

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re	)	
TIJUANA FLATS RESTAURANTS, LLC, <i>et al</i> , <sup>1</sup>	)	Case Nos. 3:24-bk-1122-BAJ and 3:24-bk-1128-BAJ
Debtors.	)	Chapter 11
	)	Jointly Administered Under
_____	)	Case No. 3:24-bk-1128-BAJ

**DEBTORS' EMERGENCY MOTION TO SUSPEND  
NOVEMBER 2024 NON-RESIDENTIAL REAL PROPERTY  
LEASE PAYMENTS DUE TO HURRICANE INTERRUPTION**

Debtors, Tijuana Flats #176, LLC and Tijuana Flats Restaurants, LLC (collectively, the “Debtors”), move the Court, pursuant to 11 U.S.C. § 105(a) for authority to suspend all non-residential real property lease payments for November 2024, due to the business interruption occasioned by Hurricane Milton, and in support of the motion state:

**Background**

1. On April 19, 2024 (the “Petition Date”), Tijuana Flats #176, LLC (“TJ 176”), filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

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<sup>1</sup> The Federal Employer Identification Number of Tijuana Flats Restaurants, LLC is 47-4472442. The principal address of the Debtor is 2300 Maitland Center Parkway, Suite 306, Maitland, Florida 32751.

2. Later that same morning, its parent, Tijuana Flats Restaurants, LLC (“Restaurants, LLC”), filed its voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.

3. The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. The Debtors own and operate 65 “Tijuana Flats” restaurants, the majority of which are located across Central Florida.

5. The restaurants all operate from leased locations. The aggregate monthly payment(s) required under the real property leases is approximately \$591,195, which is one of Debtors’ largest monthly operating expenses.

6. The Debtors arrived in this Chapter 11 case in severe financial distress due primarily to inflationary pressures which compressed profit margins and store profitability. Those same inflationary pressures affected the Debtors’ top line revenues as many customers could not afford even the low-cost casual dining experience offered by the Debtors.

7. Since filing their petitions, the Debtors have made significant improvement in sales, with average daily revenues now totaling \$221,293. In fact, the Debtors are poised to file their joint Chapter 11 plan of reorganization with the intention of exiting this Chapter 11 process by year-end.

8. Nature has thrown the Debtors a “curveball” however via Hurricane Milton. On October 5, 2024, Governor Ron DeSantis declared a state of emergency for thirty-five counties located across Central Florida (Executive Order 24-214), with

mandatory evacuations in a number of communities on Florida's West Coast. The state of emergency was enlarged to fifty-one counties on October 6, 2024 (Executive Order 24-215).

9. Hurricane Milton made landfall on October 9, 2024, devastating a wide swath of Central Florida. Among other things, the hurricane has caused wide-spread loss of power throughout the region, has interrupted the Debtors' supply chain and has severely impacted the Debtors' ability to operate its restaurants.

10. The Debtors were therefore forced to close the vast majority of their locations for 48 to 72 hours, with at least ten stores located at the center of the devastation still being shuttered.

11. As a result, the Debtors have suffered an unexpected loss of revenue in excess of \$665,000.<sup>2</sup> A substantial amount of perishable products have been lost due to power outages and will need to be replaced. Initial estimates place those losses at \$85,000. This loss comes on the heels of an unexpected loss of over \$250,000 in revenues only two weeks earlier due to Hurricane Helene. The Debtors will therefore have insufficient funds to pay November rents in a timely manner.

12. The Debtors are not presently making debt service payments on the secured debt, and cannot therefore look to a suspension of those payments to bridge the gap in revenue and expenses. The reduction in payments to U.S. Foods as a result of the store closures has provided some relief, but not enough. Emergency rent relief thus provides the only means by which Debtors can survive this unexpected business interruption.

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<sup>2</sup> Estimated. A number of stores remain closed. Damages are thus continuing to accrue.

13. Though the Debtors have not surveyed all of their leases, a large number of them contain *force majeure* clauses which permit the suspension of rent due to natural disasters. For example, the lease for Store No. 120 contains the following rent abatement provision:

**30. Excuse.** Neither Landlord nor Tenant shall be required to perform any term, condition, or covenant in this Lease so long as such performance is delayed or prevented by any acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of the Landlord or Tenant and which by the exercise of due diligence Landlord or Tenant is unable, wholly or in part, to prevent or overcome.

14. Other leases contain provisions excusing payment of lease obligations while repairs to damaged premises are being made.

15. To the extent any given lease does not contain such provisions, the Debtors believe that, the doctrine of impossibility of performance, coupled with the equitable powers under § 105(a), provides the requisite authority for the Court to grant the requested relief.

16. The Debtors fully intend to assume all remaining real property leases. The Debtors therefore propose that the suspended rent payments for November 2024 be included in the “cure” payments required to be made under the leases which have not yet been assumed, which cure payments are budgeted to begin in January 2025. The Debtors propose to pay the deferred November payments on the already assumed leases in six equal payments commencing January 15, 2025.

**Relief Requested**

17. By this motion, the Debtors seek authority to suspend all non-residential lease payments for November 2024 due to the unexpected business interruption occasioned by Hurricane Milton.

**Legal Authority**

18. Under Florida law, a *force majeure* clause excuses a party's non-performance due to extraordinary events such as a natural disaster:

A force majeure clause is a contractual provision that excuses a party's non-performance when extraordinary events that are beyond that party's control prevent the party from performing under the contract.

*Vereit Real Estate L. P. v. Fitness International, LLC*, 365 So.3d 442, 446 (Fla. 3<sup>rd</sup> DCA 2023).

19. A hurricane is an event that is certainly beyond the control of the Debtors, allowing the Debtors to invoke the *force majeure* provision of any of the leases which excuse performance due to a natural disaster, *See, e.g., Devco Dev. Corp. v. Hooker Homes, Inc.*, 518 So.2d 922, 923 (Fla. 2<sup>nd</sup> DCA 1987)(excessive rain excused delay under force majeure clause).

20. To the extent a given lease does not contain a *force majeure* clause, the doctrine of impossibility of performance provides the necessary authority to grant the requested relief. Under this doctrine, "a party is discharged from performing a contractual obligation which is impossible to perform and the party neither assumed the

risk of impossibility nor could have acted to prevent the event rendering the performance impossible.” *Marathon Sunsets, Inc. v. Coldiron*, 189 So.3d 235, 236 (Fla. 3<sup>rd</sup> DCA 2016).

21. Section 105(a) of the Bankruptcy Code also permits the Bankruptcy Court to enter any order necessary or appropriate to carry out the provisions of Title 11:

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. . . .

11 U.S.C. § 105(a).

22. While one could argue whether a hurricane was a foreseeable event, the combination of the impossibility of performance doctrine with the equitable powers afforded the Court under § 105(a) of the Bankruptcy Code certainly support the relief requested herein.

23. Without question, suspension of the lease payments for November, 2024 is in the best interest of creditors and the estate.

WHEREFORE, Debtors respectfully request the entry of an order (i) suspending all non-residential lease payments due November 2024 as provided herein, and (ii) granting such further relief as is deemed appropriate.

**THAMES | MARKEY**

*/s/ Richard R. Thames*

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