

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

**PICCADILLY RESTAURANTS, LLC,
ET AL.,**

DEBTORS

* **CASE NO. 12-51127**
*
* **(JOINT ADMINISTRATION)¹**
*
* **CHAPTER 11**
*
* **JUDGE ROBERT SUMMERHAYS**

MOTION FOR (I) AN INCREASE OF THE EXCLUSIVE PERIOD IN WHICH THE DEBTORS MAY FILE A PLAN IN ORDER TO MAINTAIN THE EXCLUSIVE PERIOD, (II) AN INCREASE OF THE TIME IN WHICH DEBTORS HAVE BEEN ORDERED TO FILE A PLAN AND (III) AN INCREASE OF THE PERIOD IN WHICH THE PLAN MUST BE ACCEPTED IN ORDER TO MAINTAIN THE EXCLUSIVE PERIOD

NOW INTO COURT, through undersigned counsel, come the debtors and debtors-in-possession (collectively, the “Debtors”),² who submit this *Motion For (i) an Increase of The Exclusive Period In Which The Debtors May File a Plan in Order to Maintain The Exclusive Period, (ii) an increase of the Time in which the Debtors Have Been Ordered to File a Plan, and (iii) an Increase of the Period in which the Plan Must Be Accepted in Order to Maintain the Exclusive Period* (this “Motion”), for the following reasons:

BACKGROUND

1. On September 11, 2012 (the “Petition Date”), the Debtors filed for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

² The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

2. The Debtors' cases are jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b) (collectively, this "Chapter 11 Case").

3. No trustee or examiner has been appointed. An Official Committee of Unsecured Creditors (the "Committee") was appointed in this Chapter 11 Case on October 23, 2012.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2).

5. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105(a) and 1121(d).

THE DEBTORS' BUSINESSES

6. The Debtors' operate cafeteria-style restaurants and provide food services to schools and other organizations. More particularly, on the Petition Date, the Debtors operated seventy-eight (78) cafeterias, and employed approximately 3,400 employees. As of the fiscal year that ended January 3, 2012, the Debtors generated revenues of roughly \$165 million.

7. On October 2, 2012, the Debtors filed a *Motion for an Order Approving the Rejection of Certain Unexpired Leases of Nonresidential Real Property for Certain Closed or Underperforming Cafeterias, and the Rejection of Certain Unexpired Leases of Personal Property, Executory Contracts and One Unexpired Sublease Related to those Closed or Underperforming Cafeterias* (Docket #167) (the "Rejection Motion"). The Rejection Motion was granted at a hearing held on October 23, 2012 (Docket #243).

8. As a consequence of the Rejection Motion, nine (9) underperforming cafeterias were closed in October 2012. Piccadilly Restaurants, LLC ("Restaurants") currently operates sixty-nine (69) cafeterias in ten states. The Debtors estimate that they currently employ approximately 3,000 people.

9. Additionally, after the Petition Date, the Debtors continue to be active in the food service line of business, which separates the Debtors from other restaurant companies in the industry. These contracts involve schools and governmental agencies. Shortly after the Petition Date, the Debtors served 131,000 meals and 100,000 snacks to Hurricane Isaac victims throughout South Louisiana. This resulted in about \$1,400,000 of incremental sales, and approximately \$950,000 in incremental operating earnings during the month of September.

RELIEF REQUESTED

10. By this Motion, the Debtors respectfully request that this Court extend by ninety (90) days (a) the date by which they have been ordered to file a plan, and (b) the exclusive period to file a plan. The Debtors further request that the period in which they have to gain acceptance of a plan also be extended by ninety (90) days.

BASIS FOR RELIEF

11. This Court, after notice and hearing, has the discretion to increase these periods for cause.

12. The Debtors submit that an extension of the exclusive period in which they may file a plan, an extension of the period in which they have been ordered to file a plan, and an extension of the time in which the plan must be accepted in order to maintain the exclusive period is appropriate in this Chapter 11 Case for a number of reasons.

13. First, statutory authority provides for such an extension. Specifically Bankruptcy Code § 1121(d) provides that, upon “request of a party in interest made within the respective periods specified in sections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180 day period referenced in this section.” 11 U.S.C. § 1121(d).

14. Second, requests for the exclusive periods are commonly granted. *See, e.g., In re Amko Plastics, Inc.*, 197 B.R. 74 (S.D. Ohio 1996); *In re Homestead Partners, Ltd.*, 197 B.R. 706 (N.D. Ga. 1997). The legislative history of Section 1121(d) indicates that the determination of whether sufficient cause exists is within the sound discretion of the bankruptcy court, based upon an evaluation of the facts and circumstances of each case. *See* H.R. Rep. No. 95-595, at 232 (1977).

15. Third, the Debtors' request for an extension of the exclusive period to file and obtain acceptances of a plan meets the factors recognized by courts in granting such extensions. For example, the bankruptcy court in *In re Express One Int'l, Inc.*, 194 B.R. 98 (Bankr. E.D. Tex. 1996), outlined nine such factors which a court may examine. Those factors are as follows:

- the size and complexity of the case;
- the necessity of sufficient time to negotiate and prepare adequate information;
- the existence of good faith progress toward reorganization;
- whether the debtor is paying debts as they come due;
- whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- whether the debtor has made progress in negotiating with creditors;
- the length of time the case has been pending;
- whether the debtor is seeking the extension to pressure creditors; and
- whether unresolved contingencies exist.

Id. at 100. The Debtors submit that these factors weigh in favor of granting an extension of the exclusive period in this instance.

16. The Debtors have been actively pursuing the Chapter 11 Case since filing. However, the Debtors have been involved in significant negotiations with its primary vendor of food and supplies, its secured creditor, and the Committee regarding several different issues.

17. On the Petition Date, the Debtors filed an *Emergency Motion for an Order (I) Authorizing the Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 364(c) and 364(d), (II) Authorizing the Debtors' Use of Case Collateral Pursuant to 11 U.S.C. § 363(c); (III) Granting Adequate Protection Pursuant to 11 U.S.C. § 361; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c)* (Docket #15) (the “DIP Motion”)

18. On September 18, 2012, the Bankruptcy Court entered an *Order* (Docket #84) (the “Interim Order”) that granted, on an interim basis, the DIP Motion as modified by the *Stipulation and Order (a) Authorizing Post-Petition Financing, (b) Authorizing Use of Cash Collateral, (c) Granting Superpriority Security Interests and Administrative Claims Pursuant to 11 U.S.C. § 364, (d) Granting Adequate Protection to Pre-Petition Lenders, (e) Granting Limited Relief from the Automatic Stay and (f) Granting Related Relief* (the “Stipulation”) (Docket #83).

19. A final hearing on the DIP Motion and the Stipulation is currently scheduled for December 4, 2012. The final hearing has come about only after extensive negotiations with (a) the Debtors' secured lenders, through counsel of record for its DIP Agent, (b) The Merchants Company, d/b/a Merchants Foodservice (“Merchants”), the Debtors' largest unsecured creditor, through counsel, and (c) the Committee, through its counsel.

20. The Debtors submit that they have moved forward in good faith towards being able to propose a plan. To date, the Debtors' have been focused on securing a distribution agreement with Merchants, the supplier of ninety percent (90%) of their food and supplies. As a part of that process, Merchants has insisted on (a) the payment, by cash or reallocation of post-petition payments for goods sold to the Debtors, and (b) the allowance of its sizable claim under section 503(b)(9). These demands have forced the Debtors to solicit competing bids, and thereafter engage in protracted negotiations with Merchants and its competitors, in order to

ensure that satisfying Merchants' demands are in the best interests of the estates. This solicitation process has been a major focus of the Debtors' reorganization process to date, because of the significance of the issues and the money involved in the same. The Debtors have now concluded the solicitation and negotiation processes. The Debtors and Merchants have a proposed Distribution Agreement, and the Debtors have filed or shortly will file a motion with this Court regarding the Merchants proposal, including seeking approval of the critical vendor treatment sought therein.

21. With the Merchants proposal near submission to the Court, the Debtors are now in a position to finalize the review of their portfolio of non-residential leases and their executory contracts. Along those lines, the Debtors have filed an *Application for Order Authorizing the Employment of GA Keen Realty Advisors, LLC ("GA Keen"), as Special Real Estate Advisor to the Debtors, Nunc Pro Tunc to November 14, 2012, Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code* (Docket #323). The hearing on this Application is scheduled for December 11, 2012.

22. With the DIP Motion and Stipulation resolved, and now that the Committee's counsel has been retained, the Debtors can refocus their attention towards formulating a plan that will maximize value for all of their creditors. The Debtors submit that maintaining the exclusive period is necessary to bring such a plan forward.

23. Notice of this Motion has been given to (a) the secured lenders, through Atalaya Administrative, LLC and its counsel of record, Brent R. McIlwain and David F. Waguespack, (b) the thirty largest unsecured creditors, the identity of which may be amended from time to time, (c) the twenty additional random unsecured creditors, (d) all parties who have requested special

notice pursuant to Bankruptcy Rule 2002, (e) the Committee's counsel, and (f) the Office of the United States Trustee.

WHEREFORE, the Debtors, pray that, after due notice of such hearing as this Court deems proper, the periods of time in which the Debtors have the exclusive right to file and confirm a plan be extended as requested herein. The Debtors further pray for such other relief as this Court deems just and equitable.

Respectfully submitted,

/s/ Elizabeth J. Futrell

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