

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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	:	Chapter 11
In re:	:	
	:	Case No. 20-11259 (CTG)
ADVANTAGE HOLDCO, INC., <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors. ¹	:	
	:	Hrg. Date: June 7, 2021 at 10:00 a.m. (ET)
	:	Obj. Deadline: May 28, 2021 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ORDER FURTHER
EXTENDING THE TIME PERIOD WITHIN WHICH THE
DEBTORS MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452**

Advantage Holdco, Inc. and certain of its affiliates, the debtors and debtors-in-possession in the above-captioned case (collectively, the “Debtors”), hereby move (the “Motion”) for entry of an order pursuant to Rules 9006 and 9027 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), further extending the time period (the “Removal Period”) within which the Debtors may remove pending proceedings pursuant to 28 U.S.C. § 1452 by 129 days, through and including September 30, 2021 without prejudice to the Debtors’ right to seek further extensions. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Advantage Holdco, Inc. (4832); Advantage Opco, LLC (9101); Advantage Vehicles LLC (6217); E-Z Rent A Car, LLC (2538); Central Florida Paint & Body, LLC (1183); Advantage Vehicle Financing LLC (7263); and RAC Vehicle Financing, LLC (8375). The Debtors’ address is PO Box 2818, Windermere, FL, 34786.

District of Delaware dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The relief requested in the Motion is warranted under section 1452 of title 28 of the United States Code, Bankruptcy Rules 9006 and 9027, and Local Rule 9006-2.

BACKGROUND

A. The Chapter 11 Cases

4. On May 26, 2020 (the “Petition Date”), each Debtor commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors’ Chapter 11 Cases are jointly administered.

5. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. On June 9, 2020, the United States Trustee for Region 3 appointed the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “Committee”) [Docket No. 140]. No trustee or examiner has been appointed in the Chapter 11 Cases.

7. The factual background regarding the Debtors, including their business operations and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Alfred C. Farrell, Chief Financial Officer of Advantage Holdco, Inc. in Support of the Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) [Docket No. 15].

8. In the near future, the Debtors anticipate filing a plan of liquidation that would effectuate a plan term sheet agreed to with the Committee and the Debtors' postpetition lender. Consistent with the plan term sheet, the anticipated plan would establish a liquidating trust for the benefit of unsecured creditors. Among other assets, the liquidating trust would be vested with certain of the Debtors' causes of action.

RELIEF REQUESTED

9. As of the Petition Date, the Debtors were parties to certain judicial and/or administrative proceedings in various courts and/or administrative agencies that were stayed under the Bankruptcy Code (collectively, the "Actions"). Some of the Actions may be subject to removal pursuant to 28 U.S.C. § 1452. As such, the Debtors may find it appropriate and beneficial to its estate to remove certain of the Actions to federal court.

10. On February 22, 2021, the Debtors filed *Debtors' Motion for Order Further Extending the Time Period Within Which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452* [Docket No. 691] (the "Extension Motion"). On March 11, 2021, the Court entered an *Order Further Extending the Time Period Within Which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452* [Docket No. 718] (the "Extension Order"), which extended the Removal Deadline through and including May 24, 2021 (the "Current Removal Deadline"), without prejudice to the Debtor's right to seek a further extension of the deadline.

11. By this Motion, the Debtors seek entry of an order, pursuant to Bankruptcy Rules 9006 and 9027 and Local Rule 9006-2, extending the Current Removal Deadline by 129 days, through and including September 30, 2021, without prejudice to the Debtor's right to seek further extensions. The Debtors respectfully request that the proposed Removal Period of September 30, 2021 apply to all matters specified in Bankruptcy Rule 9027(a)(2) and (3).

BASIS FOR RELIEF AND APPLICABLE AUTHORITY

12. 28 U.S.C. § 1452 and Bankruptcy Rule 9027 govern the removal of claims and causes of action pending as of the Petition Date. Section 1452(a) provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

13. Bankruptcy Rule 9027 provides, in part, that, for claims or causes of action pending when a bankruptcy case is commenced:

[A] notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the [Bankruptcy] Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the [Bankruptcy] Code

Fed. R. Bankr. P. 9027(a)(2).

14. Finally, Bankruptcy Rule 9006 provides, in pertinent part, that “when an act is required or allowed to be done at or within a specified period by these rules . . . the court for cause shown may at any time in its discretion . . . order the period enlarged if the request therefor is made before the expiration of the period originally prescribed” Fed. R. Bankr. P. 9006(b)(1).

15. It is well-established that this Court has authority to grant the relief requested and extend the Removal Period as requested herein. *See, e.g., Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984) (holding that the bankruptcy court's power to grant an extension of the removal period pursuant to Bankruptcy Rule 9006(b) is “clear”), *overruled on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995); *Jandous Elec. Constr. Corp. v. City of New York (In re Jandous Elec. Constr. Corp.)*, 106 B.R. 48, 50 (Bankr. S.D.N.Y. 1989) (period

in which to file motion to remove may be expanded pursuant to Bankruptcy Rule 9006); *In re World Fin. Servs. Ctr., Inc.*, 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (United States Supreme Court intended to give bankruptcy judges the power to enlarge the filing periods under Bankruptcy Rule 9027(a) pursuant to Bankruptcy Rule 9006(b)); *Raff v. Gordon*, 58 B.R. 988, 990 (E.D. Pa. 1986) (an expansion of time to file notices of removal is authorized under the Bankruptcy Rules).

16. An extension is appropriate here because it will allow the Debtors and their key constituents, including the Committee and the contemplated liquidation trustee, the opportunity to focus on finalizing and pursuing a plan of liquidation and make informed decisions about appropriate removal.

17. The decision regarding whether to seek removal of an Action will depend on a number of factors, including: (a) the importance of the Action to the expeditious resolution of general unsecured claims; (b) the time required to complete the Action in its current venue; (c) the presence of federal subject matter jurisdiction in the proceeding that may allow for one or more aspects thereof to be heard by a federal court; (d) the relationship between the Action and the claims allowance process; and (e) the progress made to date in the Action. To make the appropriate determination, the potential Action must be analyzed in light of such factors.

18. The Debtors' personnel and professionals, working closely with the Committee, have devoted substantial time to numerous bankruptcy-related matters. The Debtors have, among other things, (i) negotiated and obtained Court approval of the Debtors' post-petition financing credit facility; (ii) initiated a sale process through which substantially all of the Debtors' assets were sold to two separate purchasers; (iii) prepared and filed the Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs; (iv) prepared and filed the Debtors' monthly operating reports; (v) retained Debtors' professionals; (vi) addressed, and resolved in a timely

manner, challenges related to the Debtors' business and the chapter 11 efforts; (vii) resolved cure objections (viii) established bar dates, including a General Bar Date, Governmental Bar Date, Administrative Claims Bar Date, for creditors to file proofs of claim; (ix) negotiated consensual resolutions of substantial administrative, priority, and secured claims, including brokering a collective plan settlement among a group of similarly situated taxing authorities, (x) prosecuted objections to certain administrative expense, priority claims, and secured claims; (xi) responded to creditor inquiries; and (xii) brokered an agreed plan term sheet with the Committee and the Debtors' postpetition lender and overseen the preparation of the draft combined plan of liquidation and disclosure statement. But for these actions, a consensual plan would likely be impossible, and the Debtors' estates may lack sufficient resources to pursue their causes of action. Now, under the anticipated plan of liquidation, a liquidating trustee will have the means and opportunity to pursue certain of the Debtors' causes of action for the benefit of unsecured creditors.

19. Absent the relief requested herein, the Removal Period will otherwise expire on May 24, 2021 without sufficient opportunity to properly evaluate the need for removal.²

20. The Debtors submit that the requested extension of time is in the best interests of their estates and creditors. Among other things, it will permit the Debtors' management and their professionals and the Committee to continue to focus on the confirmation of a plan, and give the Debtors, the Committee, and the anticipated liquidation trustee sufficient time to make well informed decisions concerning the removal of any Actions, ensuring that the Debtors' rights

² The Debtors note that they have filed the Motion prior to the expiration of the current deadline for the Removal Period. Pursuant to Local Rule 9006-2, "if a motion to extend the time to take any action is filed before the expiration of the period prescribed by the [Bankruptcy] Code, the [Bankruptcy Rules], these Local Rules or Court order, the time shall automatically be extended until the Court acts on the motion, without the necessity for the entry of a bridge order." Local Rule 9006-2. Accordingly, Local Rule 9006-2 automatically extends the Removal Period pending the Court's hearing to consider the relief requested by the Motion.

provided by 28 U.S.C. § 1452 can be exercised in an appropriate manner. Alternately, if such an extension is not granted, the Debtors may be forced to make removal decisions prematurely.

21. Moreover, the rights of parties to the Actions will not be unduly prejudiced by the Debtors' requested extension of the Removal Period because each of the Actions is stayed pursuant to section 362 of the Bankruptcy Code. If the Debtors ultimately seek to remove Actions pursuant to Bankruptcy Rule 9027, parties will retain their rights to have such Actions remanded pursuant to 28 U.S.C. § 1452(b).

22. Accordingly, the Debtors submit that cause exists for the relief requested herein.

NO PRIOR REQUEST

23. No previous request for the relief sought herein has been made to this or any other court.

NOTICE

24. Notice of this Motion will be given to: (a) the U.S. Trustee; (b) counsel to the Debtors' postpetition lender; (c) counsel to the Committee; and (d) all parties entitled to notice pursuant to Local Rule 2002-1(b). The Debtors submit that no other or further notice is required.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: May 12, 2021

COLE SCHOTZ P.C.

/s/ Andrew J. Roth-Moore

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