

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

In Re: * Case No. 17-17821
Washington McLaughlin Christian School *
Debtor * (Chapter 11)
*

* * * * *

**CONSENT MOTION FOR EXTENSION OF EXCLUSIVE PERIODS
FOR DEBTOR TO FILE PLAN OF REORGANIZATION
AND DISCLOSURE STATEMENT
AND SEEK ACCEPTANCE OF SAME**

Washington McLaughlin Christian School (the “School” or “Debtor”), Debtor and Debtor-in-Possession in the above-styled case, files this Consent Motion for Extension of Exclusive Periods for Debtor to File a Plan of Reorganization and Disclosure Statement and Seek Acceptance of Same (the “Motion”), and respectfully states as follows:

I. Jurisdiction, Venue and Predicate for Relief

1. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this Motion and this case is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicate for relief requested herein is section 1121(d) of the Bankruptcy Code.

II. Factual Background

2. The Debtor filed a petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on June 6, 2017.

3. The Debtor has continued in possession of her properties and is presently operating its business and managing its properties as Debtor-in-Possession pursuant to 11 U.S.C. §§ 1107 and 1108.

4. By order dated October 24, 2017, the Court extended the exclusivity period in this case to January 2, 2018.

III. Relief Requested

5. By this Motion, the Debtor requests entry of the Proposed Order attached hereto extending the Exclusive Periods to file a Plan of Reorganization and Disclosure Statement and to seek acceptance of the Plan of Reorganization by an additional 90 days, without prejudice to the Debtor's, right to seek further extensions of the Exclusive Periods.

IV. Basis for Relief Requested

6. In accordance with 11 U.S.C. §1121, the Debtor is granted the exclusive right to file a Plan of Reorganization for 120 days after the date of the Order for Relief and the exclusive right to seek acceptance of said plan for the period of 180 days after the date of the Order for Relief. The current deadline for filing a Chapter 11 plan in this case is October 4, 2017.

7. Section 1121(d) of the Bankruptcy Code provides that the Court may, "for cause," extend these periods: "[on] request of a party in interest...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." 11 U.S.C. § 1121(d)(1).

8. Although the Bankruptcy Code does not define the term "cause," the legislative history indicates that it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95-595, at 231, 232

(1978), reprinted in 1978 U.S.C.C.A.N. 5693, 6191 (noting that Congress intended to give the bankruptcy courts flexibility to protect a debtor's interest by allowing an unimpeded opportunity to negotiate the settlement of debts without interference from other parties in interest); *see also In re Texaco, Inc.*, 81 B.R. 806,809 (Bankr. S.D.N.Y. 1988) ("It was intended that at the outset of a Chapter 11 case a debtor should be given the unqualified opportunity to negotiate a settlement and propose a plan of reorganization without interference from creditors and other interests").

9. The exclusive periods established by section 1121 of the Bankruptcy Code intended to give a debtor an adequate opportunity to address necessary operational matters at the outset of its chapter 11 case, to resolve significant issues with various creditors and to negotiate an effective plan of reorganization with its creditors. *See In re Newark Airport/Hotel L.P.*, 156 B.R. 444, 451 (Bankr. D.N.J.), *aff'd*, 155 B.R. 93 (D.N.J. 1993) (noting that chapter 11 provisions are designed to enable a debtor to remain in control for some period of time, thereby making reorganization an attractive alternative to financially troubled companies); *see also Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297-98 (W.D. Tenn. 1987) (noting that section 1121 is designed to give the debtor time to reach an agreement with its creditors regarding a plan of reorganization).

10. When determining whether "cause" exists to extend the exclusive filing period and the exclusive solicitation period, bankruptcy courts generally consider a number of factors to assess the totality of the circumstances affecting whether or not "cause" exists to extend such periods. *See In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997) (noting that courts generally rely on the same factors to determine whether exclusivity should be extended and identifying nine such factors; *see also In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987) ("*McLean*")

(noting that courts generally rely on the same factors to determine whether exclusivity should be extended and identifying five such factors.)

11. In *McLean*, the Court held that the following factors are relevant to a court's determination of whether "cause" within the meaning of section 1121 exists to extend the exclusive periods for filing and soliciting acceptances of a plan:

- (a) the size and complexity of the debtor's case;
- (b) the existence of good faith progress towards reorganization;
- (c) a finding that the debtor is not seeking to extend exclusivity to pressure creditors to accede to the [debtor's] reorganization demands;
- (d) the existence of an unresolved contingency; and
- (e) the fact that the debtor is paying its bills as they come due.

McLean, 87 B.R. at 834 (citations and internal quotation marks omitted).

12. Not all factors are relevant to every case, and courts often have used a subset of the above-quoted factors to determine whether cause exists. *See e.g., In re Express One Int'l*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (identifying four of the five above-quoted factors, among others, as relevant in determining whether "cause" exists to extend exclusivity); *In re Interco, Inc.*, 137 B.R. 999, 1001 (Bankr. E.D. Mo. 1992) (using four of the five above-quoted factors to determine that the bondholders' committee failed to show "cause" to terminate the debtors' exclusivity periods); *In re United Press Int'l, Inc.*, 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (holding that the debtor showed "cause" to extend the exclusivity periods based upon three of the five above-quoted factors). As discussed below, an application of these factors supports the requested extension of the Exclusive Periods.

A. The Existence Of An Unresolved Contingency

13. The primary reason for filing this case was to address the matured note on the real property owned by the Debtor located at 6501 Poplar Avenue, Takoma Park, MD, (the “Property”) held by Fairview Investment Fund II, LP (“Fairview”).

14. At one time, the Property was actually three different and distinct parcels.

15. One of the three parcels was purchased by the Takoma Park, MD at a tax sale (the “Takoma Park Parcel”).

16. Fairview subsequently filed a quiet title action to resolve a lien asserted by the US Department of Housing and Urban Development (“HUD”) in the amount of \$650,000 against the Takoma Park Parcel.

17. Fairview is in the process of attempting to settle the quiet title action.

18. If Fairview’s settlement efforts are fruitful, it is possible that the present case may be unnecessary because Fairview may be able to settle its lien by liquidating the Takoma Park Parcel.

B. The Debtor’s Good Faith Progress in this Case Weighs in Favor of an Extension of the Exclusive Periods

19. Courts considering extensions of the Exclusive Periods often consider a debtor’s progress during the initial and intermediary stages of the case. *See In re United Press Int’l, Inc.*, 60 B.R. at 269 (holding that a debtor’s “extraordinary diligence, speed and skill, in the face of major obstacles,” which, after one year’s time, put the debtor in a position to file a plan of reorganization, warranted an additional three month extension).

20. Since the Petition Date, the Debtor has taken significant steps toward a successful reorganization, including but not limited to:

- Preparing and filing the Schedules and Statements;
- Attending the Initial Debtor Interview and 341 Meeting of Creditors;
- Filing an Application to Employ Counsel;
- Amendments the Schedules and Statements;
- Negotiating with Secured Creditors;
- Beginning to Draft the Plan and Disclosure Statement; and
- Working with the U.S. Trustee to ensure that all administrative requirements have been satisfied.
- Timely filing all Monthly Operating Reports;
- Timely paying all quarterly fees to the US Trustee

21. Accordingly, the Debtor's good faith progress in this case favors extending the Exclusive Periods.

C. The Debtor is Not Seeking an Extension of the Exclusive Periods to Pressure Creditors to Submit to Their Reorganization Demands

22. When determining whether "cause" exists for the requested extension, courts also may assess whether a debtor's motives for requesting an extension of the Exclusive Periods are proper. *See McLean*, 87 B.R. at 834. The Debtor seeks the requested extension of the Exclusive Periods in good faith and submits that there is no risk of harm to the Debtor's creditors if this Court grants the requested extension. This case does not bear characteristics that would justify the denial of an extension of the Exclusive Periods. *See In Re Dow Corning*, 208 B.R. at 670 (stating that an extension of the Exclusive Solicitation Period should be denied if the debtor is attempting to delay administration of the reorganization cases or pressure creditors to accept an unsatisfactory plan).

The Debtor is not seeking the extension of the Exclusive Periods to delay administration of this Chapter 11 case or to pressure creditors to accept an

unsatisfactory plan. On the contrary, the purpose of the present motion is to determine whether certain contingencies will occur obviating the need for this case.

VI. Counsel For Fairview Consents To This Motion.

Undersigned has conferred with counsel for Fairview, Richard Hagerty, and he has consented to this Motion.

V. Conclusion

WHEREFORE, the Debtor prays

- (a) that the exclusive periods within which only the Debtors may file a Plan of Reorganization be extended for a period of 90 days;
- (b) that the 180-day exclusivity period for obtaining acceptance of said plan be extended for the same length of time;
- (c) that the Court enter the Order filed contemporaneously herewith granting such relief subject to objection by parties in interest; and
- (d) for such other and further relief as the court deems just and appropriate.

Respectfully submitted,

/s/ Michael P. Coyle
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READ AND CONSENTED TO:

/s/ Richard Hagerty

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DATED: January 2, 2018

Certification Pursuant to Admin. Order 03-02

I HEREBY CERTIFY that the terms of the foregoing Motion submitted to the Court are identical to those set forth in the original Motion, and the signatures represented by the /s/ on this copy reference the consent of the parties to filing of this Motion.

/s/ Michael P. Coyle

Michael P. Coyle

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of January 2018, copies of the attached Motion to Extend Exclusivity Period was served on all parties listed below by first class mail, unless said party is a registered CM/ECF participant and the Notice of Electronic Filing indicates that this Motion was electronically mailed to said party.

Office of the U.S. Trustee – Greenbelt

All parties listed on the attached mailing matrix.

Richard Hagerty
Troutman Sanders
1850 Towers Crescent Plaza #500
Tysons Corner, VA 22182

/s/ Michael P. Coyle
Michael P. Coyle, Bar No. 16202