



4. On or about January 28, 2009, the Debtor filed the Extension Motion pursuant to which the Debtor is requesting that the exclusive period during which the Debtor, and only the Debtor, may file a Plan of Reorganization be extended an additional ninety (90) days or until May 6, 2009 and the period for the Debtor to solicit acceptances of its Plan of Reorganization be extended to July 6, 2009.

5. Section 1121(b) of the Bankruptcy Code allows the Debtor an initial one hundred and twenty (120) days after the commencement of a Chapter 11 bankruptcy proceeding during which only the Debtor may file a Plan of Reorganization (hereinafter "Exclusive Period"). The Exclusive Period may be extended by the Court for "cause". 11 U.S.C. §1121(d).

6. The term "cause" is not defined in the Bankruptcy Code but the following nonexclusive list of factors have been utilized by courts to determine whether "cause" exists to extend the Exclusive Period:

1. The size and complexity of the case;
2. The necessity of sufficient time to negotiate and prepare adequate information;
3. The existence of good faith progress toward of reorganization;
4. Whether the Debtor is paying its debts as they become due;
5. Whether the Debtor has demonstrated reasonable prospects for filing a viable plan;
6. Whether the Debtor has made any progress in negotiating with creditors;
7. The length of time the case has been pending;
8. Whether the Debtor is seeking an extension to pressure creditors; and
9. Whether unresolved contingencies exist.

*Matter of Friedman, Inc.*, 336 B.R. 884, 888 (Bankr. S.D. Ga 2005); *In Re Service Merchandise Company, Inc.*, 256 B.R. 744, 751 (Bankr. M.D. Tenn. 2000)

7. The Debtor has the burden of establishing "cause" exists justifying an extension of the Exclusive Period. Extensions of the Exclusive Period should be based upon a showing by the Debtor of some promise of a successful reorganization. *In Re Hoffinger Industries, Inc.*, 292 B.R. 639, 643 (BAP 8<sup>th</sup> Cir. 2003).

8. The fact that the Debtor's request for an extension of the Exclusive Period is its first request for an extension does not of itself constitute cause. *In Re General Bearing Corporation*, 136 B.R. 361, 367 (Bankr. S.D. N.Y. 1992).

9. As was stated by the Bankruptcy Court in *Matter of All Seasons Industries, Inc.* 121 B.R. 1002, 1004 (Bankr. N.D. Indiana 1990):

“In passing upon a request for change in the debtor's exclusivity period, the court needs to consider more than just the articulated cause presented to it. It must also consider the history and purpose of Section 1121 and the competing interests which Congress sought to balance when it enacted these timetables.”

10. The fact that the Exclusive Period is not extended does not prevent a debtor from preparing and filing a Plan of reorganization. Rather, a refusal to extend the Exclusive Period simply levels the playing field so that the Committee, as well as the Debtor, will have an equal chance to propose a Plan of Reorganization which might be acceptable to all creditors. *In re General Bearing Corporation*, 136 B.R. 361, 367 (Bankr. S.D. N.Y. 1992); *Matter of All Seasons Industries, Inc.*, 121 B.R. 1002, 1005 (Bankr. N.D. Indiana 1990).

11. In the Extension Motion the Debtor states that an extension of the Exclusive Period should be granted since its Chapter 11 case is both large and complex; additional time is necessary to negotiate a Plan and prepare a Disclosure Statement and that substantial progress in resolving issues facing the bankruptcy estate has been made.

12. Stated simply, the reasons articulated within the Extension Motion do not constitute “cause” to extend the Exclusive Period for an additional ninety (90) days as requested by the Debtor. This bankruptcy proceeding will result in the filing of a Plan providing for the

orderly liquidation of the Debtor's assets rather than the reorganization of its business as a going concern. The Debtor's business is certainly not large and the liquidation of its assets will not be overly complex. As of the commencement of this bankruptcy proceeding, the Debtor had sixteen (16) employees and its primary assets are real estate and a mortgage loan portfolio. While the disposition of these assets in an orderly liquidation may take time, the process itself will be neither exceedingly involved nor complex.

13. The Debtor is not faced with a number of different classes of creditors in this bankruptcy proceeding. The Debtor has no secured creditors. All of the Debtor's creditors are unsecured creditors. In the Extension Motion, the Debtor professes a need to have the bar date for the filing of the claims pass so as to be able to prepare and file a Plan. It is simply not necessary to know the amount of all creditors' claims in order to formulate a Plan since any confirmable Plan in this case will provide for the orderly liquidation of the Debtor's assets. Since all of the Debtor's creditors are unsecured creditors, upon the liquidation of the Debtor's assets, the net sale proceeds derived from the sale of the assets will be distributed to unsecured creditors consistent with the priorities established within the Bankruptcy Code and, with respect to general unsecured creditors, on a pro rata basis. It is also not necessary for the Debtor to dispose of real estate or its loan portfolio in order to be able to file a Plan providing for the orderly liquidation of its assets. Rather, the procedure for sale of the Debtor's assets will be set forth within the Plan and will occur and be implemented after its confirmation.

14. The Debtor also claims to have made significant progress in resolving issues faced by the bankruptcy estate. The Committee does acknowledge that the Debtor's former chief executive officer has resigned and that a real estate broker to market and sell its commercial real estate has been selected by the Debtor. However, the selection of the commercial real estate

broker took the Debtor four (4) months to accomplish which is quite lengthy when the sale of its commercial real estate would be an integral component of any confirmable Plan. Additionally, the Debtor and its wholly owned subsidiary corporations own a substantial number of residential parcels of real estate that will also need to be sold pursuant to the Plan. The Debtor has made no effort to retain any real estate brokers for the purposes of marketing and selling the residential real estate assets despite being provided the names of a number of residential real estate brokers by the Committee over two (2) months ago.

15. Stated simply, a Plan providing for the orderly sale and liquidation of the Debtor's assets must be promptly prepared and filed with the Bankruptcy Court. The Committee is ready, willing and able to prepare and file such a Plan. While the Committee is more than willing to continue to negotiate with the Debtor with a goal toward agreeing upon a Joint Plan of orderly liquidation to be filed with the Bankruptcy Court, the Committee requests that the "playing field" be leveled so as to allow the Committee to promptly prepare and file a Plan providing for the sale and orderly liquidation of the Debtor's assets if the Debtor fails to do so.

WHEREFORE, the Official Committee of Unsecured Creditors respectfully requests the entry of an Order by this Court denying the Extension Motion and for such other and further relief as the Court deems just and equitable.

Dated: February 17, 2009

The Official Committee of Unsecured Creditors of  
Commercial Mortgage and Finance, Co.,

Holmstrom & Kennedy P.C.,  
Its attorneys

By: \_\_\_\_\_

One of its attorneys

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**PROOF OF SERVICE**

The undersigned, being first duly sworn, states that a copy of the foregoing *Objection to the Motion of Commercial Mortgage and Finance, Co., Debtor to Extend the Exclusive Periods During Which the Debtor May File A Chapter 11 Plan and Solicit Acceptances Thereof* was served upon the parties and attorneys of record herein, by depositing said envelope, with postage fully prepaid by first class mail, in the United States Post Office mailbox in Rockford, Illinois on the 17th day of February, 2009:

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Subscribed and sworn to before me  
this 17<sup>th</sup> day of February, 2009.

Lisa Jacobson

Notary Public



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