

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:

CAESARS ENTERTAINMENT OPERATING  
COMPANY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-01145 (ABG)

(Jointly Administered)

CAESARS ENTERTAINMENT OPERATING  
COMPANY, INC., *et al.*,

Plaintiff,

v.

BOKF, N.A., WILMINGTON SAVINGS FUND  
SOCIETY, FSB, MEEHANCOMBS GLOBAL  
CREDIT OPPORTUNITIES MASTER FUND, LP,  
RELATIVE VALUE-LONG/SHORT DEBT  
PORTFOLIO, A SERIES OF UNDERLYING  
FUNDS TRUST, SB 4 CF LLC, CFIP ULTRA  
MASTER FUND, LTD., TRILOGY PORTFOLIO  
COMPANY, LLC, AND FREDERICK BARTON  
DANNER,

Defendants.

Chapter 11

Adversary Case No. 15-00149

**UNSECURED NOTES DEFENDANTS'<sup>2</sup> RESPONSE  
TO DEBTORS' REQUEST FOR JUDICIAL NOTICE**

<sup>1</sup> A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

<sup>2</sup> The Unsecured Notes Defendants are, collectively, MeehanCombs Global Credit Opportunities Master Fund, LP, Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, SB 4 CF LLC, CFIP Ultra Master Fund, Ltd. and Trilogy Portfolio Company, LLC (“MeehanCombs Defendants”) and Frederick Barton Danner (“Danner”).

The Unsecured Notes Defendants respectfully submit this response to the Debtors' Request for Judicial Notice [Dkt. No. 150] (the "Request"), in which the Debtors ask the Court to take judicial notice of: (1) the complaint (the "UMB Complaint") filed by UMB Bank, N.A. ("UMB") on June 15, 2015 (not June 6, 2015, as the Debtors represent in the Request) captioned *UMB Bank, N.A. v. Caesars Entertainment Corporation*, Case No. 15-CV-4635 (S.D.N.Y. 2015) (the "UMB Action") and (2) Judge Scheindlin's June 19, 2015 scheduling order in the action captioned *BOKF, N.A. v. Caesars Entertainment Corporation*, Case No. 15-CV-01561 (S.D.N.Y. 2015) (the "BOKF Scheduling Order"). The Unsecured Notes Defendants object to the Court taking judicial notice of the UMB Complaint and the BOKF Scheduling Order because the suspicious circumstances surrounding the commencement of the UMB Action caution against giving any weight to the documents.

Judicial notice should be taken cautiously because, as the Advisory Committee noted: "The key to a fair trial is opportunity to use the appropriate weapons (rebuttal evidence, cross-examination, and argument) to meet adverse materials that come to the tribunal's attention." Fed. R. Evid. 201 advisory committee's note (quoting Kenneth Davis, *A System of Judicial Notice Based on Fairness and Convenience*, in *Perspectives of Law* 69 (1964)). However, "if a court takes judicial notice of a fact whose application is in dispute, the court removes these weapons from the parties and raises doubt as to whether the parties received a fair hearing." *General Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1083 (7th Cir. 1997). In determining that the lower court erred by taking judicial notice of another court's findings of fact, the Seventh Circuit explained that because judicial notice is "an adjudicative device that substitutes the acceptance of a universal truth for the conventional method of introducing evidence...[it] therefore, merits the traditional caution it is given, and courts should strictly

adhere to the criteria established by the Federal Rules of Evidence before taking judicial notice of pertinent facts.” *Id.* at 1081 (citing Fed. R. Evid. 201(b) advisory committee’s note).

As discussed in the joint post-trial brief filed by Wilmington Savings Fund Society, FSB (“WSFS”) and BOKF, N.A. (with WSFS, the “Second Lien Defendants”), the mere fact that UMB filed a suit against CEC raises factual questions concerning its motive for doing so and possible collusion between the Debtors, CEC<sup>3</sup> and UMB. In a press release issued following the filing of the UMB Complaint, CEOC stated that “UMB Bank has agreed that it will be bound by the bankruptcy court’s decision to the same extent as if CEOC had requested injunctive relief with respect to the UMB lawsuit.” Second Lien Defendants’ Post-Trial Brief, Dkt. No. 152-4. In that same June 16, 2015 press release, CEOC states that it “has acknowledged to the holders of first lien notes who are party to its Restructuring Support Agreement (RSA) that UMB Bank is not a party to the RSA and, therefore, the filing of the lawsuit by UMB Bank does not terminate the RSA, which remains in effect.” While such an acknowledgement and the current status of the RSA are not relevant to this Court’s determination of whether the SDNY Litigation should be enjoined, the Debtors evidently prefer to remain silent on this issue and ask the Court to take judicial notice without any context.

Given the timing of the lawsuit and the fact that UMB—despite serving as the indenture trustee for over six billion dollars’ worth of bonds—has nonetheless agreed to be bound by the result of a trial in which it did not participate, one can conclude that the Debtors, CEC and UMB coordinated to manufacture “evidence” allegedly supporting the Debtors’ request for a preliminary injunction. The circumstances surrounding the filing of the UMB Complaint are dubious at best. Without any context or opportunity to engage in discovery regarding the filing of

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<sup>3</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the *Unsecured Notes Defendant’s Post-Trial Brief* [Dkt. No. 153].

the UMB Complaint or the entry of the BOKF Scheduling Order, the documents should be given no weight and are improper subjects for judicial notice or admission into evidence.

**CONCLUSION**

For the foregoing reasons, judicial notice of the documents attached to the Request is unnecessary and inappropriate. Accordingly, the Court should (i) deny the Request and (ii) grant to the Unsecured Notes Defendants such other and further relief as this Court deems just and proper.

Dated: July 8, 2015

Respectfully submitted,

Frederick Barton Danner

MeehanCombs Global Credit Opportunities Master Fund, LP, Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, SB 4 CF LLC, CFIP Ultra Master Fund, Ltd. and Trilogy Portfolio Company, LLC

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