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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re IMPERIAL PALMS RESORT, LLC Debtor.	Case No. 17-04553-MM11 Chapter 11 **MOTION TO EXTEND PERIOD OF EXCLUSIVITY TO FILE A CHAPTER 11 PLAN PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE** DATE: January 11, 2018 TIME: 2:00 p.m. JUDGE: Hon. Margaret M. Mann DEPT.: One

COMES NOW Imperial Palms Resort, LLC, the Debtor and Debtor-In-Possession (the "Debtor") in the above captioned Chapter 11 case, and moves this Court for an order, pursuant to 11 U.S.C. § 1121(d)(1) to extend the exclusive period within which the Debtor has the ability, to itself at the exclusion of all others, to file a plan of reorganization. The Debtor requests that the extension be from the current exclusivity date of November 28, 2017 to February 26, 2018 which is a requested extension of ninety (90) days. Debtor also seeks a corresponding extension for the approval of a plan from January 27, 2018 to Friday April 27, 2018, also ninety (90) days.

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I.

FACTUAL SUMMARY

On July 31, 2017, the Debtor filed for bankruptcy protection under the Bankruptcy Code. The Debtor is a California Limited Liability Company. The Debtor operates the Imperial Palms Resort at Barbara Worth (the "Resort") at the real property best known as 2050 Country Club Drive, Holtville, California 92250 (the "Subject Property"). The Resort is located in Holtville, California. Holtville lies 10 miles east of El Centro, California. It has a population of less than 7,000. During the months of June through September, the typical temperature tops 100° on a daily basis and the Debtor's operations tend to slow significantly. During the months of November through March, the weather is typically very moderate and the Debtor's operations pick up significantly, receiving a steady stream of out of town guests that tend to spend these temperate months in the area. As such, the Debtor's operations are seasonal in nature and the Debtor is forced to plan its budgets accordingly.

The primary reason for the filing of the Bankruptcy was to preserve the going concern value and ongoing operations of the Debtor's business. The Debtor had a cash crisis due to an effort to renovate the Resort and the Subject Property in time to enter the peak season at the end of 2016. The renovations were delayed during that season and the Debtor's cash situation worsened. Because of an impending foreclosure by the secured creditor in first position, Clearinghouse Community Development Financial Institution ("Clearinghouse"), and the secured creditor in second position, Kevin Smith, a former insider of the Debtor, the viability of the Debtor's business was put at risk if not protected by the filing. The Debtor needed the protections and time under Chapter 11 to carefully analyze its assets and liabilities and to determine the core business operations around which the Debtor's march toward profitability was to be based.

Since the filing of the bankruptcy, the Debtor has maintained the operations of the Resort through the remaining slow season. In an effort to survive this slow season, the Debtor's majority owner, Oasis Growth Partners, Inc., ("OGP") has infused approximately $88,000 in capital contributions to maintain the Debtor's operations. The Debtor also diligently pursued the infusion of approximately $400,000 in funds in an effort to solidify its cash standing and to take advantage of the coming peak months. Unfortunately, efforts of the Debtor and OGP to obtain that financing have been unsuccessful to date.

However, the Debtor is now entering the peak season for its operations and the Debtor anticipates that the Debtor's cash position over the next several months will improve significantly. In addition, the Debtor has made an effort to locate potential buyers for the Resort and has received a letter of intent ("LOI") by a Chinese company offering to purchase the Resort from the Debtor for a purchase price of $7,250,000. The LOI was accepted and there are ongoing efforts to finalize a purchase and sale agreement with the LOI buyer. In the meantime, however, the Debtor has sought to increase the number of interested buyers and has signed a Commercial and Residential Income Listing Agreement with P C Realty, Inc., and Sperry Commercial[1] in order to list the Subject Property for sale at $8,500,000.[2]

The Debtor has been informed by the broker, JC Fan, that there is a third party preparing an offer on the Subject Property in the range of $8,500,000. The Debtor anticipates that this offer will be received prior to the hearing on this matter. If this offer is received and finalized as anticipated, the Debtor will have more than enough money to pay Clearinghouse in full. In fact, if OGP agrees to subordinate its secured claim to all allowed general unsecured claims with the exception to claims held by other current and/or former owners of the Debtor[3], then there will be enough money to pay all non-insider creditors in full.

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[1] Sperry Commercial is a full-service commercial real estate firm specializing in investment sales, leasing, property and asset management, as well as 1031 exchange services. With a global network of affiliates, Sperry can and does reach thousands of potential buyers.

[2] The Debtor is currently discussing the commission percentage and certain excluded parties to the listing agreement that would not generate a commission for Sperry and P C Realty, Inc. The Debtor will seek to have the final agreement approved by the Court shortly.

[3] The Debtor has discussed this issue with OGP and OGP has indicated a willingness to subordinate its alleged secured claim as provided above.

The Debtor is interested in working with creditors, including Clearinghouse, towards a consensual plan of reorganization or a liquidation of the Debtor's assets that will pay all non-insider creditors in full. In order to avoid having undue pressure from creditors, and maintaining the status quo for the time being, the Debtor brings this motion to extend the exclusivity period for the filing of a plan of reorganization. The extension will allow the Debtor to hopefully finalize a purchase and sale agreement that will hopefully pay all non-insider creditors in full.

II.

CAUSE EXISTS FOR AN EXTENSION AS DEBTOR DETERMINES CLAIMS AND ASSETS FOR REORGANIZATION

Under 11 U.S.C. § 1121(b), the Debtor has an exclusive period for 120 days after the date of the order for relief under the Bankruptcy Code to file a plan of reorganization. The Debtor then has 180 days to have the plan of reorganization accepted by the court under 11 U.S.C. § 1121(c)(3). 11 U.S.C. § 1121 (d) provides that "on request of a party in interest made within the respective periods specified in subsections (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 referred to in this section." The Debtor notes that the request for the extension must be made within the respective period, which is being done here, and that the hearing on the matter may take place beyond the expiration of the exclusivity period and that the motion may be granted beyond the exclusivity period. (See *In re Henry Mayo Newhall Memorial Hospital*, (9th Cir. BAP, 2002) 282 B.R. 444).

The determination of whether cause exists lies within the discretion of the court and must be determined on a case by case basis, focusing on the unique circumstances and factual considerations that arise in each distinct case (See *In re Gibson & Cushman Dredgin Corp.*, (E.D.N.Y. 1989) 101 B.R. 405). A variety of matters probative of § 1121 (d) cause are standardly considered as expressed in two decision (See *In re Henry Mayo Newhall Memorial Hospital*, (9th Cir.BAP 2002) 282 B.R. 444). Under the *In re Dow Corning Corp.* And *Express One*, decisions, a court must consider: (1) the size and complexity of the case; (2) the necessity of sufficient time to negotiate and prepare adequate information; (3) the existence of good faith progress toward reorganization; (4) whether the debtor is paying debts as they come due; (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the Debtor has made progress in negotiating with creditors; (7) the length of time the case has been pending; (8) whether the debtor is seeking the extension to pressure creditors, and (9) whether unresolved contingencies exist (See _In re Express One Int'l. Inc._, (Bankr. E.D. Tex. 1996) 194 B.R. 98, 100 and _In re Dow Corning Corp._, (Bankr.E.D.Mich. 1997) 208 B.R. 661). It is not necessary that all of the considerations raised by these two decisions be met, only that the aggregate facts support a finding of cause to extend the exclusive period (See _In re Henry Mayo Newhall Memorial Hospital_, (9th Cir.BAP 2002) 282 B.R. 444 at 452; found for extension where the application was for a (1) first extension (2) in a complicated case (3) that had not been pending for a long time, relative to its size and complexity (4) in which the debtor did not appear to be proceeding in bad faith (5) had improved operating revenues (6) had shown a reasonable prospect for filing a viable plan, (7) was making progress in negotiating with creditors (8) did not appear to be seeking an extension to pressure creditors and (9) was not depriving interested parties with material or relevant information).

In the instant case, most, if not all of the considerations under the *In re Express One Int'l Inc.* line of cases are met by the Debtor. The extension being sought from the original exclusivity period would be 90 days, well within the outside period provided by Section 1121, which is 18 months after the date of filing. In this case, the filing occurred on July 31, 2017, 18 months from that point would be January 31, 2019.

1. The Size and Complexity of the Case.

The Debtor's case is fairly complex. The Debtor has no less than five significant secured creditor in Clearinghouse, Kevin Smith, Darryl Readshaw, Qing Tao and OGP. A number of these claimants are current or former insiders. The Debtor also has significant claims with priorities (including various claims from former employees and allegedly unpaid taxes). As a corporate Debtor, the Debtor must find a way to satisfy the Absolute Priority Rule or, in the alternative, develop a plan that will likely receive approval from all creditor classes. Currently, the Debtor is working on finalizing a purchase and sale agreement that may resolve many issues.

However, it is anticipated that certain claims will still have to be litigated and/or negotiated, including several of the insider claims that arose due to the purchase of Debtor's securities and the claims of the Internal Revenue Service which are based on tax returns prepared by the previous ownership group, which are being amended at this time.

Perhaps more importantly, the Debtor is in a situation where it has equity as an ongoing company but has to continue operations and must find the necessary funds to continue its operations. The Debtor is able to maintain operations as a result of its chapter 11 bankruptcy, but needs a fully developed strategy to satisfy those creditors that have outstanding arrearages on their claims against the Debtor. In order to satisfy these claims, the Debtor must have a new source of cash, whether it be by Debtor-In-Possession Financing or through the sale of its assets, the avenue being considered at this time. In order to ensure that this occurs, the Debtor is working diligently towards a global plan that will allow it to remain in business and pay its non-insider creditors in full.

2. The necessity of sufficient time to negotiate and prepare adequate information.

As provided herein above, the Debtor needs to continue its effort to secure a purchaser for the Resort and is working diligently to find a buyer. Alternatively, the Debtor continues to work to obtain financing that would help the Debtor provide payments to secured creditors and establish a longer period to complete the sale of its assets. As provided above, the Debtor has hired a broker to assist it in identifying potential buyers. These efforts are ongoing, along with discussions with current owners on the potential to have the current shareholders remain as owners of the Debtor by and through further capital contributions. As these talks will likely involve the infusion of significant cash into the Debtor, it is understandable that those discussion proceed at their own pace. However, the Debtor continues to diligently pursue all potential avenues and hopes to have a motion to sell the Resort in a short period of time.

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3. *The existence of good faith progress toward reorganization.*

As provided above Debtor has weathered the slow season and has obtained capital infusions from OGP to continue in operations. The Debtor has also employed a broker for the Debtor to seek and obtain a buyer for the Resort and to pay all non-insider creditors in full. The Debtor anticipates having a hearing take place on a potential sale before the end of January 2018 and does not anticipate needing the entire 90-day continuance being requested, but is requesting a longer extension only to ensure that Debtor has enough time to complete negotiations.

4. *Whether the debtor is paying debts as they come due.*

Debtor had previously not been paying its ongoing obligations in full. However, with the Debtor entering its peak season the Debtor is paying all ongoing operation costs and should be current with all creditors on all post-petition operation costs. There is no harm being done to creditors by the ongoing operation of the Debtor. Indeed, as the Debtor remains in operations, the more interest the Debtor is garnering for the sale of the business.

5. *Whether the debtor has demonstrated reasonable prospects for filing a viable plan.*

Ongoing negotiations with potential buyers still need to be finalized. As negotiations continue, the Debtor is hoping to have a motion on file to sell the Debtor's property free and clear of liens. The sale would allow the Debtor to pay all non-insider allowed claims in full.

6. *Whether the Debtor has made progress in negotiating with creditors.*

The Debtor has not had an opportunity to negotiate with creditors due to the general lack of funds. However, as the Debtor enters its peak season and as the Debtor negotiates with potential buyers, the Debtor anticipates that discussions on the ultimate allowance of certain claims will commence once a bona fide offer is received. As provided above, the Debtor anticipates receiving such an offer shortly, certainly prior to the hearing on this matter.

7. *The length of time the case has been pending.*

The Debtor's case was filed on July 31, 2017. The case has only been pending for less than four months. As discussed previously herein, the Debtor has not sat idly as time has passed by, obtaining capital contributions allowing the Debtor to remain in operations, working to hire an broker to help the Debtor seek buyers for the Resort and otherwise working with its shareholders to find alternative solutions to the Debtor's reorganization. The Debtor believes a motion to sell the Resort may be on file shortly and seeks a 90 day extension to the exclusivity period in order to ensure that ongoing negotiations with potential buyers and with creditors can move forward at a reasonable pace. This is the first, and hopefully only, motion to seek an extension of the exclusivity period.

8. *Whether the Debtor is Seeking the Extension to Pressure Creditors.*

The Debtor is keeping creditors up to speed on the progress made towards a reorganization and/or sale of the Resort. There are no efforts to prevent creditors from taking part in this reorganization process. The Debtor is not seeking this extension to add pressure to creditors to improperly force any resolution. Instead, the Debtor seeks this extension only to allow more time for good faith negotiations to continue on the potential sale of the Resort. The Debtor is not aware of any creditor that will feel pressure by the filing of this Motion and is informed.

9. *Whether unresolved contingencies exist.*

There are a number of unresolved contingencies at this time. First and foremost, the Debtor has yet to obtain a buyer for the Resort. On this issue, the Debtor has hired a reputable broker and is moving quickly to finalizing a purchase and sale agreement. To date a letter of intent has already been received at $7,250,000 and a higher offer in the range of $8,500,000 is anticipated shortly.

The Debtor believes the various factors for extension of the exclusivity period for the Debtor's plan of reorganization support an extension being granted in the instant case. The Debtor is operating its business and should be current on its post-petition obligations shortly. The Debtor is in constant contact with its broker and is attempting to finalize a purchase and sale agreement in short order. The Debtor has now complied with all requirements as a debtor-in-possession under the Bankruptcy Code and is only seeking to continue the exclusivity period to ensure that it can develop the best possible plan of reorganization that the Debtor can propose in a reasonable period of time.

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III.

CONCLUSION

Debtor respectfully requests that the Court grant the Motion to extend the exclusivity period to file a plan of reorganization from the current deadline of November 28, 2017 until February 26, 2018 which is a requested extension of ninety (90) days and a corresponding extension for the approval of a plan extended from January 27, 2018 to April 27, 2018, also ninety (90) days.

Dated: November 28, 2017

By:/s/ Gustavo E. Bravo
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