

Andrea Sheehan
LAW OFFICES OF ROBERT E. LUNA, P.C.
4411 N. Central Expressway
Dallas, Texas 75205
(214) 521-8000
(214) 521-1738 FAX
sheehan@txschoollaw.com

ATTORNEYS FOR LEWISVILLE INDEPENDENT SCHOOL
DISTRICT AND CARROLLTON-FARMERS BRANCH
INDEPENDENT SCHOOL DISTRICT

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In Re: BLOCKBUSTER, INC., et al., Debtors.	§ § § § § §	Chapter 11 CASE NO. 10-14997(BRL) Jointly Administered
---	----------------------------	---

LIMITED OBJECTION OF CARROLLTON-FARMERS BRANCH INDEPENDENT SCHOOL DISTRICT AND LEWISVILLE INDEPENDENT SCHOOL DISTRICT TO INTERIM DIP FINANCING ORDER (Docket No. 95) AND TO ENTRY OF FINAL ORDER REGARDING DEBTOR’S MOTION FOR ENTRY OF AN ORDER, ON AN INTERIM AND FINAL BASIS, (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SUPERPRIORITY FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c), 364(d)(1), AND 364(e), (II) AUTHORIZING DEBTORS’ USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (III) GRANTING LIENS AND SUPERPRIORITY CLAIMS TO DIP LENDERS PURSUANT TO 11 U.S.C. § 364, (IV) PROVIDING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364, AND (V) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 2002, 4001(b), 4001 (c), AND 6004 (Docket No. 16; “DIP FINANCING MOTION”)

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Now come Carrollton-Farmers Branch Independent School District and Lewisville Independent School District (hereinafter “the School Districts”), and file this their Limited Objection to the Interim DIP Financing Order (Docket No. 95) Order and entry of a Final Order

regarding the DIP Financing Motion (Docket No. 16), and would respectfully show the Court in support thereof the following:

1. The School Districts are political subdivisions in the State of Texas.

2. The School Districts hold claims for 2009 and 2010 business personal property taxes, and are secured creditors of Debtor's bankruptcy estate by virtue of their statutory tax liens. The School Districts estimate their claims to be \$32,690.62. Further, on January 1, 2011, statutory tax liens will attach to any taxable property of Debtors within the School Districts' taxing jurisdiction to secure any and all taxes assessed for the 2011 tax year.

3. Pursuant to Texas law, on January 1, of each tax year a lien automatically attaches to Debtors' business personal property located within the School Districts' taxing jurisdiction to secure payment of all taxes, penalties, and interest ultimately imposed for the associated tax year.

Texas Tax Code §32.01 provides in relevant part:

(a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property . . .

(b) A tax lien on inventory, furniture, equipment, or other personal property is a lien in solido and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.

4. Pursuant to TEX. TAX CODE ANN. §32.05(c), the School Districts' secured tax liens, with limited exceptions not relevant in the case, "take[] priority over the claim of any creditor of a person whose property is encumbered by the lien[s] and over the claim of any holder of a lien on property encumbered by the tax lien[s], whether or not the debt or lien existed before the attachment of the tax lien[s]." Therefore, the School Districts have first priority liens on the property.

5. Paragraph 11 of the Interim DIP Financing Order indicates that the DIP Liens will not prime, and shall be junior to, any valid, perfected, enforceable and unavoidable security interest and lien of any entity (other than the Senior Secured Obligations) existing immediately prior to the Commencement Date if and to the extent such security interest and lien was senior to the lien securing the Senior Secured Obligations as of the Commencement Date. The DIP Credit Agreement defines Permitted Encumbrances to include Liens for taxes not yet due and payable or which are being contested.

6. **2009 Tax Liens.** The 2009 taxes are delinquent and the liens for 2009 taxes, to the extent not being contested, may not be included within the definition of Permitted Encumbrances. They are, however, liens that, on the Commencement Date, were valid, perfected, enforceable, unavoidable and, by operation of state law, senior to the liens securing the Senior Secured Obligations.

7. **2010 Tax Liens.** Further, 2010 taxes have either just been billed or are in the process of being billed and, once billed, are due and payable under state law. However, these taxes are not yet delinquent. Therefore, it is unclear if they will be included under the definition of Permitted Encumbrances. They are, however, liens that, on the Commencement Date, were valid, perfected, enforceable, unavoidable and, by operation of state law, senior to the liens securing the Senior Secured Obligations.

8. **2011 Tax Liens.** Paragraph 26(d) of the Interim DIP Financing Order provides that the DIP Liens and the Adequate Protection Liens shall not be subject to or subordinate to any liens arising after the Commencement Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, for any liability of the Debtors. The 2011 tax liens will arise after the Commencement Date.

9. **Objection to Priming Liens.** The School Districts object to the Interim DIP Financing Order and DIP Financing Motion to the extent that the School Districts' statutory tax liens, for either pre- or post-petition taxes would be primed by the DIP liens and/or Adequate Protection Liens granted by the Interim Order. For the reasons set out in Paragraphs 6 through 8 above, the School Districts request clarification that their 2009, 2010 and 2011 tax liens are not primed by the DIP liens or the Adequate Protection Liens and will retain the same priority as such liens are granted under state law. To the extent their liens are to be primed, the School Districts assert that the parties have not demonstrated that the School Districts' liens are adequately protected as required by 11 U.S.C. §364(d)(1)(B). Debtors have the burden of proof on the issue of adequate protection. 11 U.S.C. §364(d)(2).

10. **Sale Proceeds.** The School Districts further object to the Interim Order and DIP Motion to the extent that they provide that proceeds of the sale of collateral subject to the School Districts' tax liens will go to the DIP lender or any other party without providing first for adequate protection of the School Districts' liens in the form of payment of taxes or, in the alternative, segregation of funds sufficient to pay taxes on the Collateral.

11. **Credit Bids.** The School Districts further object to the Interim Order to the extent that it allows the DIP Lender or other secured parties the right to credit bid under any sale application or procedure. The School Districts do not oppose secured parties having the right to credit bid, so long as the School Districts are given an opportunity at the time of any sale to object to a credit bid by these parties that does not provide for retention of the tax liens or payment of the taxes by the credit bidder at the time of sale.

WHEREFORE, PREMISES CONSIDERED, Carrollton-Farmers Branch Independent School District and Lewisville Independent School District hereby request that any Final Order

approving the DIP Financing Motion clarify that any pre-petition or post-petition statutory tax liens of the School Districts will not be primed, provide that proceeds from the sale of collateral will go to payment of taxes prior to payment of any junior liens, including DIP liens and Adequate Protection Liens, and provide or reserve the right of the School Districts to request at the time of any sale that tax liens will be retained in the event of a credit bid if taxes are not paid by the credit bidder at the time of sale. The School Districts further pray for any such other relief to which they may show themselves justly entitled.

Respectfully submitted,

/s/ Andrea Sheehan

Andrea Sheehan

Texas Bar No. 24002935

LAW OFFICES OF ROBERT E. LUNA, P.C.

4411 North Central Expressway

Dallas, Texas 75205

(214) 521-8000 Phone

(214) 521-1738 Fax

sheehan@txschoollaw.com

Attorney for Lewisville Independent School District
and Carrollton-Farmers Branch Independent School
District

/s/ J. Ted Donovan

J. Ted Donovan, Esq.

Goldberg Weprin Finkel Goldstein LLP

1501 Broadway, 22nd Floor

New York, NY 10036

General phones: (212) 221-5700 / (212) 344-2929

Telecopier: (212) 422-6836

tdonovan@finkgold.com

Local Counsel for Carrollton-Farmers Branch
Independent School District and Lewisville
Independent School District

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and correct copy of the attached Limited Objection of Carrollton-Farmers Branch Independent School District and Lewisville Independent School District via facsimile, United States first class mail and/or Federal Express delivery, this 8th day of October, 2010 to the parties on the attached service list.

/s/ Andrea Sheehan
ANDREA SHEEHAN

SERVICE LIST

Honorable Burton R. Lifland
Chambers, Courtroom 623
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Peter Neckles, Esq.
Alexandra Margolis, Esq.
4 Times Square
New York, New York 10036
Fax: (212) 735-2000

Blockbuster, Inc.
Attn: Rod McDonald, Esq.
1201 Elm Street
Dallas, Texas 75270

Emmet, Marvin & Martin, LLP
Attn: Edward P. Zujkowski, Esq.
120 Broadway, 32nd Floor
New York, New York 10271
Fax: (212) 238-3100

Stephen Karotkin
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Fax : (212) 310-8007

Sheppard, Mullin, Richter & Hampton, LLP
Attn: David McCarty, Esq.
Kyle J. Mathews, Esq.
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071
Fax: (213) 620-1398

Martin Sosland
Weil, Gotshal & Manges, LLP
200 Crescent Court
Suite 300
Dallas, TX 75201
Fax : (214) 746-7777

Brian Shoichi Masumoto
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
Fax : (212) 668-2255

Sidley Austin LLP
Attn: James P. Seery, Esq.
Paul S. Caruso, Esq.
787 Seventh Avenue
New York, New York 10019
Fax: (212) 839-5599