

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:))	Chapter 11
ZACHRY HOLDINGS, INC., <i>et al.</i> ¹))	Case No. 24-90377 (MI)
Debtors.))	(Jointly Administered)

**DEBTORS’ MOTION FOR ENTRY OF AN
ORDER EXTENDING TIME TO ASSUME OR TO REJECT
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) state as follows in support of this motion (this “**Motion**”):

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “**Order**”), pursuant to section 365(d)(4) of title 11 of the United States Code (the “**Bankruptcy Code**”), extending the initial 120-day period to assume or reject unexpired leases of non-residential

¹ The last four digits of Zachry Holdings, Inc.’s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/zhi>. The location of the Debtors’ service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.



real property (the “**Unexpired Leases**”) by an additional ninety (90) days, through and including December 17, 2024.²

Jurisdiction, Venue, and Predicates for Relief

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

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

4. The predicates for the relief requested herein are sections 105 and 365(d)(4) of the Bankruptcy Code, rule 9006 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), and rule 9013-1 of the Bankruptcy Local Rules for the Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Local Rules**”).

Background

5. On May 21, 2024 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing these chapter 11 cases. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

6. On June 4, 2024, the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”) appointed the Official Committee of Unsecured Creditors pursuant to sections 1102(a)(1) and 1102(b)(1) of the Bankruptcy Code (the “**Committee**”) [Docket No. 176].

7. No trustee or examiner has been appointed in these chapter 11 cases.

² Pursuant to paragraph 30 of the *Procedures for Complex Cases in the Southern District of Texas*, the deadline for the Debtors to assume or reject the Unexpired Leases is automatically extended until the Court rules on this Motion.

8. The Debtors are currently party to approximately forty (40) Unexpired Leases. Many of the Unexpired Leases are office leases. While the Debtors are seeking to reject certain Unexpired Leases in connection with the settlement with Golden Pass LNG Terminal LLC (“**Golden Pass**”),³ the Debtors have not yet decided whether to assume or reject the remaining Unexpired Leases. The Unexpired Leases are important assets of the Debtors’ estates and should be preserved for the benefit of all stakeholders while the Debtors complete their analysis and decide whether to assume or reject the remaining Unexpired Leases.

9. The Debtors are formulating a plan of reorganization that will facilitate their emergence from chapter 11 in the coming months. Pending the filing and confirmation of that plan, the Debtors seek to preserve the status quo in order to evaluate each of the Unexpired Leases, make informed decisions to assume or reject the Unexpired Leases, negotiate any modifications to the Unexpired Leases as needed, and ensure any action taken with respect to the Unexpired Leases will maximize value and stakeholder recoveries under a plan of reorganization.

Basis for Relief

10. Pursuant to section 365(d)(4)(A) of the Bankruptcy Code, the Debtors must decide to assume or reject the Unexpired Leases on or before the earlier of (a) the date of the entry of an order confirming a plan, and (b) 120 days from the Petition Date. *See* 11 U.S.C. § 365(d)(4)(A). Pursuant to section 365(d)(4)(B)(i) of the Bankruptcy Code, the deadline to assume or reject leases may be extended for cause for an additional 90 days. *See* 11 U.S.C. § 365(d)(4)(B)(i).

11. Courts consider various factors in determining whether “cause” exists to grant such an extension, including, but not limited to:

- (a) whether the lease is the debtor’s primary asset;

³ *See Debtors’ Second Omnibus Motion for Entry of an Order Authorizing Rejection of Certain Personal Property Leases and Related Executory Contracts Effective as of August 10, 2024* [Docket No. 730].

- (b) whether the debtor has had sufficient time to intelligently appraise its financial situation and the potential value of its assets in terms of the formulation of a plan of reorganization;
- (c) whether the lessor continues to receive rent for the use of the property;
- (d) whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;
- (e) whether the case is exceptionally complex and involves a large number of leases;
- (f) whether the debtor has failed or is unable to formulate a plan when it has had sufficient time to do so; and
- (g) any other factors bearing on whether the debtor has had a reasonable amount of time in which to decide whether to assume or reject the lease.

See, e.g., In re Panaco, Inc., 2002 WL 31990368 at *5 (Bankr. S.D. Tex. Dec. 10, 2002) (listing similar factors to consider when determining whether to extend deadline); *South St. Seaport Ltd. P'ship v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 761 (2d Cir. 1996) (same); *In re Beautyco, Inc.*, 307 B.R. 225, 231 (Bankr. N.D. Okla. 2004) (same); *see also In re Am. Healthcare Mgmt., Inc.*, 900 F.2d 827, 830 (5th Cir. 1990) (recognizing that a court may extend the deadline under section 365(d)(4) if "there is 'cause' for granting the extension"); *Legacy, Ltd. v. Channel Home Ctrs., Inc. (In re Channel Home Ctrs., Inc.)*, 989 F.2d 682, 689 (3d Cir. 1993) ("[I]t is permissible for a bankruptcy court to consider a particular debtor's need for more time in order to analyze leases in light of the plan it is formulating"), *cert. denied*, 510 U.S. 865 (1993).

12. The Court recently approved a settlement among the Debtors, Golden Pass and the Debtors' former joint venture partners related to the Golden Pass project that enabled the Debtors to resolve their long-term disputes with Golden Pass and clear a path for the Debtors to emerge

from bankruptcy.⁴ The Debtors are currently working with stakeholders to craft a plan of reorganization. Rejecting the Unexpired Leases now may result in unnecessary rejection damages or administrative claims that would negatively impact the Debtors' restructuring efforts. Further, prematurely rejecting Unexpired Leases may cause the Debtors to lose valuable office space, leading to interruption of the Debtors' business. The Debtors need additional time to analyze the value of the Unexpired Leases to their estates, and to negotiate potential lease modification arrangements with their landlord counterparties. It is crucial that the Debtors not be forced to make these decisions prematurely.

13. Pending the Debtors' decision to assume or reject the Unexpired Leases, the Debtors have been and intend to continue timely performing all of their undisputed obligations arising from and after the Petition Date to the extent required by section 365(d)(3) of the Bankruptcy Code. The Debtors are currently paying, and will continue to pay in the ordinary course of business, the postpetition rent obligations that arise under the Unexpired Leases. Counterparties will not be harmed by an extension. *See, e.g., In re Am. Healthcare Mgmt., Inc.*, 900 F.2d at 833 (“[A]n order extending the time for a debtor to assume or reject a lease merely preserves the status quo.”).

14. For the reasons set forth above, the Debtors submit that (a) cause exists to extend the deadline to assume or reject the Unexpired Leases by ninety (90) days, through and including December 17, 2024, and (b) the proposed extension is reasonable, necessary, and warranted under the circumstances and is in the best interests of the Debtors' estates and creditors.

⁴ *Final Order (I) Approving the Settlement by and among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV, (II) Authorizing the Parties to Perform Any and All Obligations Contemplated by the Settlement, and (III) Granting Related Relief* [Docket No. 744].

Notice

15. The Debtors will provide notice of this Motion to: (a) the United States Trustee for the Southern District of Texas; (b) counsel for the Committee; (c) the Prepetition Agent; (d) the United States Attorney's Office for the Southern District of Texas; (e) the state attorneys general for the states in which the Debtors operate; (f) the Internal Revenue Service; (g) any party affected by the Motion; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d). In light of the nature of the relief requested, no other or further notice need be provided.

[Remainder of Page Intentionally Left Blank]

The Debtors respectfully request that the Court enter the Order granting the relief requested in this Motion and such other and further relief as the Court deems appropriate under the circumstances.

Dated: September 10, 2024
Houston, Texas

/s/ Charles R. Koster

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*Counsel to the Debtors and
Debtors in Possession*

Certificate of Service

I certify that on September 10, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster
Charles R. Koster

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
ZACHRY HOLDINGS, INC., <i>et al.</i> ¹)	Case No. 24-90377 (MI)
Debtors.)	(Jointly Administered)

**ORDER EXTENDING THE TIME TO ASSUME OR TO REJECT
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”) extending the initial 120-day period to assume or reject the unexpired leases of non-residential real property to which the Debtors are lessees (the “**Unexpired Leases**”) by additional ninety (90) days, through and including December 17, 2024; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other

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

notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”), if applicable; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. Pursuant to section 365(d)(4) of the Bankruptcy Code, the time by which the Debtors may assume or reject the Unexpired Leases is extended through and including December 17, 2024.

2. The entry of this Order is without prejudice to the Debtors’ right to request further extensions of the time to assume or reject the Unexpired Leases in accordance with section 365(d)(4)(B)(ii) of the Bankruptcy Code.

3. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

4. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

5. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2024

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE