UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

STANDARD MILL LIMITED PARTNERSHIP, BKY 4-96-2656

Debtor.

ORDER DENYING INDENTURE TRUSTEE'S MOTION FOR A REDUCTION OF THE EXCLUSIVITY PERIOD, AND IN THE ALTERNATIVE, FOR RELIEF FROM STAY

At Minneapolis, Minnesota, September 10, 1996.

The above-entitled matter came on for hearing before the undersigned on September 3, 1996, on the motion of National City Bank of Minneapolis, as Indenture Trustee for a group of the Debtor's bondholders, for the reduction of the Debtor's exclusivity period pursuant to 11 U.S.C.Section 1121(d) or, in the alternative, for relief from the automatic stay pursuant to 11 U.S.C. Section 362(d)(2) or (3). Appearances of counsel were noted in the record.

FACTS

1. The Debtor in this case, Standard Mill Limited Partnership ("Standard Mill" or "Debtor"), is a limited partnership organized in 1985 to acquire, renovate and operate a luxury hotel known as the Whitney Hotel.

2. On May 21, 1996, Standard Mill consented to the entry of an order for relief in an involuntary Chapter 11 case filed against it on April 26, 1996.

3. National City Bank of Minneapolis, as Indenture Trustee for a group of the Debtor's bondholders ("Indenture Trustee"), has negotiated a Chapter 11 Plan with the Debtor, which the Debtor has now chosen to withdraw (after the ownership of the Debtor changed).

4. On August 30, 1996, the Debtor filed a First Amended Chapter 11 Plan and Disclosure Statement. The hearing on the Disclosure Statement is set for October 10, 1996.

5. The Indenture Trustee, on behalf of the bondholders, now wishes to end the Debtor's exclusivity period and propose the formerly agreed upon plan.

CONCLUSIONS OF LAW

I. Motion to Shorten the Exclusivity Period

Section 1121(b) of the United States Bankruptcy Code provides a Chapter 11 debtor with the exclusive right to file a plan of reorganization during the first 120 days following the entry of the order for relief. 11 U.S.C. Section 1121(b) (1994). Under Section 1121(d), the court, at the request of a party in interest, may shorten the Chapter 11 debtor's exclusivity period if "cause" is shown to do so. 11 U.S.C. Section 1121(d) (1994). An examination of Section 1121(d), however, does not reveal what factors must be established to constitute "cause" to

reduce the exclusivity period. Nevertheless, the legislative history of Section 1121 and its provision for an exclusivity period reveal a Congressional intent to facilitate the rehabilitation of debtors in Chapter 11, and it has been therefore established that the party requesting a reduction of the exclusivity period under Section 1121(d) "bears a heavy burden." In re Geriatrics Nursing Home, Inc., 187 B.R. 128 (D. N.J. 1995); Matter of Interco, Inc., 137 B.R. 999, 1000 (Bankr. E.D. Mo. 1992) (citing In re Texaco, Inc., 81 B.R. 806, 812 (Bankr. S.D. N.Y. 1988)). For example, factors such as the gross mismanagement of the debtor's operations, the debtor's failure to negotiate with creditors in good faith, the debtor's use of the exclusivity period to force creditors to accept a patently unconfirmable plan, and acrimonious feuding between the debtor's principals have constituted "cause" to reduce the exclusivity period when they amounted to "major obstacles to a successful reorganization." See In re Geriatrics Nursing Home, Inc., 187 B.R. at 133; In re Texaco, Inc., 81 B.R. at 812.

None of these elements are present in this case. There is no indication in the record that the debtor in this case is not negotiating in good faith toward a successful reorganization. Nor is the debtor attempting to use the exclusivity period to pressure creditors into acquiescing to a patently unconfirmable plan. The mere fact that, after the ownership of the debtor has changed, the debtor withdrew a formerly agreed upon plan and replaced it with a new plan is not grounds to reduce the exclusivity period. See In re Geriatrics Nursing Home, Inc., 187 B.R. at 134 (the fact that a group of creditors would prefer that a different plan be proposed does not constitute sufficient cause for shortening the exclusivity period).

While some have argued that the mere filing of a new value plan should be grounds for shortening the debtor's exclusivity period, these arguments are usually made in the context of a need for amendment of the Bankruptcy Code. See, e.g, Kenneth N. Klee, Adjusting Chapter 11: Fine Tuning the Plan Process, 69 Am. Bankr. L.J. 551, 554-55 (1995). Irrespective of the merits of such an amendment, however, the Code does not now so provide, the legislative history of Section 1121 does not express such an intent, and at least one court has rejected that argument. See Matter of Homestead Partners, Ltd., 197 B.R. 706, 717-19 (Bankr. N.D. Ga. 1996). Therefore, the Court holds that in the present case insufficient cause exists to reduce the debtor's exclusivity period.

II. Motion for Relief from Stay

1. Section 362(d)(3)

Section 362(d)(3) entitles a secured creditor to relief from the automatic stay in a single asset real estate case unless, within 90 days after the entry of the order for relief: i) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or ii) the debtor has commenced monthly payments to each creditor whose claim is

secured by such real estate in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate. See 11 U.S.C. Section 362(d)(3) (1994). The term "single asset real estate" is defined by Section 101(51B):

> single asset real estate' means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate noncontingent, liquidated secured debts in an amount no more than $4,000,000.

11 U.S.C. Section 101(51B) (1994). Since the Indenture Trustee claims a lien in excess of $6 million in this case, the Court must interpret Section 101(51B) to determine whether the term "secured debts" as used therein should mean the full allowed amount of the secured creditors claims regardless of the value of the collateral, or whether it should instead be synonymous with the term "allowed secured claim" as used in 11 U.S.C. Section 506 and therefore be limited to the fair market value of the property.

Enacted as part of the Bankruptcy Reform Act of 1994, the interplay between Section Section 362(d)(3) and 101(51B) is meant to impose an expedited time frame for filing a Chapter 11 plan in single asset real estate cases. In re Oceanside Mission Assoc., 192 B.R. 232, 238 (Bankr. S.D. Cal. 1996); In re Kkemko, 181 B.R. 47, 49 (Bankr. S.D. Ohio 1995); In re Philmont Development Co., 181 B.R. 220, 223 (Bankr. E.D. Pa. 1995). This Court agrees with the holding of the court in In re Oceanside Mission Assoc. that the best way to support the goal of expediting single asset cases without wasting time and resources is to interpret the term "secured debts" in Section 101(51B) as referring to the total amount of all secured claims without regard to the value of the property. See In re Oceanside Mission Assoc., 192 B.R. at 238. Therefore, because there is over $4 million in secured debt claims in the present case, this case falls outside the definition of a "single asset real estate" case as defined in Section 101(51B), and the form of expedited relief provided for such cases under Section 362(d)(3) is unavailable to Indenture Trustee.

2. Section 362(d)(2)

Section 362(d)(2) entitles a secured creditor to relief from the automatic stay if the debtor does not have equity in the collateral and the collateral is not necessary to an effective reorganization. See 11 U.S.C. Section 362(d)(2) (1994). Section 362(g) provides that, in a Section 362(d)(2) hearing: i) the party requesting relief has the burden of proof on the issue of the debtor's equity in the property; and ii) the party

opposing relief has the burden of proof on all other issues. See 11 U.S.C. Section 362(g) (1994). Furthermore, in United Ass'n v. Timbers of Inwood Forest, the United States Supreme Court held that, once the movant under Section 362(d)(2) establishes that it is an undersecured creditor, it is the burden of the debtor to establish that the property is essential for a reorganization that is in prospect. 108 S.Ct. 626, 633 (1988). In other words, the Supreme Court stated, the debtor must show "a reasonable possibility of a successful reorganization within a reasonable time." Id.

In this case, although the bondholders are undersecured, the debtor has sustained its burden of proof under the Timbers test. It is undisputed that the Whitney Hotel is the debtor's single revenue-producing asset, and as such, is essential to the success of the debtor's reorganization. The only issue that arises is whether the Whitney Hotel is essential for a reorganization that is in prospect or that has a reasonable possibility of being successful within a reasonable time. Because a First Amended Chapter 11 Plan and Disclosure Statement have been filed by the debtor in this case, the Court finds that the Debtor is making good faith progress towards reorganization and that there is a reasonable possibility of a successful reorganization within a reasonable time. Therefore, pursuant to the Timbers test, the debtor has sustained its burden of proof under Section 362(g).

Accordingly, and for the reasons stated, IT IS HEREBY ORDERED THAT:

1. The motion of National City Bank, as Indenture Trustee, for a reduction of the debtor's exclusivity period pursuant to 11 U.S.C. Section 1121(d) is in all things DENIED; and

2. The motion of National City Bank, as Indenture Trustee, for relief from the automatic stay pursuant to 11 U.S.C. Section 362 is in all things DENIED.

SO ORDERED.

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Nancy C. Dreher
United States Bankruptcy Judge