IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE: BETTEROADS ASPHALT LLC. Debtor	CASE NO.17-04156 (ESL) CHAPTER 11
IN RE: BETTERCYCLING CORPORATION Debtor	CASE NO. 17-04157 (ESL) CHAPTER 11

ORDER

On January 29, 2020, BETTEROADS ASPHALT LLC. and BETTERCYCLING CORPORATION ("Debtors") filed a motion requesting the court to extend "by 120 days the exclusive periods during which only the Debtor may file a chapter 11 plan and solicit acceptances thereof. Specifically, the Debtor seeks to extend the exclusive period to file a chapter 11 plan (the "Exclusive Filing Period") through and including June 9, 2020, and the exclusive period to solicit acceptances of a chapter 11 plan from Debtor through and including August 8, 2020 (the "Exclusive Solicitation Period" and, together with the Exclusive Filing Period, the "Exclusive Periods")."

On February 12, 2020, Firstbank Puerto Rico ("Firstbank"), Banco Santander de Puerto Rico ("Banco Santander"), the Economic Development Bank for Puerto Rico ("EDB"), and Banco Popular de Puerto Rico ("Banco Popular" or the "Administrative Agent", and collectively with Firstbank, Banco Santander and EDB, the "Lenders"), filed an Opposition (the "Opposition") to the Debtors' Motion for Entry of an Order Extending the Exclusive Periods During Which Only the Debtor May File a Chapter 11 Plan and Solicit Acceptances Thereof (the "Extension of Exclusivity Motion").

The Lenders summarize in their opposition the litigious history and conduct of the Debtors. They further allege that the Debtors' request does "not meet the factors typically followed to warrant an extension. In this circuit, courts have employed a four-factor test, which

the Debtors have failed to comply with in the Involuntary Proceedings. In re Situation Mgmt. Sys, Inc., 252 B.R. 859, 863 (Banks. D. Mass. 2000); see also, In re Crescent Beach Inn, Inc.,22 B.R. 155, 159 (Bankr.D.Me.1982)."

"The four factors to determine cause to extend exclusivity period are (1) whether debtor is using exclusivity period to force a plan, (2) whether the extension will improve the process of filing a plan, (3) if there has been gross mismanagement of the affairs of the debtor, and (4) if there is an acrimonious relationship with debtors' principals. Id."

On April 27, 2020, the Debtors replied to the Lenders' opposition to extend the exclusivity period. Debtors contend that the Legislative History supports granting Debtor's First Extension, that the lenders proffer unwarranted justifications on a speculative cramdown plan, the Lenders admit as to complexity of the case and time to negotiate, the Lenders make unwarranted allegation of lack of confidence and relationship with the Debtors, exclusivity is not used to force a plan on Creditors, and extending the exclusivity period will aid the filing of a plan.

The court may extend the exclusivity period in which only the debtor may file a chapter 11 plan for cause. Whether the debtor has established cause hinges on the particular circumstances of each case. The four factors discussed by the Lenders are generally accepted in the First Circuit. The court considers the same as well as others relevant to these cases.

There is no indication that the debtors intend to force a plan; the extension, in light of the pending contested matters in these cases, namely, the use of cash collateral and the appointment of a trustee, are not likely to improve the filing of a plan; the issue of gross mismanagement is a critical factor in the pending motion for appointment of a trustee, but has not been established at this juncture; and, yes, there is an acrimonious relationship between the Lenders and the Debtors.

The court also considers the litigious history between the Lenders and the Debtors, which led to the filing of the involuntary petitions and the complexity of the litigation. It is also relevant that this is the first request for an extension, and that actually, only thirty (30) days remain until the date the extension is requested, that is, June 9, 2020. The court is also conscious that there is little likelihood for the parties to reach an agreement.

The travel of these cases show that the Lenders filed involuntary chapter 11 petitions against the Debtors on June 9, 2017. On June 27, 2017, the Debtors filed a motion to dismiss the involuntary petitions. Hearings were held on June 28, 2017 and November 11, 2017. On November 13, 2018, the court entered an opinion and order determining that the involuntary

petitions met all the statutory requirements but left open a decision as to whether the involuntary petitions were filed in bad faith. After several continuances, an evidentiary hearing on the bad faith issue was held. An opinion and order was entered on October 11, 2019, finding that the involuntary petitions were not filed in bad faith and that the entry of a relief order was appropriate. A notice of appeal was filed by the Debtors on October 24, 2019, and by the Lenders on November 8, 2019. On December 6, 2019, the court entered an order denying Debtors' motion for stay pending appeal. The appeals are pending before the U. S. District Court.

This court agrees with the decisions in In re Hermanos Torres Pérez, Inc., 491 B.R. 316 (Bankr. D. P. R. 2010) and In re Borders Group, Inc., 460 B.R. 818 (Bankr. S.D. N.Y 2011), that a decision whether to grant a debtor's request to extend the exclusivity period under 11 U.S.C. §1121(d) requires the balancing of competing factors, that is, Debtors need to retain control and the interests of creditors.

After due consideration of the litigation history between the Lenders and the Debtors, past, present and future; the pending contested matters; the pending appeals; and the time remaining in the request; the court grants the Debtors' request to extend the exclusivity period to June 9, 2020, and the exclusive period to solicit acceptances of a chapter 11 plan from Debtor through and including August 8, 2020. Extending the exclusivity period will not have an adverse effect on the creditors, considering the travel of the case and the pending contested matters.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 8th day of May 2020.

Enrique S. Lamoutte
United States Bankruptcy Judge

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In San Juan, Puerto Rico, this 8th day of May 2020.

Enrique S. Lamoutte
United States Bankruptcy Judge

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ALEXIS A BETANCOURT VINCENTY
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