

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

CAESARS ENTERTAINMENT
OPERATING COMPANY, INC., et al.,

Debtors.

Chapter 11

Case No. 15-01145 (ABG)

(Jointly Administered)

CAESARS ENTERTAINMENT
OPERATING COMPANY, INC., et al.,

Plaintiffs,

vs.

BOKF, N.A., WILMINGTON SAVINGS
FUND SOCIETY, FSB, MEEHANCOMBS
GLOBAL CREDIT OPPORTUNITIES
MASTER FUND, LP, RELATIVE VALUE-
LONG/SHORT DEBT PORTFOLIO, A
SERIES OF UNDERLYING FUNDS TRUST,
SB 4 CF LLC, CFIP ULTRA MASTER
FUND, LTD., TRILOGY PORTFOLIO
COMPANY, LLC, AND FREDERICK
BARTON DANNER,

Defendants.

Chapter 11

Adversary Case No. 15-00149

**NOTICE OF MOTION AND MOTION OF WILMINGTON SAVINGS FUND
SOCIETY FSB TO COMPEL DEPOSITION OF RONEN STAUBER**

PLEASE TAKE NOTICE that on August 12, 2016, Wilmington Savings Fund Society FSB (“WSFS”) filed the *Motion of Wilmington Savings Fund Society FSB to Compel Deposition of Ronen Stauber* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that on **August 17, 2016, at 9:30 a.m. (prevailing Central Time)** or as soon thereafter as counsel may be heard, WSFS will appear before the Honorable A. Benjamin Goldgar, or any other judge who may be sitting in his place

and stead, in Courtroom 642 in the Everett McKinley Dirksen 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 this chapter 11 case, are available free of charge by visiting the case website maintained by Prime Clerk LLC, the claims and noticing agent for this chapter 11 case, available at <https://cases.primeclerk.com/CEOC> or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court's website at ww.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

Dated: August 12, 2016

JONES DAY

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Chapter 11

Adversary Case No. 15-00149

**MOTION OF WILMINGTON SAVINGS FUND SOCIETY FSB TO
COMPEL DEPOSITION OF RONEN STAUBER**

Wilmington Savings Fund Society FSB (“WSFS”) moves to compel the deposition of Ronen Stauber, a director of Caesars Entertainment Operating Company, Inc. (“CEOC”), which along with its subsidiaries are debtors in these bankruptcy cases (collectively, the “Debtors”), pursuant to Rules 7037 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy”

Rules”), Rule 37(a)(1) of the Federal Rules of Civil Procedure (the “Federal Rules”), and Rule 7037-1 of this Court’s Local Rules. A proposed form of order is attached.

PRELIMINARY STATEMENT

1. In response to the Debtors’ “Motion to Extend the Section 105 Injunction Enjoining Defendants From Further Prosecuting Their Guaranty Lawsuits” (the “105 Extension Motion”) (ECF No. 284), filed earlier this week, WSFS served document requests on the Debtors and sought to take the depositions of certain directors and financial advisors of the Debtors. The Debtors initially advised WSFS, during the course of meet and confer discussions, that they would not make certain witnesses available, or produce certain responsive documents. Based on extensive meet and confer efforts between the Debtors and WSFS, the dispute has been narrowed to one issue—whether Ronen Stauber, a director of CEOC, should be required to appear for deposition.

2. The documents and information sought by WSFS are necessary to respond to the numerous factual assertions and arguments raised by the Debtors in the 105 Extension Motion.¹

¹ The breadth of the issues and arguments raised in the 105 Extension Motion is surprising in light of the Court’s prior order dated June 15, 2016 (the “June 15 Order”) (ECF No. 274), which limits the scope of the issues to be determined in any proceeding seeking an extension of the injunction. The June 15 Order states: “To encourage the debtors and CEC to make good use of that 74-day period, they are warned that the likelihood any further injunctive relief will be granted is small. The August 29 expiration date should accordingly be considered a deadline to reach a resolution. On the other hand, to lessen the possibility that the guaranty plaintiffs will do nothing for the next 74 days and will simply wait for the injunction to expire, they are warned that further relief will indeed be considered if it appears that despite the overtures of the debtors and CEC the parties have not participated in extensive, good-faith negotiations.” June 15 Order at 5-6 (emphasis added). Based on that Order, WSFS believes that the only issue to be decided is whether, despite any purported overtures by the Debtors and CEC, WSFS and the other guaranty plaintiffs have not participated in extensive good-faith negotiations. Given the admissions in the 105 Extension Motion, including allegations regarding the participation of the Noteholder Committee (which includes WSFS and BOKF) in “three in-person mediation sessions” with a fourth scheduled on August 16 and “frequent and extensive discussions among principals and

Those include allegations that:

- the Debtors made “substantial progress towards a fully consensual plan with numerous key stakeholders” during the injunction period, including an agreement (the “2L RSA”) with a minority group of holders of Second Lien Notes (105 Extension Motion, at ¶¶ 1, 2, 10, 20, 23);
- extending the injunction will enhance the prospects of a consensual deal by “rebalancing” negotiating leverage (*id.*, at ¶¶ 31, 39);
- the Plan enjoys purported widespread support of creditors (*id.*, at ¶ 35);
- the Plan will provide substantial recoveries to creditors, which the Debtors claim is possible only because of the contribution to be made by CEC and the risk to that contribution as a result of the guaranty litigation (*id.*, at ¶ 28);
- CEC is close to being “drained of capital” and cannot pay the guarantee judgments notwithstanding substantial improvements in financial performance of the enterprise (*id.*, at ¶ 30); and
- the guaranty plaintiffs will not be prejudiced if the Court extends the injunction (*id.*, at ¶ 38).

The discovery sought by WSFS (and companion discovery requested by BOKF) is targeted to these allegations.

3. The Debtors cannot have it both ways. If they want to relitigate the same issues that the Court considered when concluding that “[t]he August 29 expiration date should

advisors for the Debtors, CEC and its affiliates and the Noteholder Committee, as well as among principals and advisors for these parties and the mediator,” *see* 105 Extension Motion, at ¶ 4, there is no colorable basis for the Debtors to seek any extension of the injunction. The Debtors, however, have made numerous other allegations in the 105 Extension Motion that WSFS must test through discovery and address at the hearing if the Court concludes that such allegations are relevant to its consideration of the requested relief.

accordingly be considered a deadline to reach a resolution” (June 15 Order, at 6), then WSFS is entitled to seek discovery as to all of those issues, factual assertions and arguments set forth or raised in the Motion. This is particularly true given that WSFS was not able to take any discovery in advance of the trial conducted in June due to the emergency nature (and forty-eight hour notice) of the Debtors’ prior request. A critical component of that discovery is the deposition of Mr. Stauber, who as a director of CEOC, is presumably responsible for and involved in the negotiations and discussions that will be the subject of the hearing on the 105 Extension Motion.

BACKGROUND

4. This Court is familiar with the background of this adversary proceeding. *Caesars Entm’t Operating Co., v. BOKF, N.A. (In re Caesars Entm’t Operating Co.)*, 533 B.R. 714 (Bankr. N.D. Ill. 2015); ECF No. 214; June 15 Order.

5. On August 8, 2016, the Debtors filed the 105 Extension Motion. The following day, August 9, 2016, WSFS served document requests on the Debtors, a copy of which is attached to the Declaration of Sidney P. Levinson (“Levinson Decl.”) as Exhibit 1. That morning, WSFS sent an email to counsel for the Debtors, advising that WSFS intended to depose Steven Winograd and Ronen Stauber (the outside directors of CEOC), along with James Millstein (who previously testified at both prior evidentiary hearings seeking relief under section 105) and Brendan Hayes (who works with Mr. Millstein). Levinson Decl., Ex. 2. In that email, WSFS proposed to schedule the depositions of Messrs. Winograd and Stauber for August 16, 2016, at the offices of Kirkland & Ellis in Chicago (to accommodate lead counsel for the Debtors who is recovering from surgery). WSFS also proposed that the parties identify their respective witnesses in advance of the August 19 deadline under the operative scheduling order so that the

parties could limit the number of depositions that would otherwise be required if the parties did not know who might be called to testify.

6. Having not heard back from the Debtors, WSFS sent another email the following afternoon, proposing a meet and confer, and attaching notices of deposition for the outside directors on the date previously proposed. Levinson Decl., Ex. 3. That second email prompted a response from the Debtors, who took the position that there was no basis for WSFS to take any depositions. Levinson Decl., Ex. 4. The Debtors did offer to make available, for a three-hour deposition, Mr. Hayes (who apparently will testify at the hearing on August 23, 2016), but only in the context of an agreement that WSFS forgo other depositions. The Debtors also proposed a meet and confer call for two days later. *Id.*

7. WSFS responded that evening to the Debtors, explaining that the depositions sought were directly relevant to the issues and factual assertions raised in the 105 Extension Motion. WSFS proposed that, if the Debtors wanted to narrow the scope of discovery, the Debtors stipulate that the hearing on August 23, 2016 would be limited to the only issue identified by the Court in the June 15 Order, *i.e.*, whether the guaranty plaintiffs did not participate in good-faith negotiations despite overtures by the Debtors and CEC. Otherwise, WSFS explained that it had no choice but to proceed with the depositions in order to test the allegations made in the Motion. Levinson Decl., at Ex. 5.

8. On August 11, 2016 and August 12, 2016, WSFS and the Debtors engaged in three meet and confer calls, during which they discussed both depositions and the documents requests. WSFS also sent a proposal to the Debtors to resolve the outstanding issues. Levinson Decl., Ex. 6. Based on those discussions, WSFS and the Debtors narrowed the scope of their disputes, but there remains one outstanding issue.

9. With regard to depositions, WSFS has agreed not to depose James Millstein or Steven Winograd (both are unavailable before August 23 and the Debtors have represented that neither will testify at the hearing). WSFS, however, continues to seek the deposition of Ronen Stauber, one of the outside directors of the Debtors, regarding his personal knowledge of negotiations and discussions that have taken place since the June 15, 2016, among other topics. This information is clearly relevant to the issues raised in the 105 Extension Motion. *See* June 15 Order at 4 (noting that “the evidence on the prospects for a successful resolution could have been stronger,” “no witnesses from CEC or from any creditor testified as to any of these deals,” “[t]here was no description of where settlement talks stood and no evidence that further talks were scheduled,” and “[t]he mediation effort appears to have stalled”). As one of the so-called “independent” directors of CEOC, who presumably are dictating the Debtors’ negotiation strategy and positions, Mr. Stauber certainly has or should have personal knowledge of these facts and, as a director, he is somebody whose testimony can be used for any purpose at the hearing under Rule 32(a)(3) of the Federal Rules of Civil Procedure.

10. WSFS proposed that, if the Debtors agreed to exchange the names of witnesses (which they did), it would limit its depositions of the Debtors and its representatives to Mr. Stauber and any named witnesses (in addition to a third party deposition that has been noticed by WSFS for August 17, 2016); that depositions would be limited to three hours (on the record); and that the depositions would be limited in scope to the issues, factual assertions and arguments set forth or raised in the Motion. Levinson Decl., Ex. 6. The Debtors have agreed to that proposal, except that they are not prepared to make Mr. Stauber available for deposition absent a court order compelling his attendance.

ARGUMENT

11. Rule 26(b)(1) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7026 of the Federal Rules of Bankruptcy Procedure, provides that “[u]nless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving as g the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

12. In the 105 Extension Motion, the Debtors claim that “[s]ince the Court entered the first injunction, the Debtors have made substantial progress towards a fully consensual plan with numerous key stakeholders.” 105 Extension Motion, at ¶ 1. The Debtors have expressly offered, as evidence of this progress, various agreements and discussions including, without limitation, the 2L RSA, an agreement in principle with Danner, and ongoing discussions with Trilogy and Relative Value. 105 Extension Motion, at ¶¶ 1-3.

13. The discovery sought by WSFS falls squarely within the issues raised by the Debtors as grounds for extension of the injunction beyond August 29, 2016. Ronen Stauber, the proposed deponent, is one of the two outside directors of CEOC and presumably has been involved in the negotiations and discussions regarding the agreements that have been reached or remain under discussion. In fact, as a director of CEOC, Mr. Stauber is responsible for any decision to enter into any agreements and the reasoning behind such decision, and he is uniquely

qualified to provide insight on the negotiations and “progress” described by the Debtors. To the extent the Court is prepared to take evidence on “progress,” Mr. Stauber will provide testimony that is directly relevant. Moreover, as a director of CEOC, Mr. Stauber’s deposition testimony can be offered by WSFS at the hearing for any purpose, including to rebut any testimony provided by the Debtors’ other witness(es). Fed. R. Civ. P. 32(a)(3), Fed. R. Bankr. P. 7032.

CONCLUSION

14. For the above stated reasons, WSFS requests that the motion to compel be granted.

Dated: August 12, 2016

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**ORDER GRANTING MOTION OF WILMINGTON
SAVINGS FUND SOCIETY FSB TO COMPEL DEPOSITION OF RONEN STAUBER**

Upon the *Motion of Wilmington Savings Fund Society FSB to Compel Deposition of Ronen Stauber* (the "Motion") seeking entry of order compelling the Debtors to make Mr. Ronen Stauber, a director of Caesars Entertainment Operating Company, Inc. ("CEOC"), available for

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

deposition in advance of the hearing on Debtors' *Motion to Extend the Section 105 Injunction Enjoining Defendants From Further Prosecuting Their Guaranty Lawsuits* (ECF No. 284); the Court having reviewed the Motion and considered the parties' respective positions at a hearing on the Motion; and after due deliberation, it is HEREBY ORDERED THAT:²

1. The Motion is granted as set forth herein.
2. The Debtors must make Mr. Ronen Stauber, available for deposition on or before

August 22, 2016.

Dated: August __, 2016
Chicago, Illinois

The Honorable Benjamin A. Goldgar
United States Bankruptcy Judge

² Capitalized terms used, but not otherwise defined, herein have the meanings given to such terms in the Motion.