

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
THE TIFARO GROUP LTD.,	§	CASE NO. 17-80171-11
	§	
EC MANSFIELD, LLC	§	CASE NO. 17-34452-11
	§	
DEBTORS.	§	Jointly Administered Under
	§	Case No. 17-80171

MOTION TO EXTEND THE EXCLUSIVITY PERIOD FOR DEBTOR EC
MANSFIELD, LLC TO FILE AND CONFIRM A CHAPTER 11 PLAN
& SOLICIT VOTES PURSUANT TO 11 U.S.C. § 1121(d) &
§1125 AND REQUEST FOR EXPEDITED CONSIDERATION

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

****EXPEDITED CONSIDERATION HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EXPEDITED BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EXPEDITED CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.****

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Debtor EC Mansfield, LLC (“Mansfield” or “Debtor”), debtor and debtor in possession, respectfully moves this Court for an order extending the exclusive period under which the Mansfield may file its Chapter 11 plan. The Debtor seeks to extend the current exclusivity period

to file a plan for approximately sixty (60) additional days, from November 22, 2017 through January 21, 2018, and for an additional sixty (60) days thereafter in which to confirm a plan, and in support thereof would respectfully show the Court as follows:

I. SUMMARY

1. Mansfield filed its Chapter 11 case on July 25, 2017. Mansfield does not operate and intends to orderly liquidate its assets in order to satisfy claims of creditors. Mansfield's assets consist primarily of outstanding accounts receivable and medical equipment. Mansfield is in the process of establishing a system for the collection of accounts receivable, which has been outstanding for more than ten months. Mansfield estimates the net value of these receivables at approximately \$340,000. However, until Debtor effectuates meaningful collections, it cannot determine receipts with sufficient precision to propose a plan. Further, Debtor estimates the value of its equipment at approximately \$500,000. The Debtor is in the process of investigating various measures to maximize the value of these assets. Mansfield in the process of putting together a plan to orderly liquidate these assets but does not expect to have it finalized in time to file a Chapter 11 plan prior to November 22, 2017, which is the expiration of its' exclusive period to file a plan.

2. Accordingly, Debtor Mansfield requests a sixty-day extension of the exclusive period in which it may file a plan, through January 21, 2018, and an additional sixty (60) days thereafter to confirm the Chapter 11 Plan. Expedited consideration is requested because Mansfield's exclusivity period expires on November 22, 2017, and if an extension is not granted, Debtor Mansfield needs sufficient time to pursue alternative strategies.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction by virtue of 28 U.S.C. §1334. Venue of this proceeding

and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

III. BACKGROUND

4. The Tifaro Group, Ltd. (“Tifaro”) filed its bankruptcy case on June 2, 2017 and Debtor EC Mansfield (“Mansfield”) filed its bankruptcy case on July 25, 2017 (collectively “Petition Date”), under Chapter 11 of Title 11 of the Bankruptcy Code, 11 U.S.C. §§101 *et seq.* (the “Bankruptcy Code”). The Debtors continue to manage their property as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. An order authorizing joint administration of Tifaro and Mansfield’s bankruptcy cases was entered on July 26, 2017 (Docket #54).

5. No trustee or examiner has been appointed in the Debtors' bankruptcy cases and no official committee of unsecured creditors has been established.

6. Debtor Tifaro filed its plan (“Tifaro Plan”) and disclosure statement (“Tifaro Disclosure Statement”) on September 29, 2017 and a hearing on conditional approval of the Tifaro Disclosure Statement is scheduled for November 16, 2017. Mansfield is not a party to the Tifaro Plan or Tifaro Disclosure Statement.

7. Since the respective filings, the focus of these jointly administered bankruptcy cases has been resolving the litigation with Capital One. Mansfield has also worked to reject its accounts receivable collection agreement with CMS and establish an internal system for these collections. Mansfield estimates the net value of these receivables at approximately \$340,000. However, these accounts receivable have been outstanding for more than ten months and will require considerable collection efforts. Until Debtor effectuates meaningful collections, it cannot determine receipts with sufficient precision to propose a plan. Further, Debtor

estimates the value of its equipment at approximately \$500,000. The Debtor is in the process of investigating various measures to maximize the value of these assets. Mansfield is in the process of putting together a plan to orderly liquidate these assets but does not expect to have it finalized in time to file a Chapter 11 plan prior to November 22, 2017, which is the expiration of its' exclusive period to file a plan.

8. Accordingly, Debtor Mansfield requests an extension of the exclusive period in which the Debtor may file a plan for sixty (60) days, through January 21, 2018, and an additional sixty (60) day thereafter in which to confirm a Chapter 11 Plan.

9. Termination of exclusivity could result in competing plans, undue expense, and no corresponding benefit to the unsecured creditors.

IV. BASIS FOR REQUESTED RELIEF

10. Under §1121(b) of the Bankruptcy Code, the Debtor has the exclusive right to file a Chapter 11 plan within the first one hundred and twenty (120) days from the Petition Date ("Exclusivity Period").¹ Section 1121(c) further provides that if the Debtor files a plan within the first one hundred and twenty (120) days of the Petition Date, the Exclusivity Period is automatically extended for an additional sixty (60) days to allow the Debtor to obtain acceptance of their plan.²

“Cause” Exists to Extend Exclusivity Periods

11. The Debtor requests the Court extend, “for cause,” the Exclusivity Period within which the Debtor may file and confirm a plan under sections 1121(b) and (c). Under section 1121(d) of the Bankruptcy Code, “after notice and a hearing, the court may *for cause* reduce or

¹ See 11 U.S.C. §1121(b).

² See 11 U.S.C. §1121(c).

increase” the period in which a debtor has the exclusive right to file a plan.³ It is within the court’s discretion to determine whether cause exists to extend a debtor’s exclusivity period.⁴ Although section 1121(d) requires the court to find “cause” for the extension of an exclusivity period, it is clear from the legislative history that courts are given broad flexibility to grant an extension and such determination is based on the facts and circumstances of each case.⁵ Also, the burden of proof rests with the debtor when it seeks an extension of the exclusivity period to demonstrate that cause exists.⁶

12. Courts generally examine a number of factors in determining whether an extension of the debtor’s exclusivity period for proposing a plan should be granted. These factors include (i) the debtor’s need for sufficient time to negotiate a Chapter 11 plan and to prepare the required adequate information; (ii) whether the debtor has, in good faith, made progress towards exiting bankruptcy; (iii) whether the debtor is current on its bills as they become due; (iv) whether the debtor is able to demonstrate that it is reasonable to expect that a viable plan can be filed; (v) what progress has been made in its negotiations with creditors; (vi) what is the amount of time that has elapsed in the case; (vii) the case’s size and complexity; (viii) whether an extension of the exclusivity period is being sought to pressure creditors into accepting the debtor’s demands; and (ix) the existence of unresolved contingencies.⁷ Other factors noted by one court were that “the debtor’s financial position would not be depleted or deteriorated by a delay. . . . [t]his [was]

³ 11 U.S.C. § 1121(d)(emphasis added).

⁴ See *In re Washington-St. Tammany Electric Cooperative, Inc.*, 97 B.R. 852, 854 (E.D.La. 1989).

⁵ See *Teachers Ins. and Annuity Assoc. of Am. v. Lake in the Woods (In re Lake in the Woods)*, 10 B.R. 338, 345 (E.D. Mich. 1981); *Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297 (Bankr. W.D. Tenn. 1987)(citing H.R. Rep. No. 95-545, 92 Cong., 2d Sess. 232, reprinted in 1978 U.S.C.C.A.N. 5787, 6191, “the hallmark of . . . section 1121(d) is flexibility.”); See also *First American Bank of New York v. Southwest Gloves, Inc.*, 64 B.R. 963, 965 (Bankr. D. Del. 1986); *In re Texaco*, 76 B.R. 321, 326 (Bankr. S.D.N.Y. 1987).

⁶ See *In re Dow Corning Corp.*, 208 B.R. 661, 662 (Bankr. E.D. Mich. 1997).

⁷ *Id.* at 664-65 (citing *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996)).

the first extension in a four-month case [and] there [was] no evidence that an extension was sought as a delay tactic or to prolong the Chapter 11 case for impermissible purposes.”⁸

13. Debtor Mansfield believed that, based on many of the above listed factors, ample cause exists for granting an extension of its exclusivity period to file and confirm a plan. The justifications for such an extension are clearly present and include the following:

- a. This is the Debtor’s first request for an extension of the Exclusivity Period. The Debtor needs additional time to obtain adequate information to formulate a plan;
- b. Mansfield cannot confirm a plan absent an efficient mechanism and financing for the purpose of collecting the A/R and liquidating its equipment. Until now, the Debtor has not had sufficient information to fully evaluate the A/R to value its net collectability. The Debtor has now received the required information from CMS pertaining to the A/R and is in the process of formulating a plan but does not expect to have this finalized prior to the expiration of Debtor’s Exclusivity Period to file a plan;
- c. The Debtor is not seeking an extension to pressure creditors into accepting its demands;
- d. The requested extension would not prejudice the interests of creditors; and
- e. The burden on the Debtor’s estate of an extension is *de minimis*.

14. Further, co-Debtor Tifaro has filed and is seeking approval of its plan and disclosure statement.

15. The Debtor believes that the requested extension of the Exclusivity Period is in the best interests of the Debtor and its creditors. The Debtor is not trying to unnecessarily prolong or delay these proceedings or pressure creditors. Mansfield’s failure to file a plan during the

⁸ *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996). See also *RCN Anlageninvestitionen Frodsgesellschaft II*, 118 B.R. at 464 (district court listed those factors upon which the bankruptcy court relied when it found an extension of exclusivity was warranted). As held by one court, “extensions are impermissible if they are for the purpose of allowing the debtor to prolong reorganization while pressuring a creditor to accede to its point of view on an issue in dispute.” *Lake in the Woods*, 10 B.R. at 345-46

current Exclusivity Period does not result from any fault or inaction by the Debtor, but instead is a result of the circumstances described herein.

16. Further, no party in interest will suffer any prejudice from granting the requested relief. On the other hand, if the Court declines to extend the Exclusivity Period, the Debtor believes that the interests of all creditors and other parties in interest will be harmed and that their progress towards a confirming a Chapter 11 plan would be severely hampered. Litigation of any competing plan would cause undue expense to the estates.

V. CONCLUSION

WHEREFORE, Debtor Mansfield respectfully requests that the Court further extend the Exclusivity Period under §§1121(b) and (c) in which the Debtor may file a plan through January 21, 2018 to file its Chapter 11 Plan, with an additional sixty (60) days thereafter in which to confirm the same and grant such other and further relief as is just and proper.

Dated: November 7, 2017

Respectfully submitted,

HOOVER SLOVACEK LLP

/s/ Melissa A. Haselden

By: _____

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ATTORNEYS FOR DEBTORS

CERTIFICATE OF CONFERENCE

The undersigned does hereby certify that on November 6, 2017 Hector Duran, trial attorney for the US Trustee, indicated that, no opposition to the extension requested herein.

/s/Melissa A. Haselden
MELISSA HASELDEN

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2017, a true and correct copy of the foregoing EXPEDITED MOTION TO EXTEND THE EXCLUSIVITY PERIOD FOR DEBTOR EC MANSFIELD LLC TO FILE AND CONFIRM A CHAPTER 11 PLAN & SOLICIT VOTES PURSUANT TO 11 U.S.C. § 1121(d) AND §1125 as forwarded via electronic mail through the Court's ECF notification to the parties listed below and U.S. First Class Mail on the attached service lists.

17-80171 Notice will be electronically mailed to:

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