

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TRUMP ENTERTAINMENT
RESORTS, INC., *et al.*,

Debtors.

Chapter 11

Case No. 14-12103 (KG)
(Jointly Administered)

Ref. Nos. 449, 516, 517

Hearing Date: November 24, 2014 at 10:00 a.m.

**REPLY TO OBJECTIONS TO ATLANTIC CITY'S MOTION FOR
RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)**

The City of Atlantic City (the "City"), by and through its undersigned counsel, in further support of its motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d) (the "Motion"), and in reply to the objections filed by the above-captioned debtors ("Debtors") and by Icahn Agency Services, LLC, in its capacity as agent for Icahn Partners, LP, Icahn Partners Master Fund, LP, and IEH Investments I, LLC (the "Icahn Parties") (collectively, the "Objections"), respectfully states and alleges as follows:

Preliminary Statement

1. The objecting parties seek to distort the legal and factual realities underlying the Motion. Neither Debtors nor the Icahn Parties can legitimately dispute that (a) the City is owed many millions of dollars in unpaid real estate taxes, (b) the Debtors have not paid their post-petition property taxes, (c) Debtors have not paid 1.5 quarters of pre-petition property taxes, and (d) the much ballyhooed tax appeals have sat dormant for at least the past six months, with not even the slightest hint of movement on the part of Debtors. The objecting parties have further attempted to misstate the interplay between the Bankruptcy Code and New Jersey statutory tax lien regime. Contrary to objecting parties' bizarre assertions, a tax certificate purchaser could never foreclose on Debtors' property without first obtaining relief from the automatic stay, nor

could such purchaser foreclose if Debtors were making all of their necessary payments pursuant to a confirmed plan of reorganization in a manner permitted by the Bankruptcy Code.

2. The Motion represents the City's well-reasoned request for the relief necessary to recoup a measure of such funds through the upcoming Tax Sale.¹ The objecting parties contend that the balancing of hardships somehow weighs in favor of Debtors, and that the City has not met its burden in this regard. "[R]ealty taxes are the lifeblood of municipal government." Tr. of Montville v. Spitz, 74 N.J. 1, 22 (1977). The City has already extensively detailed the essential nature of the taxes being withheld, and in turn, why a sale of the tax certificates is critical to preventing not only budgetary hardship to the City, but also practical, day-to-day hardships to the City's larger community: the children in its schools; its teachers, police, firemen and other municipal workers; and the overall health and safety of its residents and tourists. Furthermore, the objecting parties' arguments in this regard are misguided because the Debtors continue to receive substantial benefit on a daily basis as a result of the municipal services provided by the City.

Debtors will not be Prejudiced if Stay Relief is Granted

3. In arguing against stay relief, the objecting parties repeatedly reference N.J.S.A. 54:5-86 – permitting foreclosure by the tax certificate holder if the lien is not redeemed by the end of a two-year period – and how it “subverts” 11 U.S.C. § 1129(a)(9)(C).² However, the City has never argued, nor does it argue now, that such statute trumps the Bankruptcy Code. Clearly, if Debtors are still in bankruptcy when the redemption period expires, the tax certificate holder will need to obtain relief from the automatic stay in order to foreclose on Debtors’

¹ Any capitalized terms not expressly defined herein shall have the meanings ascribed to such terms in the application in support of the Motion.

² The objecting parties should really be referring to section 1129(a)(9)(D), since the unpaid taxes constitute a secured claim in favor of the City.

properties. Conversely, if Debtors are out of bankruptcy and their relationships with creditors are thus governed by the terms of a chapter 11 plan, the certificate holder will be bound by the terms of the plan, and payment of its claim will be governed by the plan. Accordingly, the objecting parties' claims of prejudice based on this false dichotomy are red herrings that intentionally fail to take into account the supremacy of the Bankruptcy Code.³

4. The objecting parties' next line of arguments relates to a nonexistent "bona fide dispute" standard that they have invented for purposes of objecting to the Motion. New Jersey law is clear that regardless of whether tax sale certificates are sold, property owners that have filed tax appeals must pay taxes on the assessed amount, and are entitled to a refund or credit from the municipality in the event that the tax court reduces their assessment. To wit:

There is no exception in the statutory plan of enforcement of tax liens for those taxpayers who are in the process of appealing their assessments. The remedy provided for a taxpayer who pays property taxes during the pendency of a tax appeal and who ultimately succeeds on that appeal is a refund of overpaid taxes, with interest at a rate provided by statute. N.J.S.A. 54:3-27.2. The tax collector is obliged to place properties with outstanding tax liens on the tax sale list. N.J.S.A. 54:5-19.

DSC of Newark Enterprises, Inc. v. South Plainfield Borough, 25 N.J. Tax 120, 128 (N.J. Tax 2009). Accordingly, regardless of whether the City sells tax sale certificates, Debtors are still required to pay taxes in the amount of the full assessment.⁴ Therefore, the objecting parties' claims of prejudice as a result of the tax sale are not claims of prejudice at all – rather, they are quixotic objections to the validity of New Jersey's statutory tax collection regime as a whole.

³ Also, a substantial portion of the unpaid taxes constitute an administrative expense claim that must be paid in full on the effective date of a plan pursuant to 11 U.S.C. § 1129(a)(9)(A), and are not governed by 1129(a)(9)(C) or (D).

⁴ Indeed, the Iahn Parties have even admitted to this Court that Debtors owe taxes on the full amount of the assessments. During the November 14, 2014 hearing before this Court regarding Debtors' disclosure statement, Mr. Brilliant stated that "there's about \$24 million of real estate taxes that are – you know, that – you know, not disputed, you know, that may go down. There's about \$24 million of real taxes, you know, that need to be dealt with as well, and you know, that obviously will be, you know – you know, dealt with . . ." (Tr. 42:12-17.)

5. More basically, as a threshold matter, the objecting parties have presented no evidence that 2014 assessments are likely to be reduced as a result of the tax appeal. Indeed, they have blatantly failed to inform the Court of critical facts pointing in the opposite direction. In early June 2014, Debtors and the City agreed in principle to a settlement of the 2014 tax appeals. As a result of the settlement in principle, the City has already reduced Debtors' 2014 assessments by hundreds of millions of dollars.

6. Even more telling is the fact that for at least the past six months, Debtors have taken no action whatsoever in the tax appeals. Indeed, since at least June 2014, the tax appeals have sat dormant. Since their bankruptcy filings, Debtors have not restarted the tax appeals, nor attempted to finalize the settlement of the assessments with the City. In their objection, Debtors do not provide any reasons as to why a court will reduce their assessments, or when they actually plan to show any interest in their appeals. In the meantime, Debtors have wholly failed to pay any property taxes.

7. Further weakening the objecting parties' prejudice claim is the fact that Debtors have failed to pay the post-petition installment of property taxes that was due on November 1, 2014. Not only is this a violation of 28 U.S.C. § 960 (mandating that debtors-in-possession must pay federal, state, and local taxes on or before the due date of such tax under nonbankruptcy law), but it also creates an administrative claim in favor of the City. In re Soltan, 234 B.R. 260, 269-73 (Bankr. E.D.N.Y. 1999). Pursuant to 11 U.S.C. § 1129(a)(9)(A), this claim must be paid in full on the effective date of a plan of reorganization (a requirement that applies whether or not the City sells the tax sale certificates).

8. Regarding interest rates, the objecting parties' complaints about the rates payable on unpaid taxes bespeak a significant misunderstanding of the governing law and the anatomy of

tax certificate auctions. While they are correct that tax lien certificates accrue interest at 18% per annum, they overlook the fact that such 18% rate applies regardless of whether the City sells the tax sale certificates. N.J.S.A. 54:4-67(a). Indeed, Debtors may be better after a tax certificate auction, where competing bidders may drive the interest rate down to as low as 0%. Contrary to the Icahn Parties' pathetic attempt in footnote 5 to hint that there will be bid-rigging at the Tax Sale,⁵ there remains a realistic possibility that the interest rate that Debtors have to pay will be significantly lower than 18%. The objecting parties' cavils about having to pay a 6% redemption premium must be viewed in this same light. Because of the possibility that the interest rate will be bid down significantly, Debtors are not certain to pay 6% on top of 18%; rather, they are paying 6% on top of a rate that could possibly be as low as 0%.

The Balance of the Hardships Overwhelmingly Tilts in the City's Favor

9. Despite the objecting parties' claims that the City is acting in a self-interested way, it is clear that the balance of hardships tilts in the direction of the City. It is undisputed that Debtors' unpaid property taxes are more than 10% of the City's entire 2014 budget. Selling tax sale certificates is the only way that the City can fill this substantial hole in its budget at the present moment, absent Debtors paying their statutory obligations. The significance of the Motion to the City and its basic services cannot be overstated.

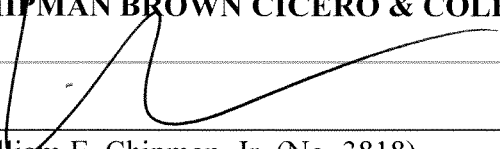
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⁵ The Icahn Parties contend that because two investors in a different town were once arrested for bid rigging at a tax sale auction, it would be prejudicial to Debtors if the City were to hold a tax sale auction. It is difficult to put into words the

WHEREFORE, the City respectfully requests that the Court grant the Motion.

Dated: November 21, 2014
Wilmington, Delaware

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absurdity of this position.