

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**
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In re:	Chapter 11
BOARDWALK AND BASEBALL, INC.,	Case No. 8:14-bk-317-MGW
COLERIDGE CORPORATION,	Case No. 8:14-bk-318-MGW
BOARDWALK LAND DEVELOPMENT, INC.,	Case No. 8:14-bk-319-MGW
Debtors.	<i>Jointly Administered Under Case No. 8:14-bk-317-MGW</i>

**MOTION TO ENFORCE TERMS OF THE ORDER CONFIRMING JOINT PLAN
OF REORGANIZATION UNDER CHAPTER 11 OF TITLE 11, UNITED STATES
CODE, FILED BY THE DEBTORS, CITY CENTER COMMUNITY
DEVELOPMENT DISTRICT, CITY CENTER BONDS, LLC AND
U.S. BANK NATIONAL ASSOCIATION, SOLELY AS INDENTURE TRUSTEE**

The Pension Benefit Guaranty Corporation (“**PBGC**”), an agency of the United States and a creditor in the above-captioned case, through undersigned counsel, hereby files this motion (the “**Motion**”) requesting the entry of an order that (a) enforces the terms of the Order Confirming Joint Plan of Reorganization Under Chapter 11 of Title 11, United State Code, Filed by the Debtors, City Center Community Development District, City Center Bonds, LLC and U.S. Bank National Association, Solely and Indenture Trustee (the “**Confirmation Order**”) (ECF No. 148), and (b) instructs Debtors Boardwalk & Baseball, Inc. (“**B&B**”) and Coleridge Corporation (“**Coleridge**”) to consult with PBGC regarding the disposition of Posner Park.¹ In support of the Motion, PBGC respectfully represents as follows:

¹ Capitalized terms not otherwise defined in this motion shall have the meaning proscribed in the Joint Plan of Reorganization Under Chapter 11 of Title 11, United State Code, Filed by the Debtors, City Center Community Development District, City Center Bonds, LLC and U.S. Bank National Association, Solely and Indenture Trustee (the “**Joint Plan**”) (ECF No. 111).

INTRODUCTION

1. This bankruptcy case concerns the disposition of two properties: (i) undeveloped property already sold pursuant to an order of this Court (the “**Undeveloped Property**”), and (ii) certain developed property, Posner Park, held by a joint venture that is partially owned by B&B and Coleridge. Pursuant to the Confirmation Order, the Undeveloped Property was sold and the resulting proceeds have been distributed pursuant to the Joint Plan. B&B and Coleridge’s interests in Posner Park have not yet been liquidated and is the focus of this Motion.

2. The Confirmation Order instructs B&B and Coleridge to “consult with PBGC (which shall have consultation rights but not veto rights) regarding the disposition of Posner Park or their equity interest in Posner Park.”² In direct conflict with this Court’s order, B&B and Coleridge have not provided consultation rights to PBGC. Despite countless requests made both in writing and orally over the past five months, B&B and Coleridge have refused to provide timely information concerning the substance of sale efforts, and provided no rationale for its refusal to do so.

3. Unable to consensually obtain consultation rights, PBGC requests that this Court enter an Order enforcing the terms of the Joint Plan and Confirmation Order that provide PBGC with consultation rights concerning the disposition of Posner Park and/or B&B’s and Coleridge’s equity interest in Posner Park.

JURISDICTION AND VENUE

4. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

² See Confirmation Order p. 4.

BACKGROUND

5. PBGC is the wholly owned United States government corporation and agency of the United States created under Title IV of ERISA to administer the federal pension insurance programs and enforce compliance with the provisions of Title IV. PBGC guarantees the payment of certain pension benefits upon termination of a pension plan covered by Title IV.

6. B&B and Coleridge are each wholly owned by Boardwalk Land Development, Inc., which in turn is wholly owned by the Estate of Victor Posner (the “**Posner Estate**”). The Posner Estate is the contributing sponsor for the APL/NVF Consolidated Pension Plan (the “**Pension Plan**”), a defined benefit pension plan covered by Title IV of the Employment Retirement Income Security Act of 1974, as amended (“**ERISA**”).³ Because of the Posner Estate’s direct and indirect ownership interests in B&B, Coleridge, and Boardwalk Land Development, Inc. (collectively, the “**Debtors**”), the Debtors are part of the Pension Plan’s controlled group.⁴

7. The Posner Estate and all members of the Pension Plan’s controlled group, including the Debtors, are obligated to pay the contributions necessary to satisfy the minimum funding standards under sections 412 and 430 of the Internal Revenue Code and section 302 of ERISA.⁵ Such contributions were missed and a statutory lien arose. Prior to the Petition Date, PBGC filed a Notice of Federal Lien against all personal property of the Debtors on behalf of the Pension Plan, thereby perfecting the Pension Plan’s statutory lien against the Debtors’ personal

³ 29 U.S.C. § 1310 et seq.

⁴ A group of trades or business under common control, referred to as a “controlled group,” includes, for example, a parent and its 80% owned subsidiaries. Another example includes brother-sister groups of trades or business under common control. See 29 U.S.C. § 1301(14)(A), (B); 26 U.S.C. § 414(b), (c); 26 C.F.R. §§ 1.414(b)-1, 1.414(c)-1, 1.414(c)-2.

⁵ See 26 U.S.C. § 412(c)(11), 29 U.S.C. § 1082(c)(11).

property (the “Lien”).

8. The Lien was perfected against, *inter alia*, B&B’s and Coleridge’s equity interest in the joint venture owning Posner Park.

9. On January 13, 2014, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.⁶ The bankruptcy focused on two primary assets: the Undeveloped Property and the equity interest in Posner Park.⁷

10. Within the first several months of the bankruptcy case, the Debtors and the Bondholder Parties agreed to a sale process for the Undeveloped Property that deprived PBGC, the largest other creditor, a voice in the process.⁸ PBGC negotiated with the Debtors and the Bondholder Parties to obtain a more substantial role. The negotiated resolution is reflected in the Court’s May 9, 2014 bidding procedures order that provided PBGC with consultation rights in the sale process of the Undeveloped Property, and instructed the Debtors to, *inter alia*, consult with PBGC on the marketing process and when determining the Successful Bidder.⁹

11. In compliance with the bidding procedures order, over the next four months Debtors arranged regularly scheduled calls between PBGC, the Debtors, and the broker, Colliers International South Florida (“**Colliers**”). During such calls, Colliers provided to PBGC timely information concerning marketing efforts, parties of interest, data room activities, and anticipated bids. The regularly held calls and frank exchange of information enabled PBGC, the largest unsecured creditor, to be involved in the sale process. Pursuant to the Court-established sale

⁶ See ECF No. 1.

⁷ Debtors’ Joint Chapter 11 Case Management Summary, ECF No. 21 (January 16, 2014).

⁸ See Joint Motion for Authority to (I) Establish Sale Procedures, (II) Set a Hearing Date on Sale, (III) Approve Form of Notice and Shortened Notice in Connection with Consensual Plan of Reorganization and (IV) Approve and Codify Settlement Terms (the “**Sale Motion**”) (ECF No. 79).

⁹ See Order Granting Joint Motion for Authority to (I) Establish Sale Procedures, (II) Set a Hearing Date on Sale, (III) Approve Form of Notice and Shortened Notice in Connection with Consensual Plan of Reorganization and (IV) Approve and Codify Settlement Terms (“**Bidding Procedures Order**”) (ECF No. 102), p. 10, 13.

process, the Undeveloped Property was sold on September 4, 2014 and proceeds were distributed pursuant to the Joint Plan.

12. B&B and Coleridge also needed to dispose of their equity interests in the joint venture owning Posner Park. On May 13, 2014, the Debtors and the Bondholder Parties filed the Joint Plan and related Disclosure Statement in which they addressed their interest in Posner Park.¹⁰ Despite PBGC's secured claim against Posner Park, the Joint Plan did not provide PBGC with involvement in its disposition.¹¹

13. To protect its secured interest, PBGC negotiated with the Debtors to be provided an appropriate voice in the sale process. PBGC and the Debtors worked together and agreed to revise the Joint Plan to provide PBGC with consultation rights. The Confirmation Order requires that the Joint Plan be amended to require that B&B and Coleridge "consult with PBGC (which shall have consultation rights but not veto rights) regarding the disposition of Posner Park or their equity interest in Posner Park."¹²

14. For the five months following plan confirmation, PBGC requested real-time information concerning sale efforts of Posner Park or the disposition of B&B's and Coleridge's equity interest in Posner Park. Such information was never provided. Having exhausted all consensual efforts, PBGC is forced to bring this motion.

ARGUMENT

15. The Lien, described above, provides PBGC, on behalf of the Pension Plan, a secured interest in the equity shares of the joint venture owning Posner Park. As the primary secured creditor, PBGC is entitled to a voice in the disposition of such equity interests.

¹⁰ See Joint Plan; Disclosure Statement (ECF No. 112).

¹¹ See Joint Plan, § 5.5.

¹² See Confirmation Order, p. 4.

16. It is commonly understood that “[c]reditor and [c]ourt oversight of the debtors’ action outside the ordinary course of business, including asset marketing and sales, is not only appropriate, but it is required by law.”¹³ Although the specifics of consultation rights vary, in *In re: Energy Future Holdings Corp.*, Judge Sontechi recently recognized that creditors “must be substantive[sic] involved on a real-time basis, [and] have the ability to speak directly with potential bidders...”¹⁴

17. Shortly after the Confirmation Order was entered, PBGC began to request information concerning efforts to sell Posner Park and/or efforts of B&B and Coleridge to dispose of their equity interest in the joint venture.

18. Initially, counsel for the Debtors, Mr. Edward Peterson of Stichter, Riedel, Blain & Prosser, instructed PBGC to work directly with Mr. Andrew Clubok of Kirkland & Ellis, counsel for the Posner Estate, to obtain consultation rights. PBGC had been working closely with Mr. Clubok concerning the Posner Estate’s pension-related liability. From September through December, counsel for PBGC would speak or email with Mr. Clubok multiple times a week. During this period, PBGC would regularly request, both in writing and orally, that PBGC be provided with consultation rights concerning the sale of Posner Park and/or disposition of B&B’s and Coleridge’s equity interests in Posner Park. Creatively, Mr. Clubok never explicitly declined this request. Rather, he would ask that we (i) reframe our request, (ii) specify the topics that we would like to have covered during a call concerning sale efforts, (iii) redirect our request to a new party, such as the other joint venture partner, Trammel Crow, and (iv) many other variations.

¹³ See Transcript Regarding Hearing Held 11/3/14 RE: Ruling on Bidding Procedures, p. 21, *In re: Energy Future Holdings Corp.*, et. al, (Bankr. D. Del. Nov. 3, 2014), Case No. 14-10979(CSS) (Dkt. No. 2699) (“EHF Hearing Transcript”). A copy of the Transcript is attached hereto as Exhibit 1.

¹⁴ Id. at 21-22.

PBGC complied with each request, yet timely information was never provided concerning sale efforts, and no call was ever scheduled.

19. Unable to obtain consultation rights through Mr. Clubok, PBGC requested those rights from Mr. Peterson, both in writing and orally, periodically throughout the past five months. Despite Mr. Peterson's efforts, PBGC was never provided any information concerning sale efforts relating to Posner Park or B&B's and Coleridge's equity interest in Posner Park.¹⁵ As recently as late-January, PBGC explained to Mr. Peterson that PBGC had yet to receive timely information concerning sale efforts.

20. In addition, in late January, PBGC contacted newly hired counsel for the Debtors - John Lukacs of Hinshaw & Culberston. Counsel for PBGC spoke with Mr. Lukacs for approximately thirty minutes concerning the open issue. Mr. Lukacs agreed to provide a prompt reply, but then disengaged entirely. He failed to respond to PBCG's three follow up emails and four follow up voicemails.

21. During the past five months, PBGC did learn a few details concerning a potential sale of the Posner Park retail property in the course of global settlement talks with the Posner Estate, but PBGC never learned this information on a real-time basis. For example, PBGC did not learn that a letter of intent had been entered into until weeks after it was signed. Thereafter, PBGC did not learn that the letter of intent was canceled until weeks after the cancellation. Ultimately, PBGC never received any information concerning marketing efforts, bid deadlines, potential bidders, data room access, expected timelines, why the letter of intent fell through, or details concerning the broker's employment.

¹⁵ On February 10, 2015, Mr. Peterson filed a Motion for Authority for Debtors' Counsel to Withdraw as Counsel of Record and for Chief Restructuring Officer to Resign and Be Discharged of Further Duties (ECF No. 213).

22. Despite the unambiguous language contained in the Confirmation Order, B&B and Coleridge have refused to provide PBGC any consultation rights concerning their effort to dispose of their interest in Posner Park.

WHEREFORE, PBGC respectfully requests the entry of an order:

- (a) enforcing the terms of the Confirmation Order;
- (b) requiring B&B and Coleridge to consult with PBGC regarding the disposition of Posner Park, and
- (c) requiring B&B and Coleridge to provide PBGC with detailed information on potential sales on a real-time basis, and provide PBGC with direct access to potential bidders; and
- (d) any other relief the court finds appropriate.

DATED: February 12, 2015
Washington, D.C.

Respectfully submitted,

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