

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: § CASE NO. 23-10245-KBO  
§  
CBC RESTAURANT CORP., *et al.*, § Chapter 11  
§  
Debtors. § (Jointly Administered)

**LIMITED JOINT OBJECTION OF THE TEXAS TAXING AUTHORITIES TO THE DEBTORS' MOTION FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) AUTHORIZING THE DEBTORS TO ENTER INTO A STALKING HORSE AGREEMENT; (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES; AND E SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (II)(A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTED RELATED RELIEF**  
(Relates to Document Nos. 289 and 361)

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COME NOW the Texas Taxing Authorities<sup>1</sup>, secured creditors and parties in interest and file this objection to *Debtors' Motion for Entry of Orders: (I)(A) Approving Bidding Procedures for the Sale of All or Substantially All of the Debtors' Assets; (B) Authorizing the Debtors to Enter Into a Stalking Horse Agreement; (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof; (D) Approving Assumption and Assignment Procedures; and (E) Scheduling a*

<sup>1</sup> The Texas Taxing Authorities include all taxing authorities represented by Linebarger Goggan Blair & Sampson, Perdue Brandon Fielder Collins & Mott, and McCreary Veselka Bragg & Allen including but not limited to: Bexar County, Dallas County, City of El Paso, City of Frisco, Gregg County, Harris County, Hidalgo County, Irving Independent School District, Lewisville Independent School District, City of McAllen, Montgomery County, Nueces County, Smith County, Tarrant County, City of University Park, Highland Park Independent School District, Richardson Independent School District, City of Highland Village, Carrollton-Farmers Branch Independent School District, Frisco Independent School District, Plano Independent School District, Tyler Independent School District, Spring Branch Independent School District, Harris County Municipal Utility District #345, Memorial Villages Water Authority, Denton County and Williamson County.



*Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* (the "Motion"), and respectfully show as follows.

### Background

1. The Texas Taxing Authorities are political subdivisions of the State of Texas, authorized and required by the Texas Constitution and laws to levy and collect taxes on taxable personal and real property within their boundaries, in order to operate and discharge their public purposes.
2. The Texas Taxing Authorities hold secured pre-petition ad valorem tax claims for the 2023 and prior tax years in the amount of \$553,992.92<sup>2</sup> (the "Tax Claims"). These claims are secured by tax liens on the tangible personal property of the Debtors within their taxing boundaries (the "Tax Liens"). The Tax Liens attach to the taxpayer's property on January 1 of each tax year.
3. The Tax Liens are superior to any other secured claim in this case as provided by Article VIII, Section 15 of the Texas Constitution, and Section 32.01 and Section 32.05(b) of the Texas Property Tax Code. The priority of the tax claims is determined under applicable non-bankruptcy law. 11 U.S.C. §506; *Butner v. U.S.*, 440 U.S. 48, 55 (1979). The tax lien takes priority over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. *See* Texas Property Tax Code §32.05 (b); *See also Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc.*, 894 S.W. 2d 841 (Tex. App. 1995) (bank's foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing unit's statutory tax lien). The tax lien arises on January 1 of each tax year and "floats" to after acquired property. *See City of Dallas v. Cornerstone Bank*, 879 S.W. 2d 264 (Tex.

---

<sup>2</sup> Due diligence is ongoing, and the Tax Claim amount is an estimate only and subject to change.

App. - Dallas 1994). The tax lien is a lien *in solido* and is a lien on all personal property of the Debtors. *See In re Universal Seismic*, 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. *See In re: Winns*, 177 B.R. 253 (Bankr. W.D. Tex. 1995). The property taxes are due upon receipt pursuant to Texas Property Tax Code Sec. 31.02.

#### Objection to the Store Closing Motion

4. The Texas Taxing Authorities do not object to the sale itself but do object to a sale that does not provide for payment of the ad valorem property taxes at closing or the creation of an ad valorem tax reserve as adequate protection for the Texas Taxing Authorities. The proceeds from the sale of the Texas Taxing Authorities' collateral constitute the cash collateral of these claimants, and they object to the use of their collateral to pay any other creditors of this estate. Pursuant to 11 U.S.C. § 363(c)(4), absent consent by these claimants or an order of the Court permitting use of their cash collateral, the Debtors “shall segregate and account for any cash collateral” in their possession. Accordingly, absent the Texas Taxing Authorities’ consent, a segregated account must be established from the sale proceeds to comply with the requirements of § 363(c)(4). Further, the proceeds from the sale of the Texas Taxing Authorities' collateral should not be distributed to any other party unless and until their claims, including any interest thereon as allowed under 11 U.S.C. §§ 506(b), 511 and 1129, are paid in full.

5. Further, in the event of a credit bid, there may be no sale proceeds to which the liens can attach or which may be used to pay the Texas Taxing Authorities’ claims. In the event of a credit bid by a junior lienholder, the property should be sold subject to the Texas Taxing Authorities’ liens, with the purchaser explicitly assuming the responsibility for paying the taxes, or the taxes should be paid at closing. A credit bid by a junior lienholder is an attempt to avoid the consequences of foreclosing/seizing the property under applicable non-bankruptcy law which

would require it to take the property subject to the tax liens. There is no legal or equitable basis for thus subordinating or avoiding the tax liens. Absent provisions for the adequate protection of the tax liens, the Texas Taxing Authorities object to the approval of a sale on a credit bid.

WHEREFORE, the Texas Taxing Authorities respectfully object to the Motion and request this Court to order appropriate provisions to assure the protection of the position of these secured tax creditors, and further request other and such relief as is just and proper.

Dated: May 22, 2023

Counsel for the Texas Taxing Authorities

**LINEBARGER GOGGAN  
BLAIR & SAMPSON, LLP**

/s/ Tara L. Grundemeier

**John P. Dillman**

Texas State Bar No. 05874400

**Tara L. Grundemeier**

Texas State Bar No. 24036691

**Jeannie L. Andresen**

Texas State Bar No. 24086239

Post Office Box 3064

Houston, Texas 77253-3064

(713) 844-3478 *Telephone*

(713) 844-3503 *Facsimile*

john.dillman@lgbs.com

tara.grundemeier@lgbs.com

jeannie.andresen@lgbs.com

**McCREARY VESELKA  
BRAGG & ALLEN, P.C.**

/s/ Julie A. Parsons

**Julie A. Parsons**

Texas State Bar No. 00790358

700 Jeffrey Way #100

Round Rock, Texas 78665

(513) 323-3200 *Telephone*

julie.parsons@mvalaw.com

**PERDUE BRANDON FIELDER  
COLLINS & MOTT, LLP**

/s/ Melissa E. Valdez

**Melissa E. Valdez**

Texas State Bar No. 24051463

**Owen M. Sonik**

Texas State Bar No. 18847250

1235 North Loop West, Suite 600

Houston, Texas, 77008

(713) 862-1860 *Telephone*

(713) 862-1429 *Facsimile*

mvaldez@pbfc.com

osonik@pbfc.com

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the District of Delaware on May 22, 2023.

/s/ Tara L. Grundemeier  
Tara L. Grundemeier