U.S. BANKRUPTCY COURT
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re RANDALL'S ISLAND FAMILY GOLF CENTERS, INC, et al., Debtors.	Chapter 11 Case Nos. 00-41065 through 00-41188 (SMB) (Jointly Administered)

OBJECTION TO DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE EXTENDING THE EXCLUSIVE PERIODS DURING WHICH ONLY THE DEBTORS-IN-POSSESSION MAY FILE A CHAPTER 11 PLAN OR PLANS AND SOLICIT ACCEPTANCES OF SUCH PLAN OR PLANS

Chinatrust Bank (U.S.A.) ("CTB") and Chinatrust Commercial Bank (New York Agency) ("CTCB"), secured creditors and parties in interest, object to the Debtors' motion for order pursuant to section 1121(d) of the Bankruptcy Code extending the exclusive periods during which only the debtors-in-possession may file a Chapter 11 plan or plans and solicit acceptances of such plan or plans (the "Motion"), for the following reasons:

1. On or about August 18, 2000, the Debtors filed the above-mentioned motion.

2. CTB and CTCB are both "Pre-Petition Secured Lenders" and "non-Chase Lenders", as those terms are defined by the final Debtor-in-Possession Financing Order entered by this Court on June 2, 2000.

3. CTB and CTCB are the holders of notes and mortgages on two properties (Margate, Florida and West Palm Beach, Florida) at which the Debtors conduct their business.

4. Pursuant to Section 1121(b) of the Bankruptcy Code, only the debtor may file a Chapter 11 reorganization plan within the first 120 days after the order for relief is entered. Section 1121(c)(3) of the Bankruptcy Code further provides that should a debtor file such a plan, the debtor has an additional 60 days to solicit acceptances of that plan.

5. The Debtors' 120-day and 180-day time periods under the Bankruptcy Code expire on September 1, 2000 and October 31, 2000, respectively. Per the Motion, the Debtors requested a 120-day extension of the time to file a plan or plans of reorganization and to solicit acceptances of such plan or plans.

6. The proposed Motion, if granted, would give the Debtors until December 30, 2000 to file their proposed Chapter 11 plan of reorganization, and until February 28, 2001 to solicit acceptance of that plan. The Debtors also requested the right to seek further extensions of those time periods as necessary.

7. Section 1121(d) of the Bankruptcy Code allows the Court to increase or decrease the time periods for the filing and acceptance of a Chapter 11 plan, for cause.

8. "Cause" is not defined by the statute, and is therefore a matter for Court interpretation. The debtor has the burden of proving that cause exists for the requested extension. In re General Bearing Corporation et al., 136 B.R. 361, 366 (Bankr. S.D.N.Y. 1992) (citing In re Texaco, 76 B.R. 322 (Bankr. S.D.N.Y. 1987)).

9. The Courts have established factors to assess if a debtor has met its burden. "In finding cause, courts have relied on, in addition to the needs of the creditors

committee to negotiate with the debtor and the ability to prepare adequate information: (a) the size and complexity of the debtor's case; (b) the existence of good faith progress towards reorganization; (c) a finding that the debtor is not seeking to extend exclusivity to pressure creditors, 'to accede to [the debtors] reorganization demands'; (d) existence of an unresolved contingency; and (e) the fact that the debtor is paying its bills as they come due." In re McLean Industries, Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987) (citations omitted).

10. With regard to the size and complexity of the case, no party in interest would contend that this administration and handling of this bankruptcy proceeding could be considered straightforward or simple. However, this case has become artificially inflated into a larger and more complex case than it needs to be, owing to the Debtors' efforts of turning this proceeding into a de facto substantively consolidated one without leave of court.

11. Nowhere is the unauthorized de facto substantive consolidation of these cases more obvious than in the recently filed application to approve the sale of 34 properties to Klak. Those 34 properties did not belong to one bankruptcy estate. With respect to CTB's interests, two of its mortgaged properties, one in the West Palm Beach Family Golf Center bankruptcy proceeding and another in the Margate Family Golf Center bankruptcy proceeding may be sold over CTB's objection and without ever establishing a purchase price for those properties. Each of the different Family Golf entities were, before the bankruptcy petition, fully capable of operating separately and in fact obtaining substantial multi-million dollar commercial loans. There is no reason the separate entities cannot continue to operate separately in bankruptcy.

12. Furthermore, the unauthorized de facto substantive consolidation of these various bankruptcy estates has given the Debtors an opportunity to operate their business affairs in secrecy. Prior to the filing of the bankruptcies on May 4, the Family Golf entities maintained records of their separate financial performance. CTB and CTCB received regular financial reports concerning the business activities of numerous Family Golf entities. However, upon the filing of these bankruptcies on May 4, the Debtors ceased to provide information about the various subsidiaries' financial performance.

13. The virtual blackout on the Debtors' financial affairs is further compounded by the Debtors' failure to file schedules of assets and liabilities and a statement of financial affairs.

14. Contrary to the Debtors' representations about progress in this proceeding, the Debtors are going backwards in terms of justifying their continued Chapter 11 existence. So far, the Debtors have incurred additional debt in connection with the Chase DIP loan, and they have arranged to sell off 34 properties for a purchase price that they admit is for less than the value of those properties. As the Court will recall, the Debtors refused to acknowledge that the purchase price from the Klak transaction would be sufficient to pay CTB the value of its mortgage liens. In view of the fact that CTB would have received the value of its liens in a Chapter 7 liquidation, one has to wonder what is the purpose of a Chapter 11 that appears to have no direction and less to offer to creditors than a straight liquidation of the assets.

15. Based upon these facts, the debtor has failed to demonstrate its ability to successfully reorganize if the exclusivity periods were extended, an important factor in the Court's determination of "cause" under the Bankruptcy Code. In the Matter of

American Federation of Television and Radio Artists, 30 B.R. 772, 774-75 (Bankr. S.D.N.Y. 1983) (citations omitted).

16. The Debtor has not filed any schedules in this case, yet this case is almost four months old. Rule 1007(b) of the Federal Bankruptcy Rules explicitly provides for the Debtor's duty to, "...unless the court orders otherwise, file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs." The Debtor has requested two extensions of the time limit specified under the Bankruptcy Code by which schedules must be filed, and the deadline from the latest extension of time was August 21, 2000. Those requests have been devoid of substantive reasons for the delay, only stating that cause exists because progress is being made and more time is needed.

17. At the latest Section 341(a) secured creditors' meeting held yesterday, Debtor's counsel admitted they had not filed the schedules for the parent corporation until Friday, August 25, 2000. Debtor's counsel further advised that the schedules for the 132 other corporations would be filed on a rolling basis between now and September 8, 2000.

18. There is no evidence to show that the Debtors would be prejudiced should the Motion be denied. The Court's denial of the Motion would only remove the Debtor's exclusive right to submit a plan of reorganization for review.

19. Based on the facts adduced above, Debtors cannot meet their burden to show cause why the time to file a Chapter 11 reorganization plan should be extended under Section 1121(d) of the Bankruptcy Code.

WHEREFORE, for all of the foregoing reasons, Chinatrust Bank (U.S.A.) and Chinatrust Commercial Bank (New York Agency) respectfully request that the Court **DENY** the Motion in its entirety.

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By: Daniel C. Fleming
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