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ATTORNEYS FOR SEG OHIO, INC.

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:	§	
	§	Chapter 11
	§	
TEXAS RANGERS BASEBALL	§	Case No. 10-43400-DML11 (DML)
PARTNERS,	§	
	§	
Debtor.	§	

**OBJECTION OF SEG OHIO, INC. TO CONFIRMATION OF DEBTOR'S SECOND
AMENDED PREPACKAGED PLAN OF REORGANIZATION OF TEXAS RANGERS
BASEBALL PARTNERS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

TO THE HONORABLE UNITED STATE BANKRUTPCY COURT:

COMES NOW SEG OF OHIO, INC (“SEG”), a party-in-interest in the above bankruptcy proceeding and file this Objection of SEG of Ohio, Inc. to Confirmation of Debtor’s Second Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code (“Second Amended Plan”) and would show the Court as follows:

I. Basis for Objection

1. Since January 2010, SEG has been involved in state court litigation in the 17th District Court in Tarrant County, Texas with Ballpark Real Estate, L.P. BPRE GP Interests, L.P. n/k/a SSR Interests, L.P., Southwest Sports Realty Partners, L.P., SWS Realty LLC, Hicks

Glorypark, LLC, Glorypark Town Center GP, LLC, n/k/a Arlington Devco, LLC (hereinafter referred to as “Hicks Related Entities.”

2. The litigation involves, among other claims, a claim for Trespass to Try Title and an Action to Quiet Title as to 40.87 acres of real property in Tarrant County, Texas (the “Property”) currently held in the name of Ballpark Real Estate, L.P. The litigation is set for trial in October 2011 (hereinafter “State Court Litigation”).¹

3. Because of the uncertainty between the Second Amended Plan, Asset Purchase Agreement (“APA”) which is attached to the Second Amended Plan as Ex. D, and Land Sale Agreement (defined herein) where the sale of the 40.87 acres is provided for and the Second Amended Plan documentation, SEG files this precautionary objection on the grounds that any purchaser of the 40.87 acres at any auction would not take free and clear of any liens, claims and encumbrances as against the non-Debtor property because the provisions of 11 U.S.C. § 363 should have no application to such Property. The purchaser would take subject to the outcome of the State Court Litigation and jurisdiction over the outcome of the title dispute should be determined in the state court where litigation is pending.

II. State Court Litigation

4. The pleadings in the State Court Litigation contend that SEG, (operating under the previous name of Steiner + Associates, Inc.) and Ballpark Real Estate, L.P. entered into a Joint Venture Agreement where they would partner, develop and operate a mixed use development adjacent to the Texas Ranger’s stadium. In connection therewith, in June 2007, the City of Arlington, Texas conveyed the Property to Hicks Glorypark LLC, a Texas limited

¹Cause No. 017-243180-10, styled SEG of Ohio, Inc. f/k/a Steiner + Associates, Inc. and Arlingtonpar, LLC vs. Ballpark Real Estate, L.P., BPRE GP Interests, L.P. n/k/a SSR Interests, L.P., Southwest Sports Realty Partners, L.P., SWS Realty LLC, Hicks Glorypark, LLC, Glorypark Town Center GP, LLC n/k/a Arlington Devco, LLC, Mesa Design Associates, Inc., Doe Entities, and John Doe Individuals.

liability company by special warranty deed. In August 2008, Hicks Glorypark LLC conveyed the Property to Ballpark Real Estate L.P., a Texas limited partnership.

5. The Original Petition filed in January 2010, alleged a constructive trust claim, breach of fiduciary duty, specific performance and the appointment of a trustee “to be appointed and a constructive trust created to manage the real property in question ...” and requested that the property referenced in the deeds attached be “conveyed to Glorypark Town Center, L.P.” (Par. 61, Plaintiff’s Original Petition).

6. The Plaintiff’s First Amended Original Petition filed on July 2, 2010, (the “Amended Petition”) named an additional lienholder, Mesa Design Associates, Inc. who had filed an architecture lien in the amount of \$320,269.66 and Ballpark Real Estate, L.P. who has a deed of trust lien for a note in the amount of \$6.5 million against the Property.

7. The Amended Petition seeks a dissolution of the Glorypark Town Center, L.P. partnership and alleges claims based on trespass to try title and to quiet title as to “Phase 1 Boundary” as:

Being a 40.87 acre tract of land situation in the William O’Neal Survey, Abstract No. 1190 and the J. Blackwell Survey, Abstract No. 147, Tarrant County, Texas and being a portion of Site 13, Great Southwest Industrial District, Community No. 3, an addition to the City of Arlington, as recorded in Volume 388-51, Plat Records, Tarrant County, Texas and being all of Tract 1A and a portion of Site 1B, Site 13, Great Southwest Industrial District, Community No. 3, as recorded in Volume 388-153, Page 84, Plat Records, Tarrant County, Texas, and being all of a 2.543 acre tract of land as recorded in Volume 7460, Page 1863, Deed Records, Tarrant County, Texas, and as recorded in the following deeds: Volume 10314, Page 1566 and Volume 10588, Page 1270, Deed Records, Tarrant County, Texas, and being a portion of Arlington Stadium Addition, an addition to the City of Arlington, Tarrant County, Texas, as recorded in Volume 388-171, Page 52, Plat Records, Tarrant County, Texas, and being all of 0.544 acre tract of land as recorded in Instrument Number D204261178, Deed Records, Tarrant County, Texas, also including right-of-way contained within Nolan Ryan Expressway and East Randol Mill Road. Said 40.87 acre tract being more particularly described by metes and bounds as follows: [as more fully described in Exhibits 2 and 3]

8. In Texas, a trespass-to-try title action (“TTT”) is the method of determining title to land, improvements on land, or other real property. TEX. PROP. CODE §22.001 (West 2004). Usually, a TTT action seeks to clear problems in chain of title or to recover the possession of land unlawfully withheld from an owner who has a right to immediate possession. *Martin v Amerman*, 133 S.W. 3d 262, 264-265 (Tex. 2004). Such action is brought against the persons in possession if the premises are occupied. *Longoria v Exxon Mobil Corp.*, 255 S. W. 3d 174 (Tex. App. – San Antonio 2008, pet. denied)

9. SEG claims a valid *lis pendens* against the Property under TEX. PROP. CODE § 12.007 because it has filed suit to seek title to the Property on behalf of Glorypark Town Center, LP, the new entity that was created and where title to the Property was to be transferred. *Hughes v. Houston NW Medical Center*, 647 S.W.2d 5 (Tex. Civ. App.—Houston [1st Dist.] 1982, writ of error dismissed w.o.j.)(true nature of suit was of accounting and distribution of partnership assets and minority shareholders could bring action to recover real property). A *lis pendens* that seeks title to real property is a valid use of the *lis pendens* statute. *Flores v. Haberman*, 915 S. W. 2d 477 (Tex. 1995); *Countrywide Home Loans, Inc. v Howard*, 240 S.W. 3d 1 (Tex. App. – Austin 2007, pet. denied); *Khraish v Hamed*, 762 S. W. 2d 906 (Tex. App. – Dallas 1998, writ denied); *Moss v Tenant*, 722 S. W. 2d 762 (Tex. App. – Houston [14th Dist.] 1986, orig. proceedings).

III. Objections to the Second Amended Plan

10. Purchasers Should Take “Subject to” the State Court Litigation. The Amended and Restated Land Sale Agreement (“Land Sale Agreement”) dated May 23, 2010, refers to the State Court Litigation.² SEG has confirmed that the entire 40.87 acres is being sold pursuant to

² “Steiner Litigation” means, collectively, the (i) Original Petition, Cause No. 017 243180 10, filed in the District Court of Tarrant County, Texas on January 21, 2010, by Steiner + Associates, Inc. (“Steiner”) and Arlingtonpar, LLC (“Arlingtonpar”), as plaintiffs, against BRE and certain other parties named in such Original Petition, (ii) all

the APA. The Second Amended Plan proposes to sell non-debtor property of the estate and non-debtor property “free and clear of all Liens, Claims, and interests of any kind in accordance with section 363(f) of the Bankruptcy Code, except to the extent the Purchaser has assumed such Liens, Claims, or interests under the Asset Purchase Agreement . . .”³

Under Article I, “Purchase and Sale”, the Land Purchase Agreement, provides for the sale, transfer and assignment to the Buyer and assumption, of all of BRE’s right, title and interest (including fee title, leasehold interests and option rights, as applicable) to the land owned in Exhibit A-1 and A-3 and leased described in Exhibit A-2 and as further described in the agreement. The transfer is for \$5,000,000 in cash and a promissory note in the sum of \$53,158,991.04 payable in level monthly payments sufficient to amortize and repay the full payment of principal and interest at 4.11% per annum through the final maturity date of such promissory note and other consideration stated.⁴

The Purchaser of the non-Debtor property should not take free and clear of the liens, claims and encumbrances against the 40.87 acres. *In re Jurgielewicz Duck Farm*, 2010 Bankr. LEXIS 1507 (Bankr. N.Y. 2010)(Debtor could not sell property free and clear that it no longer

Legal Proceedings resulting thereunder or resulting therefrom, and (iii) all claims (including all counterclaims and cross-claims) pursuant to such Legal Proceedings. [Disclosure Statement - P. 26]

³ Under Section 11.6 “Terms of Injunctions or Stays” the Debtor proposes: (a) Except as otherwise specifically provided herein, all Persons who have held, hold, or may hold Claims against the Debtor are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim against the Post-Effective Date Debtor or the Purchaser, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Post-Effective Date Debtor or the Purchaser with respect to any such Claim, (iii) creating, perfecting or enforcing any encumbrance of any kind against the Post-Effective Date Debtor or the Purchaser, or against the property or interests in property of the Post-Effective Date Debtor or the Purchaser with respect to any such Claim, and (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Post-Effective Date Debtor or the Purchaser, or against the property or interests in property of the Post-Effective Date Debtor or the Purchaser with respect to any such Claim.

(b) Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date

⁴ Article I references the following exclusion from the sale: “. . . (iv) to the extent relating exclusively to the BRE Owned Property or the BRE Leased Property, or any portion thereof, (a) all rights, benefits, privileges, easements, tenements, hereditaments and appurtenances, including, utilities and related utility rights, pertaining thereto (other than any documents, materials, studies or other items made by or on behalf of Steiner or Arlingtonpar) . . .”

owned). A sale under Section 363 that proposes to deprive a litigant of substantial rights inherent in the plan confirmation process, sales of substantial portions of the debtor's assets under section 363 require close court scrutiny. *Stephens Indus. Inc. v McClung*, 789 F. 2d 386, (6th Cir. 1986). The court may impose restrictions on the use, sale, or lease as necessary to provide adequate protection of a party's interest in property of the estate.⁵ 11 U.S.C. § 363(e).

The Bankruptcy Court should provide that the Purchasers of non-debtor real property take subject to the claims being made against the real property being adjudicated in the 17th District Court, Tarrant County, Texas.⁶

11. Continuation of the State Court Suit to Adjudicate Title. The Debtor does not claim that the Property constitutes property of the estate in its disclosure statement [Docket # 34][Section 5.9 provides that “[N]either Seller nor the Rangers Subsidiary own any real property.”], its plan of reorganization [Docket # 31], or its recently filed schedules and statement of financial affairs filed on June 28, 2010. [Docket # 293 and # 294] The Retention of

⁵ Under the Second Amended Plan, Article XI, Effect of Confirmation the Debtor proposes: 11.1 *Vesting of Assets.* Except as otherwise provided in the Prepackaged Plan and as contemplated under the Asset Purchase Agreement, the Debtor, as Post-Effective Date Debtor, shall continue to exist on and after the Effective Date as a separate Person with all of the powers available to such legal entity under applicable law, without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) in accordance with applicable law. *The property of the Debtor's Estate, together with any property of the Debtor that is not property of its Estate and that is not specifically disposed of pursuant to the Prepackaged Plan or purchased by Purchaser under the Asset Purchase Agreement, if any, shall vest in the Post-Effective Date Debtor on the Effective Date. All property sold, conveyed or transferred to the Purchaser is and shall be free and clear of all Liens, Claims, and interests of any kind in accordance with section 363(f) of the Bankruptcy Code, except to the extent the Purchaser has assumed such Liens, Claims, or interests under the Asset Purchase Agreement.* Thereafter, the Post-Effective Date Debtor may operate its business and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Court. As of the Effective Date, all property of the Post-Effective Date Debtor not sold to the Purchaser shall be free and clear of all Claims, encumbrances, charges, and Liens except as specifically provided in the Prepackaged Plan or the Confirmation Order. Without limiting the generality of the foregoing, the Post-Effective Date Debtor may, without application to or approval by the Bankruptcy Court, pay professional fees and expenses incurred after the Effective Date. Notwithstanding anything to the contrary herein, the Post-Effective Date Debtor shall remain bound by the terms of the confirmed Prepackaged Plan and the order confirming the same. [Emphasis added.]

⁶ Under Section 11.2 of the Second Amended Plan “Binding Effect” the Debtor proposed: Subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Prepackaged Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtor and such holder's respective successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under the Prepackaged Plan and whether or not such holder has accepted the Prepackaged Plan.

Jurisdiction under Article XII, Section 12.1 does not specify whether the title litigation will remain in the State Court Litigation or whether the Bankruptcy Court would retain jurisdiction over certain aspects of it.⁷ The imposition of a constructive trust is governed by state law. *Bradley v. Ingalls (In re Bradley)*, 501 F.3d 421, 431 (5th Cir. 2007) (elements required under Texas law); *In re Beveridge*, 416 B. R. 552 (Bankr. N.D. Tex. 2009). The Court should require the Debtor to specify whether State Court Litigation will be affected post-confirmation by the Chapter 11 Plan and whether the 17th District Court will adjudicate the validity of all liens and claims against the Property in that litigation or provide whatever provisions that the Bankruptcy Court would require in such a title dispute that involves non-Debtor property that has been so integrated into the Amended Plan and appears to shroud non-Debtor property with bankruptcy protections.⁸

WHEREFORE, SEG requests that the Court grant its objections and other relief SEG is entitled or to provide relief sufficient to protect its interest.

Dated: July 6, 2010.

Respectfully submitted,

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⁷ Under Article XII, Section 12.1, the Chapter 11 plan proposes that the Bankruptcy Court will retain exclusive jurisdiction of all matters arising out of, or related to, the Chapter 11 Case and the Prepackaged Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and the numerous items listed as (a) through (n).

⁸ Article VI, Covenants, of the sale agreement evidences the Steiner litigation: 6.11 Steiner and RTKL Litigation. At all times, Seller shall actively and in good faith defend the Steiner Litigation, the RTKL Litigation and any other claims against Seller or the Land related to the Glorypark Matters that may arise. Seller shall keep Buyer reasonably informed on a reasonably current basis regarding the Steiner Litigation, the RTKL Litigation and any such other claims, including delivering Buyer copies of all pleadings. This Section 6.11 shall apply notwithstanding anything to the contrary in this Agreement.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served by electronic submission to those entitled to service of this pleading in the instant case and, in particular, those persons listed below, on the 6th day of July, 2010.

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