

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

S.M.F. GROUP INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 26-11893 (SAB)

(Jointly Administered)

BRASSERIE 57 LLC, BROADWAY
HOSPITALITY VENTURE, LLC,
BROOKLYN DINER USA, L.P., CAFE
CONCEPTS (WASHINGTON DC), LLC,
CIELI PARTNERS, L.P., EBBETS FIELD
VENTURE, LLC, FIORELLO'S ROMAN
CAFE, INC., ITALIAN CAFE CONCEPTS,
LLC, RED EYE GRILL, L.P., and THE FINER
DINER, LLC,

Plaintiffs,

v.

AMERICAN EXPRESS TRAVEL RELATED
SERVICES COMPANY, INC., TOAST, INC.,
STRIPE, INC., and STRIPE PAYMENTS
COMPANY,

Defendants.

Adv. Proc. No. 26-01077 (SAB)

**TEMPORARY RESTRAINING ORDER
DIRECTED TO DEFENDANT TOAST, INC.**

Upon the motion, dated August 10, 2026 (ECF No. 2, the "Motion for Preliminary Injunction and Temporary Restraining Order"), of Plaintiffs Brasserie 57 LLC, Broadway Hospitality Venture, LLC, Brooklyn Diner USA, L.P., Cafe Concepts (Washington DC), LLC,

¹ The Debtors and the last four digits of their federal tax identification numbers are: (1) S.M.F. Group Inc. (1726); (2) 57th Street Hospitality Partners, LLC (2026); (3) Brasserie 57 LLC (6251); (4) Broadway Hospitality Venture, LLC (5541); (5) Brooklyn Diner USA, Inc. (1194); (6) Brooklyn Diner USA, L.P. (9292); (7) Cafe Concepts (Washington DC), LLC (3827); (8) Cieli Partners, L.P. (7771); (9) Ebbets Field Venture, LLC (9637); (10) Ebbets Field Venture II, LLC (2344); (11) Fireman Hospitality Card LLC (4763); (12) Fiorello's Roman Cafe, Inc. (2519); (13) Italian Cafe Concepts, LLC (3784); (14) Red Eye/Brooklyn Associates, L.P. (9293); (15) Red Eye Grill, Inc. (1189); (16) Red Eye Grill, L.P. (9291); (17) SFAP Group, LLC (9152); (18) Shelny, LLC (1859); (19) SMJ Group, Inc. (1191); (20) SMJ Group, L.L.C. (3319); (21) The Finer Diner, LLC (1940); and (22) The Fireman Group Cafe Concepts, Inc. (5919). The Debtors' mailing address is 810 Seventh Avenue, Suite 615, New York, NY 10019.

Cieli Partners, L.P., Ebbets Field Venture, LLC, Fiorello's Roman Cafe, Inc., Italian Cafe Concepts, LLC, Red Eye Grill, L.P., and The Finer Diner, LLC, debtors and debtors in possession in the above-captioned, jointly administered chapter 11 cases (the "Bankruptcy Cases") (each a "Plaintiff" and collectively, "Plaintiffs"), for entry of an order pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) compelling, *inter alia*, Defendant Toast, Inc. ("Toast") to immediately surrender, turn over, and pay to the applicable Plaintiff(s) all funds constituting property of that Plaintiff's estate currently held, withheld, or otherwise in the possession, custody, or control of Toast on account of credit or charge card transactions processed for that Plaintiff's restaurant(s), including without limitation the amounts identified in Exhibit A to the Complaint; (ii) compelling Toast to make timely payment and turnover to the applicable Plaintiff(s), in the ordinary course and consistent with the terms of the applicable merchant or processing agreement, of any and all additional funds that come into its possession, custody, or control on account of such Plaintiff's card transactions from and after the date of the order, without withholding, diverting, or delaying on account of any claim asserted by any funder or other third party; and (iii) restraining Toast, and its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with it, from withholding, transferring, disbursing, encumbering, or otherwise disposing of any such funds to any person or entity other than the applicable Plaintiff, pending the final disposition of this adversary proceeding, other than in accordance with the applicable merchant or processing agreement and this Court's orders; this Court having jurisdiction to decide the Motion for Preliminary Injunction and Temporary Restraining Order and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); due and sufficient notice of the Motion

for Preliminary Injunction and Temporary Restraining Order having been given under the circumstances, and no other or further notice being required; this Court having reviewed the Complaint (ECF No. 1) and the Motion for Preliminary Injunction and Temporary Restraining Order; the Court having held hearings on the Motion for Preliminary Injunction and Temporary Restraining Order on August 11, 2026, and August 19, 2026 (collectively, “the Hearings”), and upon the record of the Hearings; after due deliberation, this Court having determined that the legal and factual bases set forth in the Complaint, the Motion for Preliminary Injunction and Temporary Restraining Order, and the record of the Hearings establish just cause for the relief granted herein; and upon the agreement and with the consent of Toast to such relief on the terms herein;

NOW, THEREFORE, this Court FINDS AND CONCLUDES as follows:

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

C. Plaintiffs have demonstrated sufficiently serious questions going to the merits of their claims for turnover under 11 U.S.C. § 542(a), because the withheld funds may constitute matured debts owed by Toast to one or more Debtors, may not be subject to any valid right of setoff under 11 U.S.C. § 553, and Debtors have shown that Toast has possession, custody, or control of such funds.

D. Plaintiffs have demonstrated that, absent the relief granted herein, they will suffer immediate and irreparable harm. The resumption of timely ordinary-course settlement and remittance going forward is essential to Plaintiffs’ ability to continue meeting payroll obligations and preserving jobs for their more than 800 employees, and is necessary to ensure that the Bankruptcy Cases do not fail at the outset.

E. The balance of the equities sharply favors Plaintiffs.

F. The entry of this Order preserves property of the Debtors' estates for orderly administration under the Bankruptcy Code and prevents circumvention of the automatic stay imposed by 11 U.S.C. § 362(a) and is therefore not contrary to the public interest.

Based on the foregoing findings and conclusions,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein as to Defendant Toast and is otherwise denied without prejudice to further application for relief.

2. Restraint on Third-Party Diversion. Toast and its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with it, are hereby temporarily restrained and enjoined, for a period fourteen (14) days from the date of this Order (which period may be renewed and extended by further Order of Court) from withholding, transferring, disbursing, encumbering, or otherwise disposing the Withheld Amounts, as defined in the Complaint (the balance of which Toast reports to be in the current amount of \$1,985,258.53) to any person or entity other than the applicable Plaintiff, pending further order of this Court, except in accordance with the applicable merchant or processing agreement and the express terms of this Order.

3. No Waiver of Third-Party Claims. Nothing in this Order shall be construed as a determination of the validity, priority, extent, or amount of any lien, security interest, assignment, or other claim asserted by any merchant cash advance funder or other third party against the Debtors, the Debtors' estates, or the funds turned over pursuant to this Order. Any such claim shall be asserted, if at all, through the applicable claims process in the Bankruptcy Cases, through a properly noticed motion for relief from the automatic stay, or through an adversary proceeding to determine the validity, priority, or extent of a lien pursuant to Bankruptcy Rule 7001(b), and shall

attach, if at all, only to the extent of any distribution to which the applicable Debtor's estate would otherwise be entitled, subject to further order of this Court.

4. No Bond Required. Plaintiffs shall not be required to post any bond or other security in connection with the preliminary injunction granted herein.

5. This Order shall take effect immediately upon entry.

6. Nothing in this Order shall affect, limit or abrogate the automatic stay under 11 U.S.C. § 362(a).

7. Plaintiffs are authorized to take all steps necessary or appropriate to carry out the terms of this Order, including serving a copy of this Order on Toast.

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

Date: August 25, 2026
New York, New York

/s/ Shireen A. Barday

HONORABLE SHIREEN A. BARDAY
UNITED STATES BANKRUPTCY JUDGE