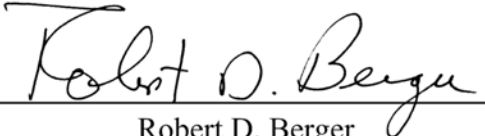


The relief described hereinbelow is **SO ORDERED**.

SIGNED this 17th day of March, 2022.




Robert D. Berger
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

In re:

VITA CRAFT CORPORATION,

Debtor.

Case No. 19-22358

Chapter 11

ORDER OVERRULING OBJECTION TO PLAN CONFIRMATION

This matter comes before the Court on the objection of creditor BMO Harris Bank to confirmation of debtor Vita Craft Corporation's Second Amended Chapter 11 Plan of Reorganization under 11 U.S.C. §§ 1129(a)(3), (7), (11), and (b)(2).¹

¹ ECF 238. All statutory references in this order are to Title 11, United States Code (the "**Bankruptcy Code**").

Because Vita Craft has established by a preponderance of the evidence that the Second Amended Plan meets the requirements of those subsections of § 1129, the Court will overrule BMO's objection to confirmation.

I. BACKGROUND

Vita Craft has manufactured high-end stainless-steel cookware in the Kansas City area for more than 80 years. According to its disclosure statement:

Vita Craft began in 1939 when 3 Pennsylvania friends found opportunity in developing a line of cookware that was superior in product and design to other products in the market. In 1940, they moved the business to the Westport area of Kansas City where the company flourished until 1943 when it closed as materials used to make the cookware were diverted to the war effort. At the time the facility was comprised of 10,000-square feet.

In 1974 Vita Craft began distributing product to Japan after being approached by Mamoru Imura, who wanted to distribute the cookware in Asia. Mr. Imura, who built Vita Craft into a household name in Japan through a separate entity named Vita Craft Japan, Ltd., purchased Vita Craft in 2002. His goal from the beginning was to ensure that Vita Craft remains a "Made-in-the-USA" product. Today, when many manufacturing jobs have moved overseas, Vita Craft cookware remains handcrafted in Shawnee, Kansas.

Through the years, Vita Craft has continued to expand its design and product lines both for itself and private brand labels for celebrity chefs. Vita Craft's growth and innovation also led to the substantial expansion of its facility, which now covers two square blocks in downtown Shawnee, Kansas.

The success of Vita Craft has stemmed from two key factors: a quality product with a lifetime guarantee and quality people. Many of the current Vita Craft employees

have worked at Vita Craft for more than 20 years, and the longest tenured employee for nearly 40 years.²

Vita Craft's two largest customers are Vita Craft Japan ("**VCJ**") and Celebrity China and Cookware. Celebrity demonstrates its products (including Vita Craft) at bridal shows; its primary customers are young couples. Vita Craft and VCJ are under the same parent company: Imura International USA Inc. ("**Imura International**"), which is owned by Mr. Mamoru Imura.

Vita Craft is located on three parcels on 1.68 acres in downtown Shawnee (the "**Real Estate**"). One parcel is improved with Vita Craft's manufacturing and warehousing plant. The second parcel is improved with an old service station that was converted to retail/warehouse space and formerly used by Vita Craft as an outlet store. The third parcel is a 16-space parking lot across the street from the plant. Although the Real Estate is zoned as Town Square Commercial, which is limited to non-industrial uses, its use by Vita Craft for cookware manufacturing has been grandfathered in by the City of Shawnee. However, because the grandfather clause only applies to Vita Craft, a third-party buyer would not be permitted to use the Real Estate as a manufacturing property.

BMO Harris Bank is Vita Craft's largest creditor. Vita Craft has three loans from BMO: one revolving credit note and two smaller term notes, with original principal amounts of \$3,700,000, \$400,000, and \$100,000, respectively. The three notes are secured by the Real Estate along with Vita Craft's machinery and

² Disclosure Statement 3, ECF 103.

equipment (“**Equipment**”)³ and inventory (“**Inventory**,” and together with the Real Estate and Equipment, the “**Collateral**”).

Vita Craft’s bankruptcy was set into motion when BMO decided not to renew its revolving credit note, which matured on June 30, 2019. At that time, Vita Craft owed approximately \$2.5 million on the three notes combined. It is uncontested that Vita Craft had never missed a payment, or even made a late payment, since the loans were originated by BMO’s predecessor in 2002.

Vita Craft filed a voluntary Chapter 11 petition on November 1, 2019. In the Schedule A/B attached to its petition, Vita Craft valued the Real Estate at \$1,700,000 (bank appraisal); the Inventory at \$2,059,001.04 (cost value); and the Equipment at \$3,862,664.44 (book value).

Sometime around January 10, 2020, Celebrity’s owner, Garry Fowler, offered to purchase Vita Craft for \$850,000. Vita Craft notified BMO of Fowler’s offer; BMO declined it.

On January 21, 2020, with Vita Craft having failed to make its third adequate-protection payment⁴ on time, BMO filed a motion for relief from the automatic stay. The motion argued that stay relief was appropriate because (1) Vita Craft had not made its adequate-protection payments on time and (2) the

³ In a previous order, the Court used the defined term “**M&E**” to refer to Vita Craft’s machinery and equipment. Because the Second Amended Plan uses the term “**Equipment**” instead, this order will do so as well; the two terms are, however, interchangeable.

⁴ In an agreed order filed November 13, 2019, Vita Craft agreed to make three monthly adequate-protection payments of \$10,417 to BMO in exchange for BMO’s consent to its use of cash collateral. *See* ECF 17.

purchase offer obtained by Vita Craft (presumably Fowler's) was not acceptable to BMO. BMO later filed "supplemental suggestions" to augment its stay-relief motion: namely, that Vita Craft was not maintaining the Collateral; that the value of the Collateral was declining such that BMO was not adequately protected; and that Vita Craft's originally-proposed Chapter 11 plan (see *infra* this page) contained no budget for necessary repairs to the Collateral.

On March 2, 2020, Vita Craft amended its Schedule A/B, this time valuing the Real Estate at \$650,000, the Inventory at \$91,999.58, and the Equipment at \$12,000.⁵

The COVID-19 pandemic caused Vita Craft's offices and manufacturing facility to close between March 17, 2020, and May 15, 2020, under executive orders from Johnson County and the state of Kansas.

On May 4, 2020, Vita Craft filed a disclosure statement and proposed plan of reorganization. Under that original plan (not the one at issue here), Garry Fowler would invest \$200,000 cash into the company upon plan confirmation and become the new owner of Vita Craft. The plan proposed to pay BMO \$850,000 over five years at the contract interest rate as a secured claim and 10% of its remaining claim for \$1,613,332.65 as unsecured; other unsecured claimants would receive either 25% or 50% of their allowed claims. Other than BMO, all voting claimants voted to accept the original plan.

⁵ See ECF 61.

On June 29, 2020, BMO filed a proof of claim for \$2,463,332.65. Two weeks later, BMO objected to confirmation of Vita Craft's original plan under 11 U.S.C. § 1129(a)(3), (7), and (11).

On October 29, 2020, following a two-day evidentiary hearing, the Court denied BMO's motion for stay relief. Part of that order will be relevant here:

By arguing that Vita Craft's proposed Plan is not confirmable, BMO is implicitly asking for stay relief under § 362(d)(2). . . . For purposes of plan confirmation, the "value" of BMO's interest in the Collateral is not foreclosure value, but *replacement* value. *See Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 962-63 (1997).

Here, the Court finds that the replacement value of the Real Estate at the time of Marx's appraisal was \$1,100,000 minus projected environmental remediation costs. . . .

Because the Plan only values BMO's secured claim at \$850,000, the Plan may not—depending on the replacement value of the Collateral as of the effective date—be confirmable as written. This does not mean that BMO is entitled to stay relief under § 362(d)(2); the Court finds, in light of all the evidence, that Vita Craft nevertheless has a reasonable possibility of a successful reorganization within a reasonable time. This does mean, though, that Vita Craft may need to propose a new plan that incorporates the replacement value of the Collateral as of the effective date of that plan (if different from \$850,000). Additionally, because "the purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes," *In re Pikes Peak Water Co.*, 779 F.2d 1456, 1460 (10th Cir. 1985) (citation omitted), a confirmable plan may need to include certain written commitments: (a) from VCJ and Celebrity to purchase minimum amounts of Vita Craft product as projected in Vita Craft's pro forma; (b) from Fowler (or a third party, such as Imura International) to pay Vita Craft's attorney fees and expert costs if Vita Craft's actual cash flow is insufficient for such payment; and (c) from Fowler (or a third party, such

as Imura International) to pay the balance of Vita Craft's property taxes if Vita Craft's tax appeal does not succeed and Vita Craft's actual cash flow is insufficient for such payment. Furthermore, if Vita Craft intends to use both the Land and the Improvements as collateral to obtain a new loan at the end of its plan, a confirmable plan will likely include a budget for the deferred maintenance items identified by Marx (which must be resolved, according to Marx, for the Improvements to reach their 10-year expected economic life).⁶

Vita Craft filed an amended plan (also not the one at issue here) on January 21, 2021. The amended plan increased the amount of BMO's secured claim to \$910,000. All voting claimants other than BMO voted to accept the amended plan as well. However, on the eve of the confirmation hearing, BMO filed a notice of election under 11 U.S.C. § 1111(b)(2) to have its entire \$2,463,332.65 claim treated as secured.⁷

When an undersecured creditor elects treatment of its claim under § 1111(b)(2), "then notwithstanding section 506(a) of this title, such claim is a secured claim to the extent that such claim is allowed." 11 U.S.C. § 1111(b)(2). This means that the electing creditor "will have a secured claim for the full amount of the debt owed to it, and will waive its unsecured claim." James A. Pusateri et al., *Section 1111(b) of the Bankruptcy Code: How Much Does the Debtor Have to Pay and When Should the Creditor Elect?*, 58 Am. Bankr. L. J. 129, 130 (1984). By waiving

⁶ ECF 175 at 29-32 (footnotes omitted).

⁷ ECF 201. Vita Craft moved to strike BMO's notice of election as untimely under Fed. R. Bankr. P. 3014, but this Court denied the motion. See ECF 209, 217.

its unsecured claim, the electing creditor also waives its right to vote for or against the plan under § 1126(a) as the holder of an unsecured claim. *See id.* at 143.

BMO's § 1111(b) election caused Fowler to decide against buying Vita Craft.

On August 6, 2021, Vita Craft filed its Second Amended Chapter 11 Plan of Reorganization (the "**Second Amended Plan**"). Under the Second Amended Plan, VCJ will invest \$600,000 cash into the company upon plan confirmation and become the new owner of Vita Craft. The Second Amended Plan divides BMO's claim (which is now treated as entirely secured per the § 1111(b) election) into three classes; it then separates the Real Estate into "**Land**" and "**Building**" and proposes to pay BMO as follows:

- For Class 2A, the BMO Land Claim, \$468,749 (which amount subtracts from \$500,000 the \$31,251 already paid to BMO during this case) amortized over 30 years at the contract interest rate, with monthly payments of \$2,001.64;
- For Class 2B, the BMO Building and Equipment Claim, \$296,150 amortized over 15 years at the contract interest rate, with monthly payments of \$2,059.43;⁸ and

⁸ Class 2B says in one place that monthly payments will be \$2,059.43, and in another that monthly payments will be \$2,000.93. The first figure is the correct one if the interest rate is 3.1%.

- For Class 2C, the BMO Nominal Claim, \$1,658,599.65 without interest over years 6-30 of the plan, with monthly payments of \$5,661.45.⁹

Treatment of all other claims under the Second Amended Plan remains the same as under Vita Craft's first amended plan (which all voting claimants other than BMO voted to accept, *see p. 7 supra*). For this reason, and because BMO's election under § 1111(b) waived BMO's right to vote under § 1126 as the holder of an unsecured claim, the parties agreed at an August 19, 2021 hearing that the plan did not need to be reballoted.

Although BMO's § 1111(b) election waived its right to vote on the Second Amended Plan as an unsecured creditor under § 1126, it did not waive BMO's right to object to confirmation of the Second Amended Plan under § 1129. BMO now argues that the treatment of its claim under the Second Amended Plan fails to satisfy 11 U.S.C. §§ 1129(a)(3), (7), (11), and (b)(2).

II. PLAN CONFIRMATION HEARING

The Court held an evidentiary hearing via Zoom on November 1 and 2, 2021, and heard testimony from the following witnesses:

- Robert E. ("Robin") Marx, a real-estate appraiser with Bliss Associates;
- Bob Lane, an estimator/project manager with Kaw Valley Companies;
- David Lewis, a machinery-and-equipment appraiser with ATC;

⁹ The figures in Class 2C do not appear to match up. The Court calculates that 300 payments of \$5,661.45 would total \$1,698,435; if a total of \$1,658,599.65 is the desired outcome, 300 payments of \$5,528.67 would suffice.

- Garry Fowler, president of Celebrity;
- Richard Ong, a CPA with Ong & Company;
- Gary Martin, president of Vita Craft;
- Mamoru Imura, owner of Imura International and CEO of Vita Craft and VCJ; and
- Jason Bitter, a real estate appraiser with CBRE;

All witnesses but Bitter were called by Vita Craft in support of plan confirmation.

A. Robin Marx

Marx, a vice-president at Bliss Associates, has worked as a real-estate appraiser for 46 years. He is state-certified in Kansas, Missouri, and Colorado. Marx specializes in complex real-estate valuation in litigation and holds the MAI Designation from the Appraisal Institute.

Marx first appraised the Real Estate in early 2020.¹⁰ At that time, he valued the Real Estate at \$850,000: \$600,000 for the Land and \$250,000 for the Building. Marx's valuation was based on speculative redevelopment of the Real Estate; however, he acknowledged sending an email in March 2020 in which he opined that the Real Estate would be worth \$1.1 million with continued manufacturing use. The Court adopted Marx's valuations in its order denying BMO's motion for stay relief.¹¹

¹⁰ See Ex. 12.

¹¹ See ECF 175 at 15, 28, 30.

Marx updated his appraisal of the Real Estate in December 2020.¹² While he still valued the Real Estate at \$850,000, he re-allocated that value between its two components: \$750,000 for the Land and \$100,000 for the Building. Marx explained that the change was due to a recently-defeated redevelopment project in Shawnee, which made the property a riskier investment, along with general changes in the market for industrial real estate, such that the Vita Craft property had become less attractive to modern manufacturers.¹³ When asked specifically about the value of the Building as used for cookware manufacturing, Marx opined:

The facility itself functions ideally for this -- what I call a widget manufacturing. It's a very specialized facility. It would not translate well into the market. Hence, it only has a contributory value of about a hundred thousand dollars today.¹⁴

Marx also explained the concept of "broom-clean" real estate:

Well, in a value in exchange or fair market value with both -- both the buyer and seller acting in their best interest, most of the transactions, a great majority of the ones I've observed, in the contract -- sale contract itself, the seller delivers the product, the building, broom clean. In other words, the new user doesn't want to deal with moving the personal property or the equipment of the seller. This is the same even in residential. So broom clean is a standard term in industrial and in residential to get the property saleable in the open market.¹⁵

¹² See Ex. 15.

¹³ Hearing Tr. 30-31, Nov. 1, 2021, ECF 258.

¹⁴ *Id.* at 33.

¹⁵ Hearing Tr. 33, Nov. 1, 2021.

This means, Marx continued, that to determine what a willing buyer would actually pay for the Real Estate, his appraised value of \$850,000 must be reduced by the cost of first rendering the Real Estate “broom-clean,” i.e., emptying the Building.¹⁶

During his testimony, Marx also addressed the appraisal of the Real Estate performed by BMO’s expert, Jason Bitter. Whereas Marx valued the as-improved Real Estate (i.e., Land plus Building) at \$850,000, Bitter valued it at \$900,000.¹⁷ Marx explained that the \$1.15 million figure in Bitter’s appraisal represents a hypothetical value for the Real Estate if it were vacant: “[I]f the building were removed from the land, how much would the land be worth?”¹⁸ To arrive at the amount a willing buyer would actually pay for the Real Estate, said Marx, one would have to deduct the costs of rendering the Land vacant, such as those to clean out and demolish the Building.¹⁹ Bitter’s appraisal deducts an estimated \$240,000 demolition cost, which he derived from a cost-per-square-foot range provided by Marshall Valuation Service,²⁰ and concludes that the Real Estate would be worth

¹⁶ *Id.* at 33-34.

¹⁷ *Compare* Ex. 15 at 17 (Marx) *with* Ex. 26 at 41 (Bitter).

¹⁸ Hearing Tr. 36, Nov. 1, 2021.

¹⁹ *Id.* at 36-37.

²⁰ Hearing Tr. 332, Nov. 2, 2021, ECF 259. According to Bitter’s appraisal: “Marshall Valuation Service . . . identifies Class C building demolition costs of \$4.54 to \$6.75 per square foot. Using a cost of \$5.00 per square foot multiplied by the total building area of 48,547 square feet results in \$242,735, rounded to \$240,000.” Ex. 26 at 41.

\$910,000 to a buyer who only wants the Land. Comparing that figure to his own \$850,000 valuation, Marx concluded: “I think we’re basically in agreement.”²¹

On cross-examination, Marx acknowledged a footnote in Exhibit A to the Second Amended Plan that states: “Presumed that after 15 years, a new building will have to be constructed or the land sold to retire the BMO scheduled payments.”²² When questioned about the combined costs of cleanup and demolition, Marx thought there might be “some overlap” between the two, such that doing both tasks together might be cheaper than doing them separately.²³

B. Bob Lane

Lane is employed by Kaw Valley Companies, which owns, among other things, a demolition division.²⁴ He has been an “estimator-slash-project manager for the demolition side” since 2008.²⁵

At the hearing, Lane examined Exhibit 29, which is an “[i]nterior demolition proposal” from Lane to Vita Craft’s president, Gary Martin.²⁶ The proposal, dated July 1, 2020, quotes a price of \$250,000 to empty out the Building—i.e., to render the Building broom-clean.²⁷ According to Lane, that price would be about \$12,000

²¹ Hearing Tr. 34, Nov. 1, 2021, ECF 258.

²² *Id.* at 48 (citing Second Amended Plan Ex. A n.4, ECF 227-1 at 2).

²³ Hearing Tr. 51-52, Nov. 1, 2021.

²⁴ *Id.* at 59.

²⁵ *Id.* at 60.

²⁶ *Id.*

²⁷ *Id.* at 60-61.

higher as of November 2021, “considering fuel costs and wages.”²⁸ Lane’s proposal does not include abatement, hazardous waste removal, disconnection of utilities, or building demolition.²⁹

Next, Lane examined Exhibit 30, a “Demolition Proposal” to Martin dated October 5, 2021. Lane’s proposal for demolition of the Building includes “the asphalt, the parking, the concrete ramps, sidewalks, leaving the property clean in a graded -- graded out to drain.”³⁰ The proposal quotes a price of \$302,170 and assumes an empty (broom-clean) Building.³¹

On cross-examination, Lane agreed that he had not presented Vita Craft with one proposal that included both cleanup and demolition:

Well, I mean, that equipment in there, there’s some massive pieces of steel and the manufacturing equipment. I mean, you’re going to have to get in there and take that thing apart. I don’t think you could just go in there with an excavator and -- that stuff is so big and heavy. I think -- I don’t think you can just get in there and tear -- now some of that stuff may be shelving or minor stuff, but for the majority of that building it’s going to have to be gutted out by hand.³²

Lane acknowledged that it would cost “[m]aybe a little bit” less to do both jobs at the same time, but that he had not “[broken] that down as far as the -- the man-

²⁸ Hearing Tr. 61, Nov. 1, 2021.

²⁹ *Id.* at 62.

³⁰ *Id.*

³¹ *Id.* at 67, 69.

³² *Id.* at 71; *see also id.* at 73 (“[Y]ou would save a little bit of your labor, but it’s -- you’re going to add more of your equipment cost and trucking at that time.”).

hours that we would save versus, you know, equipment and trucking hours that we would add.” Lane’s proposals included “a little bit of scrap value” for Vita Craft’s remaining inventory: “there is money in scrap, but you -- there’s also a -- a lot of time to load that stuff and haul it and we usually just don’t even give a whole lot to the scrap value.”³³

C. David Lewis

Lewis has worked for ATEC, a firm that does appraisals and liquidations, since 1997.³⁴ He performs machinery and equipment appraisals as well as liquidations of distressed assets and surplus equipment sales.³⁵ All of his personal-property appraisals are performed in conformity with the Uniform Standards of Professional Appraisal Practice, or USPAP.³⁶

Lewis visited Vita Craft in January of 2021.³⁷ His report, which was admitted as Exhibit 17, states that the forced liquidation value of the Equipment is \$196,150. Lewis explained that this value equals the replacement value of the Equipment under Vita Craft’s particular circumstances, which include “a lot of pieces that are somewhat unique in nature,” a “very depressed market,” and “uncertainty in the market,” such that a willing seller of the Equipment would likely do so via auction that, due to carrying costs (e.g., taxes, insurance, and

³³ Hearing Tr. 71-72, Nov. 1, 2021.

³⁴ *Id.* at 76.

³⁵ *Id.*

³⁶ *Id.* at 77.

³⁷ *Id.* at 78; *see id.* at 86 (“I apologize, I’ve been saying 2020. It’s 2021, not 2020.”).

security), would take place over a relatively narrow time frame.³⁸ When asked about a separate appraisal conducted by BMO's expert, Tim Roy,³⁹ who concluded in June 2019 that the forced liquidation value of the Equipment was \$226,000, Lewis answered that "there was quite a difference in the market between June of 2019 and January of 2021."⁴⁰ Lewis thought that change in the market explained the difference between the two appraisals.⁴¹ He clarified that his estimates of value were gross amounts, not net.⁴² On cross-examination, Lewis confirmed that his valuations did not consider the presence of any hazardous substances (such as motor oil and hydraulic fluid) in the Equipment.⁴³

D. Garry Fowler

According to Fowler, who has been in the cookware business since 1968, "the last couple of years has made [the business] very difficult."⁴⁴ However, he said, the market is recovering: "[W]e're much busier right now than we've been in the last two years. . . . We're still not a hundred percent back but we're headed in the right direction again."⁴⁵ Fowler explained his previous intent to buy Vita Craft:

³⁸ Hearing Tr. 87-90, Nov. 1, 2021.

³⁹ Roy testified at the 2020 stay-relief hearing but did not testify at the 2021 plan confirmation hearing.

⁴⁰ Hearing Tr. 86, Nov. 1, 2021.

⁴¹ *Id.* at 86-87.

⁴² *Id.* at 90.

⁴³ *Id.* at 95.

⁴⁴ *Id.* at 104-05.

⁴⁵ *Id.* at 106.

In July of 2019 Vita Craft had their line of credit removed and we were concerned whether they were going to be able to stay in business. So I went and visited the other American factories that produce high-end cookware and talked to them about a replacement cookware in case I needed it. And the bottom line is I saw some very good cookware from the competitors but none as good as what Vita Craft makes.

So after I made my rounds, I was -- instead of finding an alternative, I was actually more recommitted that Vita Craft was the product I really wanted to sell.⁴⁶

Fowler explained what makes Vita Craft's product special:

Simply, without going into technical details, which I'm happy to do if you want to hear it, but it cooks better and it cleans better. And those are the two most important things to the consumer.⁴⁷

Fowler is so committed to selling Vita Craft's products that during this Chapter 11 case, Celebrity has paid Vita Craft for its purchases in advance and ordered the raw materials (steel and other component parts) for those purchases out of its own pocket.⁴⁸

Fowler explained why, following BMO's § 1111(b) election, he decided not to buy Vita Craft: "[B]asically the purchase price - probably because of the issues with BMO and the loan there - exceeded what I felt the assets and the value of the company was by a large margin, so I couldn't be involved any more."⁴⁹ However,

⁴⁶ Hearing Tr. 106, Nov. 1, 2021.

⁴⁷ *Id.* at 107.

⁴⁸ *Id.* at 108.

⁴⁹ *Id.* at 109.

Celebrity “absolutely” still intends to buy Vita Craft’s cookware, starting at just under half a million dollars a year.⁵⁰

Over BMO’s objection, Fowler explained that he didn’t think Vita Craft’s existing inventory has any significant value:

I was with another large -- very large cookware company for 25 years. And when I -- and semi retired from them and bought Celebrity in the early ‘90s. And Celebrity had quite a bit of “inventory.” But I’ve already been through this. Most [of] the time the inventory that they have, they have because they couldn’t sell it. And I still have -- when I bought Celebrity in ‘93, I still probably have most of that inventory sitting in a warehouse because there’s no market for it. That’s why it was in inventory.

The cookware business, the factory -- you make the product and you ship it and you sell it. You get it out there and start making more. And if it’s sitting there for a long time, that really means there was no market for it.

So most of the inventory, not all of it, but most of the inventory was going to be very difficult to ever move. Now, maybe they had money invested in it to produce it, sure. But that doesn’t mean you’re going to be able to sell it. And -- and anywhere near what it cost to produce it. So I knew what they had that was sellable in the marketplace today and a lot of that inventory has value, but it doesn’t really have value until it gets sold to somebody.

So, no, I didn’t pay much attention to it. I knew they had very little inventory that was currently in demand.⁵¹

⁵⁰ Hearing Tr. 109-10, Nov. 1, 2021.

⁵¹ *Id.* at 111-12.

On cross-examination, Fowler stated that Vita Craft “wasn’t worth investing 2 and a half million dollars in.”⁵² He agreed that he would be willing to buy product from Vita Craft to hold in inventory, but that he has not done that before.⁵³ According to Fowler, Celebrity had about 25 percent fewer sales staff than it had prior to COVID; however, that reduction affected “the bottom part of the sales performing people . . . [s]o it didn’t hurt our sales that much.”⁵⁴

On redirect, Fowler stated that production contracts are uncommon in the cookware industry: “I’ve never had one, ever, with any factory.”⁵⁵ On re-cross, Fowler confirmed that Celebrity has not entered into any written commitments to purchase product from Vita Craft.⁵⁶

E. Richard Ong

Ong has worked as a certified public accountant since 1977.⁵⁷ Most of his clients are small-to-mid-sized businesses and their owners.⁵⁸

Exhibit 19 is a letter from Ong that responds to three questions posed by Vita Craft, all three relating to whether the Second Amended Plan complies (in the mathematical sense) with § 1129. In response to Vita Craft’s first question—whether the Second Amended Plan provides for full payment of BMO’s claim over

⁵² Hearing Tr. 113, Nov. 1, 2021.

⁵³ *Id.*

⁵⁴ *Id.* at 114-15.

⁵⁵ *Id.* at 115.

⁵⁶ *Id.* at 116.

⁵⁷ *Id.* at 117.

⁵⁸ *Id.* at 118.

the term of the plan—Ong answered that it does, reasoning that the total amount of BMO’s claim is \$2,463,332.65, and that the total amount paid to BMO under the Second Amended Plan will be \$2,789,721.45.⁵⁹ However, in response to Vita Craft’s second question—whether the present value of payments to BMO under the Second Amended Plan was equal to the value of the Collateral—Ong answered that the two values were not equal. He reasoned that whereas he assumed the fair market value of the Collateral to be \$850,000 for purposes of his letter, the present value of the payments to BMO attributable to the Collateral was only \$764,900—\$468,750 for the Class 2A Land payments and \$296,150 for the Class 2B Building & Equipment payments. According to Ong, “this shortage of \$85,100 could be satisfied by adding \$363.39 in payments for 30 years.” In a follow-up letter, Ong noted that increasing the present value of the Class 2A and Class 2B claims combined from \$764,900 to \$850,000 would reduce BMO’s Class 2C claim from \$1,698,433 to \$1,613,333. This reduction, said Ong, would mean a corresponding reduction in the 300 payments to BMO over months 61-360 of the plan, from \$5,661 to \$5,378.

In response to Vita Craft’s third question—whether the LIBOR-plus-3%⁶⁰ interest rate provided by the Second Amended Plan was reasonable—Ong answered that it was.

⁵⁹ The letter assumes that BMO will receive 300 monthly payments of \$5,661.45, for a total of \$1,698,433.65, on the Class 2C claim. *But see* note 9 *supra*.

⁶⁰ Ong noted that LIBOR will soon “be replaced by something called the Secured Overnight Financing Rates promulgated by the Federal Reserve Board.” Hearing Tr. 123, Nov. 1, 2021. However, he said, that replacement benchmark rate “is going to be very similar or at least has been so far.” *Id.* at 124.

Next, Ong addressed the pro forma attached as Exhibit A to the Second Amended Plan.⁶¹ He calculated that, after taking into account the Class 2C payments that begin in Year 6 of the plan, the total value of the payments received by BMO will exceed the value of the Collateral (assuming a value of \$796,150) sometime in Year 7.⁶² Ong observed that Vita Craft’s cumulative projected net cash flow of \$1,768,033 after 15 years would suffice to retire its remaining obligations of “about a million five” to BMO.⁶³ He noted that, assuming the Land appreciates at a rate of 2% per year, Vita Craft will have also built up around \$300,000 in equity in the Land at that point.⁶⁴

On cross, Ong acknowledged that changing the value of the Collateral would change his calculations, and that his calculations assumed that Vita Craft would be able to meet the projections in its pro forma.⁶⁵

F. Gary Martin (Direct)

Martin, Vita Craft’s president, has been employed by the company for more than 27 years and has worked in manufacturing for more than 48 years.⁶⁶ He testified that Vita Craft has not used its gun drill and robots since around 2005,⁶⁷ that Vita Craft’s inventory “has very minimal value,” and that some of the

⁶¹ *Id.* at 125.

⁶² Hearing Tr. 128, Nov. 1, 2021.

⁶³ *Id.* at 129-31.

⁶⁴ *Id.* at 132.

⁶⁵ *Id.* at 134-35.

⁶⁶ *Id.*

⁶⁷ *Id.* at 144. The gun drill and robots are shown on page 75 of Exhibit 41.

inventory “hasn’t been touched in years.”⁶⁸ According to Martin, “there is inventory there that is still there [from] when I started 28 years ago.”⁶⁹

Martin testified that Vita Craft “has cash flowed” since 2017: “We were able to pay our -- our expenses, our people. And I believe in those three years we also paid down our loan with BMO during those three years.”⁷⁰

During his testimony, Martin looked at Exhibit 54, a list of Vita Craft’s monthly revenues by customer since November 2019.⁷¹ Martin agreed that most of Vita Craft’s customers have been paying for their own steel (i.e., the raw material Vita Craft uses to manufacture its cookware) during that time.⁷² Martin also acknowledged that one of the customers listed on Exhibit 54 is Health Quest, who will not be buying from Vita Craft going forward.⁷³

Next, Martin looked at Exhibit 55, which shows Vita Craft’s total yearly sales, broken down between sales to VCJ and non-VCJ sales, for each year between 2008 and 2018.⁷⁴ During that time, Vita Craft’s sales to VCJ ranged between \$2.4 million and \$5.5 million per year, and its non-VCJ sales ranged between \$752,000 and \$2.1 million per year.⁷⁵ Martin also looked at Exhibit 56, which shows Vita

⁶⁸ Hearing Tr. 145, Nov. 1, 2021.

⁶⁹ *Id.*

⁷⁰ *Id.* at 146.

⁷¹ *Id.* at 146-47.

⁷² *Id.* at 147.

⁷³ *Id.* at 147-48.

⁷⁴ *Id.* at 156.

⁷⁵ *Id.* at 157; Ex. 55.

Craft's annual sales per customer from 2016 through August 2021, acknowledging that Vita Craft was shut down due to COVID "for a pretty good chunk of [2020]."⁷⁶

Martin then turned to the Second Amended Plan's Exhibit A, which is the pro forma, or projections, used in the plan.⁷⁷ He acknowledged that the projected revenue in Year 1 includes the \$600,000 initial investment from VCJ.⁷⁸ The projected revenues assume that Vita Craft is buying its own steel; if Vita Craft had been buying its own steel during the bankruptcy, its revenues would have been higher.⁷⁹ Exhibit A budgets \$274,575 for repairs over the first five years of the plan, including \$150,000 in the first year.⁸⁰ Martin testified that Vita Craft will use some of the initial \$600,000 cash investment to repair the roof and replace the office HVAC.⁸¹

As to employees, Martin testified that Vita Craft's current weekly payroll for 12 employees "is running right around a little over 11,000 a week" including payroll taxes.⁸² The Second Amended Plan will increase yearly payroll expenditures to \$651,510 in the first year, plus an additional \$60,000 for benefits, including health

⁷⁶ Hearing Tr. 158, Nov. 1, 2021.

⁷⁷ *Id.* at 159.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 160; Second Amended Plan, Ex. A, ECF 227-1.

⁸¹ Hearing Tr. 162, Nov. 1, 2021. *See* Second Amended Plan, Ex. A (budgeting \$80,000 for roof repair and \$40,000 for office HVAC replacement).

⁸² Hearing Tr. 161, Nov. 1, 2021.

insurance.⁸³ The plan also proposes to pay the full assessed amount of Vita Craft's property taxes.⁸⁴

Exhibit 64 contains BMO's ledger of Vita Craft's payment history.⁸⁵ Martin was not aware of any time when Vita Craft missed a payment to BMO, or was late on a payment to BMO, or was ever late paying its property taxes.⁸⁶

Martin also addressed Vita Craft's recent performance. He testified that being in Chapter 11 has caused Vita Craft to lose business opportunities: "[P]eople are hesitant,"⁸⁷ and not many customers are willing to pay for their steel in advance.⁸⁸ Vita Craft's average monthly revenue since December 2020, during which time Vita Craft's customers have been buying their own raw materials, was \$103,162.⁸⁹ In contrast, Vita Craft's pro forma assumes that Vita Craft will buy its own raw materials, which will mean a corresponding increase in its revenue. Taking this difference into account, the revenues projected in the first, second and most of the third years of the Second Amended Plan are consistent with Vita Craft's current performance.⁹⁰

⁸³ Hearing Tr. 161, Nov. 1, 2021.

⁸⁴ *Id.* at 163-64.

⁸⁵ *Id.* at 165.

⁸⁶ *Id.*

⁸⁷ *Id.* at 169.

⁸⁸ *Id.*

⁸⁹ *Id.* at 167.

⁹⁰ *Id.* at 168.

Vita Craft's counsel asked Martin directly: "You've seen projections for these moving forward. Do you believe -- can you look at the court and tell the court that you believe Vita Craft can hit those projections?"⁹¹ Martin answered: "Yes, I believe we can hit those projections."⁹² When asked about retirement, Martin testified:

I have put my heart and soul into this company and I'm still putting my heart and soul. And the reason I'm still here two and a half years later is because I believe in the company. I believe in the people. And I hope through everything we're presenting that we'll get that opportunity.

But I will stay -- and I know this is open-ended. I will stay as long as it takes to make this transition happen. I want it to succeed.⁹³

Martin testified that Vita Craft's foreman, Kevin, who runs the physical plant, has worked at Vita Craft for 35 years; its machinist, Bruce, has worked there for 40 years.⁹⁴ These employees have remained with the company even during bankruptcy, during which time they have had no health insurance or paid leave. Vita Craft has other staff in-house who can keep the plant running.⁹⁵ If Vita Craft's Second Amended Plan is confirmed, Martin will be there the next day to run the business.⁹⁶

Martin's direct examination concluded the first day of the hearing.

⁹¹ Hearing Tr. 171, Nov. 1, 2021.

⁹² *Id.*

⁹³ *Id.* at 172.

⁹⁴ *Id.* at 172-73.

⁹⁵ *Id.* at 174.

⁹⁶ *Id.* at 175.

G. Mamoru Imura

Mr. Imura, joining the Zoom meeting from Japan on the second day of the hearing, described his 40-plus-year history with Vita Craft:

When I was looking for the best cookware for Japanese market, oil king Mr. David Rockefeller -- Rockefeller, III, who was a friend of my grandfather introduced me to Vita Craft Corporation cookware I think in 1974. And then I set up Vita Craft Japan.

In 1977 Suntory, Limited, who is the largest alcohol manufacturer and sales company in Japan and the current owner of Jim Beam in Kentucky, wanted to sell Vita Craft cookware with me because of my relationship. It was really very hard for us to make a known brand of cookware, Vita Craft, very famous and make good sales in Japan. We spend over 10 million USD for the advertisements every year to do it. And they took five years to make it. That was in 1982.

...

Anyway, our cookware brand Vita Craft has become the most famous, popular and the top quality cookware in Japan since 1982.

... I decided to move to Kansas City to make Vita Craft cookware famous in U.S. and I moved to Kansas City with my family in May 2001. And I set up Imura International USA, Inc. at the warehouse of Vita Craft Corporation in order to make sales network of Vita Craft cookware in U.S.

However, September 11 . . . happened and it was really hard for me to travel between Kansas City and Japan or other U.S. cities. At the same time a former owner and the CEO of Vita Craft Corporation strongly asked me to buy Vita Craft Corporation. . . . As I did not want to lose manufacture of Vita Craft cookware, I bought Vita Craft Corporation unwillingly I think it was on 23rd of December in 2002.

The reason why I (inaudible) bought Vita Craft Corporation instead of Vita Craft Japan was, what I did not want to inform the truths to Japanese people that Vita Craft Corporation was not a big company. I bought Vita Craft Corporation. . . . I hired [Gary Martin] to run Vita Craft Corporation since I think early 2003.

(Inaudible) this is a very rough story. Indeed I bought Vita Craft Corporation, but I have not received a single salary and I have not spent any cent of money on Vita Craft Corporation. It is very hard for me to make myself understood, my English properly, because I was away from English for a long time. That is very rough story.⁹⁷

Imura is the CEO of Vita Craft's proposed buyer, VCJ.⁹⁸ VCJ has around 200 employees; its annual revenue ranges between 20 million USD and 25 million USD, depending on the exchange rate.⁹⁹ According to Imura, VCJ has a "very good management team," which includes Imura's son.¹⁰⁰

Imura testified that VCJ will have "[n]o problem" investing \$600,000 into Vita Craft upon plan confirmation.¹⁰¹ As to Vita Craft's projected sales to VCJ, Imura explained that for VCJ to purchase \$1,000,000 of Vita Craft product per year would amount to only 8 percent of VCJ's total annual purchasing.¹⁰² Imura, who is authorized on behalf of VCJ to commit to purchases, testified that VCJ will buy the amounts projected in the pro forma (\$750,000 in Year 1, increasing to \$1,098,075 in

⁹⁷ Hearing Tr. 184-86, Nov. 2, 2021, ECF 259.

⁹⁸ *Id.* at 187.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 188.

¹⁰¹ *Id.*

¹⁰² *Id.* at 189.

Year 5), and even more if necessary,¹⁰³ adding that VCJ's business model requires it to purchase products made in the United States.¹⁰⁴

According to Imura, the operating losses projected in Years 2 and 3 (\$130,043 and \$48,627, respectively) of the Second Amended Plan will not affect Vita Craft's viability:

This is not a big deal from Vita Craft Japan to cover it. Vita Craft Japan will adjust to make more purchases. Vita Craft Japan will do whatever is needed to make Vita Craft Corporation work. You can understand it to see our history since I bought it.¹⁰⁵

Moving on to Vita Craft's loans from BMO, Imura testified that the high point of the total loan amount was around \$7.5 million, which Vita Craft has since paid down to under \$2.5 million.¹⁰⁶ Vita Craft has never missed a payment, nor has it, to Imura's knowledge, ever been late in making a payment.¹⁰⁷

As to whether VCJ would honor its commitment to invest \$600,000 into Vita Craft, Imura laughed: "Why would I lie about something that will so soon be proven wrong? Vita Craft Japan is ready to do this as soon as a plan is confirmed by the judge."¹⁰⁸

¹⁰³ Hearing Tr. 190-91, Nov. 2, 2021.

¹⁰⁴ *Id.* at 196.

¹⁰⁵ *Id.* at 188-89.

¹⁰⁶ *Id.* at 191-92.

¹⁰⁷ *Id.* at 192.

¹⁰⁸ *Id.* at 192-93.

Imura lived in Kansas City for six years while building Vita Craft.¹⁰⁹ He testified that other members of VCJ's management team, including his son, can move to Kansas City to run Vita Craft after Martin retires.¹¹⁰

On cross, Imura stated that he had not provided the precise numbers listed in the pro forma; rather, he had simply stated that VCJ "would buy 1 million USD every year."¹¹¹ Imura acknowledged that he did not know specifically what VCJ's initial \$600,000 investment would pay for other than the items listed on the pro forma, but was unconcerned:

I have been receiving lots of Vita Craft Corporation information over 20 years so that the -- once I look at these kind of numbers, I understand almost without having a detailed explanation. So if this plan will be okay, it's very good for me to make Vita Craft Corporation very good company very quickly.¹¹²

Returning to the negative cash flows projected for Years 2 and 3 of the plan (\$130,043 and \$48,627, respectively), BMO's counsel asked Imura if VCJ would provide Vita Craft with additional capital even if those numbers "were closer to a half million dollars or a million dollars."¹¹³ Imura responded: "As long as this plan is agreed by [the] judge, I would do so."¹¹⁴ He acknowledged that he has not spoken

¹⁰⁹ Hearing Tr. 194, Nov. 2, 2021.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 201-02.

¹¹² *Id.* at 206.

¹¹³ *Id.* at 218.

¹¹⁴ *Id.*

to Martin on the phone for more than two years.¹¹⁵ As to what Vita Craft will do when Martin retires, Imura testified that he (Imura) will “send my son or send my managing team or hire somebody who can handle the company.”¹¹⁶

On redirect, Imura testified that the balance of VCJ’s \$600,000 investment would necessarily go into Vita Craft’s other expenses,¹¹⁷ and that he signed the Second Amended Plan after reviewing it.¹¹⁸ While Imura has not spoken recently with Martin, others within VCJ do: “My importing division people has been contacting with him almost every day. . . . We are sending lots of e-mails, one or two e-mails every day to Gary Martin.”¹¹⁹ Imura reviews those email exchanges and has people in Japan he can ask about them if he has questions.¹²⁰ He testified that Vita Craft is important to VCJ:

Vita Craft Japan is selling Vita Craft Corporation-made cookware only for the department stores, which is the high-end products handling.

So in order to keep the good image of the quality of the cookware in Japan, we have to sell the products to their -- all the prominent stores in -- all over Japan. We are sending saleswomen for the stores, which is very unusual. But this is the reason why we can make lots of different kind of sales channels with better price range of the products because of the department stores’ high-end

¹¹⁵ Hearing Tr. 219, Nov. 2, 2021.

¹¹⁶ *Id.* at 221.

¹¹⁷ *Id.* at 224.

¹¹⁸ *Id.* at 224-25.

¹¹⁹ *Id.* at 225.

¹²⁰ *Id.* at 226.

image. So we need Vita Craft Corporation products very much.¹²¹

At the conclusion of Imura's testimony, Martin returned for cross-examination.

H. Gary Martin (Cross)

Martin testified on cross that he has worked at Vita Craft for 28 years.¹²²

His position is critical to the company; he does not know who in particular will replace him when he retires.¹²³ Martin explained Vita Craft's projection of "other retail sales," beginning with \$120,000 in Year 2:

Those sales are based on additional marketing such as getting our website back up and running and making sales through our website and also our outlet store and -- which we previously had and were generating some income.

But to answer your question directly, there's no exact documents. It's just trying to pick back up where we left off.¹²⁴

Martin acknowledged that he did not know exactly how much it will cost to refurbish Vita Craft's outlet store and reestablish its online presence.¹²⁵ He also acknowledged that Vita Craft has not yet prepared a plan to do so, and that there is no specific line item for it on the pro forma.¹²⁶

¹²¹ Hearing Tr. 226, Nov. 2, 2021.

¹²² *Id.* at 231.

¹²³ *Id.* at 231-32.

¹²⁴ *Id.* at 232.

¹²⁵ *Id.* at 234-35.

¹²⁶ *Id.* at 235-36.

Next, Martin looked at Exhibits 52 and 53, Vita Craft's monthly operating reports from August and September 2021 in its Chapter 11 bankruptcy. He acknowledged that the August 2021 report shows a loss of \$69,957 since Vita Craft filed for bankruptcy, and that the September 2021 report shows an additional loss of \$18,502.¹²⁷

Under the Second Amended Plan, Vita Craft's annual plan payments are \$78,377 for the first five years. Martin acknowledged that if Vita Craft had been making those payments since filing for bankruptcy, its total loss would have been closer to \$240,000.¹²⁸

Vita Craft's original plan projected \$2,442,750 in sales to VCJ over five years.¹²⁹ When asked why that number was so much less than the \$4.5 million projected in the Second Amended Plan, Martin responded:

Health Quest is no longer part of the plan and Garry Fowler is no longer a potential buyer.

Of course, that was a -- a loss of revenue, a loss of sales when HealthCraft [sic] decided not to participate and that -- that the -- our current plan is -- is with Vita Craft Japan or Mr. Imura, I just combine the two. They have stepped up, I called it, and are covering the lost sales and now the whole picture has changed dramatically to where we now kind of come full circle back around to Mr. Imura and Vita Craft Japan.

So there's been a lot of change that happened that would trigger the dollars. And the short answer is is I -- Vita Craft Corporation believes that Vita Craft Japan has --

¹²⁷ Hearing Tr. 240, 245, Nov. 2, 2021.

¹²⁸ *Id.*

¹²⁹ *See* Ex. 10.

has stepped up with a new plan of which Mr. Imura signed to support the changes.¹³⁰

Martin acknowledged a “book loss” for Vita Craft in 2017, 2018, and 2019, but explained that it “was the result of a write-down of the RFID inventory.”¹³¹

When asked about Kevin and Bruce, Vita Craft’s 35- and 40-year employees, Martin testified that Vita Craft is already training some of its other, younger employees to replace them.¹³²

Exhibit 55 shows \$4,397,787 in total sales for 2016; Exhibit 58 shows \$4,477,454. When asked to explain the difference, Martin stated that one figure “represent[s] what was billed from our invoicing system” and the other “is my calculations of our orders being shipped.”¹³³ On redirect, Martin testified that Vita Craft’s fiscal year does not mirror the calendar year, and that the difference might be explained that way.¹³⁴

¹³⁰ Hearing Tr. 253, Nov. 2, 2021.

¹³¹ *Id.* at 261. Martin explained this write-down in more detail at the stay-relief hearing, when he testified that in 2004, Vita Craft had launched a line of “RFIQ” cookware, or cookware that used radio frequency identification (“RFID”) components. However, Martin said, the RFID cookware was not a commercial success, and Vita Craft was left with a large amount of unsold RFID inventory when the product line “tanked in 2006.” Vita Craft retained the RFID inventory until 2017, when it sold that inventory to VCJ for less than it had cost to produce it. Thus, said Martin, even though Vita Craft’s income statements showed “book losses” between 2017 and 2019, Vita Craft had not lost money in the cash-flow sense. *See* ECF 175 at 18.

¹³² Hearing Tr. 270, Nov. 2, 2021.

¹³³ *Id.* at 275.

¹³⁴ *Id.* at 302-03.

Martin testified that he has “no doubt” that Vita Craft can perform as it has projected under the Second Amended Plan.¹³⁵

I. Jason Bitter

The final witness to testify at the hearing was Jason Bitter, a director with CBRE’s valuation and advisory services in Kansas City.¹³⁶ Bitter has been a real estate appraiser since 2005. He is state-certified in Kansas and Missouri and, like Marx, has received the MAI designation from the Appraisal Institute.¹³⁷

Bitter testified that he was hired to provide a market value appraisal for the Real Estate “as it is currently improved,” where “market value” is defined as “the value to a generic likely buyer in the market.”¹³⁸ To carry out that assignment, he conducted a site inspection, researched comparable sales, and “spoke with multiple industrial brokers.”¹³⁹ According to Bitter, Vita Craft’s current non-conforming use of the Real Estate for manufacturing was a “key component” of his analysis, because “it probably renders the sale of the property as an improved industrial property to another user very unlikely, which led us to the conclusion that the highest and best use of the property would be to demolish the improvements and redevelopment with

¹³⁵ Hearing Tr. 308, Nov. 2, 2021.

¹³⁶ *Id.* at 320.

¹³⁷ *Id.* at 321.

¹³⁸ *Id.* at 322.

¹³⁹ *Id.* at 322-23.

another use.”¹⁴⁰ Like Marx, Bitter used the comparable-sales approach to valuing the Real Estate.¹⁴¹

Turning to page 41 of his report, Bitter testified as to what the Real Estate would be worth if it were vacant land:

[A]s a vacant tract of land with no improvements that’s available for immediate development, we came to the conclusion that the land value as if vacant would be \$16 per square foot which equates on a rounded basis to \$1,150,000.

However, to arrive at what we would define as an as-is value, which is the value of the property as it currently exists, currently there’s in our opinion obsolete improvements that would need to be razed prior to making that a developable site, therefore we deducted the demolition costs to remove those improvements to arrive at what we would define as an as-is value which defines what the value is as it currently exists as of the date of our inspection.

...

That value is \$910,000 or \$12.71 per square foot of land area.¹⁴²

Bitter explained that he obtained an estimated demolition cost from Marshall Valuation Service, “which is a widely known source of cost estimates in the real estate market and is probably the single most trusted source of construction costs.”¹⁴³ He confirmed that his analysis did not include any “scrap value” or

¹⁴⁰ Hearing Tr. 324, Nov. 2, 2021.

¹⁴¹ *Id.* at 326.

¹⁴² *Id.* at 331-32.

¹⁴³ *Id.* at 332.

“broom-clean” figures: “Our analysis does not contain any consideration of equipment or the removal of.”¹⁴⁴

Bitter also calculated the value of the Real Estate as improved:

We determined that the value was \$1.1 million if it were in similar condition to other properties that we compared it against. However, during our inspection we observed a significant amount of deferred maintenance that was present at the property

And so we -- we deducted the estimated cost to cure those maintenance items which would be necessary to be done probably in a very short amount of time to arrive at our as-is value.

. . .

The source of that information was a prior appraisal completed by Scott Belke. And I believe it was in 2019. We did not -- and that was an extraordinary assumption within our report. Myself and CBRE did not personally estimate the cost of deferred maintenance, that’s really beyond our abilities.¹⁴⁵

Bitter testified that page 809 of his report “reconciled the two values and it was the -- on an as-is basis, the land value was marginally higher than the value as improved.” He confirmed that his two ultimate market value calculations for the Real Estate are \$1,150,000 as hypothetically vacant land and \$910,000 as improved.¹⁴⁶

¹⁴⁴ Hearing Tr. 332, Nov. 2, 2021.

¹⁴⁵ *Id.* at 334-35.

¹⁴⁶ *Id.* at 335.

Bitter also confirmed that he and Marx used at least one property in common as a comparable sale.¹⁴⁷ However, Bitter's report shows its size as 3.17 acres, which is "somewhat smaller than what was reported in Mr. Marx's report."¹⁴⁸ Bitter testified that 3.17 acres is consistent with "Johnson County deed records and also Johnson County land records and GIS,"¹⁴⁹ such that the land value used by Marx understated the value-per-square-foot of the sale.¹⁵⁰ He also testified that while his report adjusted some sale prices upward to reflect demolition costs, Marx's did not do so as to one of those properties.¹⁵¹

On cross, Bitter acknowledged that a higher demolition cost would lower the residual value of the Real Estate.¹⁵² He also acknowledged that the estimated demolition cost in his appraisal assumed that the building would be empty, and that his appraisal did not account for the cost of cleaning out the building.¹⁵³

After Bitter's testimony, the parties presented closing arguments and the Court took the matter under advisement.

¹⁴⁷ Hearing Tr. 335, Nov. 2, 2021.

¹⁴⁸ *Id.* at 336.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 337. Marx had addressed this discrepancy on cross-examination: "I do know that part of that is in the floodplain that they raised and I'm not sure everything in the plat -- that the city-approved plat included all of the land being conveyed by the seller." Hearing Tr. 44-45, Nov. 1, 2021.

¹⁵¹ Hearing Tr. 338, Nov. 2, 2021. Marx addressed this discrepancy on cross-examination as well: "I believe that was TIF reimbursed." Hearing Tr. 46, Nov. 1, 2021.

¹⁵² Hearing Tr. 344, Nov. 2, 2021.

¹⁵³ *Id.* at 345.

III. ANALYSIS

As the proponent of the Second Amended Plan, Vita Craft has the burden of proving, by a preponderance of the evidence, that its plan complies with all applicable provisions of § 1129. *See FB Acquisition Prop. I, LLC v. Gentry (In re Gentry)*, 807 F.3d 1222, 1226 (10th Cir. 2015) (citing *Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 685 F.3d 1160, 1177 (10th Cir. 2012)). Here, BMO argues that the Second Amended Plan does not meet the requirements of §§ 1129(a)(3), (7), (11), and (b)(2).

A. Subsections (a)(7)(B) and (b)(2)(A)(i): Collateral Value

First, BMO argues that the Second Amended Plan fails to comply with 11 U.S.C. §§ 1129(a)(7)(B) and (b)(2)(A)(i). Under subparagraph (a)(7)(B):

[I]f section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Section 1129(b) allows plan confirmation even if an impaired class has not accepted the plan (as is the case here with BMO's Classes 2A, 2B, and 2C), but requires among other things, that the plan be "fair and equitable" with respect to that class.

To be fair and equitable with respect to a class of secured claims under § 1129(b)(2)(A)(i), the plan must provide for lien retention and:

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property.

Thus, under §§ 1129(a)(7)(B) and (b)(2)(A)(i), the present value of the payments BMO will receive under the plan cannot be less than the value of its collateral. More specifically, the present value of the payments BMO will receive as to each class of claims cannot be less than the value of the collateral securing that class.

For purposes of plan confirmation, the relevant “value” of BMO’s interest in the Collateral is the replacement value of the Collateral. *See Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 962-63 (1997). According to *Rash*, replacement value is “the price a willing buyer in the debtor’s trade, business, or situation would pay a willing seller to obtain property of like age and condition.” *Rash*, 520 U.S. at 959 n.2. *Rash* continues:

Our recognition that the replacement-value standard, not the foreclosure-value standard, governs in cram down cases leaves to bankruptcy courts, as triers of fact, identification of the best way of ascertaining replacement value on the basis of the evidence presented. Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property.

Rash, 520 U.S. at 965 n.6.

Here, BMO argues that Class 2A (Land) and Class 2B (Building and Equipment) fail to satisfy §§ 1129(a)(7)(B) and (b)(2)(A)(i). The present value of the payments BMO will receive as to those classes (using a discount rate of 3.1%) is:

- For Class 2A, the BMO Land Claim, \$500,001 (\$468,750 in plan payments plus the \$31,251 already paid to BMO during this case); and
- For Class 2B, the BMO Building and Equipment Claim, \$296,150.

This means that Classes 2A and 2B satisfy §§ 1129(a)(7)(B) and (b)(2)(A)(i) if the replacement value of the Land does not exceed \$500,000 and if the sum of the replacement values of the Building and the Equipment does not exceed \$296,150.

1. Building

According to BMO's expert, Jason Bitter, the Building has no residual value apart from the Land. *See* Ex. 26 at 41, 46 (concluding that value of Land alone is \$10,000 more than that of Land and Building together). According to Vita Craft's expert, Robin Marx, the residual value of the Building is \$100,000. *See* Ex. 15 at 14, 17 (concluding that value of Land alone is \$100,000 less than that of Land and Building together). Because there is no evidence that the Building is worth more, the Court accepts Vita Craft's figure and holds that the replacement value of the Building for purposes of plan confirmation is \$100,000.

2. Equipment

BMO argues, citing "the Court's findings," that the replacement value of the Equipment is \$226,000.¹⁵⁴ However, the Court has not made such a finding.

Rather, in its order denying stay relief, the Court stated:

Since the only evidence as to the replacement value of the M&E . . . was from Roy, and since Roy acknowledged that a change in the market for those items occurred around the beginning of 2020 that rendered his estimates unreliable in any event, *the Court is unable to make factual findings at this time as to the likely replacement*

¹⁵⁴ *See* ECF 238 ¶ 22.

*value of the M&E . . . as of the effective date of Vita Craft's plan.*¹⁵⁵

Because the Court has not made any findings as to the value of the Equipment, and because the Court accords little, if any, weight to the \$3,862,664.44 value listed for the Equipment on Vita Craft's original Schedule A/B (which reflects book value rather than market value),¹⁵⁶ the Court turns to the parties' evidence.

According to Vita Craft's expert, David Lewis, the replacement value of the Equipment is \$196,150. BMO presented no evidence as to the value of the Equipment at the confirmation hearing; however, BMO's expert at the stay-relief hearing, Tim Roy, testified at that hearing that the forced liquidation value of the Equipment was \$226,000 as of June 2019.¹⁵⁷ While both experts testified credibly, the Court accords greater weight to Lewis's opinion, which is more recent and better reflects current market conditions. The preponderance of the evidence before the Court thus establishes that the replacement value of the Equipment for purposes of plan confirmation is \$196,150.

¹⁵⁵ See ECF 175 at 30-31 (referencing opinion of BMO's expert, Tim Roy, who did not testify at the confirmation hearing, and using the defined term "M&E" to refer to the Equipment) (citation and footnote omitted) (emphasis added).

¹⁵⁶ Cf. *book value*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003) ("[T]he value of something as shown on bookkeeping records as distinguished from market value.").

¹⁵⁷ See ECF 175 at 11. Lewis testified that forced liquidation value best represents the replacement value of the Equipment under current market conditions. See *supra* pp. 15-16.

3. Land

Again citing “the Court’s findings,” BMO argues that the replacement value of the Land is \$1,100,000.¹⁵⁸ To support its argument, BMO refers to this Court’s statement, in its order denying BMO’s motion for stay relief, that “the replacement value of the Real Estate at the time of Marx’s appraisal was \$1,100,000.00 minus projected environmental remediation costs.” However, this argument is flawed in three ways.

First, although BMO accurately quotes the Court’s prior order, it takes the quoted sentence—which was about the replacement value of the Real Estate *at the time of Marx’s first appraisal* (i.e., March 2020)—out of context. The stay-relief order continues:

Because the Plan only values BMO’s secured claim at \$850,000, the Plan may not—*depending on the replacement value of the Collateral as of the effective date*—be confirmable as written. . . . Vita Craft may need to propose a new plan that incorporates the replacement value of the Collateral as of the effective date of that plan (if different from \$850,000).¹⁵⁹

Thus, the Court’s order expressly leaves open the question of the replacement value of the Collateral for purposes of plan confirmation—i.e., as of the effective date of the Second Amended Plan or some other date close to the confirmation hearing.¹⁶⁰

¹⁵⁸ Cf. ECF 238 ¶ 22 (arguing that replacement value of Real Estate is \$1,100,000).

¹⁵⁹ ECF 175 at 31 (emphasis added).

¹⁶⁰ See 4 *Collier on Bankruptcy* ¶ 506.03[10] (Richard Levin & Henry J. Sommer eds., 16th ed.) (“In general, courts generally agree that, for purposes of determining the amount of a secured creditor’s claim in the cramdown context, the relevant collateral should be valued as of the effective date of the plan.”); *In re S-Tek 1, LLC*, No. 20-12241-j11, 2021 WL 5860020, at *4 (Bankr. D.N.M. Dec. 9, 2021) (“[F]or plan

Second, even if the Court had not left the valuation question open, its prior valuation would not have been binding for purposes of plan confirmation. *Cf.* 2 Thomas J. Salerno et al., *Advanced Chapter 11 Bankruptcy Practice* § 11.33 (2d ed. 1996) (“Prior valuations of the collateral made in connection with a creditor’s request for adequate protection are not *res judicata* for this purpose.”) (citations omitted).

Third, BMO’s argument does not take into account additional evidence, presented by Vita Craft at the confirmation hearing, as to the current replacement value of the Real Estate. Most of the evidence before the Court in 2020 was for purposes of adequate protection and stay relief, and thus about the Real Estate’s foreclosure (non-manufacturing) value. The only evidence as to replacement (manufacturing) value at that time was an informal March 2020 email from Marx, Vita Craft’s expert, in which he opined that the Real Estate would be worth \$1.1 million if it could continue to be used for manufacturing purposes.¹⁶¹ Because there was no other evidence as to replacement value, the Court relied on Marx’s informal email in ruling on BMO’s stay-relief motion.

confirmation purposes, collateral . . . should be valued as of or near the date of the confirmation hearing.”).

¹⁶¹ *See* ECF 175 at 15. As stated on page 3 *supra*, Vita Craft’s non-conforming use of the Real Estate for manufacturing has been grandfathered in by the City of Shawnee, but a third-party buyer would not be permitted to use the Real Estate for manufacturing. This means that while foreclosure value is that of the Real Estate under current zoning restrictions, replacement value is that of the Real Estate as a manufacturing property. *See* 11 U.S.C. § 506(a) (providing that value of collateral is determined “in light of . . . the proposed disposition or use of such property”).

However, Marx testified at the confirmation hearing that the market for industrial real estate has changed since the 2020 stay-relief hearing and that the Real Estate has become less attractive to manufacturers. Marx’s new testimony establishes that his current valuation of \$850,000 applies to the Real Estate *as a manufacturing property*. Moreover, while the Court’s prior assessment of replacement value did not take into account the cost of rendering the Real Estate “broom-clean,” Marx’s testimony at the confirmation hearing also establishes that such cost must be considered in calculating replacement value. For these reasons, the Court will reject BMO’s argument and consider the evidence presented at the confirmation hearing as to the replacement value of the Real Estate.

At the confirmation hearing, Marx and BMO’s expert, Bitter, each provided two figures for the fair market value of the Real Estate. The first figure represents the value of the Land and Building (if broom-clean) together; the second represents that of the Land alone (if vacant):

	Real Estate (if broom-clean)	Land (if vacant)
Marx	\$850,000	\$750,000
Bitter	\$900,000	\$1,150,000

However, as explained by Marx, these values are hypothetical because the Building is not currently broom-clean and the Land is not currently vacant. To determine what a willing buyer would actually pay for the Real Estate in its present condition, the values in the table above must be reduced by the costs of cleaning out and/or demolishing the Building:

	Real Estate (as-is)	Land (as-is)
Marx	\$850,000 minus cost of cleanup	\$750,000 minus costs of cleanup and demolition
Bitter	\$900,000 minus cost of cleanup	\$1,150,000 minus costs of cleanup and demolition

The only evidence before the Court as to the cost of cleanup came from Vita Craft's expert, Lane, who testified that it would cost \$262,000 (his original \$250,000 estimate plus a \$12,000 adjustment for higher wages and fuel costs at the time of trial) to render the Real Estate broom-clean.

Both Vita Craft and BMO presented expert testimony as to the cost of demolition. Lane, who also provided Vita Craft with a proposal to that effect, testified that it would cost \$302,170 to demolish the Building. Bitter used cost-per-square-foot estimates listed in Marshall Valuation Service and testified that demolition would cost \$240,000. While both witnesses testified credibly, the Court will adopt Lane's estimate of demolition cost, which is specific to the Building, incorporates factors particular to the Real Estate, and is within the range of costs considered by Bitter.¹⁶²

As to whether costs could be saved by doing both cleanup and demolition together, Marx testified that he would expect there to be "some overlap." Lane, however, thought that doing both together "would save a little bit of your labor" but

¹⁶² Lane's demolition proposal, which works out to \$6.22 per square foot, is within the estimated range of \$4.54 to \$6.75 per square foot provided by Marshall Valuation Service that Bitter used in his appraisal. *Cf.* Ex. 26 at 41.

“add more of your equipment cost and trucking at that time.” In the absence of any evidence as to the amount that could be saved, and given Lane’s apparent doubt that such amount would be significant, the preponderance of the evidence before the Court establishes that the cost of cleanup and demolition is the sum of Lane’s two estimates.

Subtracting Lane’s proposed costs of cleanup and demolition, and disregarding the lower of Marx’s two figures, the Court is left with three competing replacement values for the Real Estate in its present condition:

	Real Estate (as-is)	Land (as-is)
Marx	\$850,000 - \$262,000 = \$588,000	\$750,000 - \$262,000 - \$302,170 = \$185,830
Bitter	\$900,000 - \$262,000 = \$638,000	\$1,150,000 - \$262,000 - \$302,170 = \$585,830

Because Marx testified that the difference between his and Bitter’s appraisals is small enough that the two are “basically in agreement,” and because the \$588,000 figure derived from Marx’s valuation is between the \$585,830 and \$638,000 figures derived from Bitter’s valuation, the Court holds that the preponderance of the evidence establishes that the as-is replacement value of the Real Estate for purposes of plan confirmation is \$588,000. Having already held that the replacement value of the Building is \$100,000 (see page 40 *supra*), the Court holds that the replacement value of the Land for purposes of plan confirmation is \$488,000.

4. Inventory

BMO argues (without citation) that the value of the Inventory is \$488,000.¹⁶³ This argument likely refers to the 2019 appraisal of BMO's expert Tim Roy, who stated that the ordinary liquidation value of the Inventory was \$487,952.¹⁶⁴ However, as noted by this Court in its order denying stay relief, both the composition of the Inventory and the market for such Inventory have changed since Roy conducted his appraisal. Any remaining probative value Roy's appraisal may have as to the present value of the Inventory is outweighed by the opinions of Garry Fowler and Gary Martin, both of whom testified at the confirmation hearing that the Inventory has nominal or zero value. Thus, the preponderance of the evidence before the Court establishes that the replacement value of the Inventory for purposes of plan confirmation is nominal or zero.

5. Present Value of Plan Payments versus Replacement Value of Collateral

Vita Craft's expert, Richard Ong, testified at the confirmation hearing that the present value of the Class 2A (Land) payments under the Second Amended Plan is \$468,750.¹⁶⁵ Vita Craft has also made \$31,251 in adequate-protection payments that must be credited toward BMO's secured claim.¹⁶⁶ Because the sum of these

¹⁶³ See ECF 238 ¶ 22.

¹⁶⁴ See Ex. 25 at 16.

¹⁶⁵ See also Ex. 19.

¹⁶⁶ See 3 *Collier on Bankruptcy* ¶ 361.03[2][a] (Richard Levin & Henry J. Sommer eds., 16th ed.) (“[T]he better approach, adopted by most courts, is to credit the payments against the secured claim rather than the unsecured claim.”); cf. ECF

two amounts (\$500,001) exceeds the \$488,000 as-is replacement value of the Land, Class 2A of the Second Amended Plan satisfies §§ 1129(a)(7)(B) and (b)(2)(A)(i).

Ong also testified that the present value of the Class 2B (Building and Equipment) payments under the Second Amended Plan is \$296,150.¹⁶⁷ Because this amount is equal to the sum of the \$100,000 replacement value of the Building and the \$196,150 replacement value of the Equipment, Class 2B satisfies §§ 1129(a)(7)(B) and (b)(2)(A)(i) as well.

Because Classes 2A and 2B of the Second Amended Plan satisfy §§ 1129(a)(7)(B) and (b)(2)(A)(i),¹⁶⁸ the Court will overrule BMO's first objection to confirmation.

B. Subsection (a)(11): Liquidation or Further Reorganization

Next, BMO argues that the Second Amended Plan is not feasible. “Feasibility” is the shorthand term for § 1129(a)(11), *see F.H. Partners, L.P. v. Inv. Co. of the Sw. (In re Inv. Co. of the Sw., 341 B.R. 298, 310 (B.A.P. 10th Cir. 2006)*, which requires a court to find that confirmation of the plan “is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.” 11 U.S.C. § 1129(a)(11). The purpose of

191 ¶ 1 (“The Court takes note that from the filing of the petition the bank is adequately protected.”).

¹⁶⁷ *See also* Ex. 19.

¹⁶⁸ BMO does not challenge the amount of the monthly payments it is to receive under Class 2C.

§ 1129(a)(11) is “to prevent confirmation of visionary schemes which promise[] creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.” *Travelers Ins. Co. v. Pikes Peak Water Co.* (*In re Pikes Peak Water Co.*), 779 F.2d 1456, 1460 (10th Cir. 1985) (quoting *Pizza of Hawaii, Inc. v. Shakey’s, Inc.* (*In re Pizza of Hawaii, Inc.*), 761 F.2d 1374, 1382 (9th Cir. 1985)). “In determining whether a plan is feasible, the bankruptcy court has an obligation to scrutinize the plan carefully to determine whether it offers a reasonable prospect of success and is workable.” *Id.* (quoting *Prudential Ins. Co. of Am. v. Monnier* (*In re Monnier Bros.*), 755 F.2d 1336, 1341 (8th Cir. 1985)).

To support its assertion that the Second Amended Plan fails to comply with § 1129(a)(11), BMO argues (A) that the Second Amended Plan “is based upon unrealistic assumptions”; (B) that Vita Craft has not identified a replacement for the retirement-eligible Gary Martin; and (C) that the Second Amended Plan does not adequately explain what will happen when the Building reaches the end of its useful life.¹⁶⁹ However, as to (A), the Court awards no weight to Vita Craft’s performance following its initial shutdown and during the early months of the COVID-19 pandemic. While neither Fowler nor VCJ has contractually committed to buying any particular amount of Vita Craft product, the projections in the Second Amended Plan are conservative as compared to Vita Craft’s pre-initial-shutdown performance and consistent with its more recent numbers. As to (B), although no specific candidate has been selected to replace Martin, Imura testified that a

¹⁶⁹ See ECF 238 ¶¶ 25-27.

number of individuals on VCJ's management team are qualified to take Martin's place and could move to Kansas City to replace him. As to (C), the Second Amended Plan's statement that "a new building will need to be constructed or the land sold to retire the BMO scheduled payments" provides adequate explanation; if Vita Craft elects not to construct a new building after 15 years, its projections show sufficient cash and equity in the Land at that time to pay off its remaining debt to BMO.

The Court finds the testimony of Martin and Imura determinative as to feasibility. Martin has been with the company for 27 years; Imura, even longer. Both credibly testified that Vita Craft can meet the projections set out in the Second Amended Plan. This testimony, combined with Vita Craft's past performance and flawless payment history, satisfies § 1129(a)(11). The Court will therefore overrule BMO's second objection to confirmation.

C. Subsection (a)(3): Good Faith

Finally, BMO argues that the Second Amended Plan fails to comply with § 1129(a)(3), which requires that a Chapter 11 plan be "proposed in good faith and not by any means forbidden by law." "In finding a lack of good faith, courts have looked to whether the debtor intended to abuse the judicial process and the purposes of the reorganization provisions." *In re Pikes Peak Water Co.*, 779 F.2d at 1460 (citation omitted). "[T]he test of good faith under § 1129(a)(3) focuses on whether a plan is likely to achieve its goals and whether those goals are consistent with the Code's purposes." *In re Paige*, 685 F.3d at 1179.

BMO argues that Vita Craft’s Second Amended Plan was not proposed in good faith because (A) “The Amended Plan directly contradicts the Court’s findings with regards to value of the Real Estate”; (B) “The Amended Plan provides vague and inappropriate reference to allowing the reorganized Debtor to file further and future motions to re-litigate the value of BMO’s collateral post-confirmation”; (C) “The Amended Plan appears to inappropriately propose to allow the reorganized Debtor to sell any assets for any price (subject to liens) without notice to the secured creditors or an opportunity to protect their rights granted under the Plan”; (D) “The Second Amended Plan proposes to commence payments ‘following 90 days after the Effective Date,’ or 115 days after confirmation. This is unreasonable”; and (E) There is no basis for the projections in Exhibit A of the Second Amended Plan.”¹⁷⁰

However, as to (A), there is no contradiction. *See supra* pp. 42-46. As to (B), the provision cited by BMO serves to appoint a representative of Vita Craft’s bankruptcy estate; any actions taken by the reorganized debtor will be subject to the Bankruptcy Code and otherwise-applicable principles of *res judicata*. As to (C), BMO does not explain why its liens would not adequately protect its interests in Vita Craft’s assets. As to (D), Vita Craft has agreed to commence payments after 60 days rather than 90.¹⁷¹ And as to (E), Vita Craft has established by a

¹⁷⁰ ECF 238 ¶ 30. While BMO also argues that the Second Amended Plan “should provide for immediate remedies in the event of default,” *id.* at ¶ 17, it points to no provision of the Bankruptcy Code that would require such a provision.

¹⁷¹ *See* Hearing Tr. 375, Nov. 2, 2021, ECF 259.

preponderance of the evidence that the Second Amended Plan is feasible. *See supra* pp. 48-50.

Finally, as to whether Vita Craft’s plan is consistent with the purposes of the Bankruptcy Code, the Court finds the prior testimony of Gary Martin and Garry Fowler illustrative. At the stay-relief hearing, Martin testified that Vita Craft shut down completely after BMO declined to renew its large revolving note when it matured on June 30, 2019. However, said Martin, there was so much customer demand for Vita Craft’s cookware that it resumed production on a limited basis after only three weeks. Martin explained that although his intent had been to “wind down” the company, customers still wanted Vita Craft cookware:

[T]he demand did not go away. We kept getting more orders and we kept getting more requests: “Can you do more?” “Can you do more?” And I had all kinds of people that called me and it was—it was very heart warming. So we started to look at saying, okay, well, maybe 90 days is not enough time. Maybe we just need – need to keep going. We need – you know, let’s – let’s find out, you know, what can we do.

...

[W]hen I talk with our distributors and customers, the concern was, you know: Are you going to be there? Are you going to survive? Can you reorganize? We loved your cookware. I can’t find anything any better.

They could all leave. You could go buy cookware anywhere from anybody practically, but not the kind of cookware I make, not to that quality. They all could have left but they—there’s—they’re staying with it. You call it loyalty. You call it brand loyalty.¹⁷²

¹⁷² ECF 175 at 19.

Fowler's statements echoed those of Martin. According to Fowler:

I've been in the industry for 50 years. I've sold product by four different manufacturers. The Vita Craft product is by far the best product I've sold from all those manufacturers. . . . [S]ince July of last year, Gary Martin and the staff of Vita Craft have reaffirmed their commitment to Vita Craft and the Vita Craft customers of which I'm one. What they've done – been able to do over the last 13 months with very little money and no support whatsoever but they fought to survive and maintain the commitments that they've made to me as a customer was a very crucial factor to having confidence that with a little support this company could continue on and rebound and resurrect itself.¹⁷³

All of the evidence before this Court suggests that the goal of the Second Amended Plan is to restructure Vita Craft's debt so that Vita Craft can continue its nearly-80-year history of producing top-quality cookware in Shawnee, Kansas. That goal, which Vita Craft appears likely to achieve, *see supra* p. 50, is perfectly consistent with—if not the embodiment of—the purposes of the Bankruptcy Code. Because the Second Amended Plan therefore satisfies § 1129(a)(3), the Court will overrule BMO's third objection to confirmation.

IV. CONCLUSION

For all of the foregoing reasons, the Court hereby overrules BMO's objection to confirmation of the Second Amended Plan. Vita Craft is hereby directed to submit a revised proposed confirmation order that is consistent with the provisions of this order.

¹⁷³ ECF 175 at 21.

IT IS SO ORDERED.

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