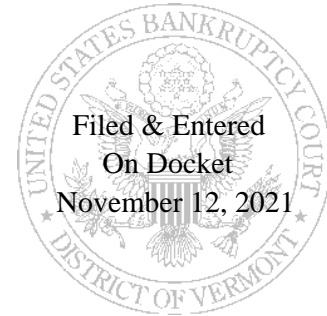


**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**



---

**In re:**

**Koffee Kup Bakery, Inc.,  
Putative Debtor.**

---

**Involuntary Case # 21-10168  
Chapter 7**

**ORDER**

**GRANTING IN PART PETITIONING CREDITORS' MOTION TO COMPEL  
AND DENYING PETITIONING CREDITORS' MOTION TO PRECLUDE**

The discovery dispute before the Court arises from the Petitioning Creditors' motion to compel and preclude (doc. # 74, the "Motion"), which they filed on November 10, 2021, seeking to compel the putative Debtor ("KKB") and Linda Sullivan, in her capacity as the KKB liquidating receiver ("Ms. Sullivan" or the "Dissolution Receiver") to produce the documents the Petitioning Creditors seek, by November 16, 2021. The Court held a hearing on the Motion on November 12, 2021, at which David N. Dunn, Esq., appeared for Ms. Sullivan, Alexandra E. Edelman, Esq., appeared for KKB and, on behalf of the Petitioning Creditors, Andrew Levin, Esq., Barbara R. Blackman, Esq., and David Reier, Esq., appeared on behalf of Lily Transportation Corp., John T. Carroll, III, Esq., appeared on behalf of Ryder Truck Rental, Inc., Tavian M. Mayer, Esq., appeared on behalf of Hillcrest Foods, Inc., and Timothy M. Netkovick, Esq., appeared on behalf of Bernardino's Bakery, Inc. Lisa M. Penpraze, Esq., of the Office of the United States Trustee, also appeared at the hearing, as an observer.

The Motion's request to compel, and to require production by November 16<sup>th</sup>, is consistent with this Court's Scheduling Order (doc. # 62, the "Scheduling Order"). However, the Motion is inconsistent with several subsequent developments in this case, including that (i) Ms. Sullivan only recently obtained the voluminous records related to KKB from the prior (foreclosure) receiver, (ii) those records comprise over 850 boxes, and (iii) she is still awaiting additional records and documents from the prior receiver. Moreover, Ms. Sullivan, through counsel, communicated to the Petitioning Creditors that she recognized the delay caused by these circumstances and proposed a compromise requiring her to act diligently while also protecting the Petitioning Creditors from prejudice that could result from the delay:

Because of these logistical problems [associated with the transfer of records from the prior receiver to Ms. Sullivan], the Dissolution Receiver has advised the Petitioning Creditors, through counsel, that she will be providing all responsive documents in her possession or control of which she has current knowledge by November 16, 2021, and also provide the Petitioning Creditors with access to all the documents in her possession and control. Counsel for the Dissolution Receiver has advised the Petitioning Creditors that the Dissolution Receiver may supplement disclosures after November 16, 2021, if she becomes aware of any additional responsive documents. Counsel for the Dissolution Receiver has advised the Petitioning Creditors that with respect to any post-November 16, 2021 production, the Dissolution Receiver understands that the Petitioning Creditors may be concerned that the timing of that production may be prejudicial to them. Counsel for the Dissolution Receiver suggested to Petitioning Creditors that if such an issue arises concerning prejudice and whether any documents produced post-November 16 could be used in the evidentiary proceeding should be resolved after the late production.

Doc. # 78, p. 2 (emphasis added). Instead of accepting this reasonable and equitable proposal, the Petitioning Creditors filed the Motion, asking the Court to enter an Order holding, in part, as follows:

[Ms. Sullivan]and [KKB] shall be precluded from offering any document or testimony regarding any issue that is covered by the requests ... unless all documents responsive to those requests have been produced on or before November 16, 2021, unless [Ms. Sullivan] or [KKB] demonstrates good cause for the failure to produce the document prior to November 16, 2021. [Ms. Sullivan's] or [KKB's] failure to obtain, review and produce responsive documents prior to the November 16, 2021 date of production shall not be good cause, regardless of the reason for their failure to do so.

Doc. # 77, p. 2 ¶ 5 (emphasis added). The Petitioning Creditors offer no explanation or rationale for such draconian relief.

After considering the factual and legal arguments the parties set forth in their filings and on the record at the November 12<sup>th</sup> hearing, THE COURT FINDS Ms. Sullivan and KKB have presented compelling arguments with respect to the proper scope and conduct of discovery, under the unique facts, circumstances, and fast-track litigation schedule in this case. THE COURT FURTHER FINDS the Petitioning Creditors have failed to demonstrate why the Motion was necessary or appropriate, under the unique facts and circumstances of this case, notwithstanding the expedited schedule.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Motion is granted only to the extent it seeks an Order compelling Ms. Sullivan and KKB to comply with the Scheduling Order by producing all known responsive documents, records and information they have in their possession and control, by November 16, 2021.
2. The Motion is denied to the extent it seeks a broader order to compel and is denied entirely with respect to the preclusion the Petitioning Creditors seek in both their Motion and proposed order.

**IT IS FURTHER ORDERED** that

3. With respect to production: KKB and Ms. Sullivan are, as their attorneys acknowledged at the November 12<sup>th</sup> hearing, under an ongoing duty to disclose and produce any responsive documents, records or information they find, as they find them, in their continuing review of documents, records,

and information that come into their possession and control, and as they find such documents, records, and information on their review of materials already in their possession and control.

4. With respect to preclusion:


- (a) To the extent the Petitioning Creditors believe, in good faith, that any document, record, email or other information which KKB or Ms. Sullivan produced to them after the November 16, 2021 deadline is probative of the issues to be tried, its late disclosure has caused them to suffer prejudice, and they are unable to reach a mutually acceptable approach for dealing with that new disclosure, the Petitioning Creditors shall bring that to the Court's attention, **by December 13, 2021**. (In the interest of judicial efficiency, the Court advises all parties who need to raise objections to late production of documents or a motion to preclude to do so in a single motion rather than an individual motion for each such document.)
- (b) If the Petitioning Creditors choose to decline the offer Ms. Sullivan and KKB have made to allow the Petitioning Creditors the opportunity to review all documents, records, and information in the custody and possession of Ms. Sullivan or KKB (the "Core Materials") and the Petitioning Creditors subsequently object to the introduction of a late produced document, which they could have had if they had chosen to review the Core Materials, then the Court will consider those circumstances in determining whether to preclude introduction of that document.

In order to enable Ms. Sullivan to meet her obligations under the Scheduling Order and this Order, and to expedite the efficient administration of this case, **IT IS FURTHER ORDERED** that

5. Mr. Teplitsky, in his capacity as the KeyBank receiver, shall deliver all materials, records and documents in his control and possession, which relate to KKB, to Ms. Sullivan as soon as possible, and Ms. Sullivan shall promptly serve a copy of this Order on Mr. Teplitsky and his counsel to inform him of this obligation.
6. All parties are to move forward in good faith, and in recognition of the benefits of avoiding unnecessary litigation disputes in order to preserve estate assets and maximize the distribution to creditors.

**SO ORDERED.**

November 12, 2021  
Burlington, Vermont

  
\_\_\_\_\_  
Colleen A. Brown  
United States Bankruptcy Judge