

M-2015-247 2452

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)
)
TRUSTEES OF CONNEAUT LAKE PARK, INC.,) Bankruptcy Case No. 14-11277-JAD
) Chapter 11
Debtor.)
)
)
TRUSTEES OF CONNEAUT LAKE PARK, INC.,)
)
)
Movant,)
)
)
v.) Document No. _____
)
)
NO RESPONDENT,)
)
)
Respondent.)

JURISDICTION

- 1. On December 4, 2014 (the "Petition Date"), the Debtor commenced its reorganization case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code").
2. The Debtor is functioning as a debtor-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.
3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
4. The statutory basis for the relief requested herein is section 1121(d) of title 11 of the United States Code.

RELIEF REQUESTED

- 5. By this Motion, the Debtor seeks entry of an order substantially in the form attached hereto as Exhibit A: (a) extending the Debtor's Filing Exclusivity Period through and including June 30, 2015, and the Debtor's Soliciting Exclusivity Period through and including August 31, 2015, without prejudice to the Debtor's right to seek further extensions to the Exclusivity Periods; and (b) granting related relief.

BACKGROUND

- 6. The Debtor is a Pennsylvania non-profit corporation organized in 1997 and having the corporate purpose, among other things, to preserve and maintain Conneaut Lake Park, a vintage amusement park (the "Park"), for historical, cultural, social and recreational, the time shall be extended until the disposition of the motion." Accordingly, Local Rule 9013-6 obviates the need for a bridge order or an expedited hearing on the Debtor's relief requested herein.

DEBTOR'S MOTION FOR ENTRY OF AN ORDER (A) EXTENDING THE DEBTOR'S EXCLUSIVE PERIOD TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE; AND (B) GRANTING RELATED RELIEF

Trustees of Conneaut Lake Park, Inc., the above-captioned debtor-in-possession (the "Debtor"), hereby moves this Court for an order, substantially in the form attached hereto as Exhibit A: (a) extending the Debtor's exclusive right to file a chapter 11 plan through and including June 30, 2015 (the "Filing Exclusivity Period"), and to solicit votes thereon through and including August 31, 2015 (the "Soliciting Exclusivity Period"; together with the Filing Exclusivity Period collectively, the "Exclusivity Periods"), without prejudice to the Debtor's right to seek further extensions to the Exclusivity Periods; and (b) granting related relief. In support of this Motion, the Debtor respectfully states as follows:

1 The Debtor filed this Motion prior to the expiration of the current deadline for the Exclusivity Period on April 3, 2015. Pursuant to Local Rule 9013-6, "[i]f the time has not expired ... within which the debtor retains the exclusive right to file a plan of reorganization ... when a motion to extend time is filed, then

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and civic purposes for the benefit of the community and the general public. The Debtor presently holds in trust for the use of the general public 208.213 acres of land and the improvements thereon (the "*Real Property*") located in Crawford County, Pennsylvania.

7. The Debtor accrued substantial unpaid tax liability on the Real Property since 1997 and as of the Petition Date, owed the relevant taxing authorities (the "*Taxing Authorities*") approximately \$940,000.00 (the "*Tax Obligations*"). The Taxing Authorities brought the Debtor's Real Property to Sheriff Sale scheduled for December 5, 2014 which precipitated the filing of this bankruptcy case.

8. Since the Petition Date, a number of contingencies have arisen that substantially affect the Debtor's reorganization. These contingencies are too far unresolved to allow the Debtor to propose a plan of reorganization that accurately states how certain claims and interests can and will be treated. These contingencies include:

- a. **The Insurance Litigation.** The Taxing Authorities and the Debtor have worked together to remove certain litigation pending in the Court of Common Pleas of Crawford County to the Bankruptcy Court relating to the disposition of certain insurance proceeds (the "*Insurance Litigation*"). Favorable resolution of the Insurance Litigation could reduce the Tax Obligations by up to 60%. The parties to the Insurance Litigation have agreed to mediate their disputes and the mediation is scheduled for April 15, 2015 (the "*Mediation*");
- b. **Park Restoration LLC Termination.** The Debtor and Park Restoration LLC are parties to a number of executory contracts and unexpired leases (the "*Park Restoration Agreements*") that involve, among other things, operations of certain businesses on the Real Property. On March 20, 2015, the Debtor sent its

notice of termination of the various Park Restoration Agreements because, *inter alia*, Park Restoration is in material default of the terms of those agreements. The Debtor anticipates that Park Restoration will dispute the termination of its agreements and that the Debtor likely will file an Adversary Proceeding to resolve the parties' disputes.

c. **Sale of the Debtor's NonCore Parcels** There are certain parcels of the Real Property (the "*NonCore Parcels*") that are outside the Debtor's main area of operations and which are not needed for the Debtor to fulfill the charitable purposes for which it was created. The Debtor proposes to sell these NonCore Parcels to fund its reorganization plan and to make capital improvements to its operations. There are certain unresolved matters affecting the NonCore Parcels that substantially impact their marketability. These matters include, but are not necessarily limited to: zoning matters, certain private and public easements, and the charitable use restriction impressed upon all of the Debtor's Real Property. In this regard:

- i. The Debtor sent its notice of intent to divest the charitable use restriction on the NonCore Parcels to the Office of the Attorney General for the Commonwealth of Pennsylvania and has initiated discussions with the Attorney General's Office regarding same; and
- ii. The Debtor intends to retain a real estate broker, after notice and hearing, for the purposes of marketing and obtaining the highest and best offer for the NonCore Parcels.

9. In addition to the impact the foregoing contingencies will have on the composition of the Debtor's proposed plan of reorganization, the deadline for filing claims against the Debtor's estates has not passed. For nongovernmental entities, the deadline is June 4, 2015 and for governmental entities the deadline is June 2, 2014. Extending the Exclusivity Periods beyond the bar date for filing claims enables the Debtor to assess the extent to which disputed claims exist. Such information enables the Debtor to draft a more accurate disclosure statement and plan of reorganization.

10. Accordingly, for these reasons, the Debtor respectfully submits that extensions of the Exclusivity Periods are in the best interests of the Debtor's estate and that the Debtor's circumstances satisfy the basis for the relief requested in its Motion.

BASIS FOR RELIEF

11. The totality of the circumstances in each particular case guides a court's decision to extend the Exclusivity Periods. See e.g., *In re Sharon Steel Corp.*, 78 B.R. 762, 763 (Bankr. W.D. Pa. 1986); *First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997). Courts typically examine a number of factors to determine whether a debtor has had an adequate opportunity to develop, negotiate, and propose a chapter 11 plan and, thus, whether there is "cause" for extending the exclusive time within which to file a plan and solicit votes. These factors include:

- 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 progress;

- d. Whether the debtor is paying debts as they become due;
- e. Whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- f. Whether the debtor has made progress negotiating with creditors;
- g. Whether creditors are prejudiced by the extension;
- h. The length of time a case has been pending; and
- i. Whether unresolved contingencies exist.

See *In re R.G. Pharm., Inc.*, 374 B.R. 484, 487 (Bankr. D. Conn. 2007); *In re Friedman's Inc.*, 336 B.R. 884, 888 (Bankr. D. Ga. 2005); *In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 183 (Bankr. D.N.J. 2002)

12. Many of the foregoing factors weigh in favor of granting the Debtor an extension of the Exclusivity Periods.

13. The Debtor's reorganization is not a simplistic endeavor. The Debtor is a nonprofit entity emerging from almost two decades of troubled leadership with substantial obligations owing to various entities. Compounding the issue are the circumstances surrounding the filing the Debtor's bankruptcy case. It was filed on the eve of a sheriff's sale. Consequently, the Debtor required an extension of time just to complete its Schedules and Statements.

14. Additionally, the complexity of the Debtor's case should not be measured just in terms of size of debt and number of creditors, but also the novelty of certain key issues to be addressed. What is needed to "fix" the Debtor's predicament is not a routine approach or even one with precedential guidance. Divesting the charitable use restrictions on a portion of a

nonprofit's assets so that the overall charitable purpose for which the nonprofit is created can be saved is not a common occurrence.

15. The Debtor commenced negotiations with (a) the Attorney General's Office regarding the sale of the NonCore Parcels, (b) Park Restoration and the Taxing Authorities with respect to the Insurance Litigation; and (c) potential lenders for debtor-in-possession financing. The Debtor anticipates filing a motion for authorization to obtain debtor in possession financing before the end of April 2015, which financing will provide the Debtor with the necessary funds to complete its reorganization prospects through at least plan confirmation.

16. Other factors warranting an extension of the Exclusivity Periods include: (a) the Debtor has been paying its debts, to the extent allowed, as they come due, including postpetition tax obligations for 2015; (b) the Debtor's bankruptcy case is less than 120 days old; and (c) as stated above, several unresolved contingencies exist that will impact substantially the form and substance of the Debtor's plan.

17. For these reasons, the Debtor respectfully submits that extensions of the Exclusivity Periods are warranted and requests an extension of the Filing Exclusivity Period through and including June 30, 2015 and the Soliciting Exclusivity Period through and including August 31, 2015.

NO PRIOR REQUEST

18. No previous request for the relief sought by this Motion has been made to this or any other court.

NOTICE

19. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) the Debtor's 20 largest unsecured creditors; (c) the Office of the Attorney General

for Commonwealth of Pennsylvania; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-2(d). In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

WHEREFORE, the Debtor respectfully requests entry of an order substantially in the form attached hereto as Exhibit A: (a) extending the Debtor's Filing Exclusivity Period through and including June 30, 2015, and the Debtor's Soliciting Exclusivity Period through and including August 31, 2015, without prejudice to the Debtor's right to seek further extensions to the Exclusivity Periods; and (b) granting related relief.

Respectfully submitted,

STONECIPHER LAW FIRM

Dated: March 31, 2015

By: Jeane S. Lofgren

George T. Snyder, Esq.

P.A. ID. 53525

Jeanne S. Lofgren, Esq.

PA I.D. 89078

125 First Avenue

Pittsburgh, PA 15222

(412) 391-8510 phone

Attorneys for Debtor-in-Possession

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)	
)	
TRUSTEES OF CONNEAUT LAKE PARK, INC.,)	Bankruptcy Case No. 14-11277-JAD
)	
Debtor,)	Chapter 11
_____)	
)	
TRUSTEES OF CONNEAUT LAKE PARK, INC.,)	
)	
Movant,)	
)	
v.)	Document No. _____
)	
NO RESPONDENT,)	
)	
Respondent,)	

ORDER (A) EXTENDING THE DEBTOR'S EXCLUSIVE PERIOD TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE; AND (B) GRANTING RELATED RELIEF

Upon the motion (the "*Motion*")² of the above-captioned debtor (the "*Debtor*") for entry of an order (this "*Order*"): (a) extending the Debtor's Filing Exclusivity Period through and including June 30, 2015, and the Debtor's Soliciting Exclusivity Period through and including August 31, 2015, without prejudice to the Debtor's right to seek further extensions to the Exclusivity Periods; and (b) granting related relief; all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue is proper; and this Court having found that the relief

² Capitalized terms not otherwise defined in this Order shall have meaning given to them in the Motion.

requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that the Debtor's notice of the motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is
HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtor's Filing Exclusivity Period pursuant to section 1121(b) of the Bankruptcy Code is hereby extended through and included June 30, 2015.
3. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtor's Soliciting Exclusivity Period pursuant to section 1121(c) of the Bankruptcy Code is hereby extended through and including August 31, 2015.
4. Nothing herein shall prejudice (a) the Debtor's right to seek further extensions of the Exclusivity Periods consistent with Section 1121(d) of the Bankruptcy Code, or (b) the rights of any party in interest to object to any further extension requests
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.
6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____

JEFFERY A. DELLER
Chief U.S. Bankruptcy Judge

IN RE:

TRUSTEES OF CONNEAUT LAKE PARK, INC.,

Debtor.

: Bankruptcy No. 14-11277JAD
:
: Document No. 95
:
: Chapter 11

FILED
4/1/15 3:40 pm
CLERK
U.S. BANKRUPTCY
COURT - WDP

**ORDER SETTING DATE CERTAIN
FOR RESPONSE AND HEARING ON MOTION**

AND NOW, this 1st day of April, 2015, a **Motion For Entry Of An Order (A) Extending The Debtor's Exclusive Period To File A Chapter 11 Plan And Solicit Acceptances Thereof Pursuant To Section 1121 Of The Bankruptcy Code; And (B) Granting Related Relief** having been filed by **the Debtor** in the above-captioned proceeding,

IT IS HEREBY ORDERED THAT:

1. Counsel for the Moving Party shall serve **IMMEDIATELY**, pursuant to Bankruptcy Rule 7004, a copy of this Order and the Motion upon all parties from whom relief is sought and their counsel, **ALL PARTIES LISTED ON THE CURRENT CLERK'S OFFICE MAILING MATRIX**. Additionally, all equity security holders in Chapter 11 bankruptcy cases, if any, are to be served. Counsel for the Moving Party shall then file a Certificate of Service. **Failure to properly serve the Motion or file the Certificate may result in dismissal of the above-captioned proceeding.**
2. **Any Response**, including a Consent to the Motion, **shall be filed with the Clerk's Office, 5414 U.S. Steel Tower, 600 Grant Street, Pittsburgh, Pennsylvania 15219 by April 21, 2015**. Any response should be served on the Moving Party and their counsel.
3. Said Motion is scheduled for hearing on **April 28, 2015, at 10:00 AM in Bankruptcy Courtroom, U.S. Courthouse, 17 S. Park Row, Erie, PA 16501***, at which time the parties and/or their counsel shall appear and the Court will dispose of the Motion.
4. If service was properly made and Respondent(s) fail to file a Response by the above-specified date, the Court **may** determine after review of the Motion that no hearing is required and accordingly enter the Order by default.

TO DETERMINE IF A DEFAULT ORDER HAS BEEN SIGNED, THE PARTIES ARE DIRECTED TO THE WEB SITE OF THE U.S. BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA AT www.pawb.uscourts.gov ONE DAY PRIOR TO THE SCHEDULED HEARING DATE. REFER TO THE CALENDAR SECTION TO VIEW THE CALENDAR FOR JUDGE DELLER.

In the event a default order has been signed, the **Moving Party** shall thereafter advise all affected parties. If a default order has not been signed, the parties will be **required** to appear in Court at the hearing on the above date and time.

5. A **maximum** of 10 minutes has been allotted to hear this matter. Should the matter require more than 10 minutes, the parties are required to so notify the Courtroom Deputy **immediately**.

JEREMIAH A. DELLER emm
Chief U.S. Bankruptcy Judge

cm: Jeanne S. Lofgren, Esq.

* **NOTE: Video Conferencing equipment has been installed in the Bankruptcy Courtroom in Erie, Pennsylvania and also in Courtroom D in Pittsburgh, Pennsylvania. Counsel can appear before the Court in either location.**

In Re: :
 :
TRUSTEES OF CONNEAUT LAKE PARK, : **Bankruptcy No. 14-11277JAD**
INC., :
 : **Chapter 11**
Debtor(s). :
 :
 :
Movant(s). :
v. : **Document. No. 95**
 :
 : **Hearing Date & Time:**
Respondent(s) [if applicable] : **4/28/2015 @ 10:00 AM**
 :

CERTIFICATE OF SERVICE OF:

Specify Document(s) Served)

I certify under penalty of perjury that I served the above captioned pleading(s) on the parties at the address specified below or on the attached list on _____
 (Date)

The type(s) of service made on the parties (first class mail, electronic notification, hand delivery, or another type of service) was: _____.

If more than one method of service was employed, this certificate of service groups the parties by the type of service. For example: the full name, email addresses, and where applicable the full name of the person or entity represented, for each party served by electronic transmission is listed under the heading "Service by NEF," and the full name and complete postal address for each party served by mail, is listed under the heading "Service by First-Class Mail."

EXECUTED ON:

By: _____
 Signature

 Typed Name

 Address

 Phone No.

 List Bar I.D. And State Of Admission

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TO: **Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, PA 17105**