

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re: ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, a New Mexico corporation sole, Debtor.	Chapter 11 Case No. 13-13676-t11 Jointly Administered with:
Jointly Administered with: BISHOP OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, an Arizona corporation sole. This pleading applies to: <input checked="" type="checkbox"/> All Debtors. <input type="checkbox"/> Specified Debtor.	Case No. 13-13677-t11

**MOTION FOR ORDER EXTENDING THE DEADLINE FOR FILING AVOIDANCE
ACTIONS PURSUANT TO 11 U.S.C. §§ 544, 545, 547, 548 or 553¹**

Roman Catholic Church of the Diocese of Gallup (“**RCCDG**”) and the Bishop of the Roman Catholic Church of the Diocese of Gallup (the “**Arizona Entity**,” and collectively with RCCDG, the “**Debtors**”) respectfully request that the Court enter an Order extending the deadline to file avoidance actions under 11 U.S.C. § 544, 545, 547, 548 or 553 pursuant to Fed. R. Bankr. P. 9006(b) for a period of an additional 270 days in the above-captioned jointly administered Chapter 11 reorganization cases (the “**Reorganization Cases**”). As discussed more fully herein, an extension of the deadline will result in efficiency and allow the Debtors to avoid wasting their limited resources investigating and pursuing potential causes of action at this time.

¹ The Debtors do not believe that a preliminary hearing is required, and would ask the Court that, to the extent a hearing is necessary, such hearing be set as a final hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION.

The Court has jurisdiction over this Motion by virtue of 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(F). The grounds for the relief requested herein include 11 U.S.C. §§ 544, 545, 547, 548 or 553 and 546(a) and Fed. R. Bankr. P. 9006(b).

II. BACKGROUND.

On November 12, 2013 (the “**Petition Date**”), the Debtors commenced the Reorganization Cases by filing voluntary Chapter 11 petitions. The Debtors are debtors-in-possession under 11 U.S.C. §§ 1107 and 1108 and no trustee has been appointed in this case.

On December 17, 2013, the US Trustee appointed an Unsecured Creditors’ Committee (the “**Committee**”).

The Court twice extended the exclusivity period in which only the Debtors had the ability to file a plan of reorganization, with the second extension expiring on May 12, 2015. On May 6, 2015, prior to the expiration of the second extension of exclusivity, a Stipulated Order Regarding Plan of Reorganization agreed upon by the Debtors and the Committee was entered (the “**Stipulated Order**”) [Dkt. No. 377]. In the Stipulated Order, the Debtors agreed not to file a plan prior to the expiration of the exclusivity period. In exchange for that agreement, the Debtors and the Committee agreed to forbear from filing a plan of reorganization without first providing the other party with at least 60 days’ notice of the intent to file.

On August 28, 2015, the Debtors and the Committee filed notices of their intent to file a plan of reorganization on or after October 27, 2015 [Dkt. Nos. 431 and 432]. Pursuant to 11 U.S.C. § 546(a)(1), the deadline for filing causes of action under 11 U.S.C. §§ 544, 545, 547, 548 or 553 is November 12, 2015 (the “**Avoidance Deadline**”).

At this stage in the case, the Debtors do not believe the limited financial resources of the estates should be expended to pursue the small number of potential §§ 544, 545, 547, 548 or 553 avoidance actions. Additionally, any proposed plan of reorganization will likely include a liquidating claims agent charged with investigating and pursuing such causes of action.

Accordingly, the Debtors respectfully request that the Court enter an order extending the Avoidance Deadline through August 8, 2016. The Committee supports the relief requested in this Motion.

III. ARGUMENT.

Pursuant to 11 U.S.C. § 546(a), an action brought under 11 U.S.C. §§ 544, 545, 547, 548 or 553 must be brought within the later of two years after the petition date or one year after the appointment of a trustee. The purpose of the two-year statute of limitations is to insure finality and prevent the assertion of stale claims. *In re M & L Bus. Mach. Co., Inc.*, 75 F.3d 586, 590 (10th Cir. 1996). The Tenth Circuit has not directly addressed whether or not § 546(a) is jurisdictional in nature.² Other circuit courts faced with the issue have concluded that § 546(a) is not jurisdictional and is therefore subject to waiver, equitable tolling, and equitable estoppel.³ Despite not ruling on whether § 546(a) is jurisdictional, the Tenth Circuit has held that § 546(a) is subject to the doctrine of equitable tolling. *In re M & L Bus. Mach. Co., Inc.*, 75 F.3d at 591.

² See *Starzynski v. Sequoia Forest Industries*, 72 F.3d 816, 822 (10th Cir. 1995) (questioning whether a plan of reorganization can extend the time period in § 546(a) and citing to case law for the proposition that § 546(a) is jurisdictional, but making no determination).

³ See, e.g., *IBT Int'l, Inc. v. Northern (In re Int'l Admin. Servs., Inc.)*, 408 F.3d 689, 699 (11th Cir. 2005); *McFarland v. Leyh (In re Texas Gen. Petroleum Corp.)*, 52 F.3d 1330 (5th Cir. 1995). See also *Raynor v. Raynor (In re Raynor)*, 617 F.3d 1065, 1070 (8th Cir. 2010) (holding that § 546(a) is not jurisdictional and therefore Fed. R. Bankr. P. 9006 applies to computation of time for avoidance actions).

The deadline for filing avoidance actions in § 546(a) has been extended for cause pursuant to Fed. R. Bankr. P. 9006(b).⁴ Fed. R. Bankr. P. 9006(b) states:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause may at any time in its discretion . . . order the period enlarged.

Fed. R. Bankr. P. 9006(b) applies to all of the Federal Rules of Bankruptcy Procedure. Fed. R. Bankr. P. 7001(1) provides that “a proceeding to recovery money or property” is an adversary proceeding. Causes of action brought under §§ 544, 545, 547, 548 or 553, to which § 546(a) applies, are therefore adversary proceedings for purposes of Fed. R. Bankr. P. 7001(1) and subject to Fed. R. Bankr. P. 9006(b). *In re Int’l Admin. Servs., Inc.*, 408 F.3d 689, 699 (11th Cir. 2005).

The Debtors have limited financial resources that should not be depleted at this time to pursue the small number of potential avoidance causes of action that may exist. Instead, the Debtors’ financial resources will be better spent seeking to reach a consensual plan that benefits all interested parties. Additionally, any proposed plan of reorganization presumably would appoint a liquidating claims agent charged with investigating and pursuing any avoidance actions. Accordingly, the pursuit of avoidance actions at this time is unnecessary and would be a waste of limited estate resources.

⁴ *In re D & L Energy, Inc.*, No. 13-40813 (Bankr. N.D. Ohio March 25, 2015) (unpublished); *Frentz v. Stites & Harbison (In re ThermoView Industries, Inc.)*, 381 B.R. 225, 226-27; *Frentz v. Stites & Harbison (In re ThermoView Industries, Inc.)* 2007 WL 4365376 at *1 (Bankr. W.D. Ky. Dec. 11, 2007). *See also In re Mammoth Resource Partners, Inc.*, 2013 WL 1867624 at *3 (Bankr. W.D. Ky. 2013) (holding that the court had authority to grant a Chapter 11 trustee’s request to extend the § 546(a) deadline); *Marsh v. Levy et al. (In re Martin Levy of Berlin D.M.D., P.C.)*, 416 B.R. 1, 8 (Bankr. C.D. Mass. 2009) (holding that the court had authority to grant an extension of the § 546(a) deadline for cause); *Carr v. Klayman (In re Klayman)*, 228 B.R. 805, 807 (Bankr. M.D. Fla. 1999) (holding that the court had authority to extend the § 546(a) deadline even after its expiration).

The Debtors believe that an extension of the Avoidance Deadline is in the best interest of the estates and will not prejudice any interested parties. The parties who may be subject to potential preference causes of action pursuant to the Statement of Financial Affairs [Dkt. No. 66] will be noticed with this Motion. Under these circumstances, the Debtors believe that cause exists to extend the Avoidance Deadline pursuant to Fed. R. Bankr. P. 9006(b).

IV. CONCLUSION.

Based on the foregoing, and for good cause shown, the Debtors respectfully request the Court enter an Order:

- A. Extending the Avoidance Deadline Filing through August 8, 2016; and
- B. Granting such other relief as is just under the circumstances.

RESPECTFULLY SUBMITTED this 23rd day of September, 2015.

/s/ Lori L. Winkelman

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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b)(3), F.R.B.P. 9036, NM LBR 9036-1(b), I hereby certify that service of the foregoing “Motion for Order Extending the Deadline for Filing Avoidance Actions Pursuant to 11 U.S.C. § 544, 545, 547, 548 or 553” was made on September 23, 2015 via e-mail and/or the notice transmission facilities of the Bankruptcy Court’s case management and electronic filing system on the below listed parties and via U.S. Mail to all additional parties on the Debtors’ Limited List and noted below.

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