

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN
DISTRICT OF IOWA

IN RE:

TAMA BEEF PACKING, INC .

Debtor.

Chapter 7

Bankruptcy No. 01-03822-C

ORDER RE MOTION TO RESCIND ORDER

This matter came before the Court on February 21, 2002 pursuant to assignment. Trustee Renee Hanrahan appeared with attorney Jeff Taylor. Attorney Carroll Reasoner appeared for the City of Tama, Iowa. Attorney Eric Lam appeared for creditor General Electric Capital Corp. (GECC) . Agriprocessors, Inc. was represented by attorney Jeff Courter. Iowa Quality Beef Supply Network appeared by attorney Lynn Hartman. After hearing arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) (A), (M).

STATEMENT OF THE CASE

On February 15, 2002, Trustee filed a motion requesting an additional 45 business days, to April 23, 2002, to accept or reject the lease with the City of Tama. Counsel for Trustee informed the Court that the City of Tama had been notified of its motion and objected to extension of the deadline. The Court entered an order extending the deadline by 10 days to preserve the rights of Trustee until such time as a hearing could be scheduled. The City of Tama filed a Motion to Rescind the Order granting the 10-day extension and this hearing was scheduled.

As of the bankruptcy filing date, Debtor had an unexpired lease of non-residential real estate with the City of Tama, Iowa. Under the Bankruptcy Code, after the case converted to Chapter 7 on December 18, 2001, Trustee had 60 days to elect to assume or reject the lease. Thus, the deadline was February 16, 2002. The Court entered its order extending the time by 10 days on February 15, 2002, making the deadline February 25, 2002.

Trustee's motion for additional time is premised on a recent development concerning the bankruptcy estate's leasehold interest. On February 15, 2002, Trustee received a Letter of Intent from Agriprocessors, Inc. concerning purchase of the bankruptcy estate's leasehold interest and option to purchase the Tama property. Agriprocessors requires 45 business days in which to perform the necessary due diligence.

The City of Tama objects to Trustee's request for additional time under § 365(d) (4), requests the Court rescind its order

granting the additional ten days and seeks an order declaring the lease has been rejected and terminated. The City asserts no cause exists to extend the deadline to accept or reject the lease. It points out Trustee has failed to reimburse it for postpetition expenses with funds made available by creditor GECC, as earlier agreed and ordered.

GECC and Trustee have assured the Court they are now prepared to reimburse the City for its related expenses. Iowa Quality Beef Supply Network appeared at the hearing and expressed an interest in negotiating with the City to take over the property for operation of a beef processing plant . The City argues Trustee should reject the lease so the City can negotiate with the Network to protect its property interests and the interests of Debtors' former employees as well as the community as a whole.

CONCLUSIONS OF LAW

The decision to grant or deny a motion for an extension of time to assume or reject leases for cause is within the discretion of the court. In re Burger Boys, Inc., 94 F.3d 755, 760-61 (2d Cir. 1996). The test for "cause" under § 365 (d) (4) leaves a great deal of discretion to the court to weigh all relevant factors. Id.; In re Ernst Home Ctr., Inc., 209 B.R. 974, 981 (Bankr. W.D. Wash. 1997). Such factors include: (1) whether the debtor is paying for the use of the property, (2) whether the debtor's continued occupation of the property could damage the lessor beyond the compensation available under the Code, (3) whether the lease is the debtor's primary asset, (4) whether the landlord would receive a windfall, (5) the complexity of the case, and (6) the amount of time the trustee has had to analyze the estate. Id. at 980; Burger Boys, 94 F.3d at 760-61; In re Columbus One Parcel Serv., Inc., 138 B.R. 194, 195 (Bankr. S.D. Ohio 1992); 2 Lawrence P. King, Collier on Bankruptcy 365 .03[3], at 364-38 (15th ed. 1995) . Courts have considered pending sales and financing negotiations in finding cause to extend the § 365(d) (4) deadline. See Ernst Home Ctr., 209 B.R. at 977; In re Musikahn Corp., 57 B.R. 938, 941 (Bankr. E.D.N.Y. 1986); In re Musikahn Corp., 57 B.R. 942, 944 (Bankr. E.D.N.Y. 1986) .

The matter for consideration at this time is the City's Motion to Rescind Order . The Court 's February 15 Order extends the assume or reject deadline to February 25, from the original deadline of February 16, to allow time for the City 's response. As the parties acknowledged at the hearing, the bar date for objections to Trustee 's Motion for Extension of Time to Assume/Reject Lease is currently set for March 7, 2002, necessitating an additional hearing on this matter in light of the City's continuing objections. The Court will weigh the relevant factors to determine whether to rescind its order extending the deadline to February 25 and whether to further extend the time to assume or reject until after the bar date to allow for full hearing on any and all objections to Trustee 's requested extension of the deadline to April 23, 2002.

As Trustee points out, the lease with option to purchase is Debtor's most significant asset. Debtor is reimbursing the City for related ongoing expenses through financing from GECC. The initial 60 days the Code grants Trustee to decide to assume or reject the lease has recently passed. Allowing the additional 10 days and a further limited period of time for a full hearing will not cause undue harm to the

City . The hearing can be expeditiously scheduled on a date less than one month past the original deadline under § 365 (d) (4) .

Agriprocessors' Letter of Intent is an indication that the estate 's leasehold interest and option to purchase has some value which can be realized for the benefit of the estate and creditors. If the lease is deemed rejected as of the expiration of the initial 60 days to assume or reject, the City may receive a windfall which should have benefitted creditors. The City expresses a desire to protect and provide for Debtors' former employees. This role, at least in part, is delegated to Trustee by the Bankruptcy Code in light of the employees ' status as wage claimants in the bankruptcy case .

In light of the interest of the Network expressed at the hearing and other parties who have approached Trustee or the City of Tama, further exploration of the value of the lease may well prove beneficial to the estate. The Court notes that the provision of Agriprocessors' Letter of Intent restricting Trustee from negotiating with other interested parties is non-binding and ineffectual. At this point, Trustee is able to entertain offers from competitors. This could allow the estate to maximize the value of the leasehold interest.

The Court concludes sufficient cause exists to allow extension of the deadline until after the bar date and hearing in order to allow all interested parties to respond. Promptly setting a hearing on the City's objections and any others filed prior to the bar date will protect the rights of all parties, including the City of Tama and the bankruptcy estate as well as former employees with wage claims and other creditors. Weighing the relevant factors results in a finding that the situation contains adequate substance to warrant further exploration of the issues and extension of the deadline to assume or reject the lease until the time set for hearing on the Motion and any objections.

WHEREFORE, the City of Tama's Motion to Rescind Court 's Order Granting Extension of Time Within Which to Assume or Reject the Lease is DENIED.

FURTHER, the deadline for assumption or rejection of the lease with the City of Tama is extended until the Court rules on Trustee's Motion for Extension of Time to Assume/Reject Lease after the bar date has passed and hearing is held .

FURTHER, hearing on Trustee's Motion for Extension of Time to Assume/Reject Lease is hereby scheduled for:

**March 12, 2002 at 10:00
a.m .**

in the BANKRUPTCY COURTROOM, 8TH FLOOR, 425 SECOND STREET SE, CEDAR RAPIDS, IOWA.

FURTHER, the Court reiterates that any and all objections to the Motion for Extension of Time to Assume/Reject Lease must be filed **on or before 4:30 p.m .on March 7, 2002 .**

SO ORDERED, this 22 day of February, 2002.

PAUL J. KILBURG CHIEF BANKRUPTCY JUDGE

