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,

-against-

CAESARS ENTERTAINMENT CORPORATION,

Defendant.

ORDER

15-cv-1561(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,

-against-

CAESARS ENTERTAINMENT CORPORATION,

Defendant.

ORDER

15-cv-4634(SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

In these related actions, two Indenture Trustees under different Indentures, BOKF, N.A. ("BOKF") and UMB Bank, N.A. ("UMB"), seek to enforce guarantees made by non-debtor Caesars Entertainment Corporation's ("CEC") for notes issued by Caesars Entertainment Operating Company ("CEOC"), which is now a debtor in a chapter 11 case pending in the Northern District of Illinois Bankruptcy Court (the "Bankruptcy Court").

BOKF filed its action on March 3, 2015, and fact discovery closes on August 31, 2015. On May 29, pursuant to Part IV.A. of my Individual Rules and Procedures, BOKF sought a pre-motion conference on a motion for partial summary judgment for a declaratory judgment that CEC's elimination of the guarantee violated section 316(b) of the Trust Indenture Act. A pre-motion conference was held on May 26, 2015, at which CEC argued that there were genuine disputes of material fact precluding summary judgment,[1] and, moreover, requested that I defer consideration of BOKF's application based on an adversary proceeding in the Bankruptcy Court seeking to enjoin all actions against CEC (the "Adversary Proceeding").

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[1] CEC also noted that plaintiffs in two related cases pending before this Court have opted to wait until the close of discovery before making dispositive motions. *See MeehanCombs Global Credit Opportunities Master Fund, LP et al. v. Caesars Entertainment Corporation*, No. 14-cv-07091 and *Danner v. Caesars Entertainment Corporation*, No. 14-cv-07973.

While district courts generally cannot prevent a litigant from making a motion allowed by the Federal Rules of Civil Procedure,[2] they do have the inherent power to control the timing of the motion or its disposition.[3] Thus, pre-motion conferences are useful tools to narrow the issues and to determine the appropriate time for the motion, and in those instances where it appears clear from the record that a motion is without merit, to attempt to persuade parties not to make the motion.

On May 28, I entered an order (the "Scheduling Order") in which I noted that "[i]t may well be that genuine issues of material fact preclude the relief BOKF seeks or that it would be better served by waiting until the conclusion of fact discovery to make its motion. The Court will be in a better position to make that determination after reviewing the parties' submissions." However, I did not see a reason to *defer consideration* of the application to make the motion on the possibility that at some future time the Bankruptcy Court might issue some form of

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[2] *See* Fed. R. Civ. P. 56(b) ("[A] party may file a motion for summary judgment at any time until 30 days after the close of all discovery.").

[3] *See, e.g.*, *In re Zyprexa Prods. Liab. Litig.*, 594 F.3d 113, 127 (2d Cir. 2010 (explaining that "district courts have broad scope to manage their own dockets in light of considerations of 'economy of time and effort for itself, for counsel, and for litigants'" (quoting *Landis v. North America Co.*, 299 U.S. 248, 57 (1936)).

injunction.[4] Accordingly, I set the following schedule: BOKF had until today, June 19, to file its motion, CEC had three weeks to respond, and BOKF had two weeks to reply. On June 4, the Bankruptcy Court concluded hearings in the Adversary Proceeding, directed that post-trial briefs be filed by June 26, and stated that a ruling would be issued on or before July 22.

On June 15, 2015, UMB commenced its action against CEC. The next day, it requested permission to file a motion for partial summary judgment on the same legal grounds asserted by BOKF, indicating it could do so one week after BOKF filed its motion. On June 17, CEC responded that while it maintains its prior objections, in the interests of judicial economy it, proposed the following schedule: both motions by June 26, 2015, responsive papers by July 24, and replies by August 7. On June 18, BOKF filed a letter "opposing any change . . . that would delay resolution of the legal issue involved in BOKF's motion."

On consideration of the foregoing, the schedule proposed by CEC is

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[4] I explained in the Scheduling Order that "enjoining actions against non-debtors occurs only rarely, in unusual or extraordinary circumstances, and after consideration of both equitable and non-equitable factors," and that in my view the BOKF "case raises significant issues under a federal statute which necessarily impact the relationship between issuers and noteholders *outside of* the bankruptcy context." I also suggested that continuing with the BOKF litigation, and even the possible entry of judgment of liability, would not be detrimental to the bankruptcy case. One reason this is true is that permitting a litigant to proceed to a judgment of liability is not the same thing as permitting that litigant to collect on a judgment.

acceptable to the Court.[5] Both motions are due on June 26, 2015, responsive papers are due by July 24, and replies are due by August 7. BOKF and UMB can also opt not to make the proposed motions and instead wait until the close of discovery.[6]

SO ORDERED:

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
June 19, 2015

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[5] While the parties may be racing against a possible stay of this action, this Court is not. The Bankruptcy Court did not set its ruling date until after I issued the Scheduling Order, and thus whether or not BOKF files its motion today (and UMB files later), the Bankruptcy Court will almost certainly be issuing its ruling prior to any ruling on the motions for partial summary judgment.

[6] Because UMB's case was filed on Monday June 15, a Rule 16(b) conference has not been held and a scheduling order setting a discovery cutoff has not been entered. The parties in these related cases should confer and inform the Court whether UMB will be proceeding in accordance with the scheduling order that is currently in place for these cases.

- Appearances -

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