

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY**

In re:)	
)	
JOHN Q. HAMMONS FALL 2006, LLC, <i>et al.</i>,)	Case No. 16-21142
)	
Debtors.)	
)	

**DEBTORS' SECOND MOTION TO EXTEND EXCLUSIVE PERIODS TO FILE AND
SOLICIT ACCEPTANCE OF A PLAN PURSUANT TO 11 U.S.C. § 1121(d)**

NOW COME the above-captioned debtors (collectively, the "Debtors") and hereby request the entry of an order, pursuant to section 1121(d) of Title 11 of the United States Code (the "Bankruptcy Code"), extending the period during which the Debtors hold the exclusive right to file a plan to December 26, 2017 and the period during which the Debtors hold the exclusive right to solicit acceptance of such a plan to February 26, 2018. In support of this Motion, the Debtors represent as follows:

BACKGROUND

1. On June 26, 2016 and July 5, 2016, the Debtors commenced chapter 11 bankruptcy cases by filing their bankruptcy petitions in this Court. For purposes of this Motion, all the Debtors shall refer to June 26, 2016 as the "Commencement Date."

2. Since the Commencement Date, the Debtors have continued in possession of their property and control of their operations pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. The Court has jurisdiction of this motion. 28 U.S.C. § 1334(b). This is a core proceeding in that this motion affects the administration of these bankruptcy estates. 28 U.S.C. §§ 157(b)(1) & (2)(A). Venue is proper in this Court. 28 U.S.C. § 1409(a).

4. On September 29, 2016, the Debtors filed their Motion to Extend Exclusive Periods to

File and Solicit Acceptance of a Plan Pursuant to 11 U.S.C. § 1121(d) [doc. no. 521], requesting a six-month extension of the exclusive periods to April 24, 2017 and June 23, 2017, respectively (the "First Exclusivity Motion").

5. On October 19, 2016, the Court entered its order granting the First Exclusivity Motion [doc. no. 595] (the "First Exclusivity Order").

6. Since the entry of the First Exclusivity Order, the Debtors have continued to pay their mortgagee secured debt according to the pre-petition amortization schedules thereof, obtained numerous Court orders addressed to continuing their day to day business affairs including those related to their use of cash, employee programs, insurance, and critical vendors.

7. The Debtors have also obtained an order of the Court (the "Rejection Order") rejecting a Sponsor Entity Right of First Refusal Agreement, Dated September 16, 2005 and Agreement and Amendment, Dated December 10, 2008 (collectively, the "ROFR") with JD Holdings, L.L.C. ("JDH"). JDH has appealed the order rejecting the ROFR and that appeal is currently pending before the Bankruptcy Appellate Panel for the Tenth Circuit Court of Appeals. Resolution of the rejection issues are an important precursor to any plan that might be filed by the Debtors.

8. The Debtors have also responded to and commenced discovery with respect to the motion filed by JDH seeking to dismiss these cases or obtain relief from the automatic stay (the "Dismissal Motion"). *See* doc. no. 269. In addition, the Debtors have filed five (5) motions for partial summary judgment as to each of the contested matters set forth in the Dismissal Motion. *See* doc. nos. 767-776. These summary judgment motions are pending before the Court. Resolution of these issues as well are an important precursor to any plan.

9. In addition, UBS is proceeding forward with its work to market assets owned by the

Debtors.

10. The Court previously set the claims bar date under Rule 3003(c), Fed. R. Bankr. P., for December 23, 2016. More than 600 claims have been filed in the Debtors' cases and more than 5,000 claims have been identified in the Debtors' schedules. The Debtors are in the process of reviewing and, where appropriate, reconciling the claims and making significant progress toward a resolution of disputed claims, some of which are significant in amount, will aid in the formulation of a plan.

11. These are large and complex cases and the litigation in which the Debtors are involved is contentious and time-consuming. This motion is sought to enable the Debtors to gather the information necessary to formulate a reasonable plan. At that time, the Debtors will commence negotiations with creditors regarding the terms thereof. Accordingly, the Debtors have made no demands upon creditors with respect to any particular terms.

12. Under the terms of the First Exclusivity Order, the period in which the Debtors hold the exclusive right to file a plan runs through April 24, 2017 (the "Plan Exclusivity Period") and, if a plan is filed by that deadline, the period in which the Debtors hold the exclusive right to solicit acceptance of a plan runs through June 23, 2017 (the "Solicitation Exclusivity Period").

RELIEF REQUESTED

13. Pursuant to Section 1121(d) of the Bankruptcy Code, the Debtors hereby request that the Court extend the Plan Exclusivity Period and Solicitation Exclusivity Period through and including December 26, 2017 and February 26, 2018, respectively. This additional time is necessary to resolve the above-described contested matters and claims issues, and conduct the above-described sale process.

BASIS FOR RELIEF

14. In the instant case, the Debtors' Plan Exclusivity Period expires after April 24, 2017

and the Debtors' Solicitation Exclusivity Period will expire after June 23, 2017. In the absence of an extension of these exclusivity periods, a creditor could file a plan thereafter under § 1121(c).

15. Section 1121(d) of the Bankruptcy Code permits the Court for cause to extend the Plan Exclusivity Period as well as the Solicitation Exclusivity Period. For the reasons set forth below, the Debtors submit that the Court has cause to extend each of these exclusivity periods.

16. In Section 1121, Congress created exclusive periods of time to file and solicit acceptance of a plan to give a debtor "the unqualified opportunity to negotiate a settlement and propose a plan of reorganization without interference from creditors and other interests." *In re Hoffinger Indus., Inc.*, 292 B.R. 639, 643 (B.A.P. 8th Cir. 2003).

17. Section 1121(d) of the Bankruptcy Code provides that the court may increase the exclusivity periods for cause. Although Section 1121(d) does not define "cause," courts have adopted a flexible standard for deciding whether a debtor has demonstrated sufficient cause to extend exclusivity. *See Hoffinger*, 292 B.R. at 643-44; *In re Borders Group, Inc.*, 460 B.R. 818, 821 (Bankr. S.D.N.Y. 2011); *In re Adelphia Comm'ns Corp.*, 352 B.R. 578, 586-87 (Bankr. S.D.N.Y. 2006). Whether to grant relief under Section 1121(d) is within the sound discretion of the court. *Adelphia Comm'n's Corp.*, 352 B.R. at 586.

18. In determining whether cause exists to extend or reduce the exclusivity periods, courts have relied on the following factors:

- a. the size and complexity of the case;
- b. the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- c. the existence of good faith progress toward reorganization;

- d. the fact that the debtor is paying its bills as they become due;
- e. whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- f. whether the debtor has made progress in negotiations with its creditors;
- g. the amount of time which has elapsed in the case;
- h. whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and
- i. whether an unresolved contingency exists.

Adelphia Comm'n's Corp., 352 B.R. at 586; *see also Hoffinger*, 292 B.R. at 643-44. For the reasons set forth herein, an analysis of these factors weighs heavily in favor of granting an extension of the Exclusivity Periods to allow the Debtors additional time to formulate a plan.

Size and Complexity of the Case

19. This case is extraordinarily large in size and complexity, with 76 separate debtors owning and operating 35 hotels and other real estate and business ventures. The Debtors have more than 16 secured mortgagee creditors and more than 5,600 total creditors; they employ more than 4,000 employees and are parties to hundreds of leases and contracts. Finally, as further evidence of the complexity of these bankruptcy cases, the Court may take judicial notice of the more than 800 docket entries submitted in the first six months of the cases. *See In re McLean Indus. Inc.*, 87 B.R. 830, 831 (Bankr. S.D.N.Y. 1987) (granting extension of exclusive periods based in part on taking judicial notice of high volume of filings in the case). Thus, these bankruptcy cases are sufficiently large and complex to justify additional time to formulate and file a plan.

Necessity for Sufficient Time to Negotiate Plan and Prepare Adequate Information; Unresolved Contingencies

20. The Debtors need additional time to determine what plan would be in the best interests of the Debtors' estates and their creditors in light of the contested matters and claims process described above. The contested matters and claims resolution process will not likely be completed until the second or third quarter of 2017 at the earliest.

Good Faith Progress Toward Reorganization; Pressuring Creditors

21. As set forth above, the Debtors have made good faith progress toward reorganization in these bankruptcy cases and are not seeking this extension to pressure creditors to submit to the Debtors' reorganization demands. The Debtors have obtained authorization to: (i) continue use of cash collateral through December 31, 2017, (ii) maintain their existing cash management system, (iii) maintain prepetition insurance programs, employee benefits programs, and business forms, (iv) designate and pay pre-petition claims of critical vendors, and (v) continue employing professionals in the ordinary course of business. In addition, the Debtors have engaged: (i) counsel to represent the Debtors in these bankruptcy cases, (ii) an appraiser to value the Debtors' hotel properties, (iii) appraisers to value the Debtors' assets, (iv) an accounting firm, and (v) a financial advisor / investment banker to assist the Debtors in working toward one or more sale or restructuring transactions. The progress set forth herein is sufficient evidence of the Debtors' good faith progress toward reorganization. Moreover, the Debtors are not trying to use exclusivity as leverage to negotiate with creditors. As set forth above, the Debtors are working to determine their possible options for formulating a plan. These factors weigh in favor of extension.

Paying Bills as They Come Due

22. This factor weighs heavily in favor of extending each exclusivity period. Not only

are the Debtors paying their post-petition operating expenses as they come due, but the Debtors are making principal and interest payments to their mortgagee secured creditors, and have designated dozens of critical vendors who have paid the pre-petition claims of several critical vendors. Accordingly, the Debtors are generally paying their debts as they come due and are not incurring significant post-petition debt.

Amount of Time Elapsed in the Case

23. This the second extension requested in the bankruptcy cases which have been on file for seven months. Under Section 1121(d) of the Bankruptcy Code, the Court has the discretion to extend the exclusivity periods for up to eighteen months after the Commencement Date. Here, the requested extension would result in a plan filed within the eighteen months of the Commencement Date.

24. For the foregoing reasons, the Debtors respectfully submit that the Court has cause to extend the exclusivity periods. The requested extensions are reasonable under the circumstances and in the best interests of the Debtors, their estates and creditors.

WHEREFORE, the Debtors respectfully request the Court enter an Order extending the 120-day Plan Exclusivity Period through and including December 26, 2017, and extending the 180-day Solicitation Exclusivity Period through and including February 26, 2018.

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