Notary Public, Cass County, North Dakota

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