

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**BOKF N.A., solely in its capacity as successor
Indenture Trustee for the 12.75% Second-
Priority Senior Secured Notes due 2018,**

Plaintiff,

v.

**CAESARS ENTERTAINMENT
CORPORATION,**

Defendant.

Case No. 1:15-cv-01561 (SAS)

**UMB BANK, N.A. solely in its capacity as
Indenture Trustee under those certain
indentures, dated as of June 10, 2009, governing
Caesars Entertainment Operating Company,
Inc.'s 11.25% Notes due 2017; dated as of
February 14, 2012, governing Caesars
Entertainment Operating Company, Inc.'s 8.5%
Senior Secured Notes due 2020; dated August
22, 2012, governing Caesars Entertainment
Operating Company, Inc.'s 9% Senior Secured
Notes due 2020; dated February
15, 2013, governing Caesars Entertainment
Operating Company, Inc.'s 9% Senior Secured
Notes due 2020,**

Plaintiff,

v.

**CAESARS ENTERTAINMENT
CORPORATION,**

Defendant.

Case No. 1:15-cv-04634 (SAS)

**PLAINTIFFS' STATEMENT OF UNDISPUTED
MATERIAL FACTS PURSUANT TO LOCAL CIVIL RULE 56.1
IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, plaintiff in the first above-captioned action (the “BOKF Action”), BOKF, N.A. (“BOKF”),¹ and plaintiff in the second above-captioned action (the “UMB Action,” and together with the *BOKF* Action, the “Actions”), UMB Bank, N.A. (“UMB,”² and together with BOKF, the “Trustees”), respectfully submit that the following material facts are undisputed.³

I. PARTIES

1. BOKF is the successor Indenture Trustee under the Indenture dated as of April 16, 2010 (as supplemented or amended, the “BOKF Indenture”) among CEOC as Issuer, CEC as

¹ BOKF appears solely in its capacity as successor Indenture Trustee for the 12.75% Second-Priority Senior Secured Notes due 2018.

² UMB appears solely in its capacity as Indenture Trustee under those certain indentures, dated as of June 10, 2009, governing Caesars Entertainment Operating Company, Inc.’s (“CEOC’s”) 11.25% Senior Secured Notes due 2017; dated as of February 14, 2012, governing CEOC’s 8.5% Senior Secured Notes due 2020; dated August 22, 2012, governing CEOC’s 9% Senior Secured Notes due 2020; and dated February 15, 2013, governing CEOC’s 9% Senior Secured Notes due 2020.

³ In order to avoid unnecessary duplication, the undisputed facts set forth herein are supported by cites to the Statements of Material Fact submitted in support of the Motions for Partial Summary Judgment Under the Trust Indenture Act, *BOKF* Action ECF No. 33 (“BOKF TIA SMF”) and *UMB* Action ECF No. 29 (“UMB TIA SMF”) where possible.

Other citations herein are formatted as follows; where applicable, specifically cited text will be highlighted:

- Documents in this Court’s ECF docket in the *BOKF* Action and the *UMB* Action will be cited by each action and ECF number with a short description in parentheses; *e.g.* “BOKF ECF No. 1 (Complaint) ¶ 1” and “UMB ECF No. 1 (Complaint) ¶ 1,” respectively.
- An attachment to an ECF document will be cited by docket and attachment number, with a description of the attachment; *e.g.* Attachment 2 to ECF No. 1 would be cited as “ECF No. 1-2 (Indenture Pt. 1) § 1.01 at ___.”
- Other documents will be cited by the Exhibit Number to the Declaration of Andrew I. Silfen (“Silfen Decl.”), with a short description of the Exhibit in parentheses; *e.g.* “Silfen Decl. Ex. A (CEC’s Resp. to Requests for Admissions) at ___.”

Parent Guarantor, and U.S. Bank National Association, as Trustee and Collateral Agent for the 12.75% Second-Priority Senior Secured Notes due 2018 (the “Second Lien Notes”). BOKF TIA SMF ¶ 1.

2. UMB is the successor Indenture Trustee under those certain indentures (as supplemented or amended, the “UMB Indentures,” and together with the BOKF Indenture, the “Indentures”), dated as of June 10, 2009, governing CEOC’s 11.25% Senior Secured Notes due 2017; dated as of February 14, 2012, governing CEOC’s 8.5% Senior Secured Notes due 2020; dated August 22, 2012, governing CEOC’s 9% Senior Secured Notes due 2020; and dated February 15, 2013, governing CEOC’s 9% Senior Secured Notes due 2020 (the “First Lien Notes,” and together with the Second Lien Notes, the “Notes”). UMB TIA SMF ¶ 1.

3. Defendant CEC is the guarantor of the Notes issued by CEOC. BOKF TIA SMF ¶ 6; UMB TIA SMF ¶ 3.

II. CEC’S OBLIGATIONS UNDER THE INDENTURES

4. Section 12.01(a) of each of the Indentures states CEC’s irrevocable and unconditional guarantee of the Notes (the “Parent Guarantee” or “Guarantee”) as follows:

SECTION 12.01. Guarantee.

(a) Each Guarantor hereby jointly and severably, *irrevocably and unconditionally guarantees*, (x) in the case of the Parent Guarantor, on an unsecured basis, and (y) in the case of a guarantee by a Subsidiary Pledgor [. . .] and in the case of each of (x) and (y) as a primary obligor and not merely as a surety, to each holder and to the Trustee and its successors and assigns (i) **the full and punctual payment when due, whether at Stated Maturity, by acceleration, by redemption or otherwise, of all obligations of the Issuer under this Indenture (including obligations to the Trustee) and the Notes, whether for payment of principal of, premium, if any, or interest on in respect of the Notes and all other monetary obligations of the Issuer under this Indenture and the Notes** and (ii) the full and punctual performance within applicable grace periods of all other obligations of the Issuer whether for fees, expenses, indemnification or otherwise under this Indenture and the Notes (all the foregoing being hereinafter collectively called the “Guaranteed Obligations”).

Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from any Guarantor, and that each Guarantor shall remain bound under this Article XII notwithstanding any extension or renewal of any Guaranteed Obligation.

BOKF TIA SMF ¶ 6; UMB TIA SMF ¶ 8 (emphasis added).

5. Section 12.01(g) of each of the Indentures provides in relevant part:

Each Guarantor agrees that its Note Guarantee shall remain in full force and effect until payment in full of all the Guaranteed Obligations.

BOKF TIA SMF ¶ 7; UMB TIA SMF ¶ 10.

6. Section 12.02(c) of each of the Indentures addresses the termination of the Parent Guarantee:

(c) The Parent Guarantee shall terminate and be of no further force or effect and [CEC] shall be deemed to be released from all obligations under this Article XII upon:

(i) [CEOC] ceasing to be a Wholly Owned Subsidiary of [CEC];

(ii) [CEOC's] transfer of all or substantially all of its assets to, or merger with, an entity that is not a Wholly Owned Subsidiary of [CEC] in accordance with Section 5.01 and such transferee entity assumes [CEOC's] obligations under this Indenture; *and*

(iii) [CEOC's] exercise of its legal defeasance option or covenant defeasance option under Article VIII or if [CEOC's] obligations under this Indenture are discharged in accordance with the terms of this Indenture.

In addition, the Parent Guarantee will be automatically released upon the election of [CEOC] and Notice to the Trustee if the guarantee by [CEC] of the Credit Agreement, the [Existing] Notes or any Indebtedness which resulted in the obligation to guarantee the Notes has been released or discharged.

BOKF TIA SMF ¶¶ 14, 15; UMB TIA SMF ¶¶ 15, 16 (emphasis added).

7. The BOKF Indenture has been amended twice, and the second amendment amended Section 12.02(c) of the BOKF Indenture. BOKF ECF No. 1-3 (Supplemental Indenture); BOKF ECF No. 1-4 (Second Supplemental Indenture Pt. 1) at 1. Neither of these

amendments amended subsections 12.02(c)(i), (ii), and (iii) or the word “and” separating them.
Id.

8. The First Lien Indenture dated as of June 10, 2009, governing CEOC’s 11.25% Senior Secured Notes due 2017 has been supplemented three times, and the third supplement amended Section 12.02(c) of that Indenture. UMB ECF No. 1-1 (Third Supplemental Indenture Pt. 1) at 205. The First Lien Indenture dated as of February 14, 2012, governing CEOC’s 8.5% Senior Secured Notes due 2020 has been supplemented twice, and the second supplement amended Section 12.02(c) of that Indenture. UMB ECF No. 1-2 (Second Supplemental Indenture Pt. 1) at 181. The First Lien Indenture dated August 22, 2012, governing CEOC’s 9% Senior Secured Notes due 2020 has been supplemented four times, and the fourth supplement amended Section 12.02(c) of that Indenture. UMB ECF No. 1-3 (Fourth Supplemental Indenture Pt. 1) at 193. None of these supplements amended subsections 12.02(c)(i), (ii), and (iii) or the word “and” separating them.⁴ *Id.*

9. Section 1.04 of each of the Indentures states:

SECTION 1.04. Rules of Construction. Unless the context otherwise requires:

....

(c) “or” is not exclusive

BOKF ECF No. 1-2 (Indenture Pt. 1) at 47; UMB ECF No. 1-1 (§ 1.04(c)) at 56; UMB ECF No. 1-2 (§1.04(c)) at 51; UMB ECF No. 1-3 (§1.04(c)) at 53; UMB ECF No. 1-4 (§1.04(c)) at 53.

10. Until 2014, CEC owned 100% of CEOC equity. BOKF TIA SMF ¶ 24; UMB TIA SMF ¶ 24.

⁴ The final First Lien Indenture, dated February 15, 2013, governing CEOC’s 9% Senior Secured Notes due 2020, was originally drafted with the term “Existing Notes” in the final paragraph of §12.02(c). UMB ECF No. 1-4 (Indenture) at 117.

11. On May 6, 2014, CEC announced that it had transferred 5% of CEOC common stock to certain institutional investors (the “5% Stock Sale”). BOKF TIA SMF ¶ 43; UMB TIA SMF ¶ 43.

12. On June 27, 2014, CEC announced that it had granted approximately 6% of its common stock to certain individuals, including directors and officers of CEOC, as part of a performance incentive plan (the “6% Stock Sale,” and together with the 5% Stock Sale, the “Stock Transfers”). BOKF TIA SMF ¶¶ 56-58; UMB TIA SMF ¶¶ 56-58.

13. CEC contends that the Parent Guarantee was terminated pursuant to the terms of Section 12.02(c)(i) of the Indentures as a result of either or both of the Stock Transfers and CEC no longer holding 100% of CEOC’s stock. BOKF TIA SMF ¶ 44; UMB TIA SMF ¶ 44; BOKF ECF No. 44 (CEC’s TIA MSJ Opp. Brief) at 12.

14. CEC admits that the requirements of 12.02(c)(ii) and 12.02(c)(iii) have not been met. Silfen Decl. Ex. A (CEC’s Resp. to Requests for Admissions) at 4, 5; BOKF ECF No. 10 (CEC’s Answer to BOKF’s Complaint) ¶ 126 (“admits that CEC does not contend that the events described in Sections 12.02(c)(ii) and (iii) of the 2010 Indenture have occurred . . .”); BOKF ECF No. 60 (CEC’s Answer to BOKF’s Complaint) ¶ 29 (“admits that CEC does not contend that the events described in Sections 12.02(c)(ii) and (iii) of the First Lien Indentures have occurred . . .”); UMB ECF No. 60 (CEC’s Answer to UMB’s Complaint) ¶ 29 (same).

15. In January 2015, CEOC and 172 of its subsidiaries filed voluntary petitions under chapter 11 of Bankruptcy Code. BOKF TIA SMF ¶ 71; UMB TIA SMF ¶ 67.

16. The filing of CEOC’s bankruptcy case was an immediate Event of Default under the Indentures, and CEC and CEOC’s obligations under the Notes became due and owing. BOKF TIA SMF ¶¶ 12-13, 74-75; UMB TIA SMF ¶¶ 14; 70-71.

17. Despite demands for payment under the Parent Guarantee, CEC has refused to pay and maintains that it is not subject to the Guarantee. BOKF TIA SMF ¶¶ 76-77; UMB TIA SMF ¶ 72.

Respectfully submitted,

Dated: New York, New York
November 20, 2015

/s/ Andrew I. Silfen

Andrew I. Silfen, Esq. (AS-1264)

Mark B. Joachim, Esq. (MJ-5324)

Michael S. Cryan, Esq. (MC-4887)

ARENT FOX LLP

1675 Broadway

New York, NY 10019-5820

Tel: (212) 484-3900

Fax: (212) 484-3990

Email: andrew.silfen@arentfox.com

mark.joachim@arentfox.com

michael.cryan@arentfox.com

-and-

Ralph A. Taylor, Jr., Esq. (*admitted pro hac vice*)

Jackson D. Toof, Esq. (*admitted pro hac vice*)

ARENT FOX LLP

1717 K Street, N.W.

Washington, D.C. 20006

Tel: (202) 857-6000

Fax: (202) 857-6395

Email: ralph.taylor@arentfox.com

jackson.toof@arentfox.com

*Attorneys for BOKF, N.A., solely in its capacity as
successor Indenture Trustee under the Indenture*

/s/ David A. Crichlow

David A. Crichlow

Craig A. Barbarosh

Karen B. Dine

Rebecca Kinburn

KATTEN MUCHIN ROSENMAN LLP

575 Madison Avenue

New York, New York 10022-2585

Tel: (212) 940-8800

Fax: (212) 940-8776

Email: craig.barbarosh@kattenlaw.com

david.crichlow@kattenlaw.com

karen.dine@kattenlaw.com

rebecca.kinburn@kattenlaw.com

*Attorneys for Plaintiff UMB Bank, N.A. solely in its
capacity as successor Indenture Trustee*