

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

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In re:	:	Chapter 11
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TRUMP ENTERTAINMENT RESORTS, INC., et al.,¹	:	Case No. 14-12103 (KG)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	RE: D.I. 449
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**DEBTORS’ OBJECTION TO MOTION OF THE CITY OF ATLANTIC CITY
FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(D)**

Trump Entertainment Resorts, Inc. and its above captioned debtors and debtors-in-possession (each a “Debtor,” and collectively, the “Debtors”), hereby file this objection (this “Objection”) to the *Motion of the City of Atlantic City for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* [Docket No. 449] (the “Motion”). In support of this Objection, the Debtors respectfully state as follows:

INTRODUCTION

1. By its Motion, the City of Atlantic City, New Jersey (the “City”) seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d), claiming that there would be no prejudice to the Debtors were the City permitted to sell tax certificates, at a December 11, 2014 auction, in respect of approximately \$22 million in real estate taxes alleged by the City to be payable by the Debtors for the 2014 tax year. Simply stated, this is not the case. The Debtors may be highly prejudiced if the relief is granted for several reasons:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Trump Entertainment Resorts, Inc. (8402), Trump Entertainment Resorts Holdings, L.P. (8407), Trump Plaza Associates, LLC (1643), Trump Marina Associates, LLC (8426), Trump Taj Mahal Associates, LLC (6368), Trump Entertainment Resorts Development Company, LLC (2230), TER Development Co., LLC (0425) and TERH LP Inc. (1184). The mailing address for each of the Debtors is 1000 Boardwalk at Virginia Avenue, Atlantic City, NJ 08401.

2. *First*, as a threshold matter, the City fails to advise this Court that the Debtors' tax liability to the City is in dispute. The Debtors, pre-petition, filed appeals challenging the City's tax assessments on its property for 2014 (the "**Tax Appeals**").² Those Tax Appeals are pending and have yet to be determined. If the Debtors are successful with their Tax Appeals, the Debtors believe there would be a significant reduction in amounts due and owing to Atlantic City for the 2014 tax year. The transfer of a tax certificate, however, could result in the purchaser being able to foreclose at the face amount of the certificate, thus impairing (if not obviating) the Debtors' rights with respect to its pending Tax Appeals.

3. *Second*, under New Jersey law, if the taxes remain unpaid, a purchaser may be entitled to foreclose on its tax certificate after six months (if the purchaser is the municipality) and two years (if the purchaser is a private buyer), at which point the Debtors would be required to satisfy the terms of that tax certificate in cash. However, under title 11 of the United States Code (the "**Bankruptcy Code**"), certain of the City's tax claims (assuming they are allowed) may be viewed as priority tax claims and entitled to deferred payment over five years in accordance with the Bankruptcy Code (*see* 11 U.S.C. § 1129(a)(9)C)), as opposed to immediate payment in cash under a foreclosure scenario.

4. *Third*, the Motion fails to explain that the Debtors would be required to pay a statutory redemption penalty equal to six percent of the face value of the tax certificate in order to satisfy such certificate should the Debtors (or reorganized Debtors) redeem the certificate more than ten days after the sale occurs. *See* N.J.S.A. 54:5-58 and 54:5-61.

5. Moreover, the Debtors should not be placed in a position of having any of their rights or remedies impaired, particularly involving a claim amount of this size, simply because

² Facts surrounding the Tax Appeals are described in Section 5.18 of the *Disclosure Statement for Debtors' Second Amended Joint Chapter 11 Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 504-1].

the City is looking to monetize its claim and avoid the chapter 11 bankruptcy process. Thus, the balance of hardships clearly weighs in favor of the Debtors. Accordingly, the Motion should be denied in its entirety.

ARGUMENT

A. The City Fails to Satisfy Its Burden to Obtain Relief From the Automatic Stay

6. The automatic stay is “one of the fundamental debtor protections provided by the bankruptcy laws.” *Midlantic Nat'l Ban v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 503 (1986) (quoting S.Rep. No. 95-989, p. 54 (1978); H.R.Rep. No. 95-595, p. 340 (1977)). The automatic stay affords a debtor a breathing spell by “prevent[ing] certain creditors from gaining a preference for their claims against the debtor; [] forestall[ing] the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, [] avoid[ing] interference with the orderly liquidation or rehabilitation of the debtor.” *Borman v. Raymark Indus., Inc.*, 946 F.2d 1031, 1036 (3d Cir. 1991); *see also Sec. and Exch. Comm'n v. Brennan*, 230 F.3d 65, 70 (2d Cir. 2000) (the automatic stay “allow[s] the bankruptcy court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas.”) (internal citation omitted).

7. Pursuant to section 362(d)(1) of Bankruptcy Code the City is required to carry the burden of demonstrating that “cause” exists to lift or modify the stay. “If the movant fails to make an initial showing of cause, . . . the court should deny relief without requiring any showing from the debtor that it is entitled to continued protection.” *Sonnax Indus., Inc. v. Tri Component Prods., Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1285 (2d Cir. 1990); *In re RNI Wind Down Corp.*, 348 B.R. 286, 299 (Bankr. D. Del. 2006).

8. In considering if a movant has satisfied this high burden, “courts generally consider the policies underlying the automatic stay in addition to the competing interests of the

debtor and the movant when determining whether there is sufficient cause to grant relief from the automatic stay.” *In re W.R. Grace & Co.*, Case No. 01-01139 (JFK), 2007 WL 1129170, at *2 (Bankr. D. Del. Apr. 13, 2007) (quoting *In re Cont'l Airlines, Inc.*, 152 B.R. 420, 424 (D. Del. 1993)). To make an adequate showing of “cause,” the movant must demonstrate “that the balance of hardships from not obtaining relief tips *significantly* in [its] favor.” *RNI*, 348 B.R. at 299 (quoting *Atl. Marine, Inc. v. Am. Classic Voyages Co. (In re Am. Classic Voyages Co.)*, 298 B.R. 222, 225 (D. Del. 2003) (emphasis added)).

9. Accordingly, Delaware courts consider the following three factors in determining whether the movant has satisfied its burden:

(i) whether any great prejudice to either the bankruptcy estate or the debtor will result from a lifting of the stay;

(ii) whether the hardship to the non-bankruptcy party by maintenance of the stay considerably outweighs the hardship to the debtor; and

(iii) the probability of the creditor prevailing on the merits.

See, e.g., Izzarelli v. Rexene Prods. Co. (In re Rexene Prods. Co.) 141 B.R. 574, 576 (Bankr. D. Del. 1992); *In re Cont'l Airlines*, 152 B.R. 420, 424 (Bankr. D. Del. 1993). In the absence of compelling evidence demonstrating that these factors weigh in the movant's favor, relief from the automatic stay should be denied. *See, e.g., W.R. Grace*, 2007 WL 1129170, at *3 (denying motion to lift the stay because movant “presented no compelling evidence that the balance of hardships [was] in its favor”).

10. The City cannot satisfy its burden under any of the three *Rexene* factors, and, accordingly, the Motion should be denied.

1. Lifting the Stay Would Cause Significant Prejudice to the Debtors

11. The Debtors would be severely prejudiced if the Motion were granted. As a threshold matter, if the stay is lifted, the Debtors will be vulnerable to a foreclosure action in the future based on the face amount of the tax certificates. The City claims that the Debtors collectively owe approximately \$22 million for unpaid real-property taxes as a result of the failure to make the Debtors' 2014 third and fourth quarter tax payments, as well as the full payment of the second quarter taxes for 2014. *See* Motion at ¶ 10. However, through the Tax Appeals, the Debtors are currently contesting the amount of taxes the City claims the Debtors owe. Thus, a sale of the tax certificates could subject the Debtors to a foreclosure in an amount that far exceeds the amount that the Debtors believe they owe to the City.

12. Indeed, under New Jersey law, once a tax certificate is sold, any subsequent adjustment or abatement which may be made to the prior assessment will not impair or otherwise affect the lien held by the purchaser of the tax sale certificate with respect to such past due taxes. Specifically, the statute provides:

The governing body of a municipality may, subject to the provisions of section 54:4-100 of this title, make such abatement, revision, alteration, adjustment and settlement of any past due taxes, assessments and other municipal charges, both of principal and of any and all interest and penalties thereon, as it shall deem equitable and just and be for the best interests of the municipality, but none of the provisions of this section or sections 54:4-100 to 54:4-102 of this title shall in any wise affect or impair the right, title, interest or estate, or the lien of any purchaser, other than such municipality, acquired under any sale made or to be made for past due taxes, assessments or other municipal charges.

N.J.S.A. 54:4-99. In other words, an adjustment to property taxes due arising out of an appeal by the taxpayer will not serve to affect the validity of a tax sale certificate sold, or the lien then held by the third-party purchaser of such certificate. *See, e.g., Simon v. Township of Voorhees*, 289 N.J. Super. 116, 121 (App. Div. 1996) (holding that the New Jersey statutory framework does

not provide that a tax sale certificate can be “set aside” as part of a settlement of a dispute over the unpaid taxes which gave rise to their issuance even when the settlement pertains to a claim of an “invalid” (as opposed to an “over” or excessive) assessment).

13. The purchaser’s lien is thus not extinguished upon a successful appeal of a tax assessment. *See id.* Accordingly, the purchaser of the tax certificate has the right to foreclose on the property (starting two years after the sale of the tax certificate if a private party is the purchaser, and six months afterwards if the municipality is the purchaser), *even if* the Debtors prevail in their Tax Appeals and it is determined that the Debtors owe an amount far less than the approximately \$22 million represented by the tax certificates. The prejudice to the Debtors in such a scenario is patent.

14. Although the Debtors (or reorganized Debtors) would expect the City or the State of New Jersey to make the tax certificate purchaser whole were there to be a deficit in the amount due to the certificate holder as a result of the Debtors having prevailed in the Tax Appeals, there is no requirement under New Jersey state law prohibiting the certificate holder from seeking to foreclose upon the Debtors’ property to obtain the full value of the tax certificate. Thus, the Debtors will be significantly prejudiced if the Motion is granted because the Debtors will face the risk of a foreclosure by any buyer of the tax certificates for the full \$22 million, even were the Debtors to have obtained a substantial reduction through the Tax Appeals in the amount of taxes it owes to the City for 2014. Furthermore, the Debtors may additionally be prejudiced should the time to foreclose the right of redemption on the tax sale certificate occur prior to the resolution of the Tax Appeals. Moreover, the City acknowledges, based on New Jersey statutes, that the sale of tax certificates constitutes a first step in the enforcement of a lien. *See Motion at ¶ 15; In re Isley*, 104 B.R. 673, 676-80 (Bankr. D.N.J. 1989).

15. In addition, the transfer of the tax certificates would subvert the priority scheme of the Bankruptcy Code. To the extent any of the City's claims are allowable and classified as a priority tax claim, such claims may be treated under a chapter 11 bankruptcy plan with deferred payments over five years. *See* 11 U.S.C. §§ 507(a)(8)(C), 1129(a)(9)(C). However, if a tax certificates sale is permitted to occur and the taxes remain "unpaid," then (as the City acknowledges) the purchaser of the tax certificates may foreclose in either six months or two years, depending on the nature of the purchaser. *See* Motion at ¶ 13. Also, the transfer of the tax certificates may result in incremental costs to the Debtors (or reorganized Debtors). For example, the Debtors (or reorganized Debtors) will be assessed a statutory redemption penalty equal to six percent of the face value of the tax certificate in order to redeem such certificate should redemption of the certificate occur more than ten days after the sale. *See*, N.J.S.A. 54:5-58 and 54:5-61. With respect to the amount of the contemplated tax sale certificate at issue, such penalty alone would exceed \$1,000,000. Moreover, in the event that the holder of the tax certificate commences foreclosure proceedings, such holder will also be entitled to certain other additional fees and costs, including, but not limited to, reasonable attorneys' fees. *See*, N.J.S.A. 54:5-97.1.

16. The facts before this Court, thus, are notably different from those before the New Jersey Bankruptcy Court in *In Revel AC, Inc., et al.*, Case No. 14-22654-GMB (Bankr. D.N.J. Nov. 6, 2014) [Docket No. 855]. There, the Bankruptcy Court for the District of New Jersey granted the City's motion for relief from the automatic stay to sell tax certificates based on the City's argument that the taxes relating to the certificates to be sold were undisputed and the amount of taxes owed was previously determined. *In Revel AC, Inc., et al.*, Case No. 14-22654-GMB (Bankr. D.N.J. Nov. 6, 2014) [Docket No. 822 at ¶¶ 9-32]. The debtors had previously

entered into a settlement agreement with the City that was approved by the bankruptcy court and was later amended to include a consent by the debtors to their 2014 tax assessment (and the debtors' attempt to reopen their prior chapter 11 cases and vacate the settlement was denied). *See id.* Here, however, the Motion seeks to lift the automatic stay so that the City can sell tax certificates equal to an amount in taxes that the Debtors are currently disputing in the Tax Appeals.

17. Accordingly, the prejudice to the Debtors were stay relief granted to the City is significant and, for this reason alone, the Motion should be denied.

2. *The Balancing of the Hardship Favors Rejection of the Motion*

18. The City has not satisfied its burden of proving that it will suffer harm should the Court deny the Motion.

19. A desire to monetize a claim to a third party in order to get around the chapter 11 bankruptcy process is not sufficient cause to lift the automatic stay, which is one of the most important protections available to every chapter 11 debtor. In any event, the City's claims of prejudice if the stay is not lifted are far outweighed by the harm that would occur to the Debtors if the Motion were granted. Denial of the Motion simply means that the City will be treated appropriately and consistent with the Bankruptcy Code. The City has not and cannot offer any proof of prejudice by having to wait until the effectiveness of a plan of reorganization approved by the Bankruptcy Court to receive payment of its allowed claim.³

B. Reservation of Rights

20. The Debtors hereby reserve all of their rights with respect to the Motion, including, but not limited to, filing additional responsive pleadings and participating at the

³ The third *Rexene* factor, the likelihood of success on the merits, is inapplicable here because the motion does not concern lifting the stay to pursue pre-petition litigation against the Debtors. Indeed, the City fails to even address this factor in its Motion.

hearing on the Motion. Furthermore, should the Court grant the Motion over this Objection, the Debtors respectfully request that the Court include certain protections preserving the rights of the Debtors, which protections the Debtors would propose at or prior to the hearing to consider the Motion.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court deny the Motion in its entirety.

Dated: November 20, 2014
Wilmington, Delaware

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