

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:) Case No. 16-23451 JAD
C Swank Enterprises, LLC,) Chapter 11
Debtor,)
C Swank Enterprises, LLC,) Related Document No. 309-305
Movant,) Hearing Date: 12/19/17 @ 10:00 a.m.
vs.) Response Due: 12/12/17
No Respondent.) Document No. 332

ORDER CONFIRMING
THIRD AMENDED PLAN OF REORGANIZATION DATED NOVEMBER 13, 2017

AND NOW, this 21st day of December, 2017, upon consideration of:

(a) The Third Amended Plan of Reorganization (the "Plan") dated November 13, 2017, filed by C Swank Enterprises, LLC ("Debtor" or "C Swank Enterprises, LLC") pursuant to Chapter 11, Title 11 of the United States Code, 11 U.S.C. §§101-1330, (the "Bankruptcy Code"); and

(b) Copies of the Third Amended Disclosure Statement, the Plan and ballots for the acceptance or rejection of the Plan having been transmitted to holders of claims against and interests in the Debtor entitled to vote on the Plan; and

(c) The solicitation of acceptances from holders of claims against and interests in the Debtor having been made within the time and in the manner required by this Court; and

(d) The acceptances and rejections to the Plan which were received within the time required by this Court from holders of claims against or interest in the Debtor; and

(e) Class 1 is not impaired and is not entitled to vote; and

(f) The Debtor having received the requisite percentages of favorable votes in Classes 2, 5, 11,14,15¹ and 17 for an acceptance of the Plan by those Classes in accordance with the requirements of Section 1126 of the Bankruptcy Code; and

(g) A hearing was held on December 19, 2017, to consider confirmation of the Plan (the "Confirmation Hearing"); and

(h) Proper and timely notice of the Confirmation Hearing having been given in accordance with Section 1128 of the Bankruptcy Code; and

After due deliberation and sufficient cause appearing therefore, the Court hereby finds (in accordance with Bankruptcy Rule 7052), determines, orders, adjudges and decrees in accordance with, inter alia, 11 U.S.C. §§363, 365, 1123, 1126, 1127, 1129(a),1129(b). 1129(d), 1141, 1142 and 1146 and Bankruptcy Rules 3018, 3019 and 9019 that:

1. All capitalized terms defined in the Plan and used in this Order shall have the meanings ascribed thereto in the Plan.

2. Class 1, consisting of priority claims is to receive the treatment required under Section 1129(a)(9), and therefore is not entitled to vote.

3. Classes 2, 3, 5, 11, 12, 14, and 17 are impaired. The Plan has been accepted by the requisite number of Allowed Claims held by creditors in Classes 2, 3, 5, 11, 12, 14, and 17 (11 U.S.C. §1126(b)).

4. Classes 4, 6, 7, 8, 9, 10, and 13 did not cast ballots and are deemed to have accepted the Plan.

¹ Class 15 is an insider.

5. Notwithstanding the provisions in the Third Amended Plan, The Plan is hereby amended to provide that should the Debtor default with respect to any creditor, such creditor will provide ten (10) days written notice to the Disbursing Agent, Donald R. Calaiaro, Esquire, and the Debtor by email @ dcaliario@cvlaw.com and carolswank@royalflushinc.com and U.S. Mail, postage prepaid, to the Debtor of such default. Default shall be defined in the underlying Loan Agreement and loan documents with such creditor. In the event the default is not cured within such ten (10) day period, the creditor will be entitled to exercise its contractual default rights as set forth in its loan documents. The right to act on the default is self- executing at the expiration at the end of the ten (10) day period.

6. Notwithstanding the provisions in the Third Amended Plan, the loans to PACCAR Financial Corp. will not be consolidated and will be maintained, as modified by the Plan as separate loans

7. Notwithstanding the provisions of the Plan the Loans to Ally Bank shall not be consolidated and will remain separate loans to be paid in full per their respective proofs of claims over five (5) years with interest at 5%. The reference in Section 7.6.4 of the Plan is amended to refer to Ally Bank instead of TCF. The Plan is further modified to provide Ally Bank shall not be required to enter into a loan modification agreement.

8. Paccar Financial Corporation, Santander and De Lage Landen have accepted the Third Amended Plan and the 5 year payment and amortization of its debt in consideration of the revisions contained in this Order Confirming the 3rd Amended Plan.

- A. Their secured claims, as modified by the Third Amended Plan, will be paid in full over the 5 year repayment
1. The Claim of PACCAR Financial Corp. Is \$ 635,897.98; less adequate protection payments made;
 2. The Claim of Santander is \$ 680,799.45; less adequate protection payments made;
 3. The claim of De Lage Landen is \$ 75,370.27;
- B. The Principal of the Debtor, Carol Swank will execute consent judgments to PACCAR Financial Corp., Santander and De Lage Landen to be held in escrow. These judgments will not be entered in the respective cases UNLESS there is a default which was not cured with the ten (10) day period, as outlined in Paragraph 4 above, PACCAR Financial Corp., Santander and De Lage Landen will forebear from any action on the guaranties
- C. Paccar Financial Corporation, Santander and De Lage Landen will forbear from enforcing any guaranty against any guarantors during the repayment period under the Plan as a result of the lenders accepting this treatment under this plan of reorganization. Provided the Reorganized Debtor makes all payments under this plan, PACCAR Financial Corp., Santander and Delage Landen will reduce any claims against the guarantors for any amounts in excess of the plan payments.

D. Paccar Financial Corporation, Santander and De Lage Landen have withdrawn their objections to the Third Amended plan based upon the modifications to the Third Amended Plan in this Order.

9. The Stipulation between the Debtor and the Internal Revenue Service, attached hereto as **Exhibit "A"**, is hereby approved.

10. Except as provided in the Plan the Debtor is hereby discharged from any liability on any "claim" and from all "debt" (as those terms are defined in Section 101 of the Bankruptcy Code) that arose before the Confirmation Date, except for claims and debts which are reinstated by the express provisions of the Plan, or this Order, and Debtor's liabilities in respect thereof are extinguished completely, whether or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or unfixed, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown that arose from any agreement of the Debtor entered into or obligation of Debtor incurred before the Confirmation Date including, without limitation, all interest, if any, on any such debt, whether such interest accrued before or after the date of commencement of the case, and including, without limitation, all debts based upon or arising out of any liability of a kind specified in Bankruptcy Code Sections 502(g), 502(h) and 502(i), whether or not proof of claim is filed or deemed filed under Bankruptcy Code section 502, or the holder of such claim has accepted the Plan, and the Debtor's liabilities for such claims and debts are limited to the amounts Debtor is paying or causing to be paid pursuant to the Plan.

11. Except as otherwise expressly provided in the Plan or this Order on the Consummation Date the reorganized Debtor will be vested with all of the property of

the estate, free and clear of all Claims, liens, encumbrances, charges and other interests of creditors and equity security holders other than liens or security interests created by the Plan or this Order or ratified by the Plan or this Order.

12. Except as provided in the Plan any judgment at any time obtained, to the extent that such judgment is a determination of liability of the Debtor with respect to any debt or claim discharged pursuant to the Plan and this Order shall be, and hereby is, rendered null and void.

13. Except as provided in the Plan or this Order all creditors and interest holders of the Debtor or other entities whose debts are discharged or whose rights and interests are terminated by the Plan and this Order, are individually and collectively permanently restrained and enjoined from instituting or continuing any action or employing any process to collect such debts from the Debtor or pursue such interests as liabilities or obligations of the Debtor, or its respective successors.

14. The issuance, transfer, or exchange of securities issued under, or the transfer of any other assets or property pursuant to, or in connection with, this Plan, shall not pursuant to Section 1146 of the Bankruptcy Code, be taxed under any law imposing a stamp tax, transfer tax, or other similar tax.

15. Prior to the Consummation Date of the Plan and in connection with the consummation of the Plan, the Plan and any exhibits thereto may be amended and modified in accordance with Section 1127 in writing by Debtor so long as any such amendment or modification does not adversely change the treatment of the Claim of any creditor or the Interest of any equity security holder nor adversely affect any other rights of any creditor that has not agreed to such amendment or modification.

16. To the extent any Orders entered in these Chapter 11 proceedings conflict with the Plan or this Order, the Plan and this Order shall control, and such Orders are vacated to the extent they conflict with this Order or the Plan. In all other respects such Orders shall remain in full force and effect.

17. All entities, the Claims and Interests of which are dealt with under the Plan shall be, and they hereby are, directed to execute, deliver, file or record any document, and to take any action necessary to implement, effectuate and consummate the Plan in accordance with its terms and all such entities shall be bound by the terms and provisions of all documents to be executed by them in connection with the Plan, whether or not such documents have been executed by such entities.

18. The Plan and its provisions as well as this Order and the findings of fact and conclusions of law contained herein shall be binding upon (i) the Debtor, (ii) Reorganized Debtor and any successors thereof, (iii) any lessor or lessee of property to or of Debtor, (iv) any creditor or equity security holder of the Debtor, whether or not the Claim or Interest of such creditor or equity security holder is impaired under the Plan and whether or not such creditor or equity security holder has accepted the Plan, and (v) any entity, including any governmental entity who has been provided notice of or a copy of the Plan and Disclosure Statement, whether or not such entity, including any governmental entity has appealed or objected to the Plan.

19. Debtor shall be, and hereby is, authorized and empowered to issue, execute, deliver, file or record any document, and to take any action necessary or appropriate to implement, effectuate, and consummate the Plan in accordance with

its terms, including, without limitation, any lease, agreement or indemnity, by-law or charter amendment, whether or not any such document or action is specifically referred to in the Plan or any exhibit thereto and without further application to, or order of, this Court.

20. The Debtor shall comply with the provisions of Bankruptcy Rule 3020(c) which relate to providing notice of the entry of the Confirmation Order as provided in Bankruptcy Rule 2002(f).

21. The Court shall retain jurisdiction in accordance with, and as limited by, the Plan and 11 U.S.C. §1142.

22. To the extent the terms of the Plan and this Order conflict, this Order shall control.

23. Notwithstanding anything in the Plan to the contrary, if the Secured Claim of any Secured Creditor is paid in full, then the corresponding lease payment to be made by Royal Flush to C Swank on the equipment that is the collateral for said Secured Claim shall be suspended until the Royal Flush creditors are paid in full under its Plan of Reorganization.

By the Court,



^{jsf}
Jeffery A. Deller, Chief Judge
United States Bankruptcy Judge

Consent:

/s/ Howard Gersham
Paccar Financial Corporation
Howard Gersham, Esquire
PA ID #25555
Gershman Law Offices, P.C.

FILED
12/21/17 2:16 pm
CLERK
U.S. BANKRUPTCY
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/s/ Carol Swank
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Jonathan Smith, Esquire

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)
)
C. SWANK ENTERPRISES, LLC,) Bank. No. 16-23451 JAD
)
) Chapter 11
Debtor.)
)
)
UNITED STATES OF AMERICA,)
)
) Related to
Movant,) Document Nos. 305 and 309
)
)
vs.)
)
) Hearing Date
) 12/19/17 @ 10:00 AM
C. SWANK ENTERPRISES, LLC,)
)
)
Respondent.)

STIPULATION AND AGREED ORDER

IT IS HEREBY STIPULATED and AGREED by and between C. Swank Enterprises, LLC, Debtor, and the United States of America, as represented by Soo C. Song, Acting United States Attorney for the Western District of Pennsylvania, as follows:

1. The prepetition claim of the Internal Revenue Service in the total amount of \$17,899.38 shall be paid as follows:

a. The unsecured priority claim totaling \$11,095.68, together with interest thereon at the rate of 4 percent per annum, shall be paid in monthly installments of \$204.34 over a sixty (60) month period. The first such installment shall be

due on the last day of the month following the month of the plan confirmation date of the plan, and each subsequent payment shall be due on the last day of each month thereafter until such time as the amount of such claim plus interest has been fully paid.

b. One half of the general unsecured claim of \$6,803.70 or \$3,401.85 shall be paid on or before the plan effective date.

2. Any unpaid federal tax liabilities of the Debtor arising between the filing of the petition in this case and the confirmation of the plan of reorganization will be paid in full on or before the plan effective date.

3. All monthly payments specified in paragraph 1 above shall be made payable to the United States Treasury and sent to the Insolvency Unit, Internal Revenue Service, William S. Moorhead Federal Building, Room 711B, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.

4. Any refunds or credits to which the Debtor may become entitled at any time before the tax liability mentioned in paragraph 1 has become fully satisfied may be credited administratively against the outstanding balance. In the event any refund check or checks are received by the Debtor prior to the full satisfaction of the tax liability, such check or checks shall be endorsed according to law and mailed to the Insolvency Unit, Internal Revenue Service, William S. Moorhead Federal Building, Room 711B, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.

5. In the event that the Debtor fails to make any of the payments specified in paragraph 1 above or fails to comply with any of its postconfirmation federal tax obligations, the Internal Revenue Service may pursue collection of all unpaid preconfirmation and postconfirmation liabilities through any means authorized by the Internal Revenue Code or other applicable law, including levy and seizure of the Debtor's assets. Notwithstanding the foregoing, the Debtor shall have thirty (30) days to cure all delinquent plan payments and postconfirmation tax liabilities. This thirty day period shall commence upon the issuance of a written notice of plan default by the Internal Revenue Service to the Debtor.

6. The period allowed to the Internal Revenue Service under I.R.C. § 6502(a) to collect the assessed taxes, interest, penalties, and any other additions thereon, which are still owed by the Debtor after the plan effective date shall be suspended for the period of time that payment of these tax debts is made according to this Stipulation and Agreement, unless and until a substantial default of these payments shall occur, and for six months thereafter in accordance with I.R.C. § 6503(h)(2). A substantial default regarding payments shall have occurred when a payment of the tax debt required by this Stipulation has not been timely made, the Service has provided the Debtor with written notice of the default, and the Debtor has failed to cure the default within 30 days of the Service mailing written notice of default to the Debtor.

7. Should the Debtor file another bankruptcy petition before completing the terms of this Stipulation, this Stipulation is null and void and the claims of the IRS retain their status as tax claims; they are not reduced to claims under this agreement. Notwithstanding the foregoing, the claims of the IRS will have no lower priority in any subsequent bankruptcy than they do in this case.

8. This Stipulation shall be deemed incorporated in the confirmed plan of reorganization and shall control the treatment of the federal tax claims in this case.

SOO C. SONG
United States Attorney

C. SWANK ENTERPRISES, LLC

BY: _____

Debtor

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By: _____

It is so ordered.

UNITED STATES BANKRUPTCY JUDGE