

Jason S. Brookner (TX Bar No. 24033684)
Micheal W. Bishop (TX Bar No. 02354860)
Amber M. Carson (TX Bar No. 24075610)
Emily F. Shanks (TX Bar No. 24110350)

GRAY REED

1601 Elm Street, Suite 4600

Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com

mbishop@grayreed.com

acarson@grayreed.com

eshanks@grayreed.com

*Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
	§	
BUCA TEXAS RESTAURANTS, L.P., <i>et al.</i> , ¹	§	Case No. 24-80058 (SGJ)
	§	
Debtors.	§	(Jointly Administered)
	§	

DEBTORS' MOTION TO CONVERT BANKRUPTCY CASES TO CHAPTER 7

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT [HTTPS://ECF.TXNB.USCOURTS.GOV/](https://ecf.txnb.uscourts.gov/) NO MORE THAN TWENTY-FOUR (24) DAYS AFTER THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK AND FILED ON THE DOCKET NO MORE THAN TWENTY-FOUR (24) DAYS AFTER THE DATE THIS MOTION WAS FILED. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON FEBRUARY 3, 2025, AT 1:30 P.M. IN THE EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, 14TH FLOOR, COURTROOM 1, DALLAS, TEXAS 75242. YOU MAY PARTICIPATE IN

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors' federal tax identification number are as follows: BUCA Texas Restaurants, L.P. (3262); BUCA Texas Beverage, Inc. (3995); BUCA C, LLC (8220); BUCA Sales & Marketing, LLC (4258); BUCA Investments, Inc. (5575); BUCA Restaurants, Inc. (9725); BUCA Restaurants 2, Inc. (2187); BUCA (Celebration), LLC (3412); BUCA (Ex), LLC (3092); BUCA (Minneapolis), Inc. (2474). The Debtors' principal offices are located at 4700 Millenia Boulevard, Suite 400, Orlando, Florida 32839.

THE HEARING EITHER IN PERSON OR BY AN AUDIO AND VIDEO CONNECTION.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT 1.650.479.3207. VIDEO COMMUNICATION WILL BE BY THE USE OF THE CISCO WEBEX PLATFORM. CONNECT VIA THE CISCO WEBEX APPLICATION OR CLICK THE LINK ON JUDGE JERNIGAN'S HOME PAGE ([HTTPS://US-COURTS.WEBEX.COM/MEET/JERNIGA](https://us-courts.webex.com/meet/jerniga)). THE MEETING CODE IS 2304 154 2638. CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF ELECTRONIC HEARINGS. TO MAKE YOUR APPEARANCE, CLICK THE "ELECTRONIC APPEARANCE" LINK ON JUDGE JERNIGAN'S HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), respectfully state the following in support of this motion (the "Motion"):

Relief Requested

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"): (a) converting these chapter 11 cases to cases under chapter 7 and (b) granting related relief.

Jurisdiction and Venue

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and this is a core matter pursuant to 28 U.S.C. § 157(b).

3. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 1112 of title 11 of the United States Code (the "Bankruptcy Code"), rules 1017(f), 1019, 9013, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2002-1(a)(4) and 2019-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "Local Rules").

Background

5. The Debtors were leading owners, operators, and franchisors of family-style Italian-American restaurants. With approximately 44 owned locations across 14 states and two international franchised locations on the Petition Date (as defined below), the Debtors operated the Buca di Beppo restaurant chain. Buca di Beppo is known for its large portions, eclectic décor, and a festive atmosphere that encourages sharing and communal dining. The Debtors' operations were impacted by a significant drop in sales, rising food and labor costs, continued staffing challenges, and changes in consumer preferences.

6. On August 4 and 5, 2024 (August 4, 2024, the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. On August 15, 2024, the United States Trustee for the Northern District of Texas (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee"). See Docket No. 123.

8. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors' chapter 11 cases, are set forth in the *Declaration of William Snyder, Chief Restructuring Officer, in Support of Chapter 11 Petitions and First Day Motions*.

9. On August 26, 2024, the Court entered its *Order (A) Approving Bidding Procedures and Designating a Stalking Horse Bidder, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* [Docket No. 177].

10. On August 30, 2024, the Court entered its *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, and (IV) Modifying the Automatic Stay* [Docket No. 206] (the “Final DIP Order”).² Under the Final DIP Order, Main Street Capital Corporation (“Main Street”) provided a \$36.3 million DIP Facility, consisting of a \$24.2 million roll-up of Prepetition Obligations and up to \$12.1 million in new money. As security for the DIP Obligations, Main Street was granted liens on substantially all of the Debtors’ assets and superpriority administrative claims. *See* Final DIP Order ¶ 5.

11. On November 4, 2024, the Court entered its *Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens and Liabilities, (B) Authorizing the Debtors to Assume and Assign Executory Contracts and Unexpired Leases in Connection with the Sale, and (C) Granting Related Relief* [Docket No. 391] (the “Sale Order”), authorizing the Debtors to sell substantially all of their assets to BDB Intermediate, LLC (the “Purchaser”), an entity related to Main Street. The transactions approved by the Sale Order closed on the same date. *See* Docket No. 409. The consideration for the sale included a \$27 million credit bid of DIP Obligations.

12. The Final DIP Order was modified on November 19, 2024, to extend the maturity date of the DIP Facility and increase the DIP Amount from \$12.1 million to \$13.1 million in new money. *See* Docket No. 429.

13. As a result of the sale, the Debtors have ceased operations and have transferred substantially all of their assets to the Purchaser. While the sale was successful in that it, among other things, ensured the Debtors’ business continued as a going concern, preserved just under

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Final DIP Order.

3000 jobs, provided for the assumption and assignment of 41 leases, and provided for the payment of more than \$6 million in cure costs and other assumed liabilities, it did not generate cash proceeds sufficient to fund a confirmable plan of liquidation. As of the date of filing this Motion, more than \$10 million of DIP Obligations are outstanding and Sysco Corporation and Edward DON & Company have asserted a combined \$1.5 million administrative expense claim. Although the Debtors have objected to this asserted administrative expense claim, the Debtors do not have sufficient cash to fund a plan process and satisfy the outstanding DIP Obligations.

14. As of the date of this Motion, the Debtors have approximately \$1,307,819 of cash collateral on hand, of which approximately \$995,836 is held in the Funded Reserve Account (as defined in the Final DIP Order) for the benefit of estate professionals. The Debtors also still own five liquor licenses from now-closed restaurant locations and causes of action of unknown—but potentially very significant—value. The Debtors have no other sources of funding. As a result, the Debtors seek conversion of these cases to allow a chapter 7 trustee to monetize their remaining assets for the benefit of the Debtors’ estates. The Debtors believe conversion will avoid accrual of unnecessary professional fees and is in the best interests of their estates.

Arguments and Authorities

15. Conversion to chapter 7 is afforded to the Debtors as a matter of right in the absence of bad faith. This is clear from the statute, its legislative history, and the applicable case law interpreting Bankruptcy Code section 1112(a).

16. Section 1112(a) provides that a debtor “may convert a case under [chapter 11] to a case under chapter 7 unless—(1) the debtor is not a debtor in possession; (2) the case originally was commenced as an involuntary case under [chapter 11]; or (3) the case was converted to a case under [chapter 11] other than on the debtor’s request.” 11 U.S.C. § 1112(a). Unless one of

those three circumstances is present, a chapter 11 debtor's right to convert its case to one under chapter 7 is nearly absolute. *See Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1161 (5th Cir. 1988) ("A debtor has the absolute right to convert his or her Chapter 11 case to a Chapter 7 case, 11 U.S.C. § 1112(a), but does not have the right to keep the case in Chapter 7.... [This] decision[] to convert [is] within the discretionary powers of the bankruptcy court based on the court's determination of what will most inure to the benefit of all parties in interest."); H.R. Rep. No. 95-595, 1st Sess. 405 (1977) ("Subdivision (a) gives the debtor an absolute right to convert a voluntarily commenced chapter 11 case in which the debtor remains in possession to a liquidation case."); 7 Collier on Bankruptcy ¶ 1112.02 (Richard Levin & Henry J. Sommer eds., 16th ed.) ("Section 1112(a) appears to give the debtor an absolute right to convert a chapter 11 case to a case under chapter 7, provided that none of three limited exceptions apply."); *In re Heses Enters., LLC*, No. 16-10299-RLJ7, 2017 WL 4457434, at *8 (Bankr. N.D. Tex. Sept. 29, 2017) (same). *But see Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 375 (2007) (holding that bad faith can support denial of a motion to convert under 11 U.S.C. § 706). Because none of the exceptions listed in section 1112(a) apply here, the Debtors submit that conversion is appropriate.

17. Conversion is also appropriate for cause under section 1112(b) of the Bankruptcy Code. Section 1112(b) provides, in relevant part, that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause. . . ." 11 U.S.C. § 1112(b)(1). While the term "cause" is not defined by the statute, section 1112(b)(4) of the Bankruptcy Code provides some examples which are meant to be non-exclusive, and any one of which may constitute "cause" for either the conversion of a chapter 11

case to a chapter 7 case or the dismissal of a chapter 11 case in its entirety. One such example is a “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A). Courts determine if there is “cause” pursuant to section 1112(b)(4) on a case-by-case basis. *See United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 808 F.2d 363, 371–72 (5th Cir. 1987) (en banc) (“The inquiry under § 1112 is case-specific, focusing on the circumstances of each debtor.”), *aff’d* 484 U.S. 365 (1988).

18. Section 1112(b) of the Bankruptcy Code contains an important mechanism for converting or dismissing those bankruptcy cases that no longer further the fundamental purposes of chapter 11, which are “preserving going concerns and maximizing property available to satisfy creditors.” *See Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle Street P’ship*, 526 U.S. 434, 453 (1999) (citing *Toibb v. Radloff*, 501 U.S. 157, 163 (1991)); *see also In re Mirant Corp.*, No. 03-46590, 2005 WL 2148362 *7 (Bankr. N.D. Tex. Jan. 26, 2005). As the Fifth Circuit has explained, when the objectives of chapter 11 cannot be realized, “it is incumbent upon the bankruptcy judge to effectuate the provisions of the Bankruptcy Code for the protection of creditors” *In re Timbers of Inwood Forest Assocs.*, 808 F.2d at 373. Section 1112(b) is such a provision, and for the reasons explained below, cause exists for conversion of these cases.

19. Confirmation of a plan is highly unlikely in these cases, particularly in light of the outstanding DIP Obligations and asserted administrative claims by Sysco Corporation and Edward DON & Company. Because the Debtors sold substantially all of their assets and have ceased operations, the only source of funding to pay such claims is by prosecuting estate causes of action and liquidating the limited remaining liquor licenses. The Debtors estimate that the liquor license proceeds will fall well short of the amounts necessary to pay such claims in full.

Additionally, the Debtors do not believe a plan proposing payments over time from future litigation proceeds can satisfy the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.³ The Debtors have budgeted to pay all known administrative expense claims that are not subject to an objection as of the date of filing this Motion. Accordingly, the Debtors believe that continuing in chapter 11 will result in a continuing loss and diminution of the estate without a reasonable likelihood of rehabilitation and submit that cause exists to convert these cases.

20. While dismissal is one option, the Debtors believe that converting these cases and appointing a chapter 7 trustee is in the best interests of the Debtors' estates and their creditors. As previously stated, the Debtors believe that causes of action with substantial value may exist. A chapter 7 trustee will be able to review, investigate, and pursue any remaining causes of action that were not conveyed under the Sale Order, and monetize the remaining liquor licenses. A chapter 7 trustee is thus best positioned to maximize the value of the remaining estate assets and administer claims without the administrative hurdles presented by section 1129(a). Under these circumstances, the Debtors submit that conversion is in the best interests of their estates, creditors, and other interested parties.

Notice

21. The Debtors will provide notice of this Motion to the following parties or their counsel: (a) the U.S. Trustee for the Northern District of Texas; (b) the Committee; (c) the agent to the lenders under the Debtors' prepetition and postpetition term loan facilities; (d) all utility

³ Several courts have held that speculative litigation recoveries are insufficient to confirm a plan. *See, e.g., In re Slabbed New Media, LLC*, 557 B.R. 911, 918 (Bankr. S.D. Miss. 2016) ("These sources of funding [litigation recoveries and future website donations] are far too speculative to be feasible, and confirmation, therefore, must be denied."); *In re FRGR Managing Member, LLC*, 419 B.R. 576, 584 (Bankr. S.D.N.Y. 2009) (converting case to chapter 7 after concluding that the debtor could not confirm a plan "solely upon its litigation claims . . . whatever the ultimate merits of its claims."); *see also Save Our Springs (S.O.S.) All., Inc. v. WSI (II)-COS, L.L.C. (In re Save Our Springs (S.O.S.) All., Inc.)*, 632 F.3d 168, 173 (5th Cir. 2011) (affirming bankruptcy court's rulings that future donations were too speculative and, therefore, insufficient to demonstrate the feasibility of the proposed plan).

providers; (e) the United States Attorney's Office for the Northern District of Texas; (f) the Internal Revenue Service; (g) the state attorneys general for states in which the Debtors conduct business; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is needed.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Respectfully submitted this 3rd day of January 2025.

GRAY REED

By: /s/ Amber M. Carson

Jason S. Brookner
Texas Bar No. 24033684
Micheal W. Bishop
Texas Bar No. 02354860
Amber M. Carson
Texas Bar No. 24075610
Emily F. Shanks
Texas Bar No. 24110350

1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
mbishop@grayreed.com
acarson@grayreed.com
eshanks@grayreed.com

*Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on January 3, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Amber M. Carson

Amber M. Carson

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

BUCA TEXAS RESTAURANTS, L.P., *et al.*,¹

Debtors.

§

§ Chapter 11

§

§ Case No. 24-80058 (SGJ)

28

§ (Jointly Administered)

8

§ **Re: Docket No.**

ORDER CONVERTING DEBTORS' BANKRUPTCY CASES TO CHAPTER 7

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), to convert the above-captioned cases to chapter 7 of the Bankruptcy Code pursuant to 11 U.S.C. § 1112; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that the relief requested in the

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors' federal tax identification number are as follows: BUCA Texas Restaurants, L.P. (3262); BUCA Texas Beverage, Inc. (3995); BUCA C, LLC (8220); BUCA Sales & Marketing, LLC (4258); BUCA Investments, Inc. (5575); BUCA Restaurants, Inc. (9725); BUCA Restaurants 2, Inc. (2187); BUCA (Celebration), LLC (3412); BUCA (Ex), LLC (3092); BUCA (Minneapolis), Inc. (2474). The Debtors' principal offices are located at 4700 Millenia Boulevard, Suite 400, Orlando, Florida 32839.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Motion is in the best interest of the Debtors' estates and their creditors; and it appearing that notice of the Motion was appropriate under the circumstances and that no other notice need be provided; and having reviewed the Motion and having heard the statements in support of the relief requested therein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted, as set forth herein.
2. The above-captioned bankruptcy proceedings shall be converted from proceedings under chapter 11 of title 11 of the United States Code to chapter 7 of title 11 of the United States Code. The clerk is hereby ordered to implement all necessary changes therewith.
3. All orders entered by the Court in the above-captioned chapter 11 cases, including the Final DIP Order and Sale Order, shall remain in full force and effect in the chapter 7 cases and shall be binding on all parties in interest, including the chapter 7 trustee.
4. Nothing in this Order or the conversion of these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code shall affect, impair, or modify the terms or conditions of any order of this Court entered in these chapter 11 cases on or before the entry of this Order, including the Carve Out or Funded Reserve Account in the Final DIP Order, which shall continue in full force and effect. All rights and remedies in connection with such orders are preserved in their entirety.
5. Any outstanding checks payable by the Debtors on the date hereof are authorized to clear, and the Debtors are authorized to continue using the cash management system previously approved by this Court to manage and/or facilitate all such transactions.
6. The Debtors and the chapter 7 trustee, as applicable, are authorized and directed to pay from the Funded Reserve Account all amounts owed to estate professionals that are

included in the Carve Out in the Final DIP Order and not prohibited by paragraph 26(b) of the Final DIP Order and (a) are authorized to be paid under the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 320] or (b) have otherwise been approved by order of this Court.

7. All funds in the Adequate Assurance Deposit (as defined in the *Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* [Docket No. 74]) shall be returned to the Debtors.

8. The Debtors, acting by and through their existing or future agents, representatives, managers, retained professionals, and/or officers (including their independent director and Chief Restructuring Officer), are hereby authorized to execute and deliver (or cause to be executed and delivered) all such documents and instruments and to take (or cause to be taken) all such further or other actions as may be (or as they may reasonably determine to be) necessary or desirable to implement or effectuate the relief granted by this Order.

9. The Official Committee of Unsecured Creditors shall be dissolved upon entry of this Order, except for the limited purpose of seeking approval of compensation and reimbursement of expenses for its professionals.

10. The Office of the United States Trustee is directed to appoint a chapter 7 trustee as soon as reasonably practicable.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

END OF ORDER

Submitted by:

Jason S. Brookner (TX Bar No. 24033684)
Micheal W. Bishop (TX Bar No. 02354860)
Amber M. Carson (TX Bar No. 24075610)
Emily F. Shanks (TX Bar No. 24110350)

GRAY REED

1601 Elm Street, Suite 4600
Dallas, TX 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com
mbishop@grayreed.com
acarson@grayreed.com
eshanks@grayreed.com

*Counsel to the Debtors
and Debtors in Possession*