UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRILOGY PORTFOLIO COMPANY, LLC and RELATIVE VALUE-LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST, Plaintiffs, v. CAESARS ENTERTAINMENT CORP. and CAESARS ENTERTAINMENT OPERATING CO., INC., Defendants.	No. 1: 14-cv-07091-JSR
FREDERICK BARTON DANNER, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. CAESARS ENTERTAINMENT CORP. and CAESARS ENTERTAINMENT OPERATING CO., INC., Defendants.	No. 1: 14-cv-07973-JSR
BOKF N.A., Plaintiff, v. CAESARS ENTERTAINMENT CORPORATION, Defendant.	No. 1:15-cv-01561-JSR

UMB BANK, N.A., Plaintiff, v. CAESARS ENTERTAINMENT CORPORATION, Defendant.	No. 1:15-cv-04634-JSR
WILMINGTON TRUST, NATIONAL ASSOCIATION, solely in its capacity as successor Indenture Trustee for the 10.75% Notes due 2016, Plaintiff, v. CAESARS ENTERTAINMENT CORPORATION, Defendant.	No. 1:15-cv-08280-JSR

NOTICE OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that today (1) the United States Bankruptcy Court for the Northern District of Illinois issued an order (the "105 Order") in *Caesars Entertainment Operating Co., Inc. v. BOKF, N.A.*, No. 15-a-00149 (Bankr. N.D. Ill.), attached hereto as Exhibit A, concerning the above-captioned actions, and then (2) in *Wilmington Sav. Fund Soc'y, FSB v. Caesars Entertainment Corporation, et al.*, Del. Ch., C.A. No. 10004-VCG, also affected by the 105 Order, the Delaware Chancery Court took the action reflected in the letter attached hereto as Exhibit B.

Dated: New York, New York
June 15, 2016

Respectfully Submitted,

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Exhibit A

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United States Bankruptcy Court, Northern District of Illinois

Name of Assigned Judge	A. Benjamin Goldgar	**CASE NO.**	15 B 1145
DATE	June 15, 2016	**ADVERSARY NO.**	15 A 149
CASE TITLE	Caesars Entertainment Operating Co., Inc. v. BOKF, N.A.		
TITLE OF ORDER	Order granting plaintiffs' emergency motion for temporary restraining order and preliminary injunction		

DOCKET ENTRY TEXT

The emergency motion of debtors Caesars Entertainment Operating Co., Inc. and subsidiaries for a temporary restraining order and preliminary injunction is granted as follows. The plaintiffs in the following actions are enjoined from prosecuting the actions against Caesars Entertainment Corp. from the date of this order until the close of business on August 29, 2016: *BOKF, N.A. v. Caesars Entm't Corp.*, No. 15-cv-1561 (JSR) (S.D.N.Y.); *Trilogy Portfolio Co. v. Caesars Entm't Corp.*, No. 14-cv-7091 (JSR) (S.D.N.Y.); *Danner v. Caesars Entm't Corp.*, No. 14-cv-7973 (JSR) (S.D.N.Y.); and *Wilmington Sav. Fund Soc., FSB v. Caesars Entm't Corp.*, No. 10004-VCG (Del. Ch.).

[For further details see text below.]

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This matter is before the court for ruling after a three-day evidentiary hearing on the emergency motion of debtors Caesars Entertainment Operating Co. (or "CEOC") and its subsidiaries for injunctive relief under section 105(a) of the Bankruptcy Code. The debtors again seek to halt temporarily six civil actions against non-debtor parent company Caesars Entertainment Corp. (or "CEC") seeking to reinstate and recover on CEC's guarantees of various CEOC notes. Five of the actions are pending in the U.S. District Court for the Southern District of New York; the sixth is pending in the Delaware Chancery Court. There are fully-briefed cross-motions for summary judgment pending in all six actions. The debtors would have the court enjoin the guaranty plaintiffs from pursuing the actions until a decision on plan

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confirmation here.[1/]

The findings in the earlier opinion of July 22, 2015, and earlier injunction order dated February 26, 2016, are incorporated. For substantially the reasons described in the February 26 order (which are also incorporated, *see Withrow v. Larkin*, 421 U.S. 35 (1975) (noting that Rule 65(d) is satisfied through a reference to reasons in an earlier decision)), and for additional reasons set forth below, the debtors' motion will be granted and the guaranty plaintiffs enjoined from pursuing the actions. But the injunction will have a much shorter duration than the movants want. And the chances of further injunctive relief are slim.

The premise of the debtors' motions (both the current one and its predecessor) is that the bankruptcy estates have claims against CEC, just as the guaranty plaintiffs do, and the estates' claims against CEC are assets of the estates. The court of appeals described the rest of the debtors' theory this way. "If before CEOC's bankruptcy is wound up," the court said, "CEC is drained of capital by the lenders' suits to enforce the guaranties that CEC had given them, there will be that much less money for CEOC's creditors to recover in the bankruptcy proceeding. . . . The less capital CEC has for CEOC to recapture through prosecution or settlement of its fraudulent-transfer claims, the less money its creditors will receive in the bankruptcy proceeding." *Caesars Entm't Operating Co., Inc. v. BOKF, N.A. (In re Caesars Entm't Operating Co.)*, 808 F.3d 1186, 1189 (7th Cir. 2015). What is more, the court continued, "[o]ne can envision a situation in which CEC, having both obligations on the guaranties it issued to CEOC's lenders, and obligations to CEOC arising from the latter's fraudulent-transfer claims, would lack the money to satisfy all its obligees." *Id.*

The court of appeals noted CEOC's contention "that if the guaranty litigation against CEC can be frozen for a time . . . , the bankruptcy examiner's report analyzing the disputed transactions will provide the parties with information they need to have a clear shot at negotiating an overall settlement." *Id.* The question, then, is "whether the injunction sought by CEOC is likely to enhance the prospects for a successful resolution of the disputes attending its bankruptcy. If it is, and its denial will thus endanger the success of the bankruptcy proceedings, the grant of the injunction would, in the language of section 105(a) be 'appropriate' . . . ." *Id.* at 1188-89.

[1/] Technically, the debtors request relief only as to three of the New York actions. Because neither UMB, N.A. nor Wilmington Trust, N.A., plaintiffs in *UMB Bank, N.A. v. Caesars Entm't Corp.*, No. 15-cv-4634 (JSR) (S.D.N.Y.), and *Wilmington Trust, N.A. v. Caesars Entm't Corp.*, No. 15-cv-8280 (JSR) (S.D.N.Y.), is a defendant here, no injunction can be entered against either one. But the debtors represent in their motion that both UMB and Wilmington Trust have agreed to abide by the terms of any injunction entered.

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To understand why another injunction is appropriate here, the terms of the February 26 injunction and events since its entry must be considered. The February 26 injunction had a limited duration. Consistent with the debtors' request (and the process the court of appeals appeared to envision), the injunction expired 60 days after the examiner filed his initial report or on May 9, 2016, whichever came first.

On February 3, the debtors had moved to have the court appoint a mediator to assist in reaching a resolution with the many creditor constituencies. The motion was denied because the parties needed no authorization to engage a mediator, and on March 1 the debtors filed a notice that a mediator had been selected. On March 15, the examiner filed his initial report with certain portions redacted. Twenty parties signed the mediator's protocol, and on April 7 they had their first session with the mediator.

On May 4, counsel for the debtors announced at a status hearing in the adversary proceeding that the debtors were not seeking to extend the injunction set to expire in five days, that because the district judge hearing the New York actions had retired, there were no imminent trial dates and no emergency requiring relief. Morever, he said, "[t]he injunction that the court entered had its intended effect from at least the debtors' perspective. It's given us a window of opportunity to mediate. Those discussions are still ongoing." He added, however, that "depending on the result of those discussions, we may seek additional relief later from this court if we are able to get to a point where there is agreement with certain stakeholders."

On June 6, a month later, the debtors and CEC entered into a Restructuring Support and Forbearance Agreement (or "RSA") with the holders of subsidiary-guaranteed notes claims. On June 7, the next day the debtors and CEC entered into an RSA with CEC under which CEC agreed to support the latest iteration of the debtors' plan of reorganization. The debtors contend the plan entails a materially larger contribution to the reorganization from CEC. At a hearing on June 8, the day after that, counsel for the Unsecured Creditors Committee told the court that the unsecured creditors had reached an "agreement in principle" concerning the treatment of their claims.

At the hearing on the debtors' motion, James Millstein, the debtors' restructuring advisor, testified that there had been progress on other fronts, as well. He said the debtors had an agreement in principle, soon to be executed, with the first lien noteholders. That, he said, left only two major groups unreconciled to the plan: the first lien bank lenders and the second lien noteholders. But negotiations with the first lien bank lenders were continuing, and the debtors had at least "advanced [the] ball in getting closer to a consensual deal" with the second lien noteholders, even though the Second Lien Committee "will tell you the ball hasn't nearly been advanced far enough." In all, Millstein opined, there had been "enormous progress towards a plan."

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Meanwhile, Millstein testified, the debtors' business has done quite well, outperforming its budget. It remains "one of the . . . strongest casino companies in the United States." The operations that CEC owns had likewise improved, so that although CEC's cash "is down, their valuation is up." The guaranty plaintiffs' expert, David Hilty, agreed that the businesses were performing well.

This evidence is enough to show that an additional injunction is "likely to enhance the prospects for a successful resolution of the disputes attending" the CEOC bankruptcy. *BOKF*, 808 F.3d at 1188. The remainder of Millstein's testimony, largely consistent with his testimony at the hearing a year ago, showed that denying relief would "thus endanger the success of the bankruptcy proceedings." *Id.* CEC could never pay a judgment in favor of the guaranty plaintiffs, he said, and CEC would likely file bankruptcy itself.

Certainly, the evidence on the prospects for a successful resolution could have been stronger. Millstein admitted that there was no executed RSA with the first lien notes or unsecured creditors, and he couldn't say whether the other RSAs were effective or even signed. No witnesses from CEC or from any creditor testified to any of these deals. There was no description of where settlement talks stood and no evidence that further talks were scheduled. The mediation effort appears to have stalled.

The same is true for the evidence on the possibility that failure to issue an injunction might endanger the success of the bankruptcy proceedings. Millstein conceded that if judgments were entered against CEC in the guaranty actions, CEC might have alternatives to bankruptcy. That was a concession he did not make at the hearing a year ago. Millstein also conceded that a CEC bankruptcy might only delay confirmation of a CEOC plan while it was determined "whether or not CEC could make substantially similar contributions." That, too, was not the view he took at last year's hearing.

On the whole, though, the debtors' progress on the settlement front is enough to show a continued likelihood of a successful reorganization – in the sense of a fully consensual plan, the debtors' goal. And the progress has been fairly rapid. Although, as the guaranty plaintiffs point out, these cases are now eighteen months old, it must be remembered that the examiner issued his initial report – the event everyone hoped would break the logjam – only three months ago. The mediator was selected only two weeks before that. In just three or three-and-a-half months, in other words, the debtors have reached agreements in principle – or better, written agreements – with a large part of their capital structure. And the prospect that a CEC bankruptcy will bring on "one of the great messes of our time," to use Millstein's phrase, remains plausible.

The public interests in successful reorganizations and in settlement continue to support a temporary injunction for the same reasons discussed at length in the February 26 order. And on the whole, so does the balance of the equities (again assuming without deciding that balancing is

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required before a section 105 injunction can be granted). The guaranty plaintiffs do raise legitimate concerns about an "imbalance" in negotiations if an injunction is entered – if, while their hands are tied, the debtors continue to litigate full bore against them in the bankruptcy cases, or if the Trust Indenture Act, the statute underlying the guaranty plaintiffs' claims, is amended retroactively to erase those claims. But a reasonable degree of balance can be restored by limiting the duration of the injunction.

That raises the final question: the duration of the injunction. The duration will be short. The purpose of granting injunctive relief here is to facilitate a negotiated resolution of the disputes in this case. Relief will be ordered only because the debtors have made a sufficient showing that an injunction is likely to "enhance the prospects for a successful resolution" of those disputes. *BOKF*, 808 F.3d at 1188. The purpose is *not* to give the debtors and CEC an opportunity to avoid negotiations and then at confirmation cram a plan down on the second lien noteholders.

What will enhance the likelihood of a settlement and avoid the monumental confirmation hearing the Second Lien Committee predicts is a short injunction with a clear termination date and little chance of extension. The debtors like to quote the statement from the February 26 order that "uncertainty produces settlements because settlements avoid risk." That statement is true – but only up to a point. As Hilty pointed out in his testimony at the hearing, what tends to produce settlements are *deadlines*. Deadlines produce settlements because they force parties to compromise in order to avoid the risk that a blissful uncertainty will become a distasteful certainty. (As Samuel Johnson reportedly said: "Depend upon it, sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.") Without a deadline in this case, Hilty predicted, the debtors and CEC would have little incentive to talk. They could sit back and take their chances at confirmation.

Indeed, recent events in these cases bear out his testimony. Milistein admitted that the RSA with CEC was reached only in the week to ten days before the hearing on the debtors' motion. So was the RSA with the subsidiary-guaranteed notes. And so, for that matter, was the agreement in principle with the Unsecured Creditors Committee. There is little doubt the deadlines in the guaranty litigation spurred all of this sudden settlement activity. The summary judgment motions in the guaranty litigation are set for argument on June 16 (in the Delaware action) and June 22 (in the New York actions), after which the courts could rule at any time. Had these deadlines not given CEC and other creditors a substantial incentive to negotiate, there would have been no agreements.

Because deadlines, not uncertainty alone, spur settlement, the debtors will not be granted injunctive relief through confirmation. The injunction will instead expire on August 29, 2016 – the same 74-day injunction the debtors were granted before. To encourage the debtors and CEC to make good use of that 74-day period, they are warned that the likelihood any further injunctive

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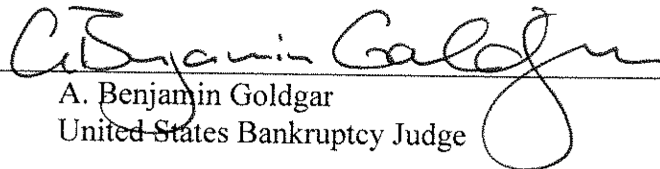
relief will be granted is small. The August 29 expiration date should accordingly be considered a deadline to reach a resolution. On the other hand, to lessen the possibility that the guaranty plaintiffs will do nothing for the next 74 days and will simply wait for the injunction to expire, they are warned that further relief will indeed be considered if it appears that despite the overtures of the debtors and CEC the parties have not participated in extensive, good-faith negotiations.

To sum up, the emergency motion of debtors Caesars Entertainment Operating Co., Inc. and subsidiaries for a temporary restraining order and preliminary injunction is granted as follows. The plaintiffs in the following actions are enjoined from prosecuting the actions against Caesars Entertainment Corp. from the date of this order until the close of business on August 29, 2016: *BOKF, N.A. v. Caesars Entm't Corp.*, No. 15-cv-1561 (JSR) (S.D.N.Y.); *Trilogy Portfolio Co. v. Caesars Entm't Corp.*, No. 14-cv-7091 (JSR) (S.D.N.Y.); *Danner v. Caesars Entm't Corp.*, No. 14-cv-7973 (JSR) (S.D.N.Y.); and *Wilmington Sav. Fund Soc., FSB v. Caesars Entm't Corp.*, No. 10004-VCG (Del. Ch.).[2] The earlier motion that had been continued from time to time is now moot. This adversary proceeding is set for a status hearing on August 19, 2016, at 1:30 p.m. A separate scheduling order will be entered.

Dated: June 15, 2016



A. Benjamin Goldgar
United States Bankruptcy Judge

[2] Because the debtors agreed to seek relief only against the plaintiffs in the actions, there is no occasion to address whether this court has the power to enjoin the New York and Delaware courts themselves – the issue raised at the outset of the evidentiary hearing. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 327-30 (1995) (Stevens, J., dissenting) (arguing that bankruptcy courts have no such power).

Exhibit B

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RE: WSFS v. Caesars Entertainment Corp.
C.A. No. 10004-VCG

Dear Counsel:

Based on the Order of Judge Goldgar of today's date, I have removed oral argument that was scheduled for tomorrow morning (June 16, 2016) at 10:00 a.m. from the Court calendar.

Sincerely yours,

/s/ Sam Glasscock III

Vice Chancellor

cc: Register in Chancery