

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

In re:	)	Chapter 11
	)	
TRUMP ENTERTAINMENT RESORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 14-12103 (KG)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Hearing: 12/19/14 at 10:00 a.m. (ET)</b>
	)	<b>Responses Due: 12/5/14 at 4:00 p.m. (ET)</b>

**MOTION OF BETFAIR INTERACTIVE US LLC FOR AN ORDER  
DECLARING THAT THE AUTOMATIC STAY OF BANKRUPTCY CODE  
SECTION 362 DOES NOT APPLY TO THE FUNDS IN THE  
BETFAIR INTERACTIVE SUSPENSE ACCOUNT, OR, IN THE  
ALTERNATIVE, GRANTING IT RELIEF FROM THE AUTOMATIC STAY**

Betfair Interactive US LLC (“Betfair Interactive”) moves (the “Motion”) the Court, in an abundance of caution, for a declaration that the automatic stay of section 362 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) is inapplicable to Betfair Interactive’s remittance to itself of certain net proceeds of its online gaming casino (the “Betfair Casino”), which are Betfair Interactive trust funds or, in the alternative, are subject to Betfair Interactive’s setoff and unstayed recoupment rights and are being held in a segregated bank account under Betfair Interactive’s exclusive control (the “Suspense Account”).<sup>2</sup> In the alternative, Betfair Interactive respectfully requests that the Court grant Betfair Interactive relief from the automatic stay so that it can remit the funds in the Suspense Account to itself. In support of this Motion, Betfair Interactive has attached the *Declaration of Samuel Levin in Support of the Motion of*

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<sup>1</sup> The Debtors in these chapter 11 cases are: (i) Trump Entertainment Resorts, Inc. (“TER”); (ii) Trump Entertainment Resorts Holding, L.P. (“TER Holding”); (iii) Trump Plaza Associates, LLC (“TP”); (iv) Trump Marina Associates, LLC; (v) Trump Taj Mahal Associates, LLC (“TTM”); (vi) Trump Entertainment Resorts Development Company, LLC; (vii) TER Development Co., LLC; and (viii) TERH LP Inc.

<sup>2</sup> To the extent necessary, this Motion shall be deemed a Challenge under paragraph 4 of the *Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to the Secured Parties, and (C) Granting Related Relief* [D.I. 342] (the “Final Cash Collateral Order”) to the validity, extent, priority, or perfection of any liens or security interests the Secured Parties (as defined in the Final Cash Collateral Order) may assert in respect of the funds in the Suspense Account.

*Betfair Interactive US LLC for an Order Declaring that the Automatic Stay of Bankruptcy Code Section 362 Does Not Apply to the Funds in the Betfair Interactive Suspense Account, or, in the Alternative, Granting It Relief from the Automatic Stay* (the “Levin Declaration”) as Exhibit 1 hereto and states as follows:

**PRELIMINARY STATEMENT**

1. Betfair Interactive runs the “Betfair Casino”, an online casino available only to patrons in New Jersey, which is authorized under New Jersey law and regulated by the New Jersey Division of Gaming Enforcement (“DGE”). Under the New Jersey gaming laws, an online gaming operator like Betfair Interactive is required to operate in conjunction with a “bricks and mortar” casino in New Jersey. TP held a prerequisite permit under which Betfair Interactive could operate the Betfair Casino. Accordingly, Betfair Interactive entered into that certain Online Gaming Operations Agreement (the “Online Agreement”) with TP, the owner of the Trump Plaza Hotel and Casino in Atlantic City, New Jersey (the “Trump Plaza”), to enable it to operate and own the Betfair Casino. A true and correct copy of the Online Agreement is attached as Exhibit A to the Levin Declaration.<sup>3</sup>

2. Pursuant to the Online Agreement, Betfair Interactive provided TP with a [REDACTED] [REDACTED] advance, which was required to be recouped by Betfair Interactive prior to TP obtaining any additional revenues from the Betfair Casino. Within a year of this payment and prior to the commencement of these chapter 11 cases, Betfair Interactive was forced to terminate the Online Agreement as a result of TP’s several, uncurable defaults under the Online Agreement.

3. Prior to shutting down the Trump Plaza, TP failed in its various obligations to Betfair Interactive under the Online Agreement. First and foremost, the closure of the Trump

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<sup>3</sup> Pursuant to Article 9.1 of the Online Agreement, the terms of the Online Agreement are confidential. As such, the Levin Declaration and the Online Agreement have been filed under seal and portions of this Motion have been redacted.

Plaza in September (a circumstance that was a known fact before the Debtors' bankruptcy filings due to TP's public statements as to its intention to close the Trump Plaza in September) was and is an obvious uncurable default under the Online Agreement. Before closure, TP also had failed to protect net gaming revenues held in trust for Betfair Interactive, failed to remit those revenues to Betfair Interactive, and may have used Betfair Interactive trust funds to support Trump Plaza and perhaps TER operations more broadly – material breaches that went against the essence of the Online Agreement and Betfair Casino operations.

4. As a result of these material breaches, and well before TP's case commenced, in mid-July 2014 and thereafter, Betfair Interactive took necessary, measured action, declaring and noticing defaults, and urging that TP cure payment defaults within the time frame in the Online Agreement. When TP failed to cure or even respond to these defaults, Betfair Interactive took action in August to protect its trust funds by creating the Suspense Account and formally terminated the Online Agreement on September 4, 2014, prior to case commencement. Betfair Interactive duly notified the DGE of its actions and has provided regular accounting reports to both TP and the DGE.

5. Consistent with regulatory direction from the DGE and an agreement with the Debtors as reflected in the Final Cash Collateral Order, Betfair Interactive has maintained the suspense arrangement and accounting after the Petition Date. By agreement with TP and pursuant to the Final Cash Collateral Order and the DGE's directives, the only use that has been made of funds in the Suspense Account is to disburse monies into the Player Funds Account<sup>4</sup> so that the Player Funds Account is never in deficit and to pay related expenses.

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<sup>4</sup>

[REDACTED]

6. Before and after the Petition Date, Betfair Interactive explored opportunities with other Atlantic City-based casinos to replace TP and its role as the hosting casino of the Betfair Casino. Betfair Interactive recently entered into an Online Gaming Operations Agreement (the “GN Agreement”) with Golden Nugget Atlantic City, LLC (“GN”). As of November 21, 2014 and with the authorization of the DGE, the Betfair Casino will be operating under GN’s internet gaming permit (the “Betfair Casino hosted by GN”). The DGE authorized the closure of the Betfair Casino hosted by TP as of 11:59 p.m. on Thursday, November 20, 2014 (the “Cessation Date”). Betfair Interactive has been in contact with TP and TTM, by counsel, regarding the transition of the Betfair Casino and hopes to be able to coordinate efforts relating to this transition, including the appropriate disposition of the funds in the Player Funds Account.

7. Similarly, the funds remaining in the Suspense Account must be addressed now that the Betfair Casino is no longer hosted by TP. Those funds are Betfair Interactive’s funds and are not property of TP’s estate. The Suspense Account is no longer needed to support the Betfair Casino and will be closed once the funds have been remitted to Betfair Interactive. Accordingly, this Motion seeks an order from the Court declaring that the automatic stay is inapplicable to Betfair Interactive’ remittance of the funds in the Suspense Account to itself. In the alternative, Betfair Interactive seeks relief from the automatic stay, to the extent this Court determines it applies, so that Betfair Interactive can receive those funds either by way of remitting its funds to itself or, in the alternative, by way of setoff.

### **JURISDICTION**

8. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

9. Venue of these proceedings and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The statutory predicates for the relief sought herein are Bankruptcy Code sections 105, 362 and 553, Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

### **FACTUAL BACKGROUND**

#### **A. The Parties**

11. Betfair Interactive is engaged in the business of providing licensed internet gaming services on a business-to-business or business-to-consumer level in New Jersey and elsewhere where authorized in the U.S. Betfair Interactive’s ultimate parent company, Betfair Group plc (“Betfair Group”), is among the world’s leaders in online betting and gaming operators. Moreover, Betfair Group already holds gambling licenses in other established internet gaming jurisdictions, such as Gibraltar, Malta, Denmark, Spain, Italy, and Australia. Betfair Group is also the ultimate parent of ODS Technologies LP, d/b/a TVG Network, which is licensed by the New Jersey Racing Commission and is the official platform services provider for 4NJBets.com, the only licensed internet horse race wagering site currently operating in New Jersey.

12. TP is the owner and operator of the casino hotel commonly referred to as the Trump Plaza. TTM is the owner and operator of the Trump Taj Mahal Casino Resort in Atlantic City, New Jersey (the “Taj Mahal”). TP and TTM are both wholly-owned by TER Holding. TER Holding, is, in turn, a wholly-owned subsidiary of TER. Through its various affiliates and pursuant to its New Jersey licenses and permits, TER owns and operates the Trump Plaza and

Taj Mahal casino properties. Each of TP, TTM, TER Holding, and TER are Debtors in the above-captioned chapter 11 cases and commenced their voluntary cases, along with the other Debtors identified in footnote one above, on September 9, 2014 (the “Petition Date”).

**B. Betfair Interactive and the Betfair Casino**

13. Among other ventures, Betfair Interactive runs the “Betfair Casino”, an online casino available only to patrons in New Jersey, which is authorized under New Jersey law and regulated by the DGE. Betfair Interactive’s product offerings are consistent with the high standards established in the New Jersey gaming laws and regulations, and serve the public interest by, “creating and maintaining a robust casino gaming industry, that is capable of competing regionally, nationally and internationally at the highest levels of quality while, at the same time, fully retaining strict State regulatory oversight to ensure the integrity of all casino gaming operations conducted in this State[.]” N.J.S.A. 5:12-95.17(1)(e).<sup>5</sup>

14. Prior to November 21, 2014, when a player visited the website maintained by the DGE and the initial entry point to New Jersey for online gaming purposes, a player would see a screen that identified Trump Plaza and its online gaming platform’s owner as “Betfair.” The player would then proceed to click on a link to the online casino, identified as “Betfaircasino.com.” A screenshot of <http://www.nj.gov/oag/ge/gamingsites.html> is attached hereto as Exhibit 2. The player would enter the online casino, which had no “Trump Plaza” trade dress. The playing space was (and is still) called the “Betfair Casino” and the player

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<sup>5</sup> It should be noted that this is not the only way that a player experiences a New Jersey online casino. Other land-based casino operators, such as Borgata Hotel Casino and Spa, Tropicana Casino and Resort, and Caesars Casino, create a gaming experience that is directly complementary to the “bricks and mortar” casino gaming environment – referencing the actual casino’s trade dress and other intellectual property. The Online Agreement was not designed to recognize the casino operator by name, and establishes different parameters, specifically, only a Betfair Casino, not a Trump Plaza Online Casino.

gambles in an environment defined entirely by Betfair Interactive-controlled intellectual property and gaming systems.

15. Under the New Jersey gaming laws, an online gaming operator like Betfair Interactive is required to operate in conjunction with a “bricks and mortar” casino in New Jersey. TP holds a prerequisite permit under which Betfair Interactive can operate the Betfair Casino. Accordingly, Betfair Interactive entered into the Online Agreement to enable it to operate and own the Betfair Casino.

16. Betfair Interactive has filed a completed Casino Service Industry Enterprise (“CSIE”) license application (VID No. 86464, Log No. 368-50), and has worked diligently with the DGE to ensure that its online gaming operations are carried out in compliance with all regulatory obligations. Moreover, Betfair Interactive has met its obligations to TP. As a consequence of this effort and commitment, the Betfair Casino has been in operation continuously since the commencement of live, 24-hour online gaming in New Jersey on November 26, 2013.

**C. Betfair Interactive Owns the Betfair Casino**

17. The Online Agreement makes clear that Betfair Interactive owns the Betfair Casino.

18. [REDACTED]

19. [REDACTED]

[REDACTED]

20. [REDACTED]

[REDACTED]

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

22. The Betfair Casino, having been in operation for a year, has approximately 25,000 registered players [REDACTED]

[REDACTED]

23. Pursuant to a DGE regulation, a disaster recovery copy of the customer data associated with the Betfair Casino is also maintained on a disaster recovery database (the “DR Database”). The DR Database is housed on BF Equipment, which was formerly located at a facility within the Trump Plaza and now is sited in a location separate from any of the Debtors’ properties.

**D. The Flow of Betfair Casino Funds; Betfair Interactive is Forced to Secure those Funds as a Result of TP’s Defaults**

24. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>7</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. As of July 16, 2014, TP was in material default of its remittance and payment obligations under the Online Agreement as to Betfair Interactive.

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED]

[REDACTED]

Compounding that failure, it permitted Icahn-related entities (including Icahn Agency Services, LLC as agent) to assert control over the Player Funds Account as a collateral accommodation to the “First Lien Secured Creditors.” Consequently, as of August 1, 2014, TP failed to distribute a total of \$966,324.00 in NJ NGR trust funds to Betfair Interactive for the period between May-July 2014.

30. As a result of these defaults and the impending Trump Plaza closure, Betfair Interactive notified TP by letter that it was in default of the Online Agreement on July 16, 2014 and July 30, 2014.

31. Upon further notice to TP and the DGE, on August 12, 2014, Betfair Interactive began to direct newly deposited funds (NJ NGR) into the Suspense Account, to protect those funds – funds that must be held in trust for Betfair Interactive. At all times, Betfair Interactive complied with all applicable regulatory requirements with respect to this suspense arrangement. Betfair Interactive has, as part of this suspense arrangement, provided to each of TP and the DGE daily and then, per an October 5, 2014 DGE directive, weekly accounting of: (i) all player activity, (ii) the amount of TP Retained Revenue, which is subject to recoupment, (iii) the balance of the Player Funds Account and disbursements therefrom to players and government units, and (iv) the suspended balance of Betfair Interactive trust funds (NJ NGR net of TP Retained Revenue).

**E. Online Agreement Termination; Transition Efforts**

32. As early as July 14, 2014, TP publicly announced that it would be closing Trump Plaza permanently on September 16, 2014. The TER Board formally determined to close Trump Plaza on or about August 8, 2014. *See Declaration of Robert Griffin in Support of Debtors' Chapter 11 Petitions and First-Day Motions and Applications* [D.I. 2] at ¶62.

33. On September 4, 2014, prior to the Petition Date, Betfair Interactive gave TP written notice of the termination of the Online Agreement, based on multiple material breaches of the Online Agreement by TP. [REDACTED]

34. Trump Plaza closed September 16, 2014 and TP is in the process of surrendering its relevant gaming licenses and permits.

35. Prior to and following the Petition Date, Betfair Interactive has taken steps to transition the Betfair Casino to a new “bricks and mortar” casino with secure licenses and permits. Per the directive of the DGE, even after the Trump Plaza shut down, TP has been directed to cooperate with Betfair Interactive to enable ongoing Betfair Casino operations while Betfair Interactive seeks a replacement for TP.

36. On November 7, 2014, Betfair Interactive entered into the GN Agreement. After obtaining the requisite DGE approval, on the Cessation Date, the Betfair Casino was transitioned from the TP hosting arrangement to the GN hosting arrangement.

37. Due to DGE and player requirements, the transition to the Betfair Casino hosted by GN involves: (i) Betfair Interactive giving notices to TP Customers as to the transition of the Betfair Casino and policies and procedures relating to follow-on customer service by Betfair

Interactive to TP Customers, remittance of funds and final accounting matters; (ii) Betfair Interactive requiring Betfair Interactive Customers (and Betfair Interactive Customers only) to agree to new terms and conditions regarding the Betfair Casino hosted by GN prior to those customers accessing the Betfair Casino hosted by GN; (iii) Betfair Interactive establishing cash management services for the Betfair Casino hosted by GN and, as part of the establishment of those services, Betfair (a) pre-funding a player funds account for the Betfair Casino hosted by GN, and (b) cooperating with TP to transfer any Betfair Interactive Customer Player Funds (as defined in Article 6.1 of the Online Agreement) held by TP in trust or otherwise to Betfair Interactive and GN in respect of the Betfair Casino hosted by GN; and (iv) TTM turning over BF Equipment at the Taj Mahal to Betfair Interactive for use in the Betfair Casino hosted by GN.

**F. The Post-Petition Status of the Suspense Account and Betfair Interactive's Claims against TP**

38. Consistent with regulatory direction from the DGE and an agreement with the Debtors as reflected in the Final Cash Collateral Order, Betfair Interactive maintained the suspense arrangement and accounting after the Petition Date. By agreement with TP and pursuant to the Final Cash Collateral Order and the DGE's directives, the only use that has been made of funds in the Suspense Account is to disburse monies into the Player Funds Account so that the Player Funds Account is never in deficit and to pay related expenses.

39. The funds in the Suspense Account have been and will be used to accomplish the transition in a manner that is consistent with the Final Cash Collateral Order, *i.e.*, to fund the Player Funds Account as necessary to cover refunds to the TP Customers and to pay related fees and expenses. Once the transition is complete, Betfair Interactive will perform a final accounting of the funds in the Suspense Account and the Player Funds Account, which will be shared with the DGE and TP.

40. Despite its continuing operation of the Betfair Casino, its unstayed recoupment rights and in compliance with the Final Cash Collateral Order, Betfair Interactive has not remitted any of the NJ NGR in the Suspense Account to itself.

41. On November 21, 2014, Betfair Interactive filed its proof of claim against TP whereby it asserts several claims against TP.<sup>9</sup>

42. First, Betfair Interactive asserts (i) its various trust and remittance rights and, in the alternative, (ii) (a) a secured claim, under the Online Agreement and by right of setoff under Bankruptcy Code section 553(b), in the remittance-related amount of \$1,462,315.00, which amount is attributable to the period prior to the Petition Date and (b) a secured claim, under the Online Agreement and by right of setoff under applicable law, in the remittance-related amount of \$844,678.00, which amount is attributable to the period from and after the Petition Date through the Cessation Date.

43. Second, following the establishment of the Suspense Account through September 4, 2014 (the date the Online Agreement was terminated), Betfair Interactive has not remitted to itself [REDACTED] but is owing to Betfair Interactive by virtue of its recoupment rights in the aggregate amount of \$91,901.00, which Betfair Interactive asserts as a secured claim because Betfair Interactive is holding such funds (despite its unstayed rights of recoupment), pursuant to the agreement reflected in the Final Cash Collateral Order.

44. Third, as of November 14, 2014, TP is indebted to Betfair Interactive in the approximate, aggregate amount of \$7,240,412.00, which Betfair Interactive asserts as a secured claim under the Online Agreement and by right of setoff against the funds in the Suspense

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<sup>9</sup> The amounts included in Betfair Interactive's proof of claim are based on account balances and Betfair Casino activity as of November 14, 2014. Betfair Interactive will provide the Debtors with the relevant amounts as of the Cessation Date in the near term.

Account under Bankruptcy Code section 553(b) as to the pre-Petition Date period and under applicable law as to the post-Petition Date period.

45. To the extent that Betfair Interactive has any deficiencies in its secured claims, it asserts these amounts, as applicable, as an administrative expense claim or unsecured, non-priority claims. In addition, Betfair Interactive asserts contingent claims of any sort, whether unmatured, unliquidated, secured, unsecured, administrative, unsecured priority or non-priority, prepetition or postpetition, whether by way of indemnity, contribution, subrogation, or otherwise, against TP arising from, in connection with, or related to the Online Agreement, the Betfair Casino and/or the transition of the Betfair Casino.

46. Finally, Betfair Interactive asserts its rights, under Bankruptcy Code section 553(b) and applicable law, to set off all amounts it is owed by the Debtors against any claim the Debtors may assert against Betfair Interactive, including, but not limited to, any amount to be turned over to the Debtors, in the event the Bankruptcy Court decides that all or some of the funds in the Suspense Account should be turned over to the Debtors.

**RELIEF REQUESTED**

47. By this Motion, Betfair Interactive respectfully requests that this Court enter an Order, substantially in the form attached hereto, declaring that the automatic stay does not apply to Betfair Interactive's remittance of the funds in the Suspense Account to itself, or in the alternative, granting Betfair Interactive relief from the automatic stay, to the extent applicable, so it can remit all amounts in the Suspense Account to Betfair Interactive.

**BASIS FOR RELIEF REQUESTED**

**A. The Suspense Account and the Monies on Deposit Therein are not Estate Property and the Disposition of the Suspense Account is Not Subject to the Automatic Stay**

53. Pursuant to section 541 of the Bankruptcy Code, a debtor’s estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case” 11 U.S.C. § 541(a)(1). While section 541 is broadly construed, “[t]he legislative history indicates that Congress intended to exclude from the estate property of others in which the debtor had some minor interest such as a lien or bare legal title.” *U.S. v. Whiting Pools, Inc.*, 462 U.S. 198 (1983); *In re Scanlon*, 239 F.3d 1195 (11th Cir. 2001) (holding that funds deposited by a debtor into an escrow account for the benefit of another are not estate property).

54. Funds held in trust by a debtor at the time of the bankruptcy filing do not become property of the debtor’s estate under Bankruptcy Code section 541. *Begier v. I.R.S.*, 496 U.S. 53, 59 (1990) (“Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not “property of the estate.”); *In re Columbia Gas Systems, Inc.*, 997 F.2d 1039, 1059 (3d Cir. 1993) (noting that Section 541(d) excludes from the estate funds held in both express and constructive trust); *In re Bake-Line Group, LLC*, 359 B.R. 566 (Bankr. D. Del. 2007); *In re IT Group, Inc.*, 326 B.R. 270, 274-75 (Bankr. D. Del. 2005) (“[P]roperty held in trust by the debtor for the benefit of a creditor is not property of the debtor’s estate”); *In re UDI Corp.*, 301 B.R. 104, 111 (Bankr. D. Mass. 2003) (“It is axiomatic that property held in trust by the Debtor on behalf of another is not property of the estate.”).

55. Here, it is clear that the funds in the Suspense Account are not property of TP’s estate. [REDACTED]

[REDACTED]

[REDACTED]



██████████ Due to TP's material breaches in respect of these trust funds, Betfair Interactive utilized the Suspense Account in order to protect its rights in those trust funds in a manner that is compliant with all applicable regulations. Although Betfair Interactive provides accounting reports to TP and the DGE with respect to the funds in the Suspense Account so that both can verify compliance with ongoing regulatory requirements, this does not somehow give rise to an interest that should be subsumed in section 541's definition of estate property. TP has, at best, only bare legal title to the funds it held in trust for Betfair Interactive, which is not enough to make those funds property of TP's estate.

56. Because the funds in the Suspense Account are not estate property, Betfair Interactive's actions with respect thereto are not subject to the automatic stay. *See, e.g., In re St. Clair*, 2011 Bankr. LEXIS 5166, \*23-24 (Bankr. D.N.J. Dec. 29, 2011) (holding that property held by a debtor in constructive trust for the benefit of the debtor's ex-husband was not property of the bankruptcy estate and that the automatic stay was thus inapplicable because the automatic stay serves only to protect property in which either the debtor or the estate has an interest); *see also In re Modular Structures, Inc.*, 27 F.3d 72, 80 (3d Cir. 1994) (funds subject to a trust arising at law were not estate property sufficient to be subject to blanket/adequate protection lien); *In re Madawaska Hardscape Prods.*, 476 B.R. 200, 213 (Bankr. S.C. 2012) (the automatic stay does not apply to stay action against non-debtor property); *cf., Soliman v. Spencer (In the Matter of Spencer)*, 115 B.R. 471, 476 (D. Del.1990) (holding that § 362(d)(1) "cause" may exist to lift stay if debtor's interest in property is purely legal).

57. The Suspense Account was established prepetition after Betfair Interactive had determined TP was violating the trust provisions of the Player Funds Account and the Online Bank Account as to players and as to the NJ NGR. In financial extremis, TP chose to offer up to

the Secured Parties a control agreement on the Player Funds Account – something it could not do under applicable regulations and something it was not permitted to do under the Online Agreement. In financial extremis, despite having been paid [REDACTED] in the fall of last year, TP managed the Player Funds Account and the Online Bank Account as if those Accounts contained TP general operating revenue. Indeed, the *res* contained in the Player Funds Account was subject to the rights of Betfair Casino customers and the *res* contained in the Online Bank Account was subject to the rights of the DGE and to Betfair Interactive’s unstayable rights of recoupment and/or its trust rights. *See, e.g., In re McWilliams*, 384 B.R. 728, 730 (Bankr. D. N.J. 2008) (noting that recoupment is an exception to the automatic stay).

58. Prior to the entry of the Final Cash Collateral Order, on September 25, 2014, more than six weeks after TP had notice of the suspense arrangement, counsel to the Debtors sent a letter to Betfair Interactive and its undersigned counsel alleging that, [REDACTED]  
[REDACTED]  
[REDACTED] the funds were not being held in trust because, unbeknownst to Betfair Interactive, the Secured Parties did not consent to [REDACTED] and otherwise prohibited the Debtors from agreeing to such a trust provision in their documents.

59. Betfair Interactive, of course, disputes the Debtors’ belated position – as to the characterization of the Online Agreement and the requirements of the Secured Parties’ loan and security documents. Gaming is a highly regulated industry where trusts and asset allocations are a fundamental operating parameter. Accordingly, the Debtors frequently have to exclude assets of various sorts from their beneficial ownership and do not require the Secured Parties’ permission to do so. Here, TP agreed that [REDACTED] (which is

subject to unstayed Betfair recoupment rights) is Betfair Interactive property and the Debtors have, at most, only bare legal title to such property

60. Upon information and belief, the Debtors are relying on an isolated qualifying phrase in [REDACTED] as the support for their newly expressed position.

[REDACTED]

[REDACTED] Betfair Interactive does not read that phrase as conditioning [REDACTED] due to the fundamental difference between trusts and security interests. A trust enables an entity to hold property that belongs to another without acquiring rights or title to such property. *See, e.g., Flint Ink Corp. v. Calascibetta*, 2007 U.S. Dist. LEXIS 66615 (D.N.J. Aug. 31, 2007). Security interests, on the other hand, create encumbrances on property that belongs to another. As such, secured creditors of various sorts compete with each other over their relative priority vis-à-vis the encumbered property in which a debtor has beneficial ownership. For this reason, among others, it is clear the highlighted phrase applies to subsection [REDACTED]

[REDACTED]

property. It would be contrary to the essence of trust law, the essence of what a trust is, for the highlighted language to apply to property that could never be subject to the Secured Parties' security interests.

61. It is telling that, until late September, TP never informed Betfair Interactive that the Secured Parties' consent to the imposition of a trust on the Online Bank Account was required or that the consent had been withheld. The Debtors have not cited any provisions in the Secured Parties' loan documents that establish that those creditors' consent was required for TP to hold funds in trust for Betfair Interactive. Nor could they, as there does not appear to be any negative covenant contained in the publicly filed Secured Party documents that prohibits the establishment of such trusts, which trusts, again, are commonplace in the gaming industry and would have to be permitted by the Secured Parties' documents to enable ordinary TP operations.

62. In fact, in addition to the express trust created in Betfair Interactive's favor, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

It follows then that, if the creation of the players' funds trust was not a violation of the Secured Parties' rights, then there is no covenant that would require the Secured Parties' to consent to the Betfair Interactive trust.

63. Notwithstanding the character of the funds in the Suspense Account, *i.e.*, *Betfair property*, Betfair Interactive has not remitted those funds to itself, but holds them pursuant to the agreement reflected in the Final Cash Collateral Order. Now that the DGE-approved transition

of the Betfair Casino to GN will be complete in the upcoming days, the Suspense Account is no longer necessary to support the Betfair Casino. As such, Betfair Interactive seeks a declaration from this Court recognizing that the automatic stay of Bankruptcy Code section 362 does not apply to the Suspense Account and its disposition by Betfair Interactive after the completion of the transition.

**B. In the Alternative, the Court Should Grant Relief From the Automatic Stay Under Section 362(d) of the Bankruptcy Code in Respect of the Suspense Account**

64. In the alternative, if the Court decides that the automatic stay applies to the Suspense Account, Betfair Interactive asks that this Court for relief from the automatic stay so it can enforce its rights of setoff and recoupment to the funds in the Suspense Account.

65. Section 362(d) of the Bankruptcy Code provides in pertinent part:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; [or]

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

(A) the debtor does not have any equity in such property; and

(B) such property is not necessary to an effective reorganization.

11 U.S.C. § 362(d). Pursuant to section 362(d) of the Bankruptcy Code, relief from the automatic stay is mandatory when: (i) there is no equity in the property at issue and such property is not necessary for an effective reorganization, or (ii) “cause” exists. *See* 11 U.S.C. §§ 362(d)(1) and (d)(2); *In re Indian Palms Assocs.*, 61 F.3d 197, 208 (3d Cir. 1995). Here, relief is warranted under both sections 362(d)(1) and 362(d)(2).

66. Betfair Interactive is entitled to relief from the automatic stay for “cause” pursuant to section 362(d)(1) of the Bankruptcy Code. *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997) (citation omitted) (Aside from the reference to “including the lack of adequate protection of an interest in property of such party in interest”, the Bankruptcy Code does not define “cause” for section 362(d)(1) purposes, leaving courts to consider what constitutes “cause” based on the totality of the circumstances in each particular case.) This Court has adopted a three-prong test to determine whether “cause” exists to grant relief from the stay:

(1) Whether any great prejudice to either the bankrupt estate or the debtor will result from a lifting of the stay; (2) Whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and (3) The probability of the creditor prevailing on the merits.<sup>10</sup>

*In re Downey Fin. Corp.*, 428 B.R. 595, 609 (Bankr. D. Del. 2010). Here, “cause” exists for the several following reasons:

- Betfair Interactive will not be adequately protected if it is not permitted to remit the funds in the Suspense Account to itself because the Debtors have demonstrated that they are unable to manage those funds in accordance with the terms of the Online Agreement. *See In re Reinhardt*, 27 B.R. 2, 4 (Bankr. M.D. Pa. 1982).
- TP has, at best, only bare legal title to the funds in the Suspense Account because such funds belong to Betfair Interactive. *See, e.g., Soliman*, 115 B.R. at 476 (holding that § 362(d)(1) “cause” may exist to lift stay if debtor’s interest in property is purely legal).
- The Online Agreement was validly terminated prior to the Petition Date, so TP is incapable of assuming, assuming and assigning, or rejecting it. *See* 11 U.S.C. § 365(a); 3 COLLIER ON BANKRUPTCY ¶ 365.02[2][e] (16th Ed.) (“Section 365 only applies to a contract or lease in existence at the commencement of the case. If the contract or lease has expired by its own terms or has been terminated under applicable law before commencement of the bankruptcy case, there is nothing left for the trustee to assume or assign.”); *In re Hernandez*, 287 B.R. 795 (Bankr. D. Ariz. 2002) (“[T]he court has already determined that the Debtors cannot assume the Agreement, or otherwise treat it in their Plan. Therefore, cause exists to lift the automatic stay and allow the Objectors to

<sup>10</sup> Most courts apply an equitable balancing test to determine if cause exists to lift the stay and, to the extent necessary, consider the probability of success on the merits. *See, e.g., In re SCO Group, Inc.*, 395 B.R. 852, 856-857 (Bankr. D. Del. 2007).

enforce whatever rights they may have under applicable non-bankruptcy law.”); *In re Adana Mortgage Bankers*, 12 B.R. 977, 988 (Bankr. N.D. Ga. 1980) (cause exists to lift the stay when contract is non-assumable).

- Betfair Interactive will suffer harm, financial and otherwise, if it is not permitted to remit its funds to itself and recoup part of its [REDACTED]. Conversely, the Debtors will suffer no prejudice because the Online Agreement makes clear that they cannot use the monies in the Suspense Account to fund the administration of their estates or the wind-down of their businesses regardless of who holds those funds. *See, e.g., In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011); *In re Rexene Prod. Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992).

65. In addition, Betfair Interactive has rights of setoff and recoupment. The existence of valid setoff claims constitutes sufficient cause to warrant relief from the automatic stay. *See, e.g., In re Nuclear Imaging Sys. Inc.*, 260 B.R. 724, 730 (Bankr. E.D. Pa. 2000); *In re Bousa, Inc.*, No. 89-B-13380 (JMP), 2006 WL 2864964, at \*9 (Bankr. S.D.N.Y. Sept. 29, 2006). While unilateral setoff is prohibited by the automatic stay under Section 362(a)(7) of the Bankruptcy Code, the right of setoff and its application, founded on state or common law, are recognized by Section 553(a) of the Bankruptcy Code. *See Citizens Bank v. Strumpf*, 516 U.S. 16, 19-20 (U.S. 1995); 11 U.S.C. § 553(a). Specifically, Section 553(a) of the Bankruptcy Code provides, in pertinent part, that:

Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case...

11 U.S.C. § 553(a). “To exercise the right of setoff, there must be mutuality between the parties, that is the estate must seek to set off a debt it owes to the creditor against a debt the creditor owes to the estate.” *In re Women First Healthcare*, 345 B.R. 131, 134- 35 (Bankr. D. Del. 2006). Here, there is mutuality. If the Court determines that the funds do not already belong to Betfair Interactive by virtue of [REDACTED], Betfair Interactive

seeks to setoff the money owed to it, to wit, [REDACTED], against any money owed to TP to the credit of the Online Agreement. [REDACTED]

[REDACTED] hat was generated during the period from the implementation of the suspense arrangement through September 4, 2014 (the date the Online Agreement was terminated) and is owed TP is also subject to Betfair Interactive's unstayed right of recoupment. *See In re Univ. Med. Ctr.*, 973 F.2d 1065, 1080 (3d Cir. 1992).

66. For all of the foregoing reasons set forth in this Motion, cause exists to modify the automatic stay to enable Betfair Interactive to offset the Suspense Account balance against its various claims against TP and TTM.

67. Relief from the automatic stay is also appropriate under section 362(d)(2) of the Bankruptcy Code because the Debtors' estates have no equity in the funds in the Suspense Account and those funds are not necessary for an effective reorganization. 11 U.S.C. § 362(d)(2); *see also United Savings Assoc. of Texas v. Timbers of Inwood Forest Assoc. Ltd.*, 484 U.S. 365, 376 (1988) (The Supreme Court has interpreted this to mean that "*there is a reasonable possibility of a successful reorganization within a reasonable time.*") (emphasis added); *Indian Palms*, 61 F.3d at 209 (noting that, under *Timbers*, if no reorganization is possible within a reasonable time, relief from stay can be granted against even a necessary asset).

68. Here, this analysis is simple. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Debtors cannot leverage, sell, or use this property and they seem to be failing rapidly. The Trump Plaza is closed; the Taj Mahal, even if it manages to stay open, has no basis to lay claim to any Betfair Interactive assets. The Debtors lack sufficient liquidity to survive into



2015 and their survival is predicated on a series of complex variables that are in part beyond their direct control. As this Court has noted, their reorganization prospects are uncertain and indeed, this Court has just entered an Order to show cause why the Debtors' chapter 11 cases should not be converted to cases under chapter 7 of the Bankruptcy Code [D.I. 512].

69. More importantly, the NJ NGR belongs to Betfair Interactive, not the Debtors. By definition, non-estate property like Betfair Interactive trust funds in the Suspense Account (or alternatively, the Betfair Interactive offset rights) cannot be *necessary* to an effective reorganization for a debtor. *See, e.g., In re Knight Jewelry*, 168 B.R. 199, 203 (Bankr. W.D. Mo. 1994). Accordingly, Betfair Interactive's property in the form of trust funds in the Suspense Account cannot be used to support a TP reorganization and thus the second prong of 362(d)(2) is met for stay relief purposes and Betfair Interactive is entitled to remit the funds to its credit.

#### **ADDITIONAL RELIEF REQUESTED**

70. Notwithstanding Bankruptcy Rule 4001(a)(3) and Local Rule 4001(c)(iii), Betfair Interactive requests that the hearing on this Motion be a final hearing on the merits and that any order approving this Motion be a final order not subject to a 14 day stay.

71. Contemporaneously herewith, Betfair Interactive is filing the *Motion of Betfair Interactive US LLC to Seal Exhibits and Redact Material in its Motion of Betfair Interactive US LLC for an Order Declaring that the Automatic Stay of Bankruptcy Code Section 362 Does Not Apply to the Funds in the Betfair Interactive Suspense Account, or, in the Alternative, Granting It Relief from the Automatic Stay* (the "Sealing Motion"). By the Sealing Motion, Betfair Interactive requests entry of an order protecting information that is proprietary and confidential to each of itself and to TP.

**NOTICE**

72. Notice of this Motion has been given to (a) the Debtors and their counsel; (b) the DGE; (c) counsel to Secured Parties; (d) counsel to the Official Committee of Unsecured Creditors; (e) any entities affected by the relief requested herein; and (f) all parties that have requested notice under Bankruptcy Rule 2002. In light of the nature of the relief requested, Betfair Interactive submits that no further notice need be given.

**CONCLUSION**

WHEREFORE, Betfair Interactive respectfully requests entry of an order, substantially in the form attached hereto, granting: (i) the Motion and (ii) such other and further relief as the Court deems just and proper.

Dated: November 21, 2014

**BLANK ROME LLP**

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*Counsel to Betfair Interactive US LLC*

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

In re:	)	Chapter 11
	)	
TRUMP ENTERTAINMENT RESORTS, INC.,	)	Case No. 14-12103 (KG)
<i>et al.</i> , <sup>1</sup>	)	
	)	(Jointly Administered)
Debtors.	)	
	)	<b>Hearing: 12/19/14 at 10:00 a.m. (ET)</b>
	)	<b>Responses Due: 12/5/14 at 4:00 p.m. (ET)</b>

**NOTICE OF MOTION OF BETFAIR INTERACTIVE US LLC FOR AN ORDER  
DECLARING THAT THE AUTOMATIC STAY OF BANKRUPTCY CODE  
SECTION 362 DOES NOT APPLY TO THE FUNDS IN THE  
BETFAIR INTERACTIVE SUSPENSE ACCOUNT, OR, IN THE  
ALTERNATIVE, GRANTING IT RELIEF FROM THE AUTOMATIC STAY**

PLEASE TAKE NOTICE that on November 21, 2014, Betfair Interactive US LLC filed the **Motion of Betfair Interactive US LLC for an Order Declaring That the Automatic Stay of Bankruptcy Code Section 362 Does Not Apply to the Funds in the Betfair Interactive Suspense Account, or, in the Alternative, Granting it Relief From the Automatic Stay** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the “Bankruptcy Court”). A copy of the Motion is attached hereto.

Any responses or objections to the Motion must be filed with the Bankruptcy Court by **December 5, 2014 at 4:00 p.m. (ET)** and must be served upon the undersigned counsel so as to be received by **December 5, 2014 at 4:00 p.m. (ET)**.

<sup>1</sup> The Debtors in these chapter 11 cases are: (i) Trump Entertainment Resorts, Inc.; (ii) Trump Entertainment Resorts Holding, L.P.; (iii) Trump Plaza Associates, LLC; (iv) Trump Marina Associates, LLC; (v) Trump Taj Mahal Associates, LLC; (vi) Trump Entertainment Resorts Development Company, LLC; (vii) TER Development Co., LLC; and (viii) TERH LP Inc.

IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

IN THE EVENT THAT ANY OBJECTION OR RESPONSE IS FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD BEFORE THE HONORABLE KEVIN GROSS AT THE BANKRUPTCY COURT ON **DECEMBER 19, 2014 AT 10:00 A.M. (ET).**

Dated: November 21, 2014

**BLANK ROME LLP**

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*Counsel to Betfair Interactive US LLC*

**Exhibit 1**

**(Filed Under Seal)**

**Exhibit 2**

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**David L. Reback**  
Director



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**CAESARS INTERACTIVE ENTERTAINMENT NEW JERSEY - AFFILIATE OF BALLY'S PARK PLACE**

**Platform: 888**

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- ✓ [www.WSOP.com](http://www.WSOP.com)
- ✓ [us.888.com](http://us.888.com)
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**Platform: Amaya**

- ✓ [www.CaesarsCasino.com](http://www.CaesarsCasino.com)

**GOLDEN NUGGET ATLANTIC CITY**

**Platform: Bally IGP**

- ✓ [www.GoldenNuggetCasino.com](http://www.GoldenNuggetCasino.com)
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**TROPICANA CASINO AND RESORT**

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**TRUMP PLAZA ASSOCIATES**

**Platform: Betfair**

- ✓ [www.betfaircasino.com](http://www.betfaircasino.com)

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**PROPOSED ORDER**



C. Notice of the Motion was sufficient under the circumstances.

D. For the reasons set forth in the Motion and at any hearing on the Motion, cause exists to lift the automatic stay under 11 U.S.C. § 362(d)(1) and Betfair Interactive is entitled to the relief requested under 11 U.S.C. § 362(d)(2) and 11 U.S.C. § 105(a).

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED and, to the extent applicable, Betfair Interactive is hereby granted relief from the automatic stay.

2. Betfair Interactive is authorized to remit the funds in the Suspense Account to itself.

3. The fourteen day stay as contemplated by Bankruptcy Rule 4001(a)(3) is hereby waived, and this Order shall become effective immediately upon its entry.

4. The Court retains jurisdiction to address all issues and disputes relating to the interpretation or implementation of the terms and provisions of this Order.

Dated: December \_\_\_\_, 2014  
Wilmington, DE

\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF SERVICE**

I, Victoria A. Guilfoyle, hereby certify that on November 21, 2014, I caused sealed/redacted copies of the following document to be served on the parties listed on the attached service list via first class mail. In addition, unsealed/unredacted copies were served on Debtors' counsel via hand delivery (local) and overnight mail (non-local).

**MOTION OF BETFAIR INTERACTIVE US LLC FOR AN ORDER  
DECLARING THAT THE AUTOMATIC STAY OF BANKRUPTCY CODE  
SECTION 362 DOES NOT APPLY TO THE FUNDS IN THE  
BETFAIR INTERACTIVE SUSPENSE ACCOUNT, OR, IN THE  
ALTERNATIVE, GRANTING IT RELIEF FROM THE AUTOMATIC STAY**

*/s/ Victoria A. Guilfoyle*  
Victoria A. Guilfoyle (DE. No. 5183)

In re Trump Entertainment Resorts, Inc.  
Core/2002 Service List

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Delaware Secretary of State	Delaware Secretary of State	Division of Corporations Franchise Tax	PO Box 898			Dover	DE	19903		302-739-3073	302-739-5831	frsodcc_frax@state.de.us
Delaware State Treasury	Delaware State Treasury	Attn: Officer, Managing Agent, or General Agent	820 Silver Lake Blvd Ste 100			Dover	DE	19904		302-672-6700	302-739-5635	statedeasurer@state.de.us
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IRS Insolvency Section	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19104-7346		800-973-0424	855-235-6787	
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New Jersey Division of Gaming Enforcement	New Jersey Division of Gaming Enforcement (Atlantic City)	David Rebeck	1300 Atlantic Avenue			Atlantic City	NJ	08401		609-441-3106	609-441-3554	info@njdge.org
New Jersey Division of Gaming Enforcement	New Jersey Division of Gaming Enforcement (Trenton Office)	Sara Ben-David and Mary Jo Flaherty	140 East Front Street	P.O. Box 047		Trenton	NJ	08625		609-292-9394	609-633-7355	info@njdge.org
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