

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION**

In re:

ROMAN CATHOLIC DIOCESE OF
HARRISBURG,

Debtor.¹

Chapter 11

Case No. 1:20-bk-00599 (HWV)

**DEBTOR’S MOTION TO FURTHER EXTEND DEADLINE TO ASSUME OR REJECT
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY PURSUANT TO
SECTION 365(d)(4) OF THE BANKRUPTCY CODE**

The above-captioned debtor and debtor-in-possession (the “*Debtor*”) hereby files this motion (the “*Motion*”) pursuant to section 365(d)(4) of title 11 of the United States Code (the “*Bankruptcy Code*”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “*Proposed Order*”) further extending the time for the Debtor to assume or reject any unexpired leases of nonresidential real property. In support thereof, the Debtor respectfully represents:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion, pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the Middle District of Pennsylvania. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b), and the Debtor consents to the entry of a final judgment or order with respect to this Motion, if it is 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 is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The last four digits of the Debtor’s federal tax identification number are: 4791. The Debtor’s principal place of business is located at 4800 Union Deposit Road, Harrisburg, Pennsylvania 17111.

BACKGROUND

3. On February 19, 2020 (the “*Petition Date*”), the Debtor commenced the Chapter 11 Case. The Debtor is operating its business and managing its property as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Official Committee of Tort Claimants (the “*Committee*”) was appointed on March 6, 2020. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Case.

4. A description of the Debtor’s history, business operations, operational structure, the reasons for commencing the Chapter 11 Case, the relief sought from the Court, and the facts and circumstances supporting this Motion are set forth in the *Informational Brie of the Roman Catholic Diocese of Harrisburg* (the “*Informational Brief*”) and the *Declaration of Christopher G. Linscott in Support of First Day Motions* (the “*Linscott Declaration*” and, with the Informational Brief, collectively, the “*First Day Informational Pleadings*”).

5. The Court, on June 15, 2020, entered the *Order Granting Debtor’s Motion to Extend the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to Section 365(d)(4) of the Bankruptcy Code* [Dkt. No. 346] (the “*Previous Order*”) by which the initial deadline was extended for 90 days through and including September 16, 2020. The Previous Order extended the Assumption/Rejection Deadline (as defined below) without prejudice to the Debtor’s ability to seek further extensions.

6. On June 22, 2020, the Court entered the *Order Granting Debtor’s Motion for an Order Extending Its Exclusive Periods to File Chapter 11 Plan and Solicit Acceptances Thereto Pursuant to Section 1121(d) of the Bankruptcy Code* [Dkt. No. 351] (the “*Extension Order*”). Pursuant to the Extension Order, the Debtor has until December 15, 2020 to file a plan of reorganization.

RELIEF REQUESTED

7. By this Motion and pursuant to section 365(d)(4) of the Bankruptcy Code, the Debtor seeks to further extend the current deadline of September 16, 2020 to assume or reject unexpired leases of nonresidential real property (the “*Assumption/Rejection Deadline*”) by an additional ninety (90) days, up to and including December 15, 2020.

BASIS FOR RELIEF

I. LEGAL GROUNDS

8. Section 365 of the Bankruptcy Code governs the Debtor’s ability to assume, assume and assign, and reject unexpired leases and executory contracts. Section 365(d)(4)(A) of the Bankruptcy Code provides that:

an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of -

- (i) the date that is 120 days after the date of the order for relief; or
- (ii) the date of the entry of an order confirming a plan.

11 U.S.C. § 365(d)(4)(A). Section 365(d)(4)(B)(i) further provides that the “court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.” 11 U.S.C. § 365(d)(4)(B). Section 365(d)(4)(B)(ii) of the Bankruptcy Code allows the Court to further extend the deadline, with prior written consent of the lessors, on the motion of the debtor. 11 U.S.C. § 365(d)(4)(B)(ii).

9. The term “cause,” as used in section 365(d)(4)(B), is not defined in the Bankruptcy Code, nor does the Bankruptcy Code establish formal criteria for evaluating a request for an extension of the initial 120-day period. Although the decision to extend a debtor’s time to assume or reject unexpired leases of nonresidential property is generally within the sound

discretion of the court, in determining whether cause exists for an extension of the initial 120-day period, courts have relied on several factors, including the following:

- (1) whether the debtor was paying for its use of the property;
- (2) whether the debtor's continued occupation of the leased premises could damage the lessor beyond the compensation available under the Bankruptcy Code;
- (3) whether the lease is the debtor's primary asset; and
- (4) whether the debtor has had sufficient time to formulate a plan.

See South St. Seaport Ltd. P'Ship v. Burger Boys, Inc. (In re Burger Boys, Inc.), 94 F.3d 755, 761 (2d Cir. 1996); *In re Panaco, Inc.*, 2002 Bankr. LEXIS 2084, *12 (Bankr. S.D. Tex. Dec. 9, 2009); *see also In re Wedtech Corp.*, 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987) (considering, among the aforementioned factors, the complexity of the case facing the debtor and the number of leases the debtor must evaluate); *Legacy, Ltd. v. Channel Home Ctrs., Inc. (In re Channel Home Ctrs., Inc.)*, 989 F.2d 682, 689 (3d Cir. 1993), *superseded by statute*, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 404(a), 119 Stat. 23 (2005), *as recognized in In re Jim Palmer Equip., Inc.*, 2008 Bankr. LEXIS 4096, *12 (Bankr. D. Mont. Nov. 25, 2008) (“it is permissible for a bankruptcy court to consider a particular debtor's need for more time in order to analyze leases in light of the plan it is formulating” (citing *In re Wedtech*, 72 B.R. at 471–72)).

10. Some bankruptcy courts have taken a slightly expansive approach by weighing multiple factors in an effort to determine whether “cause” exists:

- (1) whether the lease is the primary asset of debtor;
- (2) whether the landlord has a reversionary interest in the building built by debtor on landlord's land;

- (3) whether the debtor has had sufficient time to assess its financial situation and the potential value of its assets in terms of formulating a plan;
- (4) whether the lessor continues to receive the rent as required by the lease;
- (5) whether the lessor will be damaged beyond the compensation available under the Bankruptcy Code due to debtor's continued occupation of the leased premises;
- (6) whether the case is exceptionally complex and involves a large number of leases;
- (7) whether the need exists for a judicial determination of whether the lease is disguised as a security interest;
- (8) whether the debtor has failed or is unable to formulate a plan when it has had sufficient time to do so; and
- (9) any other factors bearing on whether the debtor has had a reasonable amount of time in which to decide whether to assume or reject the lease.

See, e.g., In re Service Merchandise Co., Inc., 256 B.R. 744, 748 (Bankr. M.D. Tenn. 2000).

The above list is not exclusive and the bankruptcy court is left a "great deal of discretion . . . to weigh all relevant factors related to the requested extension." *BC Brickyard Assocs. v. Ernst Home Ctr., Inc. (In re Ernst Home Ctr., Inc.)*, 221 B.R. 243, 253 (B.A.P. 9th Cir. 1998).

11. Ultimately, whether to grant an extension of time rests within the sound discretion of the bankruptcy court. *In re Burger Boys, Inc.*, 94 F.3d at 760–61. "Nothing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to determine whether the assumption or rejection of particular leases is called for by the plan of reorganization that it is attempting to develop." *In re Channel Home Ctrs., Inc.*, 989 F.2d at 689; *see also Coleman Oil Co. v. Circle K Corp. (In re Circle K Corp.)*, 127 F.3d 904 (9th Cir. 1997), *cert. denied*, 522 U.S. 1148, 118 S. Ct. 1166 (1998) (noting that bankruptcy courts can grant a debtor's request for an extension).

II. FACTUAL GROUNDS

12. Pursuant to section 365(d)(4) of the Bankruptcy Code, if the unexpired leases are not assumed or rejected on or prior to the Assumption/Rejection Deadline, such unexpired leases shall be deemed rejected unless the Debtor receives, pursuant to section 365(d)(4)(B) of the Bankruptcy Code, an extension of time within which it may assume or reject the unexpired leases. As illustrated herein, there is more than sufficient cause to grant the Debtor's requested extension of time within which it may assume or reject any unexpired leases.

13. The Debtor continues to analyze and evaluate its unexpired leases of nonresidential real property as it continues to develop a plan of reorganization with its constituents. However, additional time is needed to fully evaluate its unexpired leases of nonresidential real property as such leases may have a material impact on the Debtor's claims pool if the Debtor is able to successfully assume and assign any remaining leases rather than incurring rejection damages.

14. Further, the Debtor is current on all monetary obligations due and owing under its unexpired leases of nonresidential real property. Consequently, its continued occupation of the leased premises will not damage its lessors.

15. This Chapter 11 Case is complex and, while the Debtor has been working expeditiously with the Committee and other key stakeholders to develop a consensual plan to emerge from chapter 11, additional time is needed to explore potential opportunities and evaluate how its remaining unexpired leases of nonresidential real property impact those opportunities. Accordingly, cause exists to extend the Assumption/Rejection Deadline up to and including December 15, 2020.

16. Pursuant to the requirements of section 365(d)(4)(B)(ii), the Debtor has obtained the written consent from Szeles Real Estate Development Company, L.P. and Catholic Charities,

Inc. to extend the Assumption/Rejection Deadline by an additional ninety (90) days. The Debtor's remaining leases are on a month-to-month basis and, therefore, consent to extend the Assumption/Rejection Deadline is not necessary.

NOTICE

17. The Debtor has provided notice of this Motion either by electronic mail, facsimile, or United States First Class mail to: (i) the Office of the United States Trustee for the Middle District of Pennsylvania; (ii) counsel to the Committee; (iii) all landlords party to an unexpired lease of nonresidential real property; and (iv) all parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 9013-1(d). Due to the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

NO PRIOR REQUEST

18. No prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: August 31, 2020
Nashville, Tennessee

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP

/s/ Blake D. Roth

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Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION**

In re:

ROMAN CATHOLIC DIOCESE OF
HARRISBURG,

Debtor.¹

Chapter 11

Case No. 1:20-bk-00599 (HWV)

**ORDER GRANTING DEBTOR'S MOTION TO FURTHER EXTEND THE DEADLINE
TO ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL
PROPERTY PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE**

Upon consideration of the motion (the "*Motion*")² for entry of an order (this "*Order*") pursuant to section 365(d)(4) of the Bankruptcy Code extending the time in the which the Debtor may assume or reject unexpired leases on nonresidential real property filed by the above-captioned Debtor; and the Court having found that it has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and the Court having found that consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that venue of this proceeding in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion as set forth therein is sufficient under the circumstances; and the Court having reviewed the Motion and having considered the record at the hearing held before this Court (the "*Hearing*"), if any; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

¹ The last four digits of the Debtor's federal tax identification number are: 4791. The Debtor's principal place of business is located at 4800 Union Deposit Road, Harrisburg, Pennsylvania 17111.

² Capitalized terms not defined herein shall have the meanings given to them in the Motion.

IT IS THEREFORE ORDERED:

1. The Motion is GRANTED as set forth herein.
2. The time period within which the Debtor may assume or assign unexpired nonresidential real property leases is extended for an additional ninety (90) days, through and including December 15, 2020, in accordance with section 365(d)(4) of the Bankruptcy Code.
3. The extensions of time granted herein is without prejudice to the Debtor's rights to seek further extensions of its time to assume or reject any unexpired nonresidential real estate lease as provided in section 365(d)(4) of the Bankruptcy Code.
4. The Debtor is authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order in accordance with the Motion.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.