


SO ORDERED.

SIGNED this 23rd day of March, 2020.




LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:)	
)	Chapter 11
)	
AJEM Hospitality, LLC)	Case No. 20-80003
d/b/a Al's Burger Shack, et. al.. ¹)	(Jointly Administered)
)	
Debtors.)	
)	

ORDER

GRANTING CONSENT MOTION OF BANKRUPTCY ADMINISTRATOR PURSUANT TO 11 U.S.C. § 1183(b)(2) TO REQUIRE SUBCHAPTER V TRUSTEE TO PERFORM CERTAIN DUTIES SPECIFIED IN 11 U.S.C. §§ 1106(a)(3) and (4)

THIS MATTER came before the Court on the Bankruptcy Administrator's motion to require the appointed subchapter V trustee (the "Trustee") to perform expanded duties specified in §§ 1106(a)(3) and (a)(4).² The Debtors and the Trustee consent to the relief requested in the motion.

The Debtors filed cases under Chapter 11 of the Bankruptcy Code on January 3, 2020 and the Court entered an order jointly administering the cases on January 10, 2020 (Docket No. 34). The Debtors filed amended petitions on February 19, 2020, re-designating the cases as subchapter V small business cases.³ On the same

¹ The Debtors in this case, along with each Debtor's case number, are: (i) AJEM Hospitality, LLC d/b/a Al's Burger Shack, Case No. 20-80003 (ii) Southern Village Shack, LLC d/b/a Al's Burger Shack, Case No. 20-80004; and (iii) Governors Club Shack, LLC d/b/a Al's Burger Shack, Case No. 20-80005.

² All citations to statutory sections refer to Title 11, United States Code, unless otherwise indicated.

³ On August 23, 2019, the President signed the Small Business Reorganization Act of 2019 (the "SBRA"). The SBRA became effective on February 19, 2020.

day, the Bankruptcy Administrator appointed the subchapter V trustee, Brian Anderson, Esq. On March 3, 2020, the Court timely held the § 1188 status conference at which the parties discussed the potential issue of intercompany claims, and the accompanying need for the Trustee or another independent third party to conduct an inquiry into any such claims. On March 17, 2020, the Bankruptcy Administrator filed the instant consent motion to expand the Trustee's duties under § 1183(b)(2) and thereby allow him to conduct such an inquiry.

The duties of a subchapter V trustee are described in § 1183(b) and closely mirror those of a chapter 12 trustee. As in § 1202(b)(2), the operative statute on which it is based, § 1183(b)(2), allows for expansion of a subchapter V trustee's duties:

The trustee shall –

(2) perform the duties specified in paragraphs (3), (4), and (7) of section 1106(a) of this title, if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;

11 U.S.C. § 1183(b)(2).

The Bankruptcy Administrator requests an expansion of the Trustee's duties to encompass §§ 1106(a)(3) and (4),⁴ which provide that a trustee shall:

(3) except to the extent that the court orders otherwise, investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(4) as soon as practicable—

(A) file a statement of any investigation conducted under paragraph (3) of this subsection, including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate;

11 U.S.C. §§ 1106(a)(3), (4).

⁴ The Bankruptcy Administrator did not request that the Trustee perform the duties described in § 1106(a)(7), which requires a trustee, "after confirmation of a plan, [to] file such reports as are necessary or as the court orders." Absent such a request, and given the present circumstances of the Debtors' bankruptcy cases, the Court declines to find such reports to be necessary at this time.

The Bankruptcy Administrator, with the consent of the Trustee and the Debtors, seeks only a narrow expansion of the Trustee's duties, specifically limited to investigating potential intercompany claims. The language of subparagraph (3) specifically allows the Court to limit the scope of an investigation "to the extent that the court orders ..." 11 U.S.C. § 1106(a)(3); *see also* 8 COLLIER ON BANKRUPTCY ¶ 1183.03 (16th ed. 2020) (describing requirement of trustee to investigate, "except to the extent limited by an order of the court"). This discretion to limit the scope of a trustee's investigation is well supported in chapter 11 and chapter 12 caselaw as well. *See, e.g., Gordon Props., LLC v. First Owners' Ass'n of Forty Six Hundred Condominium (In re Gordon Props., LLC)*, 514 B.R. 449, 458 (Bankr. E.D. Va. 2013) (finding § 1106(a)(3) "give[s] the court broad discretion in ordering an investigation and in setting the parameters" of that investigation); *In re Mirant Corp.*, No. 03-46590, 2004 WL 2983945, at *2 (Bankr. N.D. Tex. Sept. 1, 2004) (finding trustee authorized by § 1106(a)(3) to investigate "subject to limit set by the court"); *In re Gross*, 121 B.R. 587, 591 (Bankr. D.S.D. 1990) ("The court has latitude in ordering the goals of a section 1106(a)(3) investigation."). This Court has the discretion, therefore, to limit the scope of the Trustee's investigation to intercompany claims.

Based on the representations in the motion, the consent of the Debtors and the Trustee, and the full record in these bankruptcy cases, IT IS HEREBY ORDERED that the Bankruptcy Administrator's motion is granted. The Trustee is directed to conduct a limited investigation pursuant to § 1106(a)(3) to review and analyze intercompany claims and to file a statement summarizing this review with the Court, pursuant to § 1106(a)(4). This Order is without prejudice to the right of the Bankruptcy Administrator, the Trustee, or other party in interest, to request additional expansion of the Trustee's duties under § 1183(b)(2).

END OF DOCUMENT

PARTIES TO BE SERVED

AJEM Hospitality, LLC
516 W. Franklin St.
Chapel Hill, NC 27516

J. P. Cournoyer via electronic service
Brian R. Anderson via electronic service
Kerry Marie Boehm via electronic service
Walter W. Pitt, Jr. via electronic service
US Bankruptcy Administrator via electronic service