

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
T-L BRYWOOD LLC, ) CASE NO. 13-21804 jpk  
a DELAWARE LIMITED LIABILITY COMPANY ) Chapter 11  
Debtor. )

ORDER GRANTING DEBTOR'S MOTION TO  
EXTEND SOLICITATION EXCLUSIVE PERIOD ["MOTION"]

The Motion was filed by the debtor as Record No. 169. As evidenced by Record No. 170, proper notice of the filing of the Motion was provided to all necessary parties. As Record No. 176, RCG-KC Brywood, LLC filed its Response in Opposition to Debtor's Motion to Extend Solicitation Exclusive Period. By separate order, the court granted the debtor an opportunity to reply to the creditor's response, which the debtor did by Record No. 188.

The debtor has filed a Chapter 11 plan, and thus extension of the exclusivity period for filing a plan is not an issue here. What is an issue is extension of the exclusivity period for the debtor to solicit acceptances of its plan, pursuant to 11 U.S.C. § 1121(c).

The Record No. 176 objection is essentially an assertion of the premises asserted by RCG-KC Brywood, LLC with respect to a motion for stay relief/abandonment which it has also filed in this case. That motion, in turn, is essentially a statement of certain of the grounds upon which the creditor will object to confirmation of the Chapter 11 plan filed by the debtor, when/if that Chapter 11 is submitted to creditors for acceptance or rejection. The court gets it – RCG-KC Brywood, LLC doesn't like the debtor's plan, and doesn't like the fact that the debtor is still in this Chapter 11 case with the automatic stay in effect.

Due to the nature of the plan filed by this debtor and somewhat associated debtors in four other pending Chapter 11 cases, the court has separately set a briefing schedule with respect to a common provision in all of the proposed Chapter 11 plans relating to what the court will describe as "deemed substantive consolidation", a provision in each of the debtor's plans to

which the primary secured creditors have objected. The briefing schedule with respect to that matter has now been closed, and the court will issue an order in the not too distant future with respect to that provision of the plan of this and other debtors.

The circumstance in which we find ourselves in this case is that a Chapter 11 plan has been submitted by the debtor in a timely fashion pursuant to extensions of time granted by the court having jurisdiction over the case. A principal – perhaps the primary – provision of the plan involves an issue to which the primary secured creditor in this case vigorously objects. Because this issue also arises in four other cases, that issue was singled out by the court for consideration prior to final consideration of disclosure statements filed by the debtors in each of the cases, on the theory that if the court determined as a matter of law that the “deemed substantive consolidation” provision could not be sustained, there is no point in going to the expense and time delay of conducting disclosure statement approval hearings on plans which included that provision. RCG-KC Brywood, LLC consented to this mechanism to address the offensive plan provision concerning “deemed substantive consolidation”, and even had it not, the court would still have proceeded in the same manner over any objection it may have had.

In this order, the court will neither analyze nor address legal authorities which may or may not be applicable to the issue at hand.<sup>1</sup> Simply put, a plan has been filed by the debtor, and its submission to creditors/parties in interest has been suspended in order to determine whether a critical provision in the plan is sustainable as a matter of law. Apart from the possible resolution of the “deemed substantive consolidation” issue in favor of the creditor, the debtor’s plan does not present any issue which as a matter of law would preclude confirmation absent extensive evidentiary proceedings. RCG-KC Brywood, LLC asserts that the debtor has submitted no evidence to support its extension request. That is of course true, because no

---

<sup>1</sup> The matter before the court is a contested matter pursuant to Fed.R.Bankr.P. 9014. Fed.R.Bankr.P. 9014(c) applies Fed.R.Bankr.P. 7052 to this matter. That latter Rule in turn applies Fed.R.Civ.P. 52(a)(3) to this matter, which states that the “court is not required to state findings or conclusions when ruling on . . . any . . . motion” of the nature of the one before the court.

opportunity for an evidentiary hearing before the court has been provided to the debtor. However, based upon the record in this case, the court determines that an evidentiary hearing is not necessary, and that the debtor has established "cause" for the requested extension because of the circumstances in this case concerning further proceedings with respect to the debtor's filed Chapter 11 plan.

The court determines that the Record No. 169 Motion should be granted, and that the Objection of RCG-KC Brywood, LLC to that Motion should be denied.

IT IS ORDERED as follows:

- I. The Objection of RCG-KC Brywood, LLC to the Record No. 169 Motion is denied.
- II. The Record No. 169 Motion is granted by separate order.

Dated at Hammond, Indiana on October 2, 2013.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor, US Trustee  
Thomas M. Lombardo