No. 25A

IN THE

Supreme Court of the United States

SVENHARD'S SWEDISH BAKERY,

Applicant,

v.

BAKERY AND CONFECTIONARY UNION AND INDUSTRY INTERNATIONAL PENSION FUND,

Respondent.

ON APPLICATION FOR AN EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPLICATION TO EXTEND TIME FOR FILING PETITION FOR WRIT OF CERTIORARI

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Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Applicant Svenhard's Swedish Bakery certifies that it has no parent company and no publicly held corporation owns ten percent or more of its stock.

Application to Extend Time for Filing Petition for Writ of Certiorari

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to this Court's Rule 13.5, Applicant Svenhard's Swedish Bakery ("Svenhard's") respectfully requests that the time to file a petition for writ of certiorari in this case be extended by 42 days, up to and including March 25, 2026. The U.S. Court of Appeals for the Ninth Circuit issued its opinion on September 12, 2025 (App. 1a-14a) and denied Svenhard's timely petition for rehearing on November 13, 2025 (App. 15a). Absent an extension of time, the petition for writ of certiorari would be due on February 11, 2026. Svenhard's is filing this Application more than ten days before that due date. *See* S. Ct. R. 13.5. This Court would have jurisdiction under 28 U.S.C. 1254(1). Respondent Bakery and Confectionary Union and Industry International Pension Fund takes no position on this request.

Introduction

This case concerns the correct interpretation of a federal bankruptcy statute.

Subject to the bankruptcy court's approval, debtors in Chapter 11 bankruptcy may generally assume and assign executory contracts that pre-date the bankruptcy petition. 11 U.S.C. § 365(a), (f). One exception to that rule is that a debtor may not assume "a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor[.]" 11 U.S.C. § 365(c)(2). The question raised by this case is whether Section 365(c)(2) precludes Chapter 11 debtors from assuming pre-petition contracts that require no extension of new credit, money, property, or financing of any kind to the debtor post-bankruptcy.

Background

Svenhard's was a California bakery that produced and sold Swedish pastries. Svenhard's participated in the Bakery and Confectionary Union and Industry International Pension Fund (the "Fund"), which required it to make employee pension contributions.

Svenhard's encountered financial difficulties and stopped contributing to the Fund. The Fund notified Svenhard's that it had effected a withdrawal and was therefore subject to two liabilities: (1) an ERISA withdrawal liability of over $38 million, and (2) a delinquent contribution liability of nearly $515,000 for severance pay and accrued vacation for laid off employees.

Svenhard's had limited assets, most of which were already pledged to other creditors. Svenhard's informed the Fund that it was unable to pay the amounts demanded and instead offered to pay reduced sums. The Fund analyzed Svenhard's financial information and concluded that asserting its full claim would cause secured creditors to assert their rights to Svenhard's assets, leaving little to nothing for the Fund. Consequently, the Fund and Svenhard's entered into a settlement agreement to resolve their dispute (the "Settlement Agreement").

Under the Settlement Agreement, Svenhard's agreed to pay the Fund a total of $3 million (in monthly installments) for the ERISA withdrawal liability, and approximately $600,000 plus interest for the contribution liability. If Svenhard's failed to make any required installment payment, the Fund could declare a default, and if the default was not cured within five business days, the Fund would have the option to declare as due the full unpaid withdrawal and contribution liability.

Svenhard's began performing its contractual obligations in June 2019. By November 2019, Svenhard's ceased all operations. Svenhard's failed to make the installment payment due in December, and the Fund declared a default. On December 19, 2019, prior to the expiration of the cure period under the Settlement Agreement, Svenhard's filed a voluntary petition for Chapter 11 bankruptcy.

As part of the bankruptcy proceedings, Svenhard's moved the court to assume and assign the Settlement Agreement pursuant to Section 365(a), which provides that a debtor may assume any "executory contract" and assign the debtor's rights and obligations under that contract to another person or entity. *See* 11 U.S.C. § 365(a), (f).[1] The bankruptcy court denied Svenhard's motion, concluding the Settlement Agreement was not an executory contract. The Ninth Circuit did not address whether the Settlement Agreement was an executory contract but affirmed on the ground that, even if the Settlement Agreement was executory, it constitutes a "financial accommodation," assumption of which is prohibited by Section 365(c)(2). *See* 11 U.S.C. § 365(c)(2) (prohibiting assumption of "a contract to make a loan, or extend

[1] Svenhard's did so based on the outcome of a mediation which resulted in a comprehensive agreement that would resolve the bankruptcy by providing a return to unsecured creditors and payment in full of the amounts to which the Fund had agreed in the Settlement Agreement. The mediated agreement was conditioned on Svenhard's ability to obtain the bankruptcy court's permission to assume and assign the Settlement Agreement.

other debt financing or financial accommodations, to or for the benefit of the debtor[.]").

Reasons for Granting an Extension

The time for filing a petition for a writ of certiorari in this case should be extended for the following reasons:

1. Svenhard's requires additional time to prepare and submit its petition for writ of certiorari because it was unable to begin that work until after it consulted other parties in interest.

Under the global mediated agreement, the proposed assumption of the Settlement Agreement by Svenhard's was coupled with assignment to a third party, United States Bakery, who would be responsible for curing the default and timely paying the remaining payments due under the Settlement Agreement. Svenhard's had to consult with United States Bakery to confirm that it remained committed to the Settlement Agreement payment obligations if the bankruptcy court's decision is reversed and Svenhard's is permitted to assume and assign the Settlement Agreement. Additionally, Svenhard's consulted with the Creditors' Committee appointed in the bankruptcy proceeding to determine whether expending bankruptcy estate assets to pursue a petition for a writ of certiorari would be advisable.

2. Svenhard's Counsel of Record, Derrick Talerico, has numerous competing deadlines leading up to the current due date of the petition: (1) pre-trial briefing on central legal issues in *Miller v. Green*, Case No. 5:24-cv-03655-EJD before the United States District Court for the Eastern District of California; (2) the filing and first-day motions in the bankruptcy case *C.D.S. Moving Equipment, Inc.*, Case No. 2:25-bk-21646-WB before the Bankruptcy Court for the Central District of California; and (3) the negotiation and drafting of a settlement agreement and plan of reorganization in the multi-debtor jointly administered bankruptcy case of *Seaton Investments, Inc. et al.*, Case No.2:24-bk-12079-VZ before the Bankruptcy Court for the Central District of California.

3. The Ninth Circuit reached an erroneous decision on an important question of bankruptcy law. Consequently, there is a substantial prospect that this Court will grant certiorari and reverse.

The Ninth Circuit's decision—expanding the reach of Section 365(c)(2) to a contract that does not require the issuance of new financing of any kind to the debtor post-bankruptcy and indeed requires the *debtor* to pay a creditor amounts negotiated prior to bankruptcy— is wrong on the merits. First, it is contrary to available

legislative history, which shows that Congress enacted Section 365(c)(2) to prevent debtors from seeking to assume and enforce pre-bankruptcy agreements that would require creditors to issue *new* financing (*i.e.*, new credit, funds, or other financing instruments) to debtors after they have filed for bankruptcy. *See In re TS Indus., Inc.*, 117 B.R. 682, 686 (Bankr. D. Utah 1990) (describing applicable legislative history, including Senate testimony regarding the need to "preclude the preposterous situation of lending institutions being required to make loans to a bankrupt"). Second, it conflicts with rulings by the Seventh and Eleventh Circuits, as well as numerous bankruptcy courts, which have held that Section 365(c)(2) must be narrowly construed to guard against requiring the post-petition extension of money or credit to a debtor in bankruptcy. *See*, *e.g.*, *In re Thomas B. Hamilton Co., Inc.*, 969 F.2d 1013, 1014 (11th Cir. 1992) (collecting authorities and holding that "'financial accommodations' should be construed to mean 'the extension of money or credit to accommodate another'"); *In re United Airlines, Inc.*, 368 F.3d 720, 723 (7th Cir. 2004) ("Section 365(c)(2) prevents the assumption of a loan commitment or equivalent promise because the cost of future credit [to the debtor] depends on the probability of repayment, and bankruptcy reveals that the risk of nonpayment [by the debtor] is higher than the would-be creditor likely assumed."); *In re TS Indus., Inc.*, 117 B.R. 682, 686 (Bankr. D. Utah 1990) ("[I]t is clear that Congress intended to protect creditors who have entered into prepetition agreements to extend financial accommodations to a debtor from being required to extend money or accommodations to it post-petition if the contract that it entered into was totally or partially unperformed when the debtor filed bankruptcy."); *In re Jonesboro Tractor Sales, Inc.*, 619 B.R. 223, 233 (Bankr. E.D. Ark. 2020) ("[B]ecause [non-debtor] is not required to extend financing to the Debtor, the Dealership Agreement is in line with the purpose of Section 365(c)(2), which is to prevent a trustee from requiring new advances of money from a creditor. [Non-debtor] does not need the protections of Section 365(c)(2) because it is not required to advance new money to the Debtor."). The Ninth Circuit's ruling cannot be reconciled with those precedents.

The Ninth Circuit's decision will also have severe repercussions on Chapter 11 debtors' ability to reorganize. The purpose of Section 365(a) is to facilitate reorganization by giving a debtor the option to assume pre-bankruptcy contracts where performance by the non-bankrupt party would benefit the bankruptcy estate, and reject contracts where continued performance by the debtor would not. As noted, the Ninth Circuit ruled that Section 365(c)(2) precludes debtors from assuming contracts entered into before bankruptcy, even if those contracts do not require any extension of new credit, money, property, or financing of any kind to the debtor post-bankruptcy. Under the Ninth Circuit's ruling, countless commercial agreements may

now qualify as "financial accommodations" that cannot be assumed in bankruptcy, effectively allowing the narrow exception contemplated by Congress in Section 365(c)(2) to swallow the general rule and broader policy espoused in Section 365(a).

Conclusion

For the foregoing reasons, Svenhard's respectfully requests that the time to file the petition for a writ of certiorari in this matter be extended by 42 days, up to and including March 25, 2026.

Respectfully submitted,

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APPENDIX

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: SVENHARD'S SWEDISH BAKERY, *Debtor*.	No. 23-60045 BAP No. 23-1001
SVENHARD'S SWEDISH BAKERY, *Appellant*, v. BAKERY AND CONFECTIONARY UNION AND INDUSTRY INTERNATIONAL PENSION FUND, *Appellee*.	OPINION

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Gan, Lafferty III, and Brand, Bankruptcy Judges, Presiding

Argued and Submitted May 20, 2025
San Francisco, California

Filed September 12, 2025

Before: Marsha S. Berzon, Michelle T. Friedland, and Salvador Mendoza, Jr., Circuit Judges.

Per Curiam Opinion

SUMMARY*

Bankruptcy

The panel affirmed, on a different ground, the Bankruptcy Appellate Panel's decision affirming the bankruptcy court's order denying Chapter 11 debtor in possession Svenhard's Swedish Bakery's motion to assume and assign a contract.

The bankruptcy court denied the motion because the contract was not "executory" within the meaning of 11 U.S.C. § 365(a) and, in the alternative, because the contract was a "financial accommodation" and therefore not assumable or assignable under § 365(c)(2). The Bankruptcy Appellate Panel affirmed on the first ground, leaving the second undecided.

The panel affirmed on the second ground, holding that the contract was a financial accommodation and therefore not assumable or assignable. The contract was a settlement agreement between Svenhard, a commercial bakery that had sold its business to United States Bakery and had closed one

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

of its facilities, and the Bakery and Confectionary Union and Industry International Pension Fund. The Pension Fund asserted that, under the Employee Retirement Income Security Act, Svenhard was subject to withdrawal liability and delinquent-contribution liability. Under § 365(c)(2), a debtor in possession is prohibited from assuming or assigning any contract "to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor." Consulting Black's Law Dictionary, the panel concluded that the ordinary and common meaning of "financial accommodation" at the time of enactment of § 365 included contracts to forebear or reduce payments to which one was otherwise entitled, if those contracts were agreed upon to aid a debtor's poor financial condition. The panel concluded that the settlement agreement was plainly such a contract, and therefore was not assumable or assignable.

COUNSEL

Derrick Talerico (argued), Weintraub Zolkin Talerico & Selth LLP, Los Angeles, California, for Appellant.

Joshua B. Shiffrin (argued), Cole Hanzlicek, and Joshua A. Segal, Bredhoff & Kaiser PLLC, Washington, D.C.; Daniel L. Egan, Wilke Fleury LLP, Sacramento, California; for Appellee.

OPINION

PER CURIAM:

The Bankruptcy Code limits the circumstances under which a debtor's contracts survive bankruptcy proceedings. In particular, under § 365 of the Bankruptcy Code, a "debtor in possession"—"a debtor that is the subject of a Chapter 11 case and who has not been ousted from possession by the appointment of a Chapter 11 trustee," 8 Michael A. Wolf, *Powell on Real Property* § 57A.02 (2025)—may, subject to court approval, "assume or reject any executory contract" to which the debtor is a party and, if the executory contract is assumed, may assign the debtor's rights and obligations under that contract to another person or entity, 11 U.S.C. § 365(a), (f); *id.* § 1107(a). But that power is subject to exceptions. As relevant here, a debtor in possession is prohibited from assuming or assigning any contract "to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor." *Id.* § 365(c)(2).

In this case, the bankruptcy court denied a motion to assume and assign a contract brought by Debtor-Appellant Svenhard's Swedish Bakery ("Svenhard"). The bankruptcy court held that the particular contract to which Svenhard is a party is not "executory" within the meaning of § 365(a) and, in the alternative, that it is a "financial accommodation" and therefore not assumable or assignable under § 365(c)(2). The Bankruptcy Appellate Panel ("BAP") affirmed on the first ground, leaving the second undecided.

We affirm on the second ground, holding that the contract is a financial accommodation, without reaching whether it is executory.

I.

A.

Svenhard was a commercial bakery that owned facilities in Oakland, California, and Exeter, California. Svenhard had long been a participating employer in the Bakery and Confectionary Union and Industry International Pension Fund ("the Pension Fund") and so was obligated to make pension contributions on behalf of certain employees covered by and participating in the Pension Fund.

In early 2014, financial difficulties prompted Svenhard to sell its business to United States Bakery ("USB"). As part of that sale, Svenhard agreed to transfer the Exeter facility and its equipment to USB, to lease the Exeter facility and its equipment back from USB for five years, and to close the Oakland facility. In 2015, Svenhard proceeded to close the Oakland facility and to move its operations to Exeter. As part of that process, Svenhard terminated its Oakland workforce and stopped contributing to the Pension Fund.

The Pension Fund notified Svenhard that it believed that Svenhard had effectively withdrawn from the Pension Fund and was subject to two liabilities under the Employee Retirement Income Security Act of 1974 ("ERISA"): a withdrawal liability of approximately $50 million (capped by ERISA to approximately $39 million) and a delinquent-contribution liability of more than $500,000 for failing to make severance and vacation payouts. Svenhard did not timely contest those liabilities through the procedures provided by ERISA. *See* 29 U.S.C. § 1399(b). Instead, Svenhard gave the Pension Fund financial information describing Svenhard's "limited assets."

The Pension Fund ultimately agreed to settle Svenhard's liabilities ("Settlement Agreement") for a significantly reduced amount, to be paid in monthly installments over twenty years. Specifically, Svenhard promised to pay $12,500 each month for 240 months (totaling $3 million) to satisfy the withdrawal liability. Svenhard also agreed to pay the delinquent-contribution liability, with interest, in monthly installments of $8,580.80. The Settlement Agreement expressly indicated that the Pension Fund agreed to that arrangement because, after reviewing Svenhard's financial information, the Pension Fund concluded that pursuing the full value of its claims against Svenhard "would almost certainly cause . . . secured creditors to assert their rights to Svenhard's assets, leaving little or nothing for the Pension Fund" to recover. The Settlement Agreement further stated that the reduced monthly payments would likely allow Svenhard "to be able to pay while continuing to operate its business." A few months later, however, Svenhard ceased operations and defaulted on the Settlement Agreement.

B.

Around the same time that Svenhard defaulted on the Settlement Agreement, it filed a Chapter 11 bankruptcy petition. In those proceedings, USB filed a motion to convert Svenhard's bankruptcy from Chapter 11 to Chapter 7. The bankruptcy court denied that motion, and USB appealed—first to the United States District Court for the Eastern District of California, which dismissed the appeal for lack of jurisdiction, and then to our court. While that appeal was pending in our court, Svenhard, USB, and a committee of Svenhard's unsecured creditors participated in a mediation facilitated by the Ninth Circuit Mediation Program. Although the Pension Fund was one of Svenhard's

unsecured creditors, it recused itself from the mediation at Svenhard and USB's request.

Through that mediation, Svenhard and USB reached a conditional compromise to settle their litigation. That compromise was contingent upon, among other things, a ruling from the bankruptcy court allowing the Settlement Agreement between Svenhard and the Pension Fund to be assumed by Svenhard and assigned to USB.

C.

Pursuant to its compromise with USB, Svenhard filed two motions in bankruptcy court. First, Svenhard filed a motion for approval of the compromise under Federal Rule of Bankruptcy Procedure 9019. Second, Svenhard filed a motion under § 365 to assume the Settlement Agreement as an "executory" contract and to assign it to USB "as a valid and subsisting contract." The Pension Fund opposed Svenhard's motions, contending that the Settlement Agreement could not be assumed or assigned under § 365 and that a proceeding on a motion to assume and assign was not an appropriate proceeding in which to decide the validity of the Settlement Agreement.[1]

The bankruptcy court denied Svenhard's motion to assume and assign on two grounds: first, that the Settlement Agreement is not "executory" within the meaning of

[1] The Pension Fund has asserted that the Settlement Agreement is voidable for fraud because Svenhard "failed to disclose to the Pension Fund the scope of its relationship with USB, let alone that USB was covertly encouraging negotiations to reduce the outstanding liabilities owed to the Pension Fund." Those issues are the subject of separate litigation in the United States District Court for the District of Oregon. *See Bd. of Trs. of the Bakery & Confectionary Union & Indus. Int'l Pension Fund v. U.S. Bakery, et al.*, No. 3:21-cv-00617-SI.

§ 365(a); and, second, that it is a "financial accommodation" that cannot be assumed or assigned under § 365(c)(2). The bankruptcy court declined to decide whether the Settlement Agreement is a "valid and subsisting" contract, reasoning that it would be procedurally improper to do so on a motion to assume and assign.

Svenhard appealed to the BAP, which affirmed the bankruptcy court's decision that the Settlement Agreement is not "executory" without deciding whether it is a "financial accommodation" under § 365(c)(2). The BAP also affirmed the bankruptcy court's refusal to decide the validity of the Settlement Agreement.

Svenhard timely appealed.

II.

We have jurisdiction under 28 U.S.C. § 158(d). "Because appeals from the BAP are subject to *de novo* review, [we] independently review[] the Bankruptcy Court's decision. We review conclusions of law *de novo* and conclusions of fact for clear error." *In re Vortex Fishing Sys., Inc.*, 277 F.3d 1057, 1064 (9th Cir. 2002).

Svenhard argues that the Settlement Agreement can be assumed under 11 U.S.C. § 365(a) because it is "executory." Svenhard further argues that the financial-accommodation exception under § 365(c)(2) does not apply because the Settlement Agreement is "not a contract to make a loan, nor is it a contract to extend money or credit to Svenhard[]." We need not and do not decide whether the Settlement Agreement is "executory" because—even if we were to accept that the Settlement Agreement is "executory"—we conclude that it constitutes a "financial accommodation" that is not assumable or assignable under § 365(c)(2).

We begin with the text of the Bankruptcy Code. Section 365(c) provides that a debtor in possession "may not assume or assign any executory contract . . . if . . . such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor." 11 U.S.C. §§ 365(c), 1107(a).[2] In interpreting that provision, we apply the "fundamental canon of statutory construction . . . that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, [and] common meaning." *Perrin v. United States*, 444 U.S. 37, 42 (1979).

Because Congress did not define the term "financial accommodations," "'we follow the common practice of consulting dictionary definitions . . .' and look to how the term[] [was] defined 'at the time [the statute] was adopted'" to determine that term's ordinary, contemporary, and common meaning. *United States v. TRW Rifle 7.62x51mm Caliber*, 447 F.3d 686, 689 (9th Cir. 2006) (third alteration in original) (quoting *United States v. Carter*, 421 F.3d 909, 911 (9th Cir. 2005)). When § 365(c)(2) of the Bankruptcy Code was enacted in 1978, *see* An Act to Establish a Uniform Law on the Subject of Bankruptcies, Pub. L. No. 95-598, 92 Stat. 2549 (1978), Black's Law Dictionary defined "accommodation" as "[a]n arrangement or engagement made as a favor to another" or "something done to oblige, usually . . . a loan of money or commercial paper," *Accommodation*, *Black's Law Dictionary* (rev. 4th ed. 1968). Other dictionaries from that period were in accord.

[2] Section 365(c) refers to the "[t]he trustee." Section 1107(a) provides that a debtor in possession "shall have all the rights . . . and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter," subject to certain exceptions not relevant here.

See Accommodation, *The Am. Heritage Dictionary of the Eng. Language* (New College ed. 1976) ("A loan or other financial favor."); *Accommodation*, *Webster's Third New Int'l Dictionary* (1976) ("[S]omething that is supplied for convenience or to satisfy a need."). An agreement to accept as full payment much less than the amount contractually due in recognition of the debtor's financial inability to pay the full amount is assuredly a "financial favor," and one provided "to satisfy a need" of the debtor. Thus, the ordinary and common meaning of "financial accommodations" at the time of enactment included contracts to forebear or reduce payments to which one was otherwise entitled, if those contracts were agreed upon to aid a debtor's poor financial condition.[3]

The Settlement Agreement is plainly such a contract. The Settlement Agreement itself memorialized that Svenhard was liable for tens of millions of dollars that it could not fully repay because of its "limited assets," and that the Pension Fund accordingly agreed to "accept a schedule of payments . . . that Svenhard [was] likely to be able to pay while continuing to operate its business." In other words, the Settlement Agreement involves the forbearance and reduction of the amount to which the Pension Fund would otherwise be entitled, and the Pension Fund agreed to that

[3] The definition of "accommodation" has remained substantially the same. *See, e.g.*, *Accommodation*, *Black's Law Dictionary* (12th ed. 2024) ("A loan or other financial favor."); *Accommodation*, *Merriam-Webster's Collegiate Dictionary* (11th ed. 2022) ("[S]omething supplied for convenience or to satisfy a need."); *Accommodation*, *The Am. Heritage Dictionary of the Eng. Language* (3d ed. 2000) ("A financial favor.").

arrangement expressly because of Svenhard's poor financial condition.[4]

Svenhard argues that the term "financial accommodations" includes only loans or other extensions of money or credit, neither of which are present here. But, again, the ordinary meaning of "accommodation" at the time of § 365's enactment was "something done to oblige, *usually*"—not exclusively—"a loan of money or commercial paper." *Accommodation*, *Black's Law Dictionary* (4th ed. 1968) (emphasis added); *see also Accommodation*, *The Am. Heritage Dictionary of the Eng. Language* (New College ed. 1976) ("A loan or *other financial favor*." (emphasis added)).

Also, "[t]he superfluity canon guides [us] to infer that Congress did not intend to make any portion of a statute superfluous," *In re Pangang Grp. Co.*, 901 F.3d 1046, 1056 (9th Cir. 2018), and it requires us to "give effect to every word of a statute wherever possible," *id.* (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 12 (2004)). Although there may be

[4] Svenhard argues that even if one purpose of the Settlement Agreement was to reduce Svenhard's liabilities because of its poor financial condition, another purpose was to "settle[] a pending dispute between the parties over the *amount* of those original liabilities." That purported other purpose does not comport with the Settlement Agreement's terms. On appeal, Svenhard suggests that its pre-settlement withdrawal liability may have been around $23 million—not $39 million as stated in the Settlement Agreement. The terms of the Settlement Agreement provided that Svenhard would pay the Pension Fund only $3 million for its withdrawal liability. That figure is so far below either liability figure—$23 million or $39 million—that it could not have been meant to settle the amount actually due. Rather, the Settlement Agreement's purpose was to accommodate Svenhard's inability to pay its withdrawal liability—whether $23 million or $39 million—by requiring payment only of a much lower amount.

overlap between what constitutes a "loan," "debt financing," or "financial accommodations" under § 365(c)(2), that Congress used each of those terms indicates that each should carry distinct meaning. Otherwise, Congress "could have omitted the word[s] ["financial accommodations"] . . . altogether." *Carcieri v. Salazar*, 555 U.S. 379, 391 (2009). Our obligation "to give effect, if possible, to every word Congress used" therefore counsels reading "financial accommodations" to include more than only loans or other debt financing. *Id*. (quoting *Reiter v. Sonotone Corp*., 442 U.S. 330, 339 (1979)).

The cases on which Svenhard primarily relies to argue that a contract is a "financial accommodation" only if it involves loans or other debt financing—*In re Easebe Enterprises, Inc.*, 900 F.2d 1417 (9th Cir. 1990), *overruled on other grounds by In re Robert L. Helms Construction & Development Co.*, 139 F.3d 702 (9th Cir. 1998) (en banc), and *In re Sun Runner Marine, Inc.*, 945 F.2d 1089 (9th Cir. 1991)—do not support that proposition.

In *Easebe*, we held that a contract through which a debtor would receive property in exchange for a promise to pay fell under § 365(c)(2)'s prohibition on assumption and assignment. 900 F.2d at 1420. In so holding, we explained that § 365(c)(2) "prohibits the assumption of debt financing or *other financial accommodations* as well as loans," and that, like here, "the transaction at issue [did] not require the [counterparties] to lend [the debtor] any funds." *Id.* (emphasis added). We acknowledged that § 365(c)(2) should be "strictly construed so as not to extend to an ordinary contract to provide goods and services that has incidental financial accommodations or extensions of credit," but that recognition does not help Svenhard here. *Id*. at 1419 (citation modified). The Settlement Agreement is

not a contract for goods and services that has only "incidental" financial accommodations. No goods or services were exchanged as part of the Settlement Agreement; its only apparent purpose was to accommodate Svenhard's financial needs and thereby ensure that the Pension Fund received *some* payment on Svenhard's obligation. Thus, our holding here that the Settlement Agreement falls under § 365(c)(2) is consistent with *Easebe*.

Our decision in *Sun Runner* is also consistent with the result we reach here. In *Sun Runner*, we held that a lender's agreements to offer loans to third parties constituted "financial accommodations" to the debtor because those third-party loans were "an indispensable means of financing the debtor's business." 945 F.2d at 1092. We observed that "[t]he term 'financial accommodation' has been defined as the extension of money or credit to accommodate another," but we did not conclude that the term was *limited* to loans or other extensions of money or credit. *Id*. Such a conclusion would have required us to stray beyond the particular facts of that case, which involved loans. In any event, agreeing to take less than ten cents on the dollar as payment of an obligation is tantamount to an "extension of money" to the debtor, in the amount that will not have to be paid.

Although our precedents have not defined the entire scope of what may constitute "financial accommodations" under § 365(c)(2), the plain text of the statute indicates that "financial accommodations" must include more than just loans and other debt financing. Because the Settlement Agreement falls within the ordinary meaning of "financial accommodations," it accordingly cannot be assumed or assigned under § 365(c)(2).

In light of that conclusion, we need not reach Svenhard's argument that, had the bankruptcy court granted the motion to assume, the bankruptcy court should also have declared that the Settlement Agreement was valid and subsisting.

III.

For the foregoing reasons, we **AFFIRM**.

DOCKETED 11/25/25

FILED

NOV 13 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: SVENHARD'S SWEDISH BAKERY, Debtor. SVENHARD'S SWEDISH BAKERY, Appellant, v. BAKERY AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL PENSION FUND, Appellee.	No. 23-60045 BAP No. 23-1001 ORDER

Before: BERZON, FRIEDLAND, and MENDOZA, Circuit Judges.

The panel has unanimously voted to deny Appellant's petition for panel rehearing. Judge Friedland and Judge Mendoza have voted to deny the petition for rehearing en banc, and Judge Berzon so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petitions for panel rehearing and rehearing en banc are DENIED.