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October 5, 2015

BY ECF AND HAND DELIVERY

The Honorable Shira A. Scheindlin
United States District Court Judge
United States District Court for the
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1620
New York, NY 10007

Re: *Frederick Barton Danner v. Caesars Entertainment Corp., et. al.*, Case No. 1:14-cv-7973-SAS

Dear Judge Scheindlin:

This firm represents plaintiffs (the "MeehanCombs Plaintiffs") in the action styled *MeehanCombs Global Credit Opportunities Master Fund, LP, et al. v. Caesars Entertainment Corp., et al.*, No. 1:14-cv-07091 (SAS). We write in response to the letter from counsel for Frederick Barton Danner ("Mr. Danner") in the above-referenced action whereby Mr. Danner seeks a pre-motion conference regarding his proposed motion seeking class certification for a class that, as defined by Mr. Danner, would include the MeehanCombs Plaintiffs.

Mr. Danner brought his action on October 2, 2014—one month after the MeehanCombs Plaintiffs filed their suit—pursuant to a complaint that almost exactly mirrored the factual allegations and legal theories set forth in the MeehanCombs Plaintiffs' complaint. He is now seeking to certify a non-opt-out class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure to pursue declaratory relief. The MeehanCombs Plaintiffs' fundamental concern is that Mr. Danner's class certification efforts do not prejudice their litigation or interests.

First, we do not believe that Mr. Danner's class certification motion or any issues attendant thereto should provide any basis for any party to argue for delay of the proceedings in our clients' case. As we advised Your Honor at a previous status conference, the MeehanCombs Plaintiffs chose to hold their motion for summary judgment until the end of the discovery process so that we could make the strongest and most complete motion possible. Now that discovery has substantially concluded, we are prepared to make our motion for summary judgment.

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By contrast, we presume CEC will object to Mr. Danner proceeding with a motion for summary judgment until his class certification issues are resolved. While Mr. Danner's letter suggests that his class certification motion is perfunctory, we think certification of a class as defined by Mr. Danner may well face real challenges. Indeed, CEC has already raised a host of issues in its response to Mr. Danner's pre-motion letter.

Moreover, we think class certification pursuant to Rule 23(b)(2) may prove to be wholly unnecessary, given that Rule 23(b)(2) class actions are intended to facilitate class-wide injunctive relief (as opposed to primarily damages).[1] If the MeehanCombs Plaintiffs' motion for summary judgment is granted, Your Honor will necessarily have ruled that the August 22, 2014 supplemental indentures that sought to strip the parent guarantee on the 2016 Notes was ineffective and that the guarantee remains in place. That ruling would redound to the benefit of all holders through ordinary concepts of collateral estoppel, and they (or the indenture trustee on their behalf) would have an unequivocal right to collect from CEC. In that circumstance, class certification for that same declaratory relief would not provide the class members any further benefit.

Furthermore, the potential prejudice that would result from any delay in proceeding with the MeehanCombs Plaintiffs' summary judgment motion is real and severe. CEC has continued to push for a bankruptcy plan for its subsidiary, CEOC, which provides for a "third party release" of the Plaintiffs' claims against CEC (as well as blanket releases for its insiders that control CEC and CEOC). The MeehanCombs Plaintiffs would like to liquidate and realize upon their claims before CEC has an opportunity to again wrap us into time-consuming and expensive litigation in the Chicago bankruptcy court in an effort to quash the proceedings before Your Honor.[2]

Second, the MeehanCombs Plaintiffs do not wish to be included in Mr. Danner's class. As set forth above, they—not Mr. Danner—took the laboring oar in identifying, crystalizing and prosecuting the causes of action here. The MeehanCombs Plaintiffs do not want now to be forced to incur the delays and inevitable costs of a class action

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[1] Mr. Danner, of course, is not moving for class certification under Rule 23(b)(3)—which would permit an "opt out" class—to recover principal and interest because such class would presumably fail the "ascertainability" test. *See Brecher v. Republic of Argentina*, No. 14-4385, -- F.3d ---, 2015 WL 5438797, at *3 (2d Cir. Sept. 16, 2015) (holding that a 23(b)(3) class of bondholders was unascertainable).

[2] As Your Honor knows all too well, CEC and CEOC attempted to stop this litigation through a request that the Chicago bankruptcy court (an Article I court) enjoin this Court from performing its judicial function. After a two-day trial, that effort failed. CEOC (for CEC's benefit) is now taking that loss up on appeal. *See Caesars Entertainment Operating Company, Inc., et al. v. BOKF, N.A., et al.*, Case No. 15-cv-06504 (N.D. Ill.).

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process that will accomplish nothing but to tax the bondholders' collective recovery with an unnecessary claim for attorneys' fees.

We are available at the Court's convenience to address any questions Your Honor may have on this or any other case-related topic.

Respectfully submitted,

James H. Millar

cc: All Counsel of Record (via ECF)

JHM/nd

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