

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	§	Chapter 11
	§	
EBHI HOLDINGS, INC. <u>et al.</u> ,	§	Case No. 09-12099 (MFW)
	§	
<i>Debtor s.</i>	§	Jointly Administered
	§	

**OBJECTION OF KATY INDEPENDENT SCHOOL DISTRICT TO DEBTORS’ FIRST
AMENDED JOINT PLAN OF LIQUIDATION**

To the Honorable United States Bankruptcy Judge:

NOW COMES Katy Independent School District (“Katy ISD”), secured creditor in the above-numbered and styled bankruptcy case, and files this objection to Debtors’ First Amended Joint Plan of Liquidation (the “Plan”). In support of its Objection, Katy ISD would show the Court as follows:

I.

Katy ISD is a political subdivision of the State of Texas.

II.

Katy ISD holds a claim for accrued but unpaid 2008 *ad valorem* taxes in the amount of \$7,564.33. These property taxes were duly assessed in accordance with the laws of the State and constitute valid, liquidated secured claims against the Debtors’ property entitled to priority over other secured claims under 11 U.S.C.A. § 506.

The laws of the State of Texas, Property Tax Code, §32.05(b), give the tax liens securing the property taxes superiority over the lien of any other claim or lien against this property. Katy ISD’s claim is for *ad valorem* taxes assessed against the Debtors on January 1 of each year pursuant to Texas Property Tax Code §§ 32.01 and 32.07. These taxes are secured by first priority liens on the personal property of the Debtors pursuant to Tex. Prop. Tax Code §§ 32.01 and 32.05. Katy ISD’s lien takes priority over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. See Texas Property Tax Code § 32.05 (b); See also Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. 1995) (bank’s foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing



unit's statutory tax lien). The tax lien arises on January 1 of each tax year and "floats" to after acquired property. See *City of Dallas v. Cornerstone Bank*, 879 S.W. 2d 264 (Tex. App. - Dallas 1994). The tax lien is a lien *in solido* and is a lien on all personal property of the Debtor. See *In re Universal Seismic*, 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. See *In re: Winns*, 177 B.R. 253 (Bankr. W.D. Tex. 1995). These tax claims are entitled to priority as secured claims, senior to other secured claims, according to the Bankruptcy Code, 11 U.S.C. §506. *Stanford v. Butler*, 826 F.2d 353 (5th Cir. 1987).

III.

It appears from the proposed plan that the Debtors intend to treat Katy ISD's secured claim as a Class 2 claim. Katy ISD objects to the Plan on the basis that the plan fails to provide post-petition interest on its secured claim as required by 11 U.S.C. §§ 506(b) and 1129(b)(2)(A)(i)(II). Katy ISD is entitled to interest at the statutory rate of 12% per annum beginning from petition date and continuing until such time as the claim is paid in full. 11 U.S.C. § 511.

WHEREFORE, PREMISES CONSIDERED, Katy ISD respectfully prays that this Court sustain its objection to Debtors' First Amended Joint Plan of Liquidation, that it accordingly deny confirmation of the Plan, and for such other and further relief, at law or in equity, as is just.

Dated: March 4, 2010

Respectfully submitted,

**LINEBARGER GOGGAN
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/s/ John P. Dillman

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the *Objection of Katy Independent School District to Confirmation of Debtors’ First Amended Joint Plan of Liquidation* was served upon the following entities by either electronic court filing or by placing same, in the United States Mail, first class, postage fully prepaid, and by electronic court filing to all parties listed in the electronic court filing system on March 4, 2010:

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/s/ Tara L. Grundemeier

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