

**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**

**THIRD EX PARTE MOTION FOR AN ORDER EXTENDING THE PERIOD OF TIME
WITHIN WHICH THE DEBTORS MAY REMOVE ACTIONS PURSUANT TO 28
U.S.C. § 1452 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9027**

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”),² who submit this *Third Ex Parte Motion for an Order Extending the Period of Time Within which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452 and Federal Rule of Bankruptcy Procedure 9027* (the “Motion”).

In support of this Motion, the Debtors state as follows:

JURISDICTION AND VENUE

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

BACKGROUND

2. On September 11, 2012 (the “Petition Date”), the Debtors filed for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The debtors are

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). (R. 43.)

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

operating their businesses and managing their affairs as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed. An Official Committee on Unsecured Creditors (the “Unsecured Creditors’ Committee”) was appointed in these procedurally consolidated Chapter 11 cases (collectively, the “Bankruptcy Cases”) on October 23, 2012.

3. The Debtors are jointly administered pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b).

4. The statutory predicates for the relief requested herein are 11 U.S.C. § 105(a); 28 U.S.C. § 1452; FED. R. BANKR. P. 9006 and 9027.

RELIEF REQUESTED

5. By this Motion, the Debtors request a third extension of time in which to remove actions that are currently pending against the Debtors. The actions of which the Debtors are aware are listed on Exhibit “A” to this Motion. It is possible that there are other actions currently pending of which the Debtors are unaware. Upon the filing of the Petitions, all actions were stayed as to the Debtors pursuant to section 362 of the Bankruptcy Code.

6. Pursuant to FED. R. BANKR. P. 9027(a)(2), a notice of removal may be filed only within the longest of (A) 90 days after entry of the order for relief in the bankruptcy case, or (B) 30 days after the entry of an order terminating the stay, if the claim or cause has been stayed under § 362 of the Bankruptcy Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

7. On November 7, 2012, this Court ordered that the Debtors shall have up to and including March 11, 2013 in which to remove actions pursuant to 28 U.S.C. 1452 and Federal Rule of Bankruptcy Procedure 9027. (P-296). On March 11, 2013, this Court ordered that the Debtors shall have up to and including June 10, 2013 in which to remove actions. (P-560).

8. The Debtors remain in the process of reviewing actions in order to make a determination of whether or not the case is removable under the Bankruptcy Code and the Federal Rules of Civil Procedure as well as the Federal Rules of Bankruptcy Procedure, and the nature of the case is such that removal is in the best interests of the estate. The Debtors are also in the process of determining if other actions have been filed that the Debtors are not aware of, and whether those actions will need to be removed. Therefore, the Debtors respectfully request another extension of 90 days from June 10, 2013, within which to file their notices of removal.

LEGAL STANDARD

9. 28 U.S.C. § 1452 and FED. R. BANKR. P. 9027 govern the removal of pending civil actions. Specifically, section 1452 provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

FED. R. BANKR. P. 9027(a)(2) provides, in pertinent part:

If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed in the bankruptcy court only within the longest of (A) 90 days after the order for relief in a case under the Code, (B) 30 days after the entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

10. FED R. BANKR. P. 9006(b) provides that the Court may extend unexpired time periods, such as the Debtors' removal period, without notice:

When an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its

discretion . . . with or without motion or notice order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order.

FED. R. BANKR. P. 9006

11. Accordingly, this Court is authorized to grant the relief requested herein, and to grant it *ex parte* by Rule. See *Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984)(finding that the period in which to file a removal under 28 U.S.C. § 1452 and FED. R. BANKR. P. 9027 may be expanded pursuant to FED. R. BANKR. P. 9006(b)(1)); *In re Jandous Elec. Constr. Corp.*, 106 B.R. 48 (Bankr. S.D.N.Y. 1989)(same); *In re World Financial Servs. Ctr., Inc.*, 81 B.R. 33 (Bankr. S.D. Cal. 1987)(same); *In re St. Joseph's Hosp.*, 103 B.R. 643 (Bankr. E.D. Pa. 1989)(same); *Caperton v. A.T. Massey Coal Co. Inc.*, 251 B.R. 322, 325 (S.D. W. Va. 2000). Courts are in agreement that a Bankruptcy Court is vested with the authority to grant an extension of the time in which to remove an action pursuant to section 1452 and rule 9027.³

NOTICE

12. Notice of this Motion has been given to the following: (a) the secured creditor, through Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack; (b) the thirty (30) largest unsecured creditors, the identity of which may be amended from time to time; (c) the twenty (20) additional random unsecured creditors; (d) all parties who have requested special notice pursuant to Bankruptcy Rule 2002; (e) the Unsecured Creditors' Committee and its counsel; and (f) the Office of the United States Trustee.

³ FED. R. BANKR. P. 9006(b)(2) provides that extensions of time are not permitted for actions under Rules 1007(d), 2003(a), 2003(d), 7052, 9023 and 9024. FED. R. BANKR. P. 9006 limits the effect of an extension of time for taking actions under Rules 1006(b)(2), 1017(e), 3002(e), 4003(b), 4004(c), 4007(c), 8002, and 9033. This Court's authority to grant an extension of time within which to remove actions is not circumscribed by the Rules in any way.

WHEREFORE, the Debtors pray for an order from this Court extending the time period for it to remove actions currently pending, for 90 days up to and including through September 9, 2013, and for all other relief to which it is entitled in law and equity.

Respectfully submitted,

/s/ Mark A. Mintz

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Exhibit A

Exhibit A
S.O.F.A. 4(a.): Litigation Pending When Bankruptcy Petition Filed

Piccadilly Restaurants, LLC

| General Description Of Allegations/Nature Of Proceeding | Case Number | Court | Court Division | County | State | Party First Name | Party Last Name |
|---|--------------------|--|----------------|------------------|-------|------------------|-----------------|
| Slip and Fall | 2008 R 06345 | City Court | 4th Ward | Caddo | LA | Cynthia | Veal |
| Slip and Fall | A2402-2010--29 | Harrison County Circuit Court | 1st JDC | Harrison | MS | Teresa | Cook |
| Slip and Fall | 90252 | 23rd | C | Ascension | LA | Joyce | Turner |
| Slip and Fall | C566427 | 19th | 23 | East Baton Rouge | LA | Gale | Bradford |
| Slip and Fall | 2009 V 42858 | State | V | Houton | GA | Jeanelle | Jones |
| Slip and Fall | 09-1703 | 4th JDC | C4 | Ouachita | LA | Patricia | Youngblood |
| Slip and Fall | 2011-CP-42-1635 | Spartanburg County Ct of Common Pleas | n/a | Spartanburg | SC | Joyce | Thornton |
| Allergic Reaction To Food | 2011-CP-02-010751 | Aiken County Court of Common Pleas | n/a | Aiken | SC | Trina | Minnis-Carter |
| Slip and Fall | 2009-11726 | 22nd JDC | A | St Tammany | LA | Cora Ann | Ball |
| Falling Object (A Tray) | 116-2011-CA-001077 | 4th JDC | CV-F | Duval | FL | Tonia | Miller-Johnson |
| Foreign Object In Food | C581408 | 19th JDC | 22 | East Baton Rouge | LA | Aaron | Forest |
| Foreign Object In Food | C-20096341 | 15th JDC | D | Lafayette | LA | George | Lewis |
| Slip and Fall | 126191 | 21st JDC | D | Livingston | LA | Jeana | Porter |
| Slip and Fall | 587116 | 19th JDC | 21 | East Baton Rouge | LA | Jeff | Norder |
| Slip and Fall | 251-11-638-EV | County Court - Hinds County - 1st District | EV | Hinds | MS | Debra | Ellis |
| Animal/Insect | 10-05031-C | Baton Rouge City Court | n/a | East Baton Rouge | LA | Abram | Banks |
| Slip and Fall | 11-00004A | Baton Rouge City Court | n/a | East Baton Rouge | LA | Herman | Buckles |
| Slip and Fall | | | | | | Mary | Dunmore |
| Claim Based On Embarrasment | 10MS111567 | Fulton County Magistrate Court | n/a | Fulton | GA | Willie | Dean |
| Struck By Object | CT-000355-11 | (Circuit/Chancery) 13th JDC | 8 | Shelby | TN | Betty | Plunk |

| | | | | | | | |
|---|---|--------------------------------------|-----------------------------|------------------|----------|----------------------|-----------|
| Slip and Fall | 03-CV-2012-900679.00 | Circuit Court of Montgomery | n/a | Montgomery | AL | Michaele | Potts |
| Slip and Fall | 701-911 | 24th JDC | K | Jefferson | LA | Debbie | Perrier |
| Slip and Fall | 1498657 | Shelby County General Sessions Court | n/a | Shelby | TN | Rosalind | Mackey |
| Slip and Fall | CT00327241 | Circuit Court of TN - 13th JDC | I | Shelby | TN | Ruth | Pollard |
| Complaint | 2011-002562 | 21 JDC | E | Tangipahoa | LA | Diane | White |
| Allergic Reaction To Food | Has not filed suit - sent a copy of a draft suggesting they would in fact file. | Circuit Court of St. Louis | | | Missouri | Elbert | Jones |
| Slip and Fall | C605256 | 19th JDC | 23 | East Baton Rouge | LA | Rachel | Smith |
| Foreign Object In Food | 20122391COC1 | Volusia County Court | 82 - Judge Steven Henderson | Volusia | FL | Brett | Jalio |
| Slip and Fall | 2012 CV 211763 | Fulton County Superior Court | | Fulton | GA | Josephine | Jones |
| Contract Dispute With A Former Landlord Arising Out Of Removal Of Equipment When A Restaurant Closed. | 11-026522 (05) | 17th | n/a | Broward | FL | Lakes Medical Center | |
| Slip and Fall | 12C428 | 20th JDC | n/a | Davidson | TN | Tracey | Blackmore |
| Slip and Fall | 711120 | 24th JDC | H | Jefferson | LA | Erica | Armour |
| Slip and Fall | 243465 | 9th JDC | G | Rapides | LA | Marilyn | Williams |
| Slip and Fall | 714132 | 24th JDC | E | Jefferson | LA | Shirley Brown | Jones |
| Struck Body Against Object | 2012 VO 575CCE | Fayette County Superior Court | n/a | Fayette | TN | Bettye | Holland |
| Claimed Sweet Tea Tasted Sour | 153334 | 1st Parish Court | A | Jefferson | LA | Tanganyika | Payne |
| Slip and Fall | 20120002131 | 21 JDC | D | Tangipahoa | LA | Austion | Sutton |
| Foreign Object In Food | 716334 | 24th JDC | N | Jefferson | LA | George | Zainey |
| Slip and Fall | 1135907 | Circuit Court - Miami-Dade County | 11th JDC | Miami-Dade | FL | Lamont | Postell |
| Slip and Fall | 715874 | 24th JDC | J | Jefferson | LA | Angelique | Strother |
| Foreign Object In Food | Pre-suit Matter | | | | | Anzetta | Smith |

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|---|------------------|--------------------------------------|-----|------------------|----|-----------------------------|---------|
| Slip and Fall | 03CV201290125300 | Montgomery County Circuit Court, AL, | n/a | Montgomery | AL | Robert | Ivey |
| Foreign Object In Food | D2402-12-483 | 2nd JDC | .. | Harrison | MS | Patsy | Dickens |
| ADA | 4:12-cv-669 | US District | | | TX | Kenneth | Tidwell |
| Money Judgment, Writ of Sequestration and to Appoint Keeper | 615116 | 19th JDC | D | East Baton Rouge | LA | Atalaya Administrative, LLC | |