

SO ORDERED.



Dated: May 07, 2010

A handwritten signature in cursive script, appearing to read "Charles G. Case, II", is written over a horizontal line.

CHARLES G. CASE, II
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re
RADICAL BUNNY, LLC,

Debtor.

Chapter 11
Case No. 2:08-bk-13884-CGC

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER
CONFIRMING AMENDED PLAN OF
REORGANIZATION**

Before the Court is the *Amended Plan of Reorganization*, dated March 9, 2010 [DE #711] proposed by G. Grant Lyon, the Chapter 11 Trustee for Radical Bunny, LLC (the “**Debtor**”).

I. BACKGROUND¹

A. Plan and Disclosure Statement

1. The Trustee seeks the Plan’s confirmation under Bankruptcy Code § 1129.
2. On March 25, 2010, the Court entered its *Second Order Approving Disclosure Statement and Plan Confirmation Procedures* [DE #720] (the “**Solicitation Order**”), approving the *Disclosure Statement in Support of Amended Plan of Reorganization* [DE #712].

B. Solicitation and Voting

3. The Trustee used the Disclosure Statement to solicit votes to accept or reject the Plan. The Trustee mailed, among other things, copies of the Plan, the Disclosure Statement, the Solicitation Order, and ballots to be used by holders of Claims in Class 2 under the Plan in accordance with the Solicitation Order.

¹ Capitalized terms used but not defined in this Order mean what they mean in the Plan.

4. Voting on the Plan concluded on April 23, 2010. *See Ballot Report*, filed with the Court on April 26, 2010 [DE #723]. The Ballot Report indicates that Class 2, the only class of impaired Claims entitled to vote, voted to accept the Plan. Under Bankruptcy Code §1126(f), Class 1 is unimpaired under the Plan and is, therefore, deemed to accept the Plan without voting. Under Bankruptcy Code § 1126(g), Classes 3 and 4 under the Plan are deemed to reject the Plan without voting since neither class receives a distribution under the Plan.

C. Procedural History

5. In support of the Plan’s confirmation, the Trustee filed the Ballot Report and the *Declaration Of G. Grant Lyon, Chapter 11 Trustee, In Support Of Confirmation Of Amended Plan*, dated April 26, 2010 [DE #724] (the “**Lyon Declaration**”).

6. The Court received no objections to Plan confirmation.

7. On April 28, 2010, the Court conducted a confirmation hearing under Bankruptcy Code § 1128 and Bankruptcy Rule 3020(b)(2). At that hearing, the Court heard statements of the Trustee’s counsel with respect to Plan confirmation. The Court admitted the Lyon Declaration as direct testimony. There was no cross-examination and no other testimony.

8. Based on the Plan, the Lyon Declaration, the Ballot Report, the arguments of Trustee’s counsel made in support of Plan confirmation, and the entire record before the Court, the Court finds, concludes, and orders as follows:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction And Venue

9. The Court has jurisdiction over this Chapter 11 case under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

10. The Court may properly retain jurisdiction under Article 11 of the Plan and 28 U.S.C. § 157.

B. Plan Contents

11. In accordance with Bankruptcy Code § 1123(a), the Plan: (a) designates classes of Claims and Equity Interests, other than claims of a kind specified in Bankruptcy Code §§ 507(a)(2), 507(a)(3) and 507(a)(8), and the classification complies with Bankruptcy Code § 1122; (b) specifies Classes of Claims and Equity Interests that are impaired under the Plan; (c) specifies the treatment of impaired Classes of Claims and Equity Interests; (d) provides the same treatment for each Claim or Equity Interest of a particular Class, unless the holder of a particular Claim or Equity Interest agrees to less favorable treatment of the particular Claim or Equity Interest; (e) provides for adequate means for the Plan's implementation; and (f) contains only provisions that are consistent with the interests of creditors and equity security holders and with public policy.

12. As permitted by Bankruptcy Code § 1123(b), the Plan: (a) impairs or leaves unimpaired Classes of Claims and Equity Interests; (b) provides for the assumption, rejection, or assumption and assignment of the Debtors' executory contracts and unexpired leases; (c) provides for the retention and enforcement of the Litigation Claims and Avoidance Actions; and (d) includes other appropriate provisions not inconsistent with the applicable provisions of the Bankruptcy Code.

C. Notice, Solicitation, And Acceptance

13. In accordance with Bankruptcy Rule 2002, the Trustee provided adequate notice of the time for filing objections to Plan confirmation and adequate notice of the confirmation hearing. No additional notice of the confirmation hearing or the opportunity to be heard with respect to Plan confirmation is required or appropriate under applicable Bankruptcy Rules or the Solicitation Order.

14. In accordance with Bankruptcy Code § 1126(b): (a) the solicitation of votes to accept or reject the Plan complied with all applicable nonbankruptcy law, rules, and regulations governing the adequacy of disclosure in connection with the solicitation; and (b) the solicitation

was conducted after disclosure of adequate information, as defined in Bankruptcy Code § 1125(a), and in accordance with the Solicitation Order.

15. The Trustee and his counsel solicited votes to accept or reject the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code and are, therefore, entitled to the protections afforded by Bankruptcy Code § 1125(e).

16. With respect to all Classes under the Plan: (a) Class 2 is impaired and has voted to accept the Plan by satisfying the voting requirements in Bankruptcy Code § 1126(c); (b) Class 1 is unimpaired and is deemed to have accepted the Plan without voting under Bankruptcy Code § 1126(f); and (c) Classes 3 and 4 are deemed to have rejected the Plan without voting under Bankruptcy Code § 1126(f).

D. Compliance With The Requirements Of Bankruptcy Code § 1129

17. In accordance with Bankruptcy Code § 1129(a)(1), the Plan complies with the applicable provisions of the Bankruptcy Code.

18. In accordance with Bankruptcy Code § 1129(a)(2), the Trustee, as proponent of the Plan, has complied with the applicable provisions of the Bankruptcy Code.

19. In accordance with Bankruptcy Code § 1129(a)(3), the Trustee has proposed the Plan in good faith and not by any means forbidden by law, and the Trustee has acted, and is presently acting, in good faith in conjunction with all aspects of the Plan and this case.

20. In accordance with Bankruptcy Code § 1129(a)(4), all payments made or to be made under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case or the Plan, have been approved by, or are subject to approval of, the Court as reasonable.

21. In accordance with Bankruptcy Code § 1129(a)(5): (a) the Trustee, as proponent of the Plan, has disclosed the identities and affiliations of all individuals that will serve, after confirmation of the Plan, as officers and directors of Reorganized RB; (b) the appointment of those individuals is consistent with the interests of the creditors and with public policy; and

(c) the Trustee, as proponent of the Plan, has disclosed the identities of, and the nature of any compensation for, all insiders that will be employed by Reorganized RB.

22. Neither the Debtor nor Reorganized RB is subject to any governmental regulation of rates for purposes of Bankruptcy Code § 1129(a)(6).

23. In accordance with Bankruptcy Code § 1129(a)(7), with respect to each Class of Claims or Equity Interests under the Plan, each holder of a Claim or Equity Interest in such Class has either accepted the Plan or will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

24. In accordance with Bankruptcy Code § 1129(a)(8), Class 2 is impaired under the Plan and has voted to accept the Plan. Class 1 is unimpaired under the Plan and is deemed to have accepted the Plan without voting. Classes 3 and 4 do not receive or retain any property of value under the Plan and are deemed to have rejected the Plan without voting.

25. In accordance with Bankruptcy Code § 1129(a)(9)(A), the Plan provides that each holder of an Allowed Administrative Claim will be paid in full in Cash (or otherwise satisfied in accordance with its terms) on or after the Effective Date, as agreed by each such holder. Allowed Professional Fee Claims will be paid in full in Cash when they are Allowed, except that all holders of Allowed Professional Fee Claims have agreed to a different treatment. In accordance with Bankruptcy Code § 1129(a)(9)(B), the Plan provides that each holder of an Allowed Priority Claim will be paid in full in Cash on the later of the Effective Date and 30 days after such Claim becomes Allowed, unless such holder agrees to a different treatment. In accordance with Bankruptcy Code § 1129(a)(9)(C), the Plan provides that each holder of an Allowed Priority Tax Claim will be paid in full in Cash on the Effective Date except that Reorganized RB reserves the right to pay any such Claim over time, as and to the extent provided in the Plan, which is wholly consistent with the terms of Bankruptcy Code § 1129(a)(9)(C). In accordance with Bankruptcy Code § 1129(a)(9)(D), the Plan provides that each holder of an Allowed Secured Tax Claim will be paid in full in Cash on the Effective Date unless paid over time, as

and to the extent provided in the Plan, which is wholly consistent with the terms of Bankruptcy Code § 1129(a)(9)(D).

26. In accordance with Bankruptcy Code § 1129(a)(10), Class 2 has voted to accept the Plan, without counting any votes by any insider holding a Claim within those Classes. (Because Class 3 is deemed to reject the Plan, the Court will address the provisions of Bankruptcy Code § 1129(b).)

27. In accordance with Bankruptcy Code § 1129(a)(11), confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor or Reorganized RB, which is to be liquidated over time.

28. In accordance with Bankruptcy Code § 1129(a)(12), if all fees payable to the United States Trustee under 28 U.S.C. § 1930(a)(6) have not been paid, the Plan provides for the payment of all those fees on the Effective Date or as they come due after the Effective Date.

29. Bankruptcy Code § 1129(a)(13) requires that the Plan provide for the continuation of all retiree benefits under collective bargaining agreements. The Debtor was never a party to a collective bargaining agreement, so this subsection is inapplicable to the Debtor and the Plan.

30. For purposes of Bankruptcy Code § 1129(a)(14), the Debtors are not subject to any judicial or administrative order, or by statute, to pay any domestic support obligation.

31. For purposes of Bankruptcy Code § 1129(a)(15), the Debtor is not an individual.

32. For purposes of Bankruptcy Code § 1129(a)(16), there are no “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” that apply to the Debtor, since the Debtor is a commercial entity.

33. For purposes of Bankruptcy Code § 1129(b), Class 2, an impaired Class of Claims, voted to accept the Plan. Class 3, a Class containing Securities Claims mandatorily subordinated to all other Claims under Bankruptcy Code § 510(b), is deemed to reject the Plan. Therefore, Bankruptcy Code § 1129(a)(8) is the only subsection of § 1129(a) that the Plan does not satisfy. Nonetheless, the Plan does not discriminate unfairly with respect to the holders of

Claims in Class 3 because Bankruptcy Code § 510(b) requires that mandatorily subordinated Claims of the type classified in Class 3 be treated differently from all other Claims. The Plan is fair and equitable with respect to the holders of Claims in Class 3 because no holder of any Claim or interest junior to the Claims in Class 3 will receive or retain any property under the Plan on account of that junior Claim or interest. There are no Claims junior to those Claims in Class 3, and the holders of the Equity Interests in Class 4 do not receive or retain any property of any value under the Plan. (Because Reorganized RB does not have any reasonable expectation that Claims in Class 2 will ever receive a 100% recovery, the Equity Interests in Reorganized RB may fairly be regarded as worthless.) As such, the Amended Plan complies in all respects with the so-called “Absolute Priority Rule” embodied in Bankruptcy Code § 1129(b)(2).

34. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act, and no objection has been filed by any governmental unit asserting such avoidance. The Plan, therefore, complies with Bankruptcy Code § 1129(d).

E. Satisfaction Of Conditions To Confirmation

35. The conditions to confirmation of the Plan set forth in Section 9.01 of the Plan will have been satisfied when the Court enters this Order.

36. The Trustee has demonstrated sufficient grounds to justify the rejection of all executory contracts and unexpired leases under the Plan.

F. Miscellaneous

37. Entry of this Order makes valid and enforceable each provision of the Plan in accordance with its terms.

38. In satisfaction of Bankruptcy Rule 3016(a), the Plan is dated and the entity submitting it is identified.

III. ORDER

In light of the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED** that:

A. Integration

1. The findings of this Court set forth in this Order constitute findings of fact and conclusions of law under Bankruptcy Rule 7052, applicable to this matter under Bankruptcy Rule 9014. If any findings of fact constitute conclusions of law, they are adopted as such. If any conclusions of law constitute findings of fact, they are adopted as such.

B. Confirmation

2. The Plan is CONFIRMED.

3. No party is required to deposit any money under Bankruptcy Rule 3020(a).

4. Notwithstanding Bankruptcy Rule 3020(e) and any otherwise applicable law, immediately on the entry of this Order, the terms of the Plan and this Order are binding on and inure to the benefit of the Debtor, Reorganized RB, all holders of Claims or Equity Interests, and the respective successors and assigns of all the foregoing.

C. Plan Implementation

5. In accordance with Bankruptcy Code § 1123(b)(3)(B), Reorganized RB is appointed as the representative and agent of the Estate to prosecute, compromise, or abandon any Avoidance Actions and Litigation Claims in accordance with the Plan.

6. On the Effective Date, all instruments, agreements, and documents issued, entered into, delivered, or filed under the Plan, including the Reorganized RB Operating Agreement, and any instrument, agreement, or document entered into, delivered, or filed in connection with any of the foregoing, will be deemed to be effective, binding, and enforceable in accordance with their respective terms. All such instruments, agreements, and documents, including the Reorganized RB Operating Agreement, are approved.

7. The rejection of all executory contracts and unexpired leases during the Chapter 11 Case or under the Plan is approved. The Debtor and the Trustee are released and discharged from all obligations arising under all executory contracts and unexpired leases rejected during the Chapter 11 Case or under the Plan. All executory contracts and unexpired leases rejected under the Plan are deemed rejected as of the date this Court enters this Order.

8. Notwithstanding Section 9.02 of the Plan, Reorganized RB Manager, a corporation named RB Liquidation Manager Corp., must be formed in accordance with applicable Arizona law for the Effective Date to occur.

9. **Injunction.** Except as provided in the Plan or this Order, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim or other debt or liability that is unclassified by the Plan or that is classified by Article 3 of the Plan or that is subject to a distribution under the Plan, or an Equity Interest or other right of an equity security holder that is subject to a distribution under the Plan, are permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities, or Equity Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against any property to be distributed under the Plan; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against any property to be distributed under the Plan; (c) creating, perfecting, or enforcing any Lien or encumbrance against any property to be distributed under the Plan; and (d) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code. Nothing in Section 12.03 or elsewhere in the Plan is to be construed or is to have the effect of extinguishing, prohibiting, or otherwise limiting the right of any holder of a Claim to assert a right to setoff or recoupment arising in connection with that Claim as part of the resolution and treatment of that Claim under the Plan. Nothing in Section 12.03 or elsewhere in the Plan is to be construed or is to have the effect of extinguishing, prohibiting, or otherwise limiting, the right of any Estate (through Reorganized RB as its representative or otherwise) or Reorganized RB to assert and prevail on any Avoidance Action or Litigation Claim. Nothing in Section 12.03 or elsewhere in the Plan enjoins or otherwise precludes any party in interest from enforcing the terms of the Plan and this Order.

10. The retention of jurisdiction as set forth in Article 11 of the Plan is APPROVED.

11. After the Confirmation Date but before substantial consummation of the Plan as defined in Bankruptcy Code § 1101(2), the Trustee or Reorganized RB may, under Bankruptcy

Code § 1127(b), institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or this Order, and such matters as may be necessary to carry out the purposes and effects of the Plan as long as such proceedings do not materially and adversely affect the treatment of holders of Claims or holders of Equity Interests under the Plan. Prior notice of such proceedings must be served in accordance with the Bankruptcy Rules or applicable order of the Court.

12. The Distribution Record Date as used throughout the Plan is the date the Court enters this Order.

13. All state or local government officials or agents are directed to forego the collection of any tax or assessment described in this Order or in Bankruptcy Code § 1146(a) and to accept for filing or recordation any of the instruments or other documents described in this Order or in Bankruptcy Code § 1146(a) without the payment of any such tax or assessment.

14. The stay in effect in the Chapter 11 Case under Bankruptcy Code § 362(a) continues to be effective until the Effective Date, and at that time will be dissolved and of no further effect, subject to the permanent injunction provided in the Plan and this Order.

15. Under Bankruptcy Code §§ 1123(a) and 1142(a), this Order and the Plan apply and are enforceable notwithstanding any otherwise applicable non-bankruptcy law.

16. The failure to include specifically any particular provision of the Plan in this Order does not diminish or impair the efficacy of that provision. The Court intends by this Order to confirm and approve the Plan and all its provisions.

17. The Debtors and their counsel are authorized and directed to do any acts and to execute any documents necessary and appropriate to implement the terms of the Plan.

18. The provisions of this Order are nonseverable and mutually dependent.

SIGNED AND DATED ABOVE