

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Bky Case No. 04-60907
FRAZEE CARE CENTER, INC. Chapter 7
Debtor.

**NOTICE OF EXPEDITED HEARING AND MOTION TO EXTEND THE TIME FOR
THE TRUSTEE TO ASSUME OR REJECT LEASES AND EXECUTORY CONTRACTS**

TO: Entities Specified Local Rule 9013-3(2).

1. Dorraine A. Larison, the Chapter 7 Trustee (the "Trustee"), through her undersigned attorneys, moves the court for the relief requested below and gives notice of hearing.

NOTICE OF BID PROCEDURES HEARING

2. The Court will hold a hearing with respect to extension of time to assume or reject leases and executory contracts at 10:30 a.m. on September 28, 2004, before The Honorable Dennis D. O'Brien, 204 U.S. Courthouse, 118 South Mill Street, Fergus Falls, Minnesota 56537.

3. Any response to this motion must be filed and served not later than September 27, 2004, which is twenty-four (24) hours before the time set for the hearing. **UNLESS A RESPONSE TO THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THAT ASPECT OF THE MOTION WITHOUT A HEARING.**

6. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this Chapter 7 case was filed on August 2, 2004 (the "Petition Date"). The

case is now pending in this court. Dorraine A. Larison has been appointed as the Chapter 7 Trustee to oversee the administration of the case.

7. This motion arises under 11 U.S.C. § 365 of the Bankruptcy Code, and Fed.R.Bankr.P. 6006, 9007 and 9014, and Local Rule 9006. The Trustee requests that this Court enter an order extending the time provided by 11U.S.C. § 365(d)(1) and (4) for the Trustee to assume or reject unexpired leases and executory contracts.

BACKGROUND

8. The Debtor is a Minnesota corporation having its principal place of business in Frazee, Minnesota. On the Petition Date, the Debtor was engaged in the business of operating nursing home and assisted care facilities in Frazee, Minnesota and Vergas, Minnesota.

9. Since the Petition Date, the Trustee has been authorized to operate the Debtor's business pursuant to the terms of an Order Granting Motion For Expedited Hearing and Motion For Authorization to Operate Debtor's Business (the "Operating Order") entered on the Petition Date.

THE EXTENSION OF TIME TO ASSUME OR REJECT UNEXPIRED LEASES AND EXECUTORY CONTRACTS

10. The Debtor is a party to several unexpired leases and executory contracts (collectively, the "Contracts") which are necessary for the continued operation of the Debtor's business.

11. By Order dated September 3, 2004, the Court approved the Trustee's Motion to Approve (1) Bidding Procedures with Respect to the Disposition of Estate Assets; (2) the Sale of All or Substantially All of the Estate's Assets Free and clear of Liens and Interest; and (3) Authorizing Assumption and Assignment of Leases and Executory Contracts (the Bidding Procedures Motion"). In addition, the Court set a hearing to approve the sale of the assets and

assumption and assignment of unexpired leases and executory contracts for September 28, 2004 at 10:30 a.m., following the completion of the bidding process.

12. Unless superceded by a procedure set forth in any prior or subsequent motions, with respect to unexpired leases and executory contracts, the Trustee proposed, in the Bidding Procedure Motion to give separate notice, with a cure amount to the extent known, to each party to such unexpired lease or executory contract of the potential assumption and assignment of such unexpired leases or executory contract more than three (3) days before the date set for the Sale Hearing. The Trustee further proposes to identify the proposed assignees as soon as known by the Trustee by fax and e-mail immediately following the receipt of bids and immediately following the Auction. The Trustee will seek approval of assumption and assignment of such unexpired leases and executory contracts at the Sale Hearing to the extent that assumption and assignment is a condition to the purchase by the winning bidder(s). For those unexpired leases and executory contracts, the assumption and assignment of which is contested, the Trustee shall notice those matters for further evidentiary hearing. If the hearing cannot be scheduled within 60 days from the Petition Date, the date for assumption and assignment shall be automatically extended until the Bankruptcy Court renders a decision.

13. The Trustee is in the process of obtaining bids pursuant to the terms of the Bidding Procedure Motion for the sale of the estate assets and the assumption and assignment of unexpired leases and executory leases. The issue of the assignment of the unexpired leases and executory contracts will be relevant to the sale process and negotiations. The Trustee anticipates that, although the sale of the assets and approval of the assumption and assignments of unexpired leases and executory contracts will occur on September 28, 2004, the closing of the actual sale will not take place until sometime in October of 2004.

EXPEDITED HEARING

14. The Trustee requires an expedited hearing on this motion in order to avoid unnecessary loss to the estate in connection with bidding procedures and sale process.

15. Bankruptcy Rules 2002 and 9006 requires 14 days' notice (by mail) of the hearing on the motion. The Trustee has given eight (8) days' notice to the holders or the attorneys representing the holders of unexpired leases and executory contracts to which the Trustee could obtain facsimile or e-mail information and all attorneys who have filed a Notice of Appearance as of the date of this Motion. The Trustee has provided notice by mail dated September 20, 2004 to those for which she could not obtain facsimile or e-mail information. The Trustee believes that this notice should be sufficient under the circumstances.

WITNESSES

16. If necessary, the Trustee may be called as a witness in support of this Motion.

WHEREFORE, the Trustee requests that the Court enter orders:

1. Granting an expedited hearing in connection with the Motion;
2. Granting an extension of the time to assume or reject unexpired leases and/or executory contracts until November 1, 2004.;
3. Granting such further relief as the Court deems just and equitable.

Dated: September 20, 2004

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By /e/ Dorraine A. Larison
Phillip L. Kunkel (#58981)
Dorraine A. Larison (#203609)
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St. Cloud, MN 56301
320-252-4414

VERIFICATION

I, Dorraine A. Larison, the Chapter 7 Trustee, declare under penalty of perjury that the facts set forth in the foregoing Notice of Hearing And Motion are true and correct according to the best of my knowledge, information and belief.

Executed on: September 20, 2004

/e/ Dorraine A. Larison

GP:1626529 v1

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Bky Case No. 04-60907
FRAZEE CARE CENTER, INC. Chapter 7
Debtor.

**MEMORANDUM OF LAW IN SUPPORT OF TRUSTEE'S MOTION FOR AN ORDER
EXTENDING TIME FOR TRUSTEE TO ASSUME OR REJECT LEASES AND
EXECUTORY CONTRACTS**

The Trustee submits this memorandum of law in support of her motion to extend the time to assume or reject unexpired leases and executory contracts under 11 U.S.C. § 365(d)(4). The relevant factual background for the motion is set forth in detail in the motion itself.

ARGUMENT

Sections 365(d) (1) and (4) of the Bankruptcy Code deal with the time period in which a leases and executory contracts of various types may be assumed in a Chapter 7 bankruptcy proceeding. 11 U.S.C. § 365(d)(1) and (4). Sections 365(d)(1) and (4) also provide that the court may extend the deadline to assume or reject the leases or executory contracts for cause. Id.

The Bankruptcy Code gives no direct guidance as to what factors should be considered by the court in determining whether to extend the time provided in section. However, some courts which have looked at the issue of cause under section 365(d)(4) have indicated that the following criteria should be considered:

1. Whether the lease is a primary asset and the decision to assume or reject the lease would be central to any plan of reorganization in the Chapter 11 proceeding.
2. Whether the landlord has a reversionary interest in a building built by the tenant on the landlord's land and the gaining of the building would represent a windfall to the landlord.

3. Whether the debtor has not had the time necessary to intelligently appraise its financial situation and the potential value of its assets in terms of the formulation of a plan.
4. The existence of any other facts indicating the lack of a reasonable time to decide whether to assume or reject the lease.

In re Wedtech Corp., 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987); Theatre Holding Corp. v. Mauro, 681 F.2d 102 (2d Cir. 1982).

In this case several factors exist which establish the cause necessary to extend the deadline to assume or reject the lease at issue. First, the Trustee has only recently been appointed in this case and has only recently learned of the existence of many of the leases and executory contracts. In addition, the Trustee, has received Court approval of procedures for the acceptance of bids for the sale of assets and the assumption and assignment. That process is ongoing; however, the sale cannot be consummated until sometime in October of 2004, after the time period to assume or reject the leases or executory contracts will have expired. The leases and executory contracts are of significant value to the estate if the potential buyer of the estate assets has the opportunity to receive an assignment of these assets. Finally, the estate has been making the payments on all of the leases and executory contracts since the filing of the petition; therefore, there would be little or no loss to the holders of the leases and executory contracts if the estate is granted the extension.

CONCLUSION

Cause exists for the Court to grant the Trustee an extension of the time to assume or reject unexpired leases and executory contracts. Therefore, the Trustee requests that the Trustee's motion be granted.

Dated this 20th day of September, 2004

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By /e/ Dorraine A. Larison
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GP:1626540 v1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-60907

Frazer Care Center, Inc.,

UNSWORN CERTIFICATE OF SERVICE

Debtor.

I, Emily Legatt, declare under penalty of perjury that on September 20, 2004, I mailed (and sent via facsimile or e-mail as noted) the following documents:

- 1. NOTICE OF EXPEDITED HEARING AND MOTION TO EXTEND THE TIME FOR THE TRUSTEE TO ASSUME OR REJECT LEASES AND EXECUTORY CONTRACTS; AND**
- 2. PROPOSED ORDER EXTENDING THE TIME FOR THE TRUSTEE TO ASSUME OR REJECT LEASES AND EXECUTORY CONTRACTS**

by first class mail postage prepaid to each entity named below at the address stated below for each entity:

SEE ATTACHED SERVICE LIST

Executed on: September 20, 2004

/e/ Emily Legatt
Emily Legatt
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

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VERGAS MN 56587

HAMILTON INVESTMENTS INC
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FRAZEE MN 56544

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Bky Case No. 04-60907
FRAZEE CARE CENTER, INC. Chapter 7
Debtor.

**ORDER EXTENDING THE TIME FOR THE TRUSTEE TO ASSUME OR REJECT
LEASES AND EXECUTORY CONTRACTS**

At Fergus Falls, Minnesota.

This matter came on for hearing on the motion of Dorraine A. Larison, Chapter 7 Trustee of Frazee Care Center, Inc. (the "Trustee"), to extend the time for the Trustee to assume or reject unexpired leases and executory contracts. Phillip L. Kunkel appeared on behalf of the Trustee. Other appearances were as noted on the record.

This Court having determined that granting the relief requested in the Motion is in the best interest of the estate and its creditors, it appearing that proper and adequate notice has been given, and after finding that good and sufficient cause appears therefore upon the record herein,

IT IS HEREBY ORDERED:

1. The time period for the Trustee to assume or reject unexpired leases and executory contracts pursuant to 11 U.S.C. § 3665 (d)(1) and (4) shall be extended to November 1, 2004..

Dated: September ____, 2004

Hon. Dennis D. O'Brien
United States Bankruptcy Judge

GP:1626532 v1