

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

RM Wind-Down Holdco LLC, et al.¹

Debtors.

Chapter 11

Case No. 18-11795 (MFW)

(Jointly Administered)

Objection Deadline: March 18, 2019 at 4:00 p.m. (ET)

Hearing Date: March 26, 2019 at 2:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
FURTHER EXTENDING THE PERIOD WITHIN WHICH THE
DEBTORS MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby submit this motion (this "Motion") for entry of an order, substantially in the form attached hereto as Exhibit A (the "Order"), pursuant to Rules 9006 and 9027 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), further extending the period within which the Debtors may remove actions pursuant to 28 U.S.C. § 1452 (the "Removal Deadline") through and including June 3, 2019. In support of this Motion, the Debtors respectfully represent and set forth as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each of the Debtors' respective federal tax identification numbers, are as follows: RM Wind-Down Holdco LLC (f/k/a RM Holdco LLC) (6847); RM Wind-Down Opco LLC (f/k/a RM Opco LLC) (7122); RM Wind-Down HQ LLC (f/k/a RM HQ LLC) (8615); RM Wind-Down Chevys LLC (f/k/a RM Chevys LLC) (N/A); RM Wind-Down Acapulco LLC (f/k/a RM Acapulco LLC) (N/A); and RM Wind-Down El Torito LLC (f/k/a RM El Torito LLC) (N/A).



Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are 28 U.S.C. § 1452 and Bankruptcy Rules 9006 and 9027.

BACKGROUND

A. General Background

4. On August 5, 2018 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On August 7, 2018, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [D.I. 43] authorizing the joint administration and procedural consolidation of these cases (the “Chapter 11 Cases”) pursuant to Bankruptcy Rule 1015(b).

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in the Chapter 11 Cases, and no statutory committee has been appointed.

6. Additional information regarding the Debtors, including their business operations, corporate and capital structure, and the events leading to the commencement of the Chapter 11 Cases, is set forth in the *Declaration of Jonathan Tibus in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [D.I. 14] and incorporated by reference herein.

B. Background Regarding Sale Process and Sale of Substantially All Assets

7. Prior to the Petition Date, the Debtors, in consultation with their professional advisors, engaged in a comprehensive marketing process to potential investors, which process yielded three third party bids for substantially all of the Debtors' assets (collectively, the "Assets"). The Debtors also received a bid from Z Capital Group, whom the Debtors ultimately selected as the stalking horse bidder (the "Stalking Horse Bidder") for the Assets.

8. To facilitate a value-maximizing sale process for substantially all of their Assets, on the Petition Date, the Debtors filed the *Debtors' Motion for Entry of (I) an Order (A) Authorizing and Approving the Debtors' Entry into the Stalking Horse APA and Approving Certain Bid Protections in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Omit Certain Confidential Schedules from the Stalking Horse APA, (C) Authorizing and Approving Bidding Procedures, (D) Scheduling an Auction and Sale Approval Hearing, (E) Approving the Form and Manner of the Notice of the Sale Hearing, (F) Approving Assumption and Assignment Procedures, and (G) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Execution Contracts and Unexpired Leases in Connection With the Sale, and (C) Granting Related Relief* [D.I. 15] (the "Bidding Procedures Motion").² The Court entered an order approving the Bidding Procedures Motion on September 6, 2018 [D.I. 187] (the "Bidding Procedures Order"), thereby initiating the sale process further detailed below.

² Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Motion.

9. After the entry of the Bidding Procedures Order, the Debtors, in consultation with their professional advisors, continued to market their Assets in an effort to generate the highest and best bid for such Assets or a subset thereof. The Debtors did not receive any Qualified Bids other than the Stalking Horse APA by the Bid Deadline, however, and the Auction for the Assets was subsequently cancelled. Since no Auction was held, the Stalking Horse Bidder was deemed the Successful Bidder and the Stalking Horse APA was rendered the Successful Bid.

10. On September 28, 2018, the Court entered that certain *Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of Certain Assets of the Debtors Outside of the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of all Liens, (III) Authorizing the Assumption and Assignment or Rejection of Certain Executory Contracts and Unexpired Leases and (IV) Granting Related Relief* [D.I. 288], thereby approving the sale (the “Sale”) of the Assets and the assumption and assignment of certain executory contracts and unexpired leases to FM Restaurants (PT), LLC (together with its affiliates or assignees, the “Purchaser”), pursuant to the Stalking Horse APA. The Sale closed on October 29, 2018.

THE CURRENT REMOVAL DEADLINE

11. The Court has granted a prior extension of the Removal Deadline, which extended the Removal Deadline through and including March 5, 2019 (the “Current Removal Deadline”) [D.I. 364].

THE DEBTORS’ CIVIL ACTIONS AND EVENTS SINCE THE PETITION DATE

12. The Debtors are parties to actions and related proceedings currently pending in the courts of certain states and federal districts (each, an “Action,” and collectively, the “Actions”), and believe that it is prudent to seek a further extension of the time established by Bankruptcy Rule 9027 to protect the rights of the Debtors and their estates to remove the Actions under 28 U.S.C. § 1452.

13. Since the Court entered its order establishing the Current Removal Deadline, the Debtors have begun the process of reviewing and reconciling the approximately 426 proofs of claim (the “Claims”) filed against the Debtors in the Chapter 11 Cases. The Claims reconciliation process is ongoing, and the Claims continue to be processed. As a result, the Debtors are still determining, among other things, whether the Claims are related to the Actions.

14. To date, four omnibus objections to claims have been filed (collectively, the “Claim Objections”) [D.I. 432, 433, 538, 539]. The Court has entered orders sustaining two of the Claim Objections [D.I. 462, 474] and the other two Claim Objections remain pending before the Court. As a result of the Debtors’ attention to the above-listed matters, the Debtors are not yet in a position to undertake a thorough analysis of the Actions or develop a strategy with respect to whether they should remove any of the Actions.

15. The Debtors therefore believe that the proposed further extension of time in this Motion will enable them to conduct their review of the Actions and make decisions concerning removal where appropriate. If the extension is not granted, the Debtors believe that they will not have sufficient time to consider adequately whether removal of each of the Actions is necessary. Accordingly, the Debtors submit that cause exists for the relief requested herein.

RELIEF REQUESTED

16. By this Motion, the Debtors request entry of an order, pursuant to Bankruptcy Rules 9006 and 9027, further extending the period within which the Debtors may remove the Actions by 90 days, through and including June 3, 2019,³ without prejudice to the rights of the Debtors to seek further extensions of the time within which to remove the Actions.

³ Pursuant to Local Rule 9006-2, the filing of this motion before the expiration of the Current Removal Deadline shall automatically extend the Current Removal Deadline until the Court acts on this Motion without the necessity for entry of a bridge order.

BASIS FOR RELIEF

17. Bankruptcy Rule 9027 and 28 U.S.C. § 1452 govern the removal of pending civil actions. Specifically, section 1452(a) provides that:

[a] party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a). Bankruptcy Rule 9027(a)(2) further provides, in pertinent part that:

[i]f the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed in the bankruptcy court only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

18. Bankruptcy Rule 9006(b) provides that the Court may extend unexpired time periods, such as the Debtors' removal period, without notice:

[W]hen an act is required or allowed to be done at or within a specified period by [the Bankruptcy Rules] or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion ... with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order.

Id. at 9006(b)(1). Accordingly, the Court is authorized to grant the relief requested herein. *See Raff v. Gordon*, 58 B.R. 988 (Bankr. E.D. Pa. 1986) (stating that period in which to file motion to remove may be expanded pursuant to Bankruptcy Rule 9006); *Jandous Elec. Constr. Corp. v. City of New York (In re Jandous Elec. Constr. Corp.)*, 106 B.R. 48 (Bankr. S.D.N.Y. 1989) (same); *see also Doan v. Loomis (In re Fort Dodge Creamery Co.)*, 117 B.R. 438 (Bankr. N.D.

Iowa 1990) (implying that time period in which removal motion may be filed may be extended pursuant to Bankruptcy Rule 9006); *In re Boyer*, 108 B.R. 19 (Bankr. N.D.N.Y. 1988) (same).

19. Pursuant to Bankruptcy Rule 9027, the Current Removal Deadline is March 5, 2019. However, for the reasons described above, the Debtors are not yet in a position to undertake a thorough analysis of the Actions or develop a strategy with respect to whether they should remove the Actions.

20. The Debtors believe the proposed time extension will provide them with additional time to consider, and make more fully informed decisions concerning, the removal of the Actions and will assure that the Debtors and their estates do not forfeit the valuable rights afforded to them under 28 U.S.C. § 1452. Unless such extension is granted, the Debtors believe they will not have sufficient time to consider adequately whether removal of each of the Actions is necessary. Accordingly, the Debtors submit that cause exists for the relief requested herein.

21. The Debtors submit further that the rights of any party to the Actions will not be prejudiced by the requested extension. Inasmuch as section 362(a) of the Bankruptcy Code automatically stays actions against the Debtors, the Actions will not be proceeding in their respective courts with respect to the Debtors even absent the relief requested herein. Finally, if the Debtors ultimately seek to remove any Action pursuant to Bankruptcy Rule 9027, any party to the litigation can seek to have such Action remanded pursuant to 28 U.S.C. § 1452(b), which provides that “[t]he court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground.” 28 U.S.C. § 1452(b).⁴ Thus, the relief requested herein does not impact any party’s rights under 28 U.S.C. § 1452(b).

⁴ The Debtors reserve their right to contest any remand.

22. For the reasons set forth above, the Debtors submit that further extending the Current Removal Deadline through and including June 3, 2019 is necessary, prudent, and in the best interests of the Debtors, their estates, and creditors.

NOTICE

23. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (iii) Thompson Hine LLP as counsel to Wells Fargo Bank, National Association as agent to the Prepetition Secured Lenders; (iv) Cleary Gottlieb Steen & Hamilton LLP as counsel to Z Capital Group, LLC; (v) Morris, Nichols, Arsht & Tunnell LLP as co-counsel to Z Capital Group, LLC; (vi) Schulte Roth & Zabel LLP and Landis, Rath & Cobb, LLP as counsel to Tennenbaum Capital Partners, LLC; (vii) all known parties to the Actions or their counsel, if known; and (viii) and all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein, and (b) grant such other and further relief as is just and proper.

Dated: March 4, 2019
Wilmington, Delaware

SIDLEY AUSTIN LLP
Christina M. Craige
Kenneth P. Kansa
Anna Gumport
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

-and-

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Elizabeth S. Justison

Robert S. Brady (No. 2847)
Michael R. Nestor (No. 3526)
Edmon L. Morton (No. 3856)
Andrew L. Magaziner (No. 5426)
Elizabeth S. Justison (No. 5911)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

ATTORNEYS FOR THE DEBTORS AND DEBTORS
IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

RM Wind-Down Holdco LLC, et al.¹

Debtors.

Chapter 11

Case No. 18-11795 (MFW)

(Jointly Administered)

Objection Deadline: March 18, 2019 at 4:00 p.m. (ET)

Hearing Date: March 26, 2019 at 2:00 p.m. (ET)

NOTICE OF MOTION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) THE HOLDERS OF THE THIRTY (30) LARGEST UNSECURED CLAIMS AGAINST THE DEBTORS ON A CONSOLIDATED BASIS; (III) THOMPSON HINE LLP AS COUNSEL TO WELLS FARGO BANK, NATIONAL ASSOCIATION AS AGENT TO THE PREPETITION SECURED LENDERS; (IV) CLEARY GOTTLIEB STEEN & HAMILTON LLP AS COUNSEL TO Z CAPITAL GROUP, LLC; (V) MORRIS, NICHOLS, ARSHT & TUNNELL LLP AS CO-COUNSEL TO Z CAPITAL GROUP, LLC; (VI) SCHULTE ROTH & ZABEL LLP AND LANDIS, RATH & COBB, LLP AS COUNSEL TO TENNENBAUM CAPITAL PARTNERS, LLC; (VII) ALL KNOWN PARTIES TO THE ACTIONS OR THEIR COUNSEL, IF KNOWN; AND (VIII) AND ALL PARTIES WHO, AS OF THE FILING OF THIS MOTION, HAVE FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF PAPERS PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that RM Wind-Down Holdco LLC and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) have filed the attached *Debtors’ Motion for Entry of an Order Further Extending the Period Within Which the Debtors May Remove Actions Pursuant to 28.U.S.C. § 1452* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed on or before **March 18, 2019 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any response or objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: RM Wind-Down Holdco LLC (f/k/a RM Holdco LLC) (6847); RM Wind-Down Opco LLC (f/k/a RM Opco LLC) (7122); RM Wind-Down HQ LLC (f/k/a RM HQ LLC) (8615); RM Wind-Down Chevys LLC (f/k/a RM Chevys LLC) (N/A); RM Wind-Down Acapulco LLC (f/k/a RM Acapulco LLC) (N/A); and RM Wind-Down El Torito LLC (f/k/a RM El Torito LLC) (N/A).

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON MARCH 26, 2019 AT 2:00 P.M. (ET) BEFORE THE HONORABLE MARY F. WALRATH IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 4, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THEN THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

Dated: March 4, 2019
Wilmington, Delaware

SIDLEY AUSTIN LLP
Christina M. Craige
Kenneth P. Kansa
Anna Gumport
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

-and-

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Elizabeth S. Justison

Robert S. Brady (No. 2847)
Edmon L. Morton (No. 3856)
Andrew L. Magaziner (No. 5426)
Elizabeth S. Justison (No. 5911)
Betsy L. Feldman (No. 6410)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

ATTORNEYS FOR THE DEBTORS AND DEBTORS
IN POSSESSION

EXHIBIT A

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

RM Wind-Down Holdco LLC, et al.¹

Debtors.

Chapter 11

Case No. 18-11795 (MFW)

(Jointly Administered)

Ref. Docket No. ____

**ORDER FURTHER EXTENDING THE PERIOD WITHIN WHICH
THE DEBTORS MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order (this “Order”), pursuant to Bankruptcy Rules 9006 and 9027, further extending the period within which the Debtors may remove the Actions pursuant to 28 U.S.C. § 1452 through and including June 3, 2019; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and in consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and this Court having determined that

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: RM Wind-Down Holdco LLC (f/k/a RM Holdco LLC) (6847); RM Wind-Down Opco LLC (f/k/a RM Opco LLC) (7122); RM Wind-Down HQ LLC (f/k/a RM HQ LLC) (8615); RM Wind-Down Chevys LLC (f/k/a RM Chevys LLC) (N/A); RM Wind-Down Acapulco LLC (f/k/a RM Acapulco LLC) (N/A); and RM Wind-Down El Torito LLC (f/k/a RM El Torito LLC) (N/A).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the relief sought in the Motion is in the best interests of the Debtors, their estates, and creditors; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted as set forth herein.
2. The time period provided by Bankruptcy Rule 9027 within which the Debtors may file notices of removal of claims and causes of action is hereby enlarged and extended through and including June 3, 2019 (the “Extended Removal Deadline”).
3. This Order shall be without prejudice to (a) the rights of the Debtors to seek further extensions of the Extended Removal Deadline and (b) any position the Debtors may take regarding whether section 362 of the Bankruptcy Code applies to stay any Action.
4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.