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By ECF and Hand Delivery

The Honorable Shira A. Scheindlin
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

MeehanCombs Global Credit Opportunities Master Fund, LP, et al. v. *Caesars Entertainment Corp. and Caesars Entertainment Operating Co., Inc.*, No. 14 Civ. 7091 (SAS); *Danner* v. *Caesars Entertainment Corp. and Caesars Entertainment Operating Co., Inc.*, No. 14 Civ. 7973 (SAS)

Dear Judge Scheindlin:

We represent defendants Caesars Entertainment Corp. ("CEC") and Caesars Entertainment Operating Co., Inc. ("CEOC"), and we write in response to plaintiffs' January 5, 2015 letter to the Court concerning the recent decision in *Marblegate Asset Mgmt.* v. *Educ. Mgmt. Corp.*, No. 14 Civ. 8584 (KPF), 2014 WL 7399041 (S.D.N.Y. Dec. 30, 2014). Plaintiffs assert that *Marblegate* "supports Plaintiffs' claim that Defendants have violated Plaintiffs' absolute and unconditional statutory right to receive payment of principal and interest on their notes" under Section 316(b) of the Trust Indenture Act of 1939 (the "TIA"). (Pls. Ltr. at 1.) In fact, the court in *Marblegate* expressly rejected the view that "Section 316(b), or the [TIA] in general, requires that bondholders be afforded [an] 'absolute and unconditional' right[] to payment," *see id.* at *16, and made clear that the right to payment is not "impaired" whenever an issuer takes action that allegedly increases the risk of default, *see id.* *16-19. *Marblegate* further supports defendants' pending motion to dismiss plaintiffs' claims under Section 316(b).

The Honorable Shira A. Scheindlin

In *Marblegate*, holders of certain unsecured notes sought to preliminarily enjoin a proposed restructuring of the issuer's debt that would force the creditors to either participate in an exchange offer or be subject to a sale transaction pursuant to which, among other things, (i) "substantially all" of the issuer's assets would be transferred to an affiliated company, and (ii) a guarantee by the issuer's parent of the issuer's secured and unsecured notes would be released. 2014 WL 7399041 at *7. The issuer acknowledged that if any creditors declined to participate in the exchange offer and the alternative sale transaction were to proceed, the transferred assets "will not be available to satisfy the claims of such Holders," and as a result, "such Holders will not receive payment on account of their Notes." *Id.* The plaintiffs declined to participate in the exchange offer, and sued to enjoin the restructuring on the ground that it violated Section 316(b).

The *Marblegate* court denied the plaintiffs' motion to enjoin the restructuring on the ground that they had not demonstrated irreparable injury and that the balance of equities and the public interest weighed against an injunction, but concluded in dictum that plaintiffs had demonstrated a likelihood of success on the merits. *Id*. at *10-15. In reaching that determination, the Court concluded that the fundamental purpose of Section 316(b) was "to force bond restructurings into bankruptcy where unanimous consent could not be obtained." *Id.* at *18. Thus, the court reasoned:

> Practical or formal modifications of indentures that do not explicitly alter a core term "impair[] or affect[]" a bondholder's right to receive payment in violation of the [TIA] only when such modifications effect an involuntary debt restructuring. . . . Nor does [this standard] prevent majority amendment of a significant range of indenture terms, including many that can be used to pressure bondholders into accepting exchange offers.

Id. at *19. The court emphasized that Section 316(b) should not be used to justify "untrammeled judicial intrusion into ordinary business practice," *id.*, and that courts "do[] not wish to find [themselves] in the position of evaluating whether a proposed investment . . . is likely to erode an issuer's financial stability and thus negatively affect a bondholder's ability to receive payment," *id.* at *18.

Addressing the circumstances before it, the court concluded that "the Intercompany Sale [at issue] is precisely the type of debt reorganization that the [TIA] is designed to preclude." *Id.* The court noted that the "two major elements" of the proposed restructuring—the foreclosure transfer of substantially all of the issuer's assets out of the noteholder's reach and the removal of the parent guarantee—would operate "to effect a complete impairment of [plaintiffs'] right to receive payment," *id.* at *15, 20. The *Marblegate* court thus found the situation analogous to *Federated Strategic Income Fund* v. *Mechala Group Jam. Ltd.*, No. 99 Civ. 10517, 1999 WL 993648 (S.D.N.Y. Nov. 2, 1999), which also involved an issuer that had disclaimed its intent to make further interest payments on its notes and planned to effect a reorganization that would involve a wholesale transfer of the issuer's assets to its subsidiaries and the elimination of a third-party guarantee. *Id.* at *6-7; *see* Deft. Mem. at 15 n.2; Deft. Reply at 6-7.

Under the standard adopted by the court in *Marblegate*, plaintiffs' claims here under Section 316(b) should be dismissed. In contrast to the transactions at issue in *Marblegate* and *Federated*, the transaction challenged here is not an out-of-court debt restructuring that "involuntarily disinherits a dissenting minority" of its right to receive payment." *Marblegate*, 2014 WL 7399041, at *20. Plaintiffs here do not and cannot allege that, as part of the transaction, CEOC has disclaimed any intent to pay interest on their notes, that it has transferred or threatened to transfer all of its assets, or that CEOC has become or is about to become a holding company with only nominal assets. Thus, the transaction at issue here does not state a claim under the standard adopted in *Marblegate.* To the extent *Marblegate* is intended to extend to the type of transaction here, we respectfully submit it was wrongly decided. For these reasons and those set forth in our briefs, plaintiffs' claims, including the purported claims for violations of Section 316(b), should be dismissed.

Finally, we note that plaintiffs have also submitted with their letter a Form 8-K filed by CEOC several hours after defendants submitted their reply brief in further support of their motions to dismiss. As the Form 8-K discloses, CEOC recently entered into a restructuring agreement with certain first-lien creditors that calls for, among other things, CEOC to file for Chapter 11 bankruptcy on or about January 15, 2015, and that is subject to, among other things, approval by the bankruptcy court. The proposed restructuring set forth in that agreement thus does not implicate the TIA policy, as described in *Marblegate*, to prevent out-of-court involuntary debt restructurings from being forced upon minority bondholders. 2014 WL 7399041 at *18. In the event of a bankruptcy filing, plaintiffs' claims against CEOC would be subject to an automatic stay, and their claims against CEC may also be stayed.

Respectfully,

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