

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SPORTS AUTHORITY HOLDINGS, INC.,	)	Case No. 16-10527 (MFW)
<i>et al.</i> , ¹	)	(Jointly Administered)
Debtors.	)	Re: Docket Nos. 20, 106

EMERGENCY MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (I) TO CONTINUE HEARING DATE WITH RESPECT TO THE DEBTORS’ DIP FINANCING MOTION AND BID PROCEDURES MOTION AND (II) FOR A PROTECTIVE ORDER AND ORDER QUASHING NOTICES OF DEPOSITION

The Official Committee of Unsecured Creditors (the “Committee”) of Sports Authority Holdings, Inc., *et al.* (the “Debtors”) hereby files this Emergency Motion (the “Motion”) (i) to continue the hearing with respect to the *Debtors’ Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, and 364; (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507; (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Secured Parties and Modifying the Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C) and Local Rule 4001-2 [Docket No. 20] (the “DIP Motion”) and the Debtors’ Motion, Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, Fed. R. Bankr. P. 2002, 6003, 6004, 6006, 9007, 9008 and 9014 and Del. Bankr. L.R. 2002-1, 6004-1 and 9006-1, for Entry of (A) an Order (I) Approving Bid Procedures in Connection*

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.



with the Sale of Substantially All of the Debtors' Assets, (II) Scheduling an Auction for and Hearing to Approve Sale of Assets, (III) Approving Notice of Respective Date, Time and Place for Auction and for Hearing on Approval of Sale, (IV) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving Form and Manner of Notice Thereof, and (VI) Granting Related Relief; and (B) an Order Authorizing and Approving (I) the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests, (II) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Related Relief [Docket No. 106] (the "Bid Procedures Motion") and (ii) for an order, pursuant to sections 105(a) the Bankruptcy Code, Rule 7026(c) of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules 7026-1 and 7030-1(c), protecting the Committee and quashing the notices of deposition served on the Committee relating to the DIP Motion.

The hearing on the DIP Motion and Bid Procedures Motion should be adjourned for approximately one week to allow the Committee sufficient time to evaluate and respond to the motions, which seek relief that will fundamentally affect the future direction of these cases, the prospects for the Debtors' reorganization or realization of a going concern sale, and the recoveries by creditor constituencies in the cases. The Debtors' depositions of the Committee's witnesses should be quashed and otherwise rescheduled until the Committee has had an adequate opportunity to investigate the facts underlying the DIP Motion, including, without limitation, receiving and reviewing the documents it has requested from the Debtors.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court

may enter a final order consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for relief are sections 105, 363, 364, and 507 of the Bankruptcy Code, Rule 7026(c) of the Federal Rules of Bankruptcy Procedure, and Local Rules 7026-1, 7030-1(c) and 9006-1.

FACTS

Case Background

1. On March 2, 2016 (the "Petition Date"), the Debtors commenced their cases under chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On the Petition Date, the Debtors filed both the DIP Motion and Bid Procedures Motion. Among other things, the DIP Motion proposes a roll-up of almost \$500 million of prepetition debt and is tied to strict milestones dictating an expeditious sale process as described in the Bid Procedures Motion. The DIP Motion and Bid Procedures Motion are scheduled for hearing on March 29, 2016 at 1:00 p.m.

3. On March 10, 2016, the United States Trustee for Region 3 appointed the Committee to represent the interests of all unsecured creditors of the Debtors pursuant to section 1102 of the Bankruptcy Code. Counsel for the Committee filed a notice of appearance the following day, on March 11, 2016.

4. By consent of the parties, the Committee's deadline to object to the DIP Motion has been extended to March 24, 2016 at 4:00 p.m.

5. On March 16, 2016, the Committee served document requests on the Debtors and their financial advisor, and on the proposed DIP lenders. The Committee has requested production of documents from the Debtors no later than Wednesday, March 23, 2016.²

6. In an effort to expedite discovery, the Committee has emailed the Debtors a short list of emails to be searched. In addition, the Committee emailed a list of 5 custodians and approximately 10 search terms to search emails to Debtors' counsel to expedite the production of electronically stored information.

7. On March 16, 2016, the Committee also requested that the Debtors make their financial advisor available for deposition on Friday, March 25, 2016. The Committee recognizes that Good Friday is a holiday. The parties initially discussed conducting the deposition on Wednesday, but upon learning that the earliest that the Debtors can produce documents will be Tuesday night, the Committee requested that the deposition be scheduled on Friday to give the Committee time to review documents for the deposition.

8. On March 17, 2016, the Debtors advised that their financial advisor is unavailable on Good Friday and will only be produced on Wednesday, March 23, 2016 (prior to the Debtors' production of documents or any review thereof by the Committee). By further emails among counsel, counsel for the Debtors refused to produce the Debtors' financial

² The Debtors have established an electronic data room available to counsel for the Committee on a confidential basis. However, the data room does not contain any emails/communications regarding critical matters related to the DIP Motion, including the Debtors' communications with their financial advisor or communications with lenders.

advisor on a date after the Debtors' documents have been produced, and refused to continue the DIP Motion hearing.

9. On March 17, 2016, counsel for the Debtors inquired regarding scheduling depositions of Committee witnesses regarding the DIP Motion. Counsel for the Committee advised that, absent its receipt and review of documents from the Debtors, the Committee would not be in a position to respond regarding who its witnesses might be or upon what topics they would testify. Debtors' counsel nevertheless requested production of Committee witnesses on Monday, March 28, 2016. When Committee counsel repeated its objection to depositions in advance of its review of any documents from the Debtors, Debtors' counsel responded that if the Committee had no witnesses to identify, there would be no need to produce them on March 28th.

10. On Monday, March 21, 2016, the Debtors served two notices of deposition (collectively, the "Deposition Notices") on the Committee entitled *Notice of Deposition of Representative of Official Committee of Unsecured Creditors, Pursuant to Rule 9014 of the Federal Rules of Bankruptcy Procedure and Rules 30(b)(6) and 45 of the Federal Rules of Civil Procedure*. The Deposition Notices seek testimony on March 28, 2016 at 9:30 a.m. of (a) any representative that the Committee intends to call at the hearing on the DIP Motion, and (b) the person most knowledgeable about any and all statements made by the Committee in its opposition to the DIP Motion.

11. The Committee was appointed less than two weeks ago, has not yet filed an opposition to the DIP Motion, and has not yet even received, let alone reviewed, documents from the Debtors in response to discovery regarding the DIP Motion or deposed any of the Debtors' witnesses in connection therewith. Thus, not surprisingly, the Committee is in no

position to identify witnesses who may, or may not, testify on behalf of the Committee regarding the DIP Motion yet.

12. The DIP Motion involves significant issues that will impact virtually all aspects of these cases based on, among other things, milestones dictating what must be completed and when; the budget prescribing how much money is available for whom; and the various liens and protections determining what assets are available for whom. Similarly, the Bid Procedures Motion seeks approval of a fast track sale process to comply with the milestones in the DIP facility.

13. Counsel for the Committee has participated in the cases for approximately eight business days and is furiously working on numerous fronts. The cases and proposed financing are complex. The Committee is diligently seeking discovery regarding the DIP Motion, including communications regarding the proposed financing, how it was negotiated, and why the Debtors believe that it is fair and appropriate despite numerous red flags. Given the foregoing, the Committee respectfully requests that an orderly discovery process should be implemented to ensure that all parties can adequately present their case in support or denial of the DIP Motion, as applicable.

14. The Deposition Notices are premature. The simple solution is a short continuance of the hearing on the DIP Motion to permit orderly discovery. Once the Committee has reviewed documents and heard the testimony of the Debtors' witnesses, the Committee may limit its objection to the DIP Motion. Unfortunately, the Debtors have rejected this solution in favor of untenable scheduling. In light of prior discussions among counsel regarding discovery timing, the Deposition Notices appear to have been served as a tactical maneuver to preclude the Committee from offering any witness testimony at all. The

Court should reject this gamesmanship and issue a protective order that prohibits any deposition of the Committee until the Debtors have produced documents and witnesses as requested by the Committee.

RELIEF REQUESTED

B. REQUEST FOR A CONTINUANCE OF THE HEARING ON THE DIP MOTION AND BID PROCEDURES MOTION

15. The Committee was formed less eight business days ago. Since then, the Committee has been working as diligently as possible in a very abbreviated timeframe to evaluate the relief requested not only in the DIP Motion, but also, as a result of the DIP-dictated, sale-related milestones contained therein, the Bid Procedures Motion.

16. The Committee has requested that the Debtors and DIP lenders agree to a short continuance of the final hearing on the DIP Motion and the Bid Procedures Motion. The Debtors respectfully declined out of concern that adjourning the hearing would cause them to miss the sale milestone dates thereby triggering a default under the DIP Loan. The prejudice the Committee will suffer as a result of conducting the Final DIP Hearing on March 29, 2016 greatly outweighs any prejudice to either the Debtors or the DIP lenders of a short continuance for the following reasons.

17. Most importantly, the Court approved the interim DIP facility, thereby providing the Debtors with ample liquidity through March 29, 2016 and beyond. Based on the foregoing, conducting the final hearing on the DIP Motion only approximately a week later than planned will have no effect on the Debtors' operations. The DIP lenders would no doubt prefer to keep the milestones in place and race to a final hearing inasmuch as they expect the final order to provide approvals of the myriad controversial and onerous DIP financing

provisions that will benefit only them, including a full rollup of the prepetition ABL and FILO loan facilities, multi-million dollar commitment fees even though they are extending no new credit, as well liens on a multitude of valuable unencumbered assets, and Bankruptcy Code sections 506(c) and 552 waivers.

18. Given the complexity of the DIP Motion, the accelerated sale processes contemplated by the milestones and the Bid Procedures Motion, and the various other relief requested by the Debtors since the Petition Date, the Committee desperately needs an additional week to fulfill its fiduciary duties to the Committee by adequately evaluating the DIP Motion and Bid Procedures Motion, which will have far-reaching effects on creditors beyond simply providing the Debtors with financing. The DIP Lenders have no entitlement, and should not be allowed by the Court, to dictate the schedule of these cases to all the other constituents' detriment.

C. MOTION TO QUASH SUBPOENAS

19. Rule 26(c) of the Federal Rules of Bankruptcy Procedure governs protective orders and provides in part:

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: . . .

* * * *

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . .

Fed. R. Bankr. Proc. 7026(c).

20. Pursuant to Local Bankruptcy Rule 7030-1(c), if a motion to quash a deposition is filed at least one business day before the scheduled deposition, neither the objecting party, witness, nor any attorney is required to appear for deposition until the motion is resolved.

21. As set forth in the Kornfeld Declaration, the Committee certifies that this Motion is made in good faith and the parties have conferred regarding the timing of discovery and, in particular, the Committee's need for discovery from the Debtors before the Committee can be expected to identify and produce witnesses to testify regarding the Committee's, as yet unfiled, opposition to the DIP Motion.

22. The Committee has requested that the Debtors produce documents by March 23, 2016. The Committee cannot be expected to produce knowledgeable witnesses regarding the DIP Motion before the Committee has even received or reviewed the Debtors' documents or deposed the Debtors witnesses. The Committee should be allowed to conduct appropriate discovery of the Debtors regarding the DIP Motion before the Committee is expected to identify and present evidence in support of its opposition.

23. The Debtors have not offered to produce documents any earlier (which, realistically, would be difficult), but they are demanding that the Committee (a) depose their financial advisor before documents are produced, and (b) confirm the depositions of Committee representatives on factual matters that have not been identified because they are among documents that have not been produced. The Debtors are clearly "jamming" the Committee on discovery issues in an effort to limit the Committee's investigation and preclude testimony by the Committee.

24. The appropriate sequence of discovery is -- first, the Committee requests and reviews documents regarding the DIP Motion from the Debtors; and, second, the Committee deposes the Debtors' witnesses. Only after such time will the Committee be in a position to oppose the DIP Motion and the Debtors can, if necessary, depose the Committee's witness.

CONCLUSION

WHEREFORE, the Committee respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested therein, and such other and further relief as this Court deems appropriate.

Dated: March 22, 2016

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Colin R. Robinson

Robert J. Feinstein (NY Bar No. 1767805)
Jeffrey N. Pomerantz (CA Bar No. 143717)
Bradford J. Sandler (DE Bar No. 4142)
Colin R. Robinson (DE Bar No. 5524)
919 North Market Street, 17th Floor
Wilmington, DE 19801
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: rfeinstein@pszjlaw.com
jpomerantz@pszjlaw.com
bsandler@pszjlaw.com
crobinson@pszjlaw.com

*[Proposed] Counsel to the Official Committee of
Unsecured Creditors*

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
In re:	)	Chapter 11
)	
SPORTS AUTHORITY HOLDINGS, INC.,	)	Case No. 16-10527 (MFW)
<i>et al.</i> , ¹	)	(Jointly Administered)
)	
Debtors.)	
	)	Re: Docket No. _____

ORDER CONTINUING HEARING AND QUASHING DEPOSITION NOTICES

Upon consideration of the *Emergency Motion of the Official Committee of Unsecured Creditors (I) To Contue Hearing Date With Respect to the Debtors’ DIP Financing Motion and Bid Procedures Motion and (II) For a Protective Order and Order Quashing Deposition Notices* (the “Motion”)² filed by the Official Committee of Unsecured Creditors (the “Committee”) of Sports Authority Holdings, Inc., *et al.*,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is granted to the extent set forth herein.
2. Pursuant to Rule 7026(c) of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 7030-1, the Deposition Notices are quashed.
3. The hearing on the DIP Motion and Bid Procedures Motion is continued from March 29, 2016 at 1:00 p.m. prevailing Eastern time to _____, 2016 at _:___
__m.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

² Capitalized terms not otherwise defined herein shall have the meaning given them in the Motion.

4. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of this Order in all respects and further to hear and determine all matters arising from the construction and implementation of this Order.

Dated: _____, 2016

Honorable Mary F. Walrath
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
)	
SPORTS AUTHORITY HOLDINGS, INC., <i>et al.</i> , ¹	)	Case No. 16-10527 (MFW)
	)	(Jointly Administered)
)	
Debtors.)	
)	

DECLARATION OF ALAN J. KORNFELD

I, Alan J. Kornfeld, hereby declare as follows:

1. I am a partner in the firm of Pachulski Stang Ziehl & Jones LLP, proposed counsel to the Official Committee of Unsecured Creditors (the “Committee”) of Sports Authority Holdings, Inc., *et al.* (the “Debtors”).

2. I submit this declaration in support of the accompanying *Emergency Motion of Official Committee of Unsecured Creditors (I) to Continue Hearing Date with Respect to the Debtors’ DIP Financing Motion and Bid Procedures Motion and (II) for a Protective Order and Order Quashing Notices of Deposition* (the “Motion”).² I have personal knowledge of the facts set forth in this Declaration and if I were called upon to testify, I could and would testify competently to the facts set forth herein.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

² All capitalized terms not otherwise defined have the meanings set forth in the Motion.

3. The DIP Motion is scheduled for hearing on March 29, 2016 at 1:00 p.m. My firm has been employed in the cases since March 10, 2016. By consent of the parties, the Committee's deadline to object to the DIP Motion has been extended to March 24, 2016.

4. On Wednesday, March 16, 2016, my firm served document requests on the Debtors and their financial advisor (the "Committee's Document Requests"). The Committee requested production of responsive documents by no later than Wednesday, March 23, 2016. As of 5:00 p.m. EDT on Tuesday, March 22, 2017, the Debtors had not produced documents responsive to the Committee's Document Requests.

5. On Thursday, March 17, 2016, by email, I asked Debtors' counsel for a limited set of documents to be produced no later than 5 p.m. on Tuesday, March 22, 2016. As of 5:00 p.m. EDT on Tuesday, March 22, 2016, the Debtors had not produced documents responsive to that limited request.

6. In a series of emails last week and in a phone conversation with Mitchell Karlan, counsel to the Debtors, on March 22, 2016, I attempted to schedule the deposition of Neil Augustine, who will be the Debtors' only witness at the DIP Hearing. Mr. Karlan advised me that Mr. Augustine was available for deposition on Wednesday, March 23, 2016. I advised Mr. Karlan that Wednesday, March 23rd was not acceptable because the Committee would not have the opportunity to review the Debtors' documents (which, as discussed above, are set to be produced on the evenings of March 22 and March 23, 2016) prior to Mr. Augustine's deposition.

7. I asked Mr. Karlan in emails and during the March 22, 2016 phone conversation whether Mr. Augustine was available on any other day prior to the DIP Motion hearing on March 29, 2016. Mr. Karlan responded that he was not.

8. During the March 22, 2016 telephone conversation, I explained to Mr. Karlan that the Committee's ability to litigate the DIP Motion would be severely prejudiced if Mr. Augustine was not made available for deposition.

9. On March 17, 2016, Mr. Karlan inquired regarding scheduling depositions of Committee witnesses with respect to the DIP Motion. I advised Mr. Karlan that, absent the Committee's receipt and review of documents from the Debtors, and the deposition of the Debtors' witness, the Committee would not be in a position to respond regarding: (a) who its witnesses might be; or (b) on what topics those witnesses would testify. Mr. Karlan nevertheless requested depositions of Committee witnesses on Monday, March 28, 2016. When I repeated our objection to depositions in advance of our review of any documents from the Debtors, Mr. Karlan responded that if the Committee had no witnesses to identify, there would be no need to produce them for deposition on March 28th.

10. On Monday, March 21, 2016, the Debtors served the Deposition Notices, which seek testimony on March 28, 2016 at 9:30 a.m. of (a) any representative that the Committee intends to call at the hearing on the DIP Motion, and (b) the person most knowledgeable about any and all statements made by the Committee in its opposition to the DIP Motion.

11. Without documents from the Debtors and without the deposition of the Debtors' witness, the Committee is not in a position to designate a witness or witnesses to testify at the hearing on the DIP Motion. I explained this to Mr. Karlan in the March 22, 2016 telephone conversation and in emails.

12. In the March 22, 2016, telephone conversation, I asked Mr. Karlan to agree to a short continuance of the DIP Motion hearing. He responded that he could not.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 22, 2016

/s/ Alan Kornfeld

Alan Kornfeld