

**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)

LIMITED OBJECTION AND RESERVATION OF RIGHTS OF TRUMP AC CASINO MARKS, LLC, WITH RESPECT TO THE DEBTORS' MOTION FOR ORDER (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING PURSUANT TO SECTION 364 OF THE BANKRUPTCY CODE, (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES PURSUANT TO SECTIONS 361, 362, 363 AND 364 OF THE BANKRUPTCY CODE, (IV) GRANTING LIENS AND SUPERPRIORITY CLAIMS, AND (V) MODIFYING AUTOMATIC STAY

Trump AC Casino Marks, LLC (“**Trump AC**”), by and through its undersigned counsel, hereby files this Limited Objection and Reservation of Rights (the “**Limited Objection**”) with respect to the *Debtors’ Motion for Order (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, and (V) Modifying Automatic Stay* [D.I. 565] (the “**Motion**”)¹ and respectfully states:

PRELIMINARY STATEMENT

1. Trump AC objects to the Motion to the limited extent that it provides for an impermissible modification of the parties’ rights and obligations under the License Agreement

¹ Capitalized terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

and Consent Agreement (each as defined below) and impermissibly includes among the collateral securing the DIP Loan the License Agreement and the Debtors' rights thereunder.

RELEVANT BACKGROUND²

2. On or about July 16, 2010, Donald J. Trump ("**Mr. Trump**") and Ivanka Trump ("**Ms. Trump**") entered into the Second Amended and Restated Trademark License Agreement (the "**License Agreement**") to license the use of certain Trump-related trademarks to debtors Trump Entertainment Resorts, Inc., Trump Entertainment Resorts Holdings, L.P., Trump Taj Mahal Associates, LLC, Trump Plaza Associates, LLC, and Trump Marina Associates, LLC (collectively, the "**Debtors**"), for certain casino activities and other related uses.

3. Under 9.2 of the License Agreement, the Debtors are prohibited from pledging any of their rights under the License Agreement.³

4. In addition, as of July 16, 2010, Mr. Trump and Ms. Trump entered into the Consent and Agreement (the "**Consent Agreement**").⁴

5. The Consent Agreement is specific in identifying when and under what limited conditions Icahn/the DIP Agent can succeed to the Debtors' rights under the License Agreement. Specifically, Section 4 to the Consent Agreement provides as follows:

²On September 24, 2014, Trump AC filed the *Motion of Trump AC Casino Marks, LLC for an Order Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362(d) to Allow Termination of a License Agreement with the Debtors* [D.I. 111] (the "**Stay Relief Motion**"), which is currently returnable on December 11, 2014 at 12:00 p.m. A more fulsome description of the relationship between and among the Debtors, the DIP Agent and Trump AC is included therein. For the sake of brevity, the lengthy recitation of the facts regarding the parties' relationship will be summarized only, and the documents attached thereto will not be attached to this Limited Objection. However, the Stay Relief Motion and the documents attached as Exhibits thereto are incorporated herein by reference.

³ Section 9.2 of the License Agreement provides as follows: "Assignment and Sublicense by Licensee Entities. Except as otherwise provided in any agreement or instrument to which the Trump Parties and the Licensee Entities are parties, without the prior written consent of the Trump Parties, in their sole and absolute discretion, none of the Licensee Entities may assign, sublicense or pledge any of their rights or obligations under this Agreement ..."

⁴On or about August 1, 2010, Mr. Trump and Ms. Trump assigned virtually all of their rights and obligations under the License Agreement and the Consent Agreement to Trump AC. The rights under the Consent Agreement were also assigned to Icahn Agency Services, LLC ("**Icahn**"), as of April 4, 2012.

(4) Subject to all of the terms, conditions and restrictions of this Section (4), [Trump AC] hereby consent[s] to transfers (each, a “**Transfer**”) from time to time of the rights of any one or more of the [Debtors] under the Assigned [License] Agreement upon and following the enforcement by [Icahn] of its rights under the Security Agreement (each, an “**Enforcement Action**”). In connection with each Transfer, [Trump AC] shall recognize, as designated by [Icahn] following an Enforcement Action: (x) the [Icahn] as a Licensee Entity under the Assigned [License] Agreement in the place and stead of the [Debtor](s) that were the subject of an Enforcement Action, but solely with respect to the Casino Properties that were the subject of the Enforcement Action and solely for so long as the Collateral Agent owns the applicable Casino Property subject to the Enforcement Action; and (y) each transferee of a Casino Property as a Licensee Entity under the Assigned Agreement in the place and stead of the [Debtor](s) that were the subject of an Enforcement Action, but solely with respect to the Casino Properties which were the subject of the Enforcement Action and solely for so long as such transferee owns the applicable Casino Property subject to the Enforcement Action. Notwithstanding anything in this Consent and Agreement and the Assigned [License] Agreement to the contrary, each Transfer shall be subject to all of the following restrictions:

(a) Except as expressly provided in this Section (4) and subclause (b) of the first paragraph of this Consent and Agreement, all of the terms and conditions of the Assigned [License] Agreement shall continue to govern and shall apply to each transferee following a Transfer and solely for so long as such transferee owns the applicable Casino Property subject to the Enforcement Action;

(b) No transferee (other than [Icahn] in connection with an Enforcement Action) shall have the further right to assign (directly or indirectly) the Assigned [License] Agreement to a subsequent transferee; and

(c) (i) Effective as of the date that is the third (3rd) anniversary of the first Transfer of any Casino Property (and thereafter), the “Restricted Territories” shall mean only the Atlantic City Zone; and (ii) effective as of the date that is the fifth (5th) anniversary of the first Transfer of any Casino Property (and thereafter) the Restricted Expiration Date (as defined in the Assigned Agreement) shall be deemed to have occurred and Section 2.5 of the Assigned Agreement shall be null and void and of no further force and effect.

6. Thus, under the terms of the Consent Agreement, Icahn is permitted only to succeed to the Debtors' rights under the License Agreement *after* an "Enforcement Action" and in the event of a "Transfer," among other things, Icahn is bound by all the terms of the License Agreement and its rights are no greater than the Debtors under that agreement.

7. Contrary to the terms of the License Agreement and Consent Agreement, paragraph 12(d) of the proposed Order submitted with the Motion (the "**Proposed Order**") provides as follows:

Without limiting any other rights or remedies of the DIP Agent or the other DIP Secured Parties, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents, upon seven calendar days' written notice, to the Debtors and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property, that a Termination Event has occurred and is continuing, the DIP Agent, (i) may, unless otherwise expressly provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agent or Prepetition Agent, as applicable (the terms of which shall be reasonably acceptable to the parties thereto), enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents, or any other similar assets of the Debtors, which are owned by or subject to a Lien of any third party and which are used by Debtors in their businesses, in either the case of subparagraph (i) or (ii) of this Paragraph 12(d) without interference from lienholders or licensors thereunder, subject to such lienholders' or licensors' rights under applicable law; provided, however, that the DIP Agent (on behalf of the DIP Secured Parties) shall pay only rent and additional rent, fees, royalties, or other monetary obligations of the Debtors that first arise after the written notice referenced above from the DIP Agent and that accrue during the period of such occupancy or use by DIP Agent calculated on a per diem basis. Nothing herein shall require the Debtors, the DIP Agent or the other DIP Secured Parties, to assume any lease or license under Bankruptcy Code section 365(a) as a precondition to the rights afforded to the DIP Agent and the other DIP Secured Parties in this Paragraph 12(d).

LIMITED OBJECTION AND RESERVATION OF RIGHTS

8. Trump AC does not object to the Debtors obtaining the financing in accordance with the Motion. However, to the extent the Motion seeks relief that will have the effect of modifying the agreements in place among the Debtors, the DIP Agent/DIP Lenders and Trump AC – whether inadvertently or not – Trump AC does object. There is nothing in Sections 361, 362, 363 and 364 of the Bankruptcy Code that would permit the Debtors and/or the DIP Agent to vitiate or otherwise impair Trump AC’s rights under either the License Agreement or the Consent Agreement or under applicable non-bankruptcy law.

9. Accordingly, on December 2, 2014, Trump AC requested that the Debtors include language in the Proposed Order to clarify that entry of the Proposed Order would not vitiate or otherwise modify the rights of the parties under the License Agreement, the Consent Agreement or applicable non-bankruptcy law. Specifically, Trump AC proposed the following language (together with the language set forth in paragraph 10 below, the “**Proposed Clarifying Language**”) to be inserted in paragraph 12(d) of the Proposed Order:

Nothing in this Paragraph 12(d), this Order, the Cash Collateral Order or the DIP Loan Documents is intended to nor shall it alter or otherwise modify (x) the rights or obligations of the DIP Agent and/or any DIP Lender with respect to the Consent and Agreement dated as of July 16, 2010 (the “Consent Agreement”) or (y) any parties’ rights or obligations under the Second Amended and Restated Trademark License Agreement dated as of July 16, 2010 (the “License Agreement”). Any right of the DIP Agent under this Paragraph 12(d), this Order, the Cash Collateral Order or the DIP Loan Documents to succeed to the Debtors’ rights or privileges of as licensee under the License Agreement and to use any and all trademarks, trade names, copyrights, licenses, patents or other similar assets of the Debtors, which are owned by Trump AC Casino Marks, LLC and which are used by the Debtors in their businesses, shall remain subject to the terms of the Consent Agreement and the License Agreement, as applicable, and applicable non-bankruptcy law.

10. In addition, to the extent the Proposed Order seeks to provide the DIP Lenders/DIP Agent a security interest in the License Agreement or the Debtors' rights thereunder, Trump AC objects. The proposed Order should also clarify as follows:

Nothing herein or in the Cash Collateral Order is intended to grant the DIP Agent and/or the DIP Lenders with DIP Liens on the License Agreement or the Debtors' rights in, to and under the License Agreement.

11. Shortly before filing this Limited Objection, the Debtors responded with certain proposed changes to the Proposed Clarifying Language. As the deadline for objections is approaching, the Debtors and Trump AC are attempting to negotiate a resolution of the issues identified in this Limited Objection. Trump AC is filing this Limited Objection in the event that the parties cannot negotiate a resolution. To the extent the parties fail to reach an agreement, Trump AC respectfully requests that this Court condition entry of the Proposed Order on the inclusion of the Proposed Clarifying Language or substantively identical relief.

12. Trump AC further reserves its rights to make objections and to request adjustments to the Proposed Order at the hearing on the Motion.

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CONCLUSION

WHEREFORE, for the reasons stated above, Trump AC respectfully requests that the Motion only be granted on condition that the Proposed Order contains the Proposed Clarifying Language or otherwise protects Trump AC's rights and interests as discussed above, and that the Court grant such other relief as the Court deems just and proper.

Respectfully submitted,

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.

By: /s/ Patrick J. Reilley

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