

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)

In re:	*	
THE SAILING EMPORIUM, INC.	*	Case No: 16-24498-TJC
Debtor	*	(Chapter 11)
* * * * *		

FOURTH MOTION FOR ORDER EXTENDING EXCLUSIVE PERIODS TO FILE PLAN AND OBTAIN ACCEPTANCES THERETO

The Sailing Emporium, Inc., the debtor and debtor in possession (the “Debtor”), by counsel, pursuant to 11 U.S.C. § 1121(d) (the “Bankruptcy Code”), files this Fourth Motion for Order Extending Exclusive Periods to File Plan and Obtain Acceptances Thereto (the “Motion”), and states:

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(M) and (O). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory basis for relief requested herein is § 1121 of the Bankruptcy Code.

General Background

3. On November 1, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues in possession of its property and manages its financial affairs as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.
4. Pursuant to § 1121(b), the Debtor had the exclusive right up to and including March 1, 2017 to file a plan of reorganization (the “Exclusive Filing Period”) and, pursuant to § 1121(d), the Debtor had the exclusive right up to and including April 30, 2017 to solicit and obtain acceptances thereto (the “Acceptance Period”) (together, the “Exclusivity Periods”). These deadlines were extended to January 27, 2018 and March 29, 2018 by the Order

Granting Third Motion for Order Extending Exclusive Periods to File Plan of Reorganization or Liquidation and Obtain Acceptances Thereto [Dkt. # 243].

Relief Requested

5. By this Motion, the Debtor seeks the entry of an Order pursuant to § 1121(d) of the Bankruptcy Code extending the Exclusive Filing Period and the Acceptance Period from their expiration dates through and including May 1, 2018, and July 1, 2018, respectively.

Legal Standard

6. Section 1121(d) of the Bankruptcy Code authorizes the Court, for cause shown, to extend the periods within which a debtor retains the exclusive right to file a plan of reorganization or liquidation and to solicit votes in favor of such plan. Specifically, § 1121(d) provides:

[O]n 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 . . . increase . . . the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1).

7. Although the term “cause” is not defined by the Bankruptcy Code, the legislative history indicates that it is to be viewed flexibly “in order to allow the debtor to reach an agreement.” H.R. REP. NO. 95-595, at 232 (1977) (the “House Report”); *see also In re Public Serv. Co. of N.H.*, 88 B.R. 521, 534 (Bankr. D. N.H. 1988) (“[T]he legislative intent . . . [is] to promote maximum flexibility.”); *In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D. N.Y. 1987) (quoting the House Report).

8. To facilitate this legislative intent, a debtor should be given reasonable opportunity to negotiate an acceptable plan with creditors and to prepare adequate financial and nonfinancial information concerning the ramifications of any proposed plan for disclosure to creditors. *See, e.g., In re McLean Indus.*, 87 B.R. at 833-34; *In re Texaco Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987). The decision to extend a debtor’s exclusive periods to file a plan and solicit acceptances thereto is committed to the sound discretion of the bankruptcy court, based upon the facts and circumstances of each particular case. *See, e.g., First Am. Bank of N.Y. v.*

*Southwest Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.)*, 292 B.R. 639, 644 (B.A.P. 8th Cir. 2003); *In re AMKO Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) (“[A]pplying the ‘flexibility’ in dealing with the question of extension of exclusivity which the cases suggest . . . , we hold that debtor has shown cause for the extension.”).

9. To determine whether cause exists for an extension of a debtor’s exclusive periods to file a plan and to solicit acceptances thereto, courts have relied on a variety of factors, including the following: (A) the size and complexity of the case; (B) the necessity of sufficient time to negotiate and prepare adequate information; (C) the existence of good faith process toward reorganization; (D) whether the debtor is paying its debts as they come due; (E) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (F) whether the debtor has made progress in negotiating with creditors; (G) the length of time the case has been pending; (H) whether the debtor is seeking the extension to pressure creditors; and (I) whether unresolved contingencies exist. *See, e.g., In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989); *In re Texaco*, 76 B.R. at 326. Each factor by itself may provide sufficient cause for extending a Debtor’s exclusive periods. *See In the Matter of Federated Dep’t Stores and Allied Stores Corp.*, 1990 Bankr. Lexis 711, at \*6 (Bankr. S.D. Ohio Apr. 13, 1990). Moreover, no one factor is dispositive, and the Court is not restricted to counting factors. *In re Dow Corning*, 208 B.R. at 669-70.

#### Basis for Relief

10. Cause exists in this case to extend the Exclusive Filing and Acceptance Periods because the Debtor and William Arthur Willis and Mary Sue Willis, the debtors and debtors in possession in jointly-administered Case No. 16-26458-TJC, recently closed a complicated transaction in which The Peoples Bank was paid its principal and other charges exceeding \$2,400,000. The transaction, which involved the sale of parcels owned by the three estates, proved to be more time-consuming than anticipated.

11. The Debtor requests that it be given an opportunity to resolve the remaining issues now that the sale has been accomplished. This additional time will allow the Debtor to properly analyze whether a plan is the proper course of action under the circumstances of this case.

12. Granting the requested extensions of the Exclusive Filing and Acceptance Periods will not adversely affect the Debtor's creditors.

13. In addition, termination of the Exclusive Filing and Acceptance Periods at this time might give rise to multiple plans and a contentious confirmation process. Such litigation and resulting administrative expense would serve only to decrease recoveries to the Debtor's creditors and delay the Debtor's ability to confirm a plan in this bankruptcy case. Given the consequences if the relief requested herein is not granted, the requested extensions will not prejudice the legitimate interests of any party in interest in this bankruptcy case. Rather, the extension will further the Debtor's efforts to preserve value and avoid unnecessary and wasteful litigation. *See In re Public Serv.*, 88 B.R. at 536-37 (delay is justified when attempting to realize the maximum value of the debtor's estates).

14. The Debtor is not seeking an extension of the Exclusive Filing and Acceptance Periods to unduly pressure the Debtor's creditors. Instead, the extensions requested herein will facilitate the Debtor's efforts by providing the Debtor with a full and fair opportunity to resolve post-closing issues and formulate and finalize a plan, if appropriate. Accordingly, the Debtor believes that the requested extension is warranted and appropriate under the circumstances.

15. As such, the Court should grant the Debtor's Fourth Motion for Order Extending Exclusive Periods to File Plan and Obtain Acceptances Thereto because cause exists warranting such extension, progress has been made by the Debtor toward resolving this case and the Debtor's creditors will not be harmed by the relief requested.

16. Pursuant to Local Rule 9013-2, the Debtor states that, in lieu of submitting a memorandum in support of this Motion, it will rely solely upon the grounds and authorities set forth herein.

WHEREFORE, for the reasons stated herein, the Debtor requests that the Court enter an Order extending the Exclusive Filing Period and the Acceptance Period from their current expiration dates through and including May 1, 2018, and July 1, 2018 respectively and granting such other and further relief as the Court may deem just and appropriate.

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Counsel for Debtor

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January 2018, notice of filing the Fourth Motion for Order Extending Exclusive Periods to File Plan and Obtain Acceptances Thereto (the “Motion”) was served by CM/ECF to those parties listed on the docket as being entitled to such electronic notices, and a copy of the Motion was mailed first class, postage prepaid to the parties on the attached service list.

/s/ Lisa Yonka Stevens  
Lisa Yonka Stevens

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