

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
GULF PACKAGING, INC.,) Case No. 15-15249 (PSH)
)
Debtor.) Honorable Pamela S. Hollis
)
) **Hearing Date: October 27, 2015**
) **Hearing Time: 10:00 a.m.**
) **Court Room: 644**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **October 27, 2015 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis of the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, Courtroom No. 644, or whomever may be sitting in her place and stead, and then and there present the **Debtor’s Second Motion for Entry of An Order Extending Deadline Within Which to Assume or Reject Non-Residential Real Property Leases**, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

GULF PACKAGING, INC.

By: /s/ Joseph D. Frank
One of its attorneys

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
)	Chapter 11
GULF PACKAGING, INC., ¹)	
)	Case No. 15-15249 (PSH)
Debtor.)	
)	

**DEBTOR’S SECOND MOTION FOR ENTRY OF AN ORDER EXTENDING
DEADLINE WITHIN WHICH TO ASSUME OR REJECT NON-RESIDENTIAL
REAL PROPERTY LEASES**

Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the “Debtor” “GPI” or the “Company”), respectfully requests the entry of an order, pursuant to 11 U.S.C. § 365(d)(4), further extending the deadline for assumption or rejection of the Debtor’s sole remaining non-residential real property lease through November 25, 2015.² In support of this motion (the “Motion”), the Debtor states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The relief sought is appropriate and proper pursuant to 11 U.S.C. §365(d)(4).

INTRODUCTION

4. On April 29, 2015 (the “Petition Date”), the Debtor filed with this Court its petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The

¹ The last four digits of the Debtor’s tax identification number are 5030.

² The Debtor is engaged in discussions with its landlord to extend the time within which to assume or reject its remaining lease beyond the November 25, 2015 deadline sought by this motion. To the extent that those efforts are successful prior to the hearing on this Motion, the Debtor will file an amended motion.

Debtor continues to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On May 11, 2015, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "Committee"). No request has been made for the appointment of a trustee or examiner.

BACKGROUND

6. The Debtor is a national distributor of packaging equipment and supplies, which sells its product by and through several independent entities ("Affiliates").³ As of the Petition Date, there were over twenty (20) warehousing locations to better serve the Debtor's customer base. Additional information about the Debtor, its business and corporate and capital structure is set forth in the *Declaration of Edward T. Gavin, CTP in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 14] (the "Gavin Declaration"), filed on the Petition Date.

7. As set forth in the Gavin Declaration, the Debtor is liquidating and winding down its business. To that end, the Debtor has been in discussions with various parties for the sale of its inventory and other assets. At the same time, the Debtor has also been working to draft a chapter 11 plan of liquidation (the "Plan") and related disclosure statement (the "Disclosure Statement").

8. At this time, the Debtor is party to only one lease of non-residential real property, a lease for property located in La Mirada, California (the "La Mirada Lease"). Although the Debtor is currently winding down its active operations, the Debtor is still using the leased premises (the "La Mirada Property") in connection with those efforts.

³ As used herein, "Affiliate" means a company that has a relationship – formal or informal – to the Debtor, and sells packaging products under a variation of the Gulf name. Unless otherwise set forth, use of the term "Affiliate" is not intended to have the same meaning as the "affiliate" term of art defined in section 101(2) of the Bankruptcy Code. All rights with respect to this issue are reserved.

9. Pursuant to section 365(d)(4) of the Bankruptcy Code, the Debtor's original deadline to assume or reject its leases of non-residential real property was August 27, 2015. However, that deadline was extended to October 30, 2015 by an order entered by the Court on August 18, 2015.

RELIEF REQUESTED

10. By this Motion, the Debtor requests the entry of an order, pursuant to 11 U.S.C. § 365(d)(4), extending the time for the Debtor to assume or reject its remaining lease of non-residential real property through November 25, 2015.

BASIS FOR THE RELIEF SOUGHT

13. Pursuant to 11 U.S.C. § 365(d)(4), a debtor's lease of nonresidential real property is deemed rejected if it is not assumed or rejected by the earlier of (i) 120 days following the filing of the debtor's bankruptcy petition, and (ii) the date of entry of an order confirming a reorganization plan. However, the court may extend the time for assumption or rejection before the deadline passes.

14. Section 365(d)(4) of the Bankruptcy Code authorizes the bankruptcy court to extend the 120-day period, for cause shown, for up to an additional 90 days, but conditions any further extensions on the lessor's consent.

15. In the Debtor's case, the additional 90-day period contemplated by section 365(d)(4) would extend through November 25, 2015. Although the Debtor previously obtained an extension to October 30, 2015, the additional extension now being requested still falls within this statutory period.

16. Although the Bankruptcy Code does not provide a standard for determining whether there is "cause" for granting an extension of the time to assume or reject a lease, courts typically consider a number of factors in determining whether to grant an extension, including the following:

- whether the lease(s) is/are the primary asset(s) of the debtor;

- whether the lessor continues to receive rental payments;
- whether the case is exceptionally complex and involves a large number of leases;
- whether the decision to assume or reject the lease(s) would be central to any plan of reorganization;
- whether there is a reasonable possibility that the debtor will submit a plan capable of being confirmed;
- whether the debtor has had the time necessary to appraise its financial situation and the potential value of its assets in terms of the formulation of a plan;
- whether the lessor will be subject to damages beyond compensation available under the Bankruptcy Code due to the debtor's continued occupation;
- whether the lessor has a reversionary interest in the building built by the debtor on the lessor's land;
- whether the property remains vacant, thereby affecting neighboring tenants; and
- the existence of any other facts bearing on whether the debtor has had a reasonable amount of time to decide whether to assume or reject the lease(s).

Key Plaza I, Inc. v. Kmart Corp., No. 02 C 4086, 2003 WL 115240, at *5 (N.D. Ill. Jan. 13, 2003).

17. Several of these factors are applicable to the Debtor's bankruptcy case, and all of those that are applicable support an extension. The Debtor has been paying the rent due to its lessor under the La Mirada Lease, and has not vacated the La Mirada Property. The Debtor is currently preparing its chapter 11 plan, and this short extension will not subject the lessor to undue risk of damages due to the Debtor's continued operation. Furthermore, forcing the Debtor to assume or reject the La Mirada Lease by the current October 30, 2015 deadline would cause the Debtor either to lose the ability to maximize the value of the inventory and equipment located at the La Mirada Property or to incur additional administrative expenses. Finally, the Debtor is not seeking the extension for an improper purpose.

NOTICE

18. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) counsel to the Committee; (iii) counsel to FCC, LLC, the Debtor's primary secured creditor; (iv) all current creditors of the Debtor; (v) counsel to the lessor of the La Mirada Property; and (vi) those other parties who have appeared and/or requested service of papers in this case through the Court's CM/ECF System.

WHEREFORE, the Debtor respectfully requests that the Court enter an order extending the deadline for the assumption or rejection of its remaining unexpired lease of non-residential real property until November 25, 2015.

Respectfully submitted this 20th day of October, 2015.

FRANKGECKER LLP

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