

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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In re:)
) Chapter 11
CAESARS ENTERTAINMENT OPERATING)
COMPANY, INC., et al., ¹) Case No. 15-01145 (ABG)
)
Debtors.) Jointly Administered
)
<hr/>)
STATUTORY UNSECURED)
CLAIMHOLDERS' COMMITTEE,)
) Adv. Proc. No. 15-00571 (ABG)
Plaintiff,)
)
vs.)
)
BOKF, N.A., et al.,)
)
Defendants.)
<hr/>)

**NOTICE OF DELAWARE TRUST COMPANY'S MOTION
TO DISMISS COUNT IV OF THE COMPLAINT PURSUANT
TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(1) AND (6)**

PLEASE TAKE NOTICE that on March 7, 2016, defendant Delaware Trust Company ("Defendant") filed *Delaware Trust Company's Motion to Dismiss Count IV of Complain Pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6)* (the "Motion").

PLEASE TAKE FURTHER NOTICE that, on **April 13, 2016, at 1:30 p.m. (prevailing Central Time)** or as soon thereafter as counsel may be heard, Defendant will appear before the Honorable A. Benjamin Goldgar, or any other judge who may be sitting in his place and stead, in the Ceremonial Courtroom (Room No. 2525), in the Everett McKinley Dirksen

¹ The last four digits of Caesars Entertainment Operating Company, Inc.'s tax identification number are 1623. A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.primeclerk.com/CEOC>.

United States courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, and present the Motion.

PLEASE TAKE FURTHER NOTICE that copies of the Motion as well as copies of all documents filed in these chapter 11 cases are available free of charge by visiting the case website maintained by Prime Clerk LLC, the claims and noticing agent for these chapter 11 cases, available at <https://cases.primeclerk.com/CEOC> or by calling (855) 842-4123. You may also obtain copies of any pleadings by visiting the Court's website at 222.ilnb.uscourts.gov in accordance with the procedures set forth therein.

Dated: March 7, 2016
Chicago, Illinois

/s/ Eric Prezant

Eric Prezant
BRYAN CAVE LLP
161 North Clark Street
Suite 4300
Chicago, IL 60601-3351
Telephone: (312) 602-5011
Facsimile: (312) 698-7411

-and-

Stephanie Wickouski
BRYAN CAVE LLP
1290 Avenue of the Americas
New York, NY 10104-3300
Telephone: (212) 541-2000
Facsimile: (212) 541-4630

Counsel for Delaware Trust Company

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,)	Case No. 15-01145 (ABG)
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Plaintiff,)	
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**DELAWARE TRUST COMPANY'S MOTION TO DISMISS
COUNT IV OF THE COMPLAINT PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND (6)**

Defendant Delaware Trust Company, ("Delaware Trust")¹, pursuant to Fed.R.Civ.P.

12(b)(1) and (6), moves to dismiss Count IV of the Complaint² filed by the Statutory Unsecured Claimholders' Committee ("UCC"). Count IV fails to allege an actual, justiciable controversy.

¹ Plaintiff named Delaware Trust in its capacities as: (i) the successor collateral agent under that certain collateral agreement, dated as of December 24, 2008, among (a) Harrah's Operating Company, Inc. n/k/a Caesars Entertainment Operating Company, Inc., ("CEOC"), (b) each subsidiary identified therein, and (c) U.S. Bank National Association ("U.S. Bank"), predecessor collateral agent to Delaware Trust; and (ii) the successor indenture trustee under that certain Indenture, dated as of December 24, 2008, pursuant to which CEOC issued 10.00% Second Priority Senior Secured Notes due 2015 and 10.00% Second Priority Senior Secured Notes due 2018. Compl. at ¶ 11.

² On August 7, 2015, the UCC filed two documents. First, the UCC filed a motion requesting derivative standing (the "Derivative Standing Motion") [Main Case, ECF 2029.] The Derivative Standing Motion attached a [Proposed] Complaint for Avoidance of Certain Alleged Security Interests and Related Declaratory Relief. [Main Case, ECF 2029-5.] Second, the UCC filed this Complaint commencing this adversary proceeding. [Adv. ECF 1.] Count IV of this Complaint is duplicative of Count XIV of the Derivative Standing Motion's proposed Complaint. Compare Adv. ECF 1, Count IV and Main Case, ECF 2029-5 Count XIV. The Derivative Standing Motion is still pending. The proposed Complaint attached to the Derivative Standing Motion requests identical relief. [ECF 2029-5 ¶ 132.]

Count IV of the UCC's Complaint purports to challenge certain stipulations entered into by the Debtors and contained in the March 25, 2015, Final Cash Collateral Order ("FCCO") [ECF 988]. Specifically, the UCC attempts to challenge what it defines as the "Fee and Charges Stipulations" (hereinafter, the "Stipulation") set forth in FCCO paragraph E(iii)(c), which provides:

Second Lien Notes Obligations as of the Petition Date. The "Prepetition Second Lien Obligations" shall mean all "Obligations" under the Second Lien Notes Indentures, including any amount paid, incurred, or accrued prior to the Petition Date in accordance with the Second Lien Notes Indentures, principal, accrued and unpaid interest, any fees, expenses, and disbursements (including, without limitation, attorneys' fees, related expenses, and disbursement), reimbursement obligations, indemnification obligations, contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing in respect thereof to the extent and as provided for the Second Lien Notes Indentures. The "Prepetition Secured Obligations" shall mean the Prepetition First Lien Obligations together with the Prepetition Second Lien Obligations.

[Compl. ¶ 54; ECF 2029-5 ¶ 129.] Count IV seeks a judgment from this Court declaring that the Stipulation does not establish, or relieve Delaware Trust from having to establish, that Delaware Trust is oversecured or otherwise entitled to recover postpetition fees, costs and other charges described in the Stipulation. [Compl. ¶ 57.]

The UCC has neither identified, nor even alleged, any ambiguity in the language of the Stipulation that merits judicial clarification or interpretation – much less what the UCC is actually requesting: judicial embellishment. In essence, the UCC is asking the Court to rewrite the Stipulation by imposing obligations on Delaware Trust that are not found in, or even contemplated by, the Stipulation. The UCC's request for a declaration that would create obligations not found in the Stipulation is improper and should be rejected by the Court.

Stipulations by parties sound in contract. *Analytical Engineering, Inc. v. Baldwin Filters, Inc.*, 425 F. 3d 443, 453 (7th Cir. 2005). It is fundamental that a court will not rewrite a contract,

but will enforce its terms as written. *Walz v. Fed. Inc. Co.*, No. 04 C 2286, 2004 WL 242713, at *5 (N.D. Ill. Oct. 29, 2004). There is no need for this Court to “clarify” the Stipulation where no ambiguity exists, and, indeed, where no ambiguity has been alleged.

The UCC’s request for a declaratory judgment should also be rejected because no actual or ripe controversy exists. The purported “issues” raised in the UCC’s request for a declaration - that the Stipulation does not establish that Delaware Trust is oversecured, or is otherwise entitled to certain fees and costs - are not before the Court, and are not properly raised in Count IV.

[Compl., at ¶¶ 52-57.]

The UCC does not allege a single fact regarding fees, charges, or collateral valuation to put these issues into controversy. Indeed, Delaware Trust has made no immediate demand that its fees should be paid. Thus, Count IV is at best premature. Moreover, no extraordinary circumstances have been alleged which could conceivably warrant a declaratory judgment to determine unripe “issues” that present no justiciable controversy.

In sum, Count IV does not present an actual, justiciable controversy between the purported plaintiff and defendants. The law is clear that under the Declaratory Judgment Act, the UCC must prove the existence of an “actual controversy.” 28 U.S.C. § 2201(a). A request for a declaration that does not present a justiciable case or controversy must be dismissed for lack of subject matter jurisdiction. Fed.R.Civ.P. 12(b)(1); *In re Soszynski*, 508 B.R. 693 (2014); *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 239 (1937). “In essence, the requirement keeps federal courts in the business of resolving existing legal disputes and out of the business of offering advice on the legality of a proposed course of action.” *Deveraux v. City of Chicago*, 14 F.3d 328, 330 (7th Cir.1994). An actual controversy exists only where “the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a

declaratory judgment.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007).

Although the Complaint conclusory alleges that “[t]here currently exists an actual, substantial, and justiciable dispute concerning the Fee and Charges Stipulations,” no specific facts are alleged to show the existence of any “substantial controversy,” let alone one of “sufficient immediacy and reality” necessary to justify declaratory judgment. The declaratory judgment claim asserted here does not meet the requirement that the UCC demonstrate the existence of an actual, ripe controversy. Accordingly, Count IV should be dismissed.

CONCLUSION

For all of the foregoing reasons, Plaintiff’s Count IV fails as a matter of law and should be dismissed with prejudice.

BRYAN CAVE LLP
1290 Avenue of the Americas
New York, NY 10104
Telephone: 212-541-2000
Facsimile: 212-541-4630

- and -

/s/ Eric Prezant
Eric Prezant
BRYAN CAVE LLP
161 North Clark Street
Suite 4300
Chicago, IL 60601-3351
Telephone: (312) 602-5011
Facsimile: (312) 698-7411
Email: eric.prezant@bryancave.com

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**ORDER GRANTING DELAWARE TRUST COMPANY'S MOTION
TO DISMISS COUNT IV OF THE COMPLAINT PURSUANT
TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) and (6)**

Upon consideration of Delaware Trust Company's Motion to Dismiss Count IV of the Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6) (the "Motion"), it is hereby

ORDERED, ADJUDGED AND DECREED THAT::

1. The Motion is granted.

¹ The last four digits of Caesars Entertainment Operating Company, Inc.'s tax identification number are 1623. A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.primeclerk.com/CEOC>.

2. Count IV of the complaint in the above-captioned action is dismissed as
against Defendant with prejudice.

Dated: _____, 2015
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge