

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

IN RE: §
§
Garden Oaks Maintenance Org., Inc., § CASE NO. 18-60018-H2-11
§
DEBTOR §

EMERGENCY MOTION TO EXTEND EXCLUSIVITY

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 ATTORNEY.

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

REQUESTED DEADLINE FOR EMERGENCY RELIEF

DEBTOR REQUESTS RELIEF **ON OR BEFORE AUGUST 9, 2018**. IF A HEARING IS NECESSARY, IT IS ESTIMATED THAT THE HEARING WILL REQUIRE **15-30** MINUTES OF COURT TIME.

COMES NOW, Garden Oaks Maintenance Organization, Inc. (“Garden Oaks”), Debtor, and Debtor-In-Possession, and files this *Emergency Motion To Extend Exclusivity* and would respectfully show the Court as follows:

1. The Debtor filed a voluntary chapter 11 petition on April 11, 2018.
2. The Debtor is a Texas corporation, and operates as a Texas non-profit Home Owners Association that furthers the common interests of residents in the Garden Oaks subdivision of Houston Texas. The subdivision is located generally in the northwest portion of Houston, bordered by loop 610NW, Hwy 290, and Pinemont/W. Tidwell Rd. It is the third largest group of subdivisions in Harris County.
3. The bankruptcy filing results from a recent state court judgment determining that certain aspects of the formation of the Property Owners Association was invalid pursuant to TEX. PROP. CODE § 201.005, as to two particular homeowners.
4. The Debtor is managed and operated by officers and a board comprised of residents of the Garden Oaks subdivision.
5. The Debtor operates at the convenience of the residents of the subdivision.
6. The Debtor’s exclusivity to file a plan terminates on August 9, 2018.
7. The Debtor anticipates filing its plan and disclosure statement within 2 weeks.
8. The delay in filing the plan has centered on a couple of issues. First, the board has spent considerable time trying to determine how the community as a whole would prefer to utilize this chapter 11, *i.e.*, the general outline of the plan. Second, the Debtor (and the Committee) need resolution of a central legal issue to this case – whether the Debtor has the legal authority to enforce a deed restriction requiring payment of mandatory transfer fees.

9. A determination of the legal issues raised by the Committee significantly affect the terms of any proposed plan, whether proposed by the Debtor or the Committee.
10. There are no secured lenders, and there are no cash collateral issues.

ARGUMENT

11. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This particular motion involves a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and (O).
12. Venue is proper pursuant to 28 U.S.C. § 1408 and 1409, as well as §§1404, 1406 and/or 1412.
13. This Court has constitutional authority to enter a final order regarding this Motion. *Stern v. Marshall* is inapplicable. See *In re Carlew*, 469 B.R. 666, 672 (Bankr. S.D. Tex. 2012).
14. To the extent necessary, the Debtor consents to final judgments of the Bankruptcy Court on this motion.
15. Under §1121(b) of the Bankruptcy Code, the Debtor has the exclusive right to file a plan of reorganization with the first one hundred and twenty (120) from the Petition Date¹ and 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 ("Exclusivity Period").²³
16. The Debtor requests the Court extend, "for cause," the Exclusivity Period within which the Debtor may file and confirm a plan under section 1121. Under section 1121(d) of the Bankruptcy Code, "after notice and a hearing, the court may *for cause* reduce or increase" the period in which a debtor has

¹ See 11 U.S.C. §1121(b).

² See 11 U.S.C. §1121(c).

³ U.S.C. § 1121(d)(emphasis added).

the exclusive right to file a plan.⁴ 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. Also, the burden of proof rests with the debtor when it seeks an extension of the exclusivity period to demonstrate that cause exists.⁵

17. 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 plan of reorganization and to prepare the required adequate information; (ii) whether the debtor has, in good faith, made progress towards reorganization; (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 reorganization demands; and (ix) the existence of unresolved contingencies.⁶ 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] 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 reorganization for impermissible purposes."⁷

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

⁵ See *In re Dow Corning Corp.*, 208 B.R. 661, 662 (Bankr. E.D. Mich. 1997).

⁶ *Id.* at 664-65 (citing *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996)).

⁷ *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

18. The Debtor believes that, based on many of the above listed factors, ample cause exists for granting an extension of Debtor's 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 request for the extension is due solely to the fact that a central legal issue will control the content of any proposed plan;
- b. The Debtor continues to pay its post petition obligations as they become due and remains in compliance with its duties as a debtor in possession;
- c. The Debtor cannot confirm a plan absent resolution of the central legal issue as to the authority of the Debtor to operate and mandate payment of a transfer fee on property located within the community. This is an unresolved contingency. An order resolving this matter will not occur prior to the expiration of the Debtor's Exclusivity Period to file a plan;
- d. The Debtor is not seeking an extension to pressure creditors into accepting its reorganization demands;
- e. The requested extension would not prejudice the interests of creditors; and
- f. The burden on the Debtor's estate of an extension is *de minimis*.

19. 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 its creditors. The Debtor's failure to propose and confirm a plan during the current

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

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

20. 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 of its creditors and other parties in interest will be harmed and that its progress towards a successful reorganization would be severely hampered. Litigation of any competing plan would cause undue expense to the estate.

CERTIFICATE OF CONFERENCE

21. Counsel for the Committee indicated that he opposes the relief requested.

WHEREFORE, Debtor requests this Court to extend the Exclusivity periods to allow the Debtor the exclusive right to file a plan to September 10, 2018, November 12, 2018 to confirm its plan, and for such other and further relief, at law or in equity, to which it may be justly entitled.

Dated: August 8, 2018.

Respectfully submitted,

By: /s/ Johnie Patterson

Johnie Patterson

State ID# 15601700

COUNSEL FOR THE DEBTOR

OF COUNSEL:

WALKER & PATTERSON, P.C.

P.O. Box 61301

Houston, TX 77208

713.956.5577

713.956.5570 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Motion* was served upon the United States Trustee, Suite 3516, 515 Rusk, Houston, TX 77002 by electronic transmission, on all entities receiving notice pursuant to the Courts CM/ECF system, all parties requesting notice and was posted on the Debtor's website at www.gardenoaks.org on August 7, 2018.

/s/ Johnie Patterson

Johnie Patterson