

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	CHAPTER 11
	:	
S&F MEAT CORP.,	:	
	:	Case No. 17-14687 (AMC)
	:	
Debtor.	:	

**DEBTOR’S MOTION PURSUANT TO 11 U.S.C. SECTION 1121(d)
OF THE BANKRUPTCY CODE FOR AN ORDER EXTENDING THE
EXCLUSIVE PERIODS DURING WHICH THE DEBTOR MAY
FILE AND CONFIRM A PLAN OF REORGANIZATION**

S&F Meat Corp. (the “Debtor”), by and through its counsel, Smith Kane Holman, LLC, hereby moves for the entry of an order extending the exclusive periods during which it may file and confirm a plan of reorganization (the “Exclusivity Motion”) and, in support hereof, avers as follows:

Parties, Jurisdiction and Bankruptcy Filing Information

1. The Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code, 11 U.S.C. §101 et seq. (the “Bankruptcy Code”) on July 10, 2017 (the “Petition Date”) and has continued in possession of its property and operating its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.
2. No official committee of unsecured creditors has been appointed in the Debtor’s case.
3. This Court has jurisdiction over the Exclusivity Motion pursuant to 28 U.S.C. §§ 157 and 1134. The statutory predicate for the relief sought herein is Section 1121 of the Bankruptcy Code.
4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and/or 1409.

Pre-Bankruptcy Background

5. The Debtor owns and operates a full service, community supermarket located at 1240

E. Erie Avenue, Philadelphia, Pennsylvania, trading as the Erie Plaza Market Place, and dedicated to providing its expanding customer base with quality grocery food.

6. The Debtor's financial issues started with an agreement to borrow funds from General Trading Co., Inc. ("GTC"), as well as to execute a certain cross corporate guaranty ("CC Guaranty"), pursuant to which it guaranteed payments to or sums owed by 476 Meat Corp. ("476 Meat"), a former affiliate of the Debtor in 2010.

7. GTC is a wholesale food distributor based in Carlstadt, New Jersey.

8. GTC lends money to start-up grocery/supermarkets in urban areas and requires the borrowers, to sign onerous loan documents which are subject to above-market interest rates and penalties.

9. Such borrowers are compelled by GTC to purchase all of their groceries from GTC at higher than market rates for the same inventory offered in the marketplace.

10. In the Fall of 2010, GTC loaned approximately \$859,000 to the Debtor and 476 Meat in order for the Debtor to complete construction of its grocery store and stock its shelves with products from GTC.

11. By 2013, the debt due to GTC by the Debtor and 476 Meat was approximately \$1,230,000.

12. Due to the above-market interest rates on the GTC loans, couple with high food prices charged by GTC, the Debtor and 476 Meat needed to refinance and payoff GTC to stay competitive.

13. After reluctantly agreeing to GTC's negotiating tactics, whereby GTC required the Debtor and 476 Meat to purchase future inventory from GTC as a condition of accepting the loan payoff, on or about September 6, 2013, the Debtor and 476 Meat closed on a loan with Capital One, National Association ("CONA") and, on the same day, paid GTC \$1,230,865.36, representing full

payment of all obligations due to GTC. All debts due and owing to GTC were paid in full and satisfied.

14. As a result, the GTC loan documents, including the CC Guaranty (and any Debtor obligations thereunder) were satisfied and were no long valid and binding.

15. Thereafter, the Debtor and 476 Meat ended their affiliation through a stock exchange between the respective principals.

16. In March of 2015, unbeknownst to the Debtor, 475 Meat borrowed additional sums from GTC pursuant to a certain Time Promissory Note (“Promissory Note”).

17. Following 475 Meat’s alleged default on the Promissory Note, GTC commenced collection actions both against 475 Meat and the Debtor, including the filing of a complaint in confession of judgment in ejectment for possession of the Debtor’s premises located at 1240 East Erie Avenue, Philadelphia, PA 19124 (the “Debtor’s Premises”) in the Court of Common Pleas of Philadelphia County (the “State Court”), in the action styled *General Trading Co., Inc., individually and by its agent Grocery Leasing Corp. v. S&F Meat Corp.*, Case No. October Term 2016, No. 002792 (the “State Court Action”).

18. On or about October 31, 2016, the Debtor filed its petition to strike and/or open confession of judgment for possession and for stay of execution in the State Court Action pursuant to Pa. R. Civ. P. 2959.

19. By Order dated January 9, 2017, the State Court granted Debtor’s petition to open, and opened GTC’s confessed judgment against Debtor.

20. Thus, as of January 9, 2017, the Debtor asserts that GTC’s does not have a State Court judgment in its favor against the Debtor, and GTC’s warrant to confess judgment is now fully exhausted and cannot be revived.

Chapter 11 Litigation

21. Debtor's chapter 11 filing on July 10, 2017 caused the State Court Action to be stayed pursuant to the provisions of section 362 of the Bankruptcy Code.
22. On July 25, 2017, GTC filed a Motion to Vacate the Automatic Stay with respect to the State Court Action (the "Motion for Relief"). *See* Bankruptcy No. 17-14687 at Dkt. No. 40.
23. On or about August 15, 2017, Debtor removed the State Court Action to this Court (the "Removed Action"). *See* Adv. Pro. No. 17-00223 at Dkt, No. 1.
24. On or about August 24, 2017, GTC filed a motion for abstention from and/or remand of, civil action removed from the Court of Common Pleas of Philadelphia County ("GTC Abstention/Remand Motion"). *See* Adv. Pro. No. 17-00223 at Dkt, No. 4.
25. On September 27, 2017, this Court entered an Order denying the GTC Abstention/Remand Motion and directing the Debtor and GTC to file a joint pre-trial order with respect to the Removed Action. *See* Adv. Pro. No. 17-00223 at Dkt, No. 20.
26. On October 2, 2017, the Debtor and GTC submitted their proposed joint pre-trial order which this Court approved on October 3, 2017 (the "Joint Pre-Trial Order"). *See* Adv. Pro. No. 17-00223 at Dkt, Nos. 21 and 22.
17. Among the relevant terms of the Joint Pre-Trial Order, (a) all fact discovery shall be completed by January 19, 2018, (b) expert witnesses shall be identified and reports exchanged by February 16, 2018, (c) all motions to amend pleadings or for summary judgment shall be filed by March 2, 2018, (d) the parties shall file their joint pre-trial statement by May 4, 2018 and (e) the Court shall conduct its mandatory pre-trial/settlement conference on May 30, 2018.
18. Accordingly, crucial facts and legal determinations that are necessary for the Debtor to formulate, prosecute and confirm a plan of reorganization shall not be determined by this Court until late Spring/early summer of 2018; such determinations include, but are not limited to GTC's

disputed assertion that “GTC became lessee/tenant under the S&F Lease when it elected to exercise its rights under the Leasehold Mortgage, and the Debtor was dispossessed of any leasehold rights it may have had at that time” and whether GTC’s UCC sale of 476 Meat’s assets was performed in a “commercially reasonable manner.” *See* Bankruptcy No. 17-14687 at Dkt. No. 40, pars. 25 and 30. These and other litigation issues are key to the Debtor’s ability to propose a chapter 11 plan and determine the treatment of not only GTC, but all other creditors asserting a security interest against the Debtor’s assets.

Basis for Relief Requested

21. By the Exclusivity Motion, the Debtors seek an order pursuant to Section 1121(d) of the Bankruptcy Code (a) extending the period during which it has the exclusive right to file a plan of reorganization, from the current expiration date of November 7, 2017 to June 30, 2018; and (b) extending the period during which the Debtor has the exclusive right to solicit acceptances of such plan from the current expiration date of January 6, 2018 to August 29, 2018.

22. This Motion is the Debtor’s first request for an extension of its exclusive periods and represents a proposed extension of each period for 235 days to accommodate the dates and deadlines established in the Joint Pre-Trial Order.

23. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to file a plan of reorganization. Section 1121(c)(3) of the Bankruptcy Code provides that if the debtor files a plan within the 120-day exclusive period, the debtor has 180 days after the commencement of the case to obtain acceptances of such plan.

24. These exclusive periods are meant afford a debtor a full and fair opportunity to propose a plan of reorganization and to solicit acceptances thereof without disruption to a debtor’s efforts to reorganize.

25. Where the initial 120-day and 180-day exclusive periods provided for in the Bankruptcy Code turn out to be inadequate for a debtor to file a plan of reorganization and solicit acceptances thereof, Section 1121(d)(1) of the Bankruptcy Code allows the Court to extend the debtor's exclusive periods for "cause".

26. Although the term "cause" is not defined in the statute, "cause" tends to be a flexible standard designed to balance the competing interests of a debtor and its creditors by affording the debtor an adequate opportunity to negotiate with its creditors a plan of reorganization, while recognizing creditor's rights to have substantial input in the process. No single factor is determinative to establish "cause" for extending a debtor's exclusivity.

27. In the instant case, cause for an extension of exclusivity exists because the final resolution of Removed Action shall have a material effect on the Debtor's ability and/or options to reorganize its affairs. Against the backdrop of this uncertainty, it would be premature (at best), as well as a waste of time, effort and resources, including judicial resources, to require the Debtor to file a plan by the original deadlines imposed by the Bankruptcy Code in order to maintain its right to exclusivity.

28. The Debtor believes that the requested extension of exclusivity periods will afford it the ability to fully litigate the Removed Action which in turn will allow all the Debtor to move forward with a plan that provides for the proper treatment and maximum return to its creditors.

29. While the Debtor would prefer to conclude its chapter 11 case expeditiously, the Debtor is in the early stage of its case and the Remove Action. No prior request to extend exclusivity has been made, and the Debtors are seeking an additional 235 days, which, given the terms of the Joint Pre-Trial Order, should not unreasonably delay the case.

30. The Debtor should be afforded a full and fair opportunity to negotiate, propose and seek acceptances to a confirmable plan of reorganization. The Debtor believes that the extension of

the exclusive periods is warranted and appropriate under the circumstances and should be granted.

It is submitted that the extension requested will not prejudice the legitimate interests of any creditor and will likely afford parties in interest an opportunity to pursue to fruition the beneficial objectives of a consensual reorganization.

31. While the Debtor presently does not anticipate the need for any further extension of exclusivity, the Debtor reserves the right to seek a further extension of its exclusivity periods, and notes that its requested extension of the exclusivity periods remains well within the plan filing/solicitation deadlines set forth in Section 1121(d)(2)(A) and (B) of the Bankruptcy Code (18 month and 20 month from Petition Date, respectively).

32. This Motion has not been filed to delay or otherwise pressure creditors into accepting less favorable plan terms than those which they would otherwise be entitled.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order in the form attached granting the relief requested herein and such other and further relief as this Court may deem just and proper.

Dated: November 7, 2017

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