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08/08/2006

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IN RE:	§	
	§	
TYLER JET, L.L.C.;	§	Case No. 02-11164
TJB HOLDINGS, LTD.;	§	Case No. 02-11181
BEVERLEY FAMILY LIMITED	§	
PARTNERSHIP; and	§	Case No. 02-63458
TIMOTHY J. BEVERLEY	§	Case No. 02-63531
	§	
	§	JOINTLY ADMINISTERED
	§	UNDER CASE NO. 02-11164
	§	
Debtors	§	Chapter 11

MEMORANDUM OF DECISION¹

This matter is before the Court upon the “Trustee’s Motion to Determine Amount of Priority Claim of Internal Revenue Service” [dkt#950] filed by Arnaldo Cavazos, Jr., in his capacity as the Trustee of the TJ Creditors’ Trust. Though inartfully phrased in terms of a challenge to the legitimacy of the allowance of the priority claim of the Internal Revenue Service (“IRS”), the Trustee clarified at the hearing that he seeks solely a determination, based upon a construction of the confirmed plan and the confirmation order, that the TJ Creditors’ Trust is not responsible nor legally liable for the payment of any allowed priority claim owed to the IRS. At the conclusion of the hearing, the Court took the matter under advisement. This memorandum of decision disposes of all issues

¹This Memorandum of Decision is not designated for publication and shall not be considered as precedent, except under the respective doctrines of claim preclusion, issue preclusion, the law of the case or as to other evidentiary doctrines applicable to the specific parties in this proceeding.

pending before the Court.²

Factual and Procedural Background

The facts relevant to this contested matter are not in dispute. On March 22, 2002, the IRS timely filed a proof of claim against the bankruptcy estate of TJB Holdings, Ltd. in which the IRS asserted a priority claim in the amount of \$25,151.49 and a general unsecured claim in the amount of \$30,327.24.³ On August 13, 2003, partially in response to objections which had been filed to the Debtors' First Amended Plan, the "Second Amended Joint Plan of Reorganization for the Debtors" was filed on behalf of the four jointly-administered debtors-in-possession.⁴ The Second Amended Plan contemplated ongoing operations by each of the Debtors and the infusion of certain funds and the assumption of certain obligations by Ralph W. Smith, Jr., who was designated in the proposed plan as the "Plan Funder." The Second Amended Plan proposed the following treatment of the IRS' priority claim filed against the four debtor entities:

² This Court has jurisdiction to consider the motion pursuant to 28 U.S.C. §1334, 28 U.S.C. §157(a), and ¶ 11.1 of the confirmed plan of reorganization. The Court has the authority to enter a final order in this contested matter since it constitutes a core proceeding as contemplated by 28 U.S.C. §157(b)(2)(O).

³ IRS' Exhibit 2.

⁴ The bankruptcy cases involving the four above-captioned debtors have been jointly administered since November 13, 2002.

3.2 Priority Tax Claims. Each Allowed Priority Tax Claim⁵ of TJB shall be paid by the Plan Funder in cash in full on the later of the Effective Date or the date that is 10 days after entry of a Final Order allowing such Claim if Allowed after the Effective Date. Each Allowed Priority Tax Claim of Beverley and BFLP shall be paid by the Trustee from the respective Sub-Trust in cash in full on the later of the Effective Date or the date that is 10 days after entry of a Final Order allowing such Claim if Allowed after the Effective Date. Each Allowed Priority Tax Claim of Tyler Jet shall be paid by the Trustee from the respective SubTrust as funds are available over a period not to exceed six years from date of assessment at the Plan Rate of interest commencing on the later of the Effective Date or the date such Claim is allowed by a Final Order. Additionally, all Liens securing Tax Claims shall be deemed and legally treated as released, voided and discharged on the date the Allowed Priority Tax Claim has been paid. Any *ad valorem* Liens or Claims for the 2003 tax year shall be satisfied in the ordinary course of business and shall be paid in full before coming delinquent on February 1, 2004.

IRS' Exhibit 2 at p. 10.

This proposed treatment specifically satisfied the IRS' previous objection to the proposed plan.⁶ On August 13, 2003, this Court confirmed the Debtors' Second Amended Joint Plan and on September 3, 2003, the "Order Confirming Second Amended Joint Plan of Reorganization for the Debtors" (the "Confirmation Order") was entered. The Confirmation Order provided, in relevant part, as follows:

⁵ Section 2.40 of the Second Amended Plan stated that a Priority Tax Claim "means all Claims for Taxes entitled to priority under section 507(a)(8) of the Bankruptcy Code, and shall include all Tax Claims secured by assets of each of the respective Estates."

⁶ See *Order Confirming Second Amended Joint Plan of Reorganization for the Debtors* entered on September 3, 2005 (dkt #497) at pp. 1-2 which states that "all objections having been resolved by agreement as set forth in the Second Amended Plan and/or this Order." The earlier IRS objection to the proposed First Amended Plan was filed on July 23, 2003, and complained that the plan as proposed failed to specify the exact amount of the IRS' priority claim for which the plan contemplated payment and how that payment was to be made. It further complained that the plan failed to provide for required interest on the priority tax claim and asserted that the proper interest rate was 5% per annum.

[It is further] **ORDERED** that the Plan Funder shall pay on the Effective Date the sum of \$25,141.49 directly to the IRS in full and complete satisfaction of any and all unsecured Priority Claims held by the IRS; and it is further

ORDERED that, to the extent the unsecured priority Claim of the IRS is paid after the Effective Date, such Claim shall receive interest at the rate of five percent (5%) per annum; . . .⁷

The Confirmation Order also specifically provided as follows:

[it is further] **ORDERED** that the provisions of the Second Amended Plan and this Order shall be, and they are hereby, binding on all parties in interest including the Debtors, the Trustee, all holders of Claims and Equity Interests against or in, as the case may be, the Debtors, whether or not impaired under the Second Amended Plan, upon any party-in-interest, any person making an appearance in this case and any other person affected thereby, as well as their respective heirs, successors, assigns, trustees, subsidiaries, affiliates, officers, directors, agents, employees, representatives, attorneys, beneficiaries, guardians, and similar officers or any person claiming through, by or in the right of any such persons; and it is further⁸

. . .

ORDERED that the rights of all holders of Claims against or Interests in the Debtors, hereafter shall be limited solely to the right to receive such reimbursements or distributions exclusively as provided in the Second Amended Plan, *and, after the date hereof, the holders of such Claims or Interests shall have no other or further rights against the Debtors or the Trusts* (emphasis added);⁹

. . . .

The TJ Creditors' Trust was subsequently created, Arnaldo N. Cavazos, Jr. was

⁷ *Id.* at p. 6.

⁸ *Id.* at p. 10.

⁹ *Id.* at p. 11.

appointed as the Plan Trustee, and the Trustee began to perform his prescribed duties, including the liquidation of certain assets and the distribution of net proceeds to creditors. Yet it quickly became clear in the post-confirmation period that the Second Amended Plan could not be completely consummated as intended as a result of the subsequent disclosure of a federal indictment pending against Timothy Beverley, which resulted in an eventual criminal conviction and his imprisonment which effectively precluded his continued operation of the Tyler Jet enterprise as contemplated by the confirmed plan.

In light of Beverley's inability to manage the enterprise on an ongoing basis, and in lieu of seeking the revocation of confirmation, the Trustee, together with the Reorganized Debtors, subsequently sought authorization from the Court for the sale by competitive auction of the Tyler Jet fixed base operations at the Tyler airport (the "Sale Motion").¹⁰ The Sale Motion was filed on April 2, 2004 and all parties, including the IRS, were properly served.¹¹ The IRS did not object to the Sale Motion, though other parties did object. Again with proper notice to the IRS,¹² a hearing was conducted on April 26, 2004 and an order authorizing the sale of the FBO assets for the sum of

¹⁰ Though he originally sought the revocation of the confirmation order on the grounds of fraud as a result of the undisclosed criminal problems of the Debtor's principal, the Trustee, upon consultation with various creditor constituencies regarding the best manner in which to proceed, abandoned that effort. It is uncontested that it is now too late for any party to seek revocation of the confirmed plan under 11 U.S.C. §1144.

¹¹ See *Expedited Motion to Approve Sale of Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances and For Other Interim Relief* filed on April 2, 2004 (dkt #621).

¹² See *Certificate of Mailing* filed on April 7, 2004 (dkt #625).

\$1,078,448.28 was entered on May 3, 2004.¹³ No appeal of that order was pursued by any party. The sale was consummated and the sales proceeds were tendered to the Trust with distributions to be made only upon the further order of the Court.¹⁴ Since that time, the Trustee has continued to fulfill his duties to administer the Trust.

Discussion

It must again be emphasized that the relief sought by the Trustee through his motion was clarified and limited in scope at the beginning of the hearing on this matter. The Trustee does not seek the disallowance of the priority claim asserted by the IRS. The Trustee solely seeks an answer to the following question:

Is the payment of the IRS priority claim asserted against
TJB Holdings, Ltd. a legal obligation of the TJ Creditors' Trust?

The answer is no.

11 U.S.C. §1141(a) provides, in relevant part, that:

Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor . . . and any creditor . . . ,

¹³ See *Order Granting in Part and Denying in Part the Expedited Motion to Approve Sale of Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances and For Other Interim Relief* entered on May 3, 2004 (dkt #789).

¹⁴ *Id.* at ¶¶ 9 - 10. An order allocating the funds among the estate and authorizing a partial distribution of proceeds was subsequently entered on July 27, 2004. See *Order Granting Joint Motion for Distribution of Sales Proceeds* entered on July 27, 2004 (dkt #839).

whether or not the claim or interest of such creditor . . . is impaired
under the plan and whether or not such creditor . . . has accepted the plan.

As one major treatise describes the effect of §1141:

Section 1141(a) of the Code provides that a plan is binding upon all parties once it is confirmed. Under this provision, subject to compliance with the requirements of due process under the Fifth Amendment, a confirmed plan of reorganization is binding upon every entity that holds a claim or interest even though a holder of a claim or interest is not scheduled, has not filed a claim, does not receive a distribution under the plan or is not entitled to retain an interest under such plan. In other words, a confirmed plan precludes parties from raising claims or issues that could have or should have been raised before confirmation but were not.

8 COLLIER ON BANKRUPTCY ¶ 1141.02 at pp. 1141-6 and 1141-7 (15th ed. rev. 2006).

The binding effect of a confirmed plan is also protected by the doctrine of *res judicata*.

As further set forth in COLLIER:

Confirmation of a plan operates as a final judgment. All questions that could have been raised that pertain to the confirmed plan are barred by the doctrine of *res judicata*. Under the doctrine, questions concerning the treatment of any creditor under the plan, discharge of liabilities, or disposition of property may no longer be raised after plan confirmation. These issues must be raised in the context of objections to confirmation of the plan.

Id. at ¶ 1141.02[4] at pp. 1141-9 and 1141-10, *citing Stoll v Gottlieb*, 305 U.S. 165, 171-72, 59 S.Ct. 134, 137-38, 83 L.Ed. 104, 108-09 (1938) and *Republic Supply Co. v. Shoaf*

(*In re Shoaf*), 815 F.2d 146 (5th Cir. 1987).

In this proceeding, any argument that the Trust is liable for the payment of the IRS priority claim against TJB Holdings, Ltd. is barred both by §1141 and by *res judicata*. The IRS unequivocally accepted the proposed treatment of its priority tax claim as set forth in the confirmed plan — that it would look solely to the Plan Funder, as that term is described in the plan, as the source for the payment of that particular claim.¹⁵ It did so in all likelihood because it appeared at the time as though the claims to be assumed and paid by the Plan Funder would be satisfied in greater amount and far more quickly than waiting for action by, and a subsequent distribution from, the TJ Creditors' Trust. No matter what its motivations were, as a result of its acceptance of the plan and the resulting confirmation of that plan without appeal, the IRS became bound by the contractual agreement that its right to receive a distribution upon that priority claim would “be limited solely to the right to receive such reimbursements or distributions exclusively as provided in the Second Amended Plan. . . .”¹⁶ That same paragraph of the confirmation order specifically provides that the IRS (and all other parties) would have no rights against the Trust other than as provided in the confirmed plan.

The IRS properly admitted during the hearing that it could not point to any

¹⁵ That differentiates this particular claim from the IRS' unsecured claim of \$30,327.24 which shall be paid by the Trust.

¹⁶ *See supra* note 9.

language in either the confirmed plan or the confirmation order which even remotely suggests that the Trust could become liable for payment of the IRS priority claim. It is equally true that the Trustee is bound by the provisions of the confirmed plan and he has an express duty to the defined beneficiaries of the Trust to maximize the amount of distributions issued by the Trust. The Trustee's payment of claims not entitled to be satisfied by Trust assets would clearly constitute a violation of the duties which he assumed. The mere fact that there is now money available in the Trust does not entitle the IRS to a distribution from it, notwithstanding the "priority" characterization of its claim. It fairly negotiated and received a treatment of that claim under the confirmed plan through which it agreed to look elsewhere for its satisfaction. Now that things have developed in a manner different than anticipated, the IRS seeks to reverse its decision and seek payment of all of its claims from the Trust.¹⁷ It cannot do so.

Accordingly, the Trustee's motion as revised in open court is granted and it is determined that the IRS holds no valid claim against the TJ Creditors' Trust and/or its trustee, Arnaldo N. Cavazos, Jr., for the payment of the priority claim asserted by the IRS in this case against TJB Holdings, Ltd.

This memorandum of decision constitutes the Court's findings of fact and

¹⁷ In defense of the IRS' position, in the time prior to the hearing before the Trustee's clarification of the relief actually being sought, the IRS was legitimately defending the allowance of its priority claim in this contested matter. But, while the IRS was justified in defending the allowance of its priority claim, the allowance of such claim does not, in turn, render the Trust liable for the satisfaction of that allowed claim.

conclusions of law¹⁸ pursuant to FED. R. CIV. P. 52, as incorporated into contested matters in bankruptcy cases by FED. R. BANKR. P. 7052 and 9014. A separate order will be entered which is consistent with this opinion.

Signed on 08/08/2006

A handwritten signature in cursive script, appearing to read "Bill Parker".

THE HONORABLE BILL PARKER
CHIEF UNITED STATES BANKRUPTCY JUDGE

¹⁸ To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such. To the extent any conclusion of law is construed to be a finding of fact, it is hereby adopted as such. The Court reserves the right to make additional findings and conclusions as necessary or as may be requested by any party.