United States Bankruptcy Court
Western District of Wisconsin

Cite as: [Unpublished]

In re The Company Store, Inc., Company Store Holdings, Inc., Scandia Down Corporation, and Southern California Comfort Corporation, Debtors
Bankruptcy Case No. 92-21810-11 (Joint Administration)

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

October 5, 1992

William J. Rameker and Catherine J. Furay, for the debtors.
Fruman Jacobson, John Collen and Robert E. Richards, for Prudential Interfunding Corporation.

Thomas S. Utschig, United States Bankruptcy Judge.

MEMORANDUM OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

This matter comes before the Court on motions by the debtors to extend the exclusivity periods for filing their plans pursuant to 11 U.S.C. § 1121(d). The exclusivity periods expired on September 19, 1992, but will continue in effect pending the Court's decision as to the debtors' motions. The debtors seek an extension of these periods to December 15, 1992. They further seek an extension of their exclusive periods for obtaining acceptances to the plans from the current deadline of November 18, 1992, to February 13, 1993. Prudential Interfunding Corporation has objected to the motions. The debtors are The Company Store, Inc.; Company Store Holdings, Inc.; Scandia Down Corporation; and Southern California Comfort Corporation; and they are represented by William J. Rameker and Catherine J. Furay. Prudential Interfunding Corporation (Prudential) is represented by Fruman Jacobson, John Collen and Robert E. Richards.

The relevant facts can be briefly stated. The four related debtor corporations filed their chapter 11 petitions on May 22, 1992. There are three major secured creditors in the debtors' bankruptcy -- Prudential, the State of Wisconsin Investment Board and Westinghouse Credit Corporation. Discussions with these creditors, the official unsecured creditors' committee and the equity holders were conducted. Although the issue of debtor-in-possession financing necessitated discovery and litigation, the parties eventually reached a fully agreed financing order. That order was approved by the Court on July 28, 1992.

On July 21, 1992, the debtors filed the current motions to extend the exclusivity periods for filing their plans and for obtaining acceptances to those plans. A telephone conference was held on September 1, 1992, at which the

parties agreed to brief the issue. The debtors and Prudential have filed lengthy briefs in support of their respective positions.

The debtors' motions are made pursuant to 11 U.S.C. § 1121(d) which provides:

> (d) [o]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

See 11 U.S.C. § 1121(d) (West 1992).

In its brief in opposition to the debtors' motions, Prudential raises numerous arguments in support of its assertion that an extension of the exclusivity periods is not warranted. Briefly summarized, Prudential raises four principal arguments. First it argues that, by not extending the periods, the Court would allow competing plans to be filed, thus enabling creditors to choose the best one. Prudential then accuses the debtors of coercive behavior in seeking to prevent the filing of competing plans. It seeks to file its own plan in what it characterizes as a "level playing field." Second, Prudential alleges that extending the exclusivity periods would harm its ability to propose an alternate plan. Under this argument, Prudential contends that the debtors have been uncooperative in putting together an information packet about their operations for prospective new owners or investors. Circulating such a packet would allegedly identify interested parties and lay a groundwork for proposing an alternate plan.

Third, Prudential argues that the debtors have failed to demonstrate sufficient cause for extending the exclusivity periods. In this section Prudential refutes point-by-point the debtors' proffered reasons for seeking the extensions. It alleges that the debtors have had sufficient time to prepare disclosure statements; that the size and complexity of this case are not so significant as to warrant extension; and that the discovery and litigation which produced the financing order have been over for two months. It argues further that extending the exclusivity periods within which the debtors can solicit acceptances to their plans would result in the creditors having only one plan to consider. In its fourth and final argument, Prudential speculates that the debtors will ultimately propose unconfirmable new value plans and that allowing other plans to be filed will expedite the debtors' emergence from bankruptcy. Throughout its brief, Prudential cites numerous cases which it alleges support its position.

The debtors also cite numerous cases in support of their position. In their reply brief, they attempt to refute the major arguments posited by Prudential. The Court has considered the arguments and case precedent forwarded by both parties and concludes that an extension of the exclusivity periods is warranted under the facts and law presented.

Numerous reasons support this result. First, as an initial consideration, the decision to grant an extension of the 120-day period for filing a plan or the 180-day period for gaining acceptance to it is within the discretion of the bankruptcy judge. See In re All Seasons Industries, Inc., 121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990).

Second, contrary to the protestations of Prudential, this case is indeed a large and rather complex case. As noted by the debtors, it involves four corporate

debtors with hundreds of employees. Although the four corporations are related, there are significant and distinct relationships between them involving both their operations and their financial obligations. In addition, the cases involve three secured creditors with overlapping security interests and more than 1,000 unsecured creditors. The consolidated debts exceed $43,000,000 and over 100 executory contracts are currently under consideration for rejection or assumption. The size and complexity of these cases, therefore, is a supporting factor in extending the exclusivity periods.

Third, the history of this case since filing supports the Court's result. The Court is aware that a significant amount of discovery, negotiation and litigation in regard to use of cash collateral and postpetition financing issues has occurred since filing. The debtors note that they have had to answer extensive discovery requests and numerous interrogatories, attend many depositions, and assist teams of experts retained by various creditors in assessing their business operations. All of these efforts and demands have reduced the amount of time available to prepare disclosure statements and plans of reorganization, thus warranting an extension of time within which the debtors can do that.

Fourth, contrary to the assertions of Prudential, the Court does not find this to be a case where the debtors are merely attempting to prolong reorganization for the purpose of pressuring a creditor to accede to its point of view on an issue in dispute. See In re Crescent Mfg. Co., 122 B.R. 979, 982 (Bankr. N.D. Ohio 1990), citing with approval Gaines v. Perkins (In re Perkins), 71 B.R. 294, 298 (W.D. Tenn. 1987). Rather, the Court finds that the debtors are proceeding in good faith in attempting to reorganize their operations. The debtors note that they have conducted ongoing discussions with the secured creditors. They have also filed their monthly operating reports with the U.S. Trustee and have provided their secured creditors with financial reports as specified in the stipulated financing order. The Court is currently in the process of hearing motions by the debtors to assume or reject the aforementioned numerous leases or executory contracts to which they are a party. The debtors further assert that they are actively exploring several alternative forms of reorganization. The Court finds, therefore, that the debtors are proceeding expeditiously and in good faith through the reorganization process and are not attempting to wrongfully coerce compliance by recalcitrant creditors.

Nor are Prudential's lamentations about the unacceptability of the debtors' ultimate plans convincing to this Court. In trying to predict the contents of those plans, Prudential is engaging in mere speculation. Given the other factors present in this case, the Court will not deny the debtors additional time on the basis of second guessing by one creditor of the yet-to-be-produced plans of reorganization.

Sixth and finally, the Court finds that Prudential will not be unduly prejudiced by granting the debtors' motions. The length of time by which the debtors seek to extend each exclusivity period -- approximately two months in each case -- is not unreasonably long. By extending the periods within which the debtors can solicit acceptances to the plans, moreover, the Court is merely maintaining the sixty-day periods that the debtors had under the original exclusivity deadlines. Such an extension will not prevent Prudential from filing a competing plan should it choose to do so. Prudential retains its right, moreover, to vote against the plans ultimately submitted by the debtors and it will have the chance to solicit rejections to them as provided for in the Bankruptcy Code.

For these reasons, then, the Court finds sufficient basis to grant the debtors' motions to extend the relevant periods of exclusivity. Accordingly, the debtors shall have until December 15, 1992, to file their disclosure statements and plans, and until February 13, 1993, to solicit acceptances to them.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.