

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11
: :
MAGNA ENTERTAINMENT CORP., : : Case No.: 09-10720 (MFW)
et al., : :
: : Jointly Administered
Debtors. : :
: : Re: Docket No. 93
: :
: : Objection Deadline: March 27, 2009 @ 4:00 p.m.
: : Hearing Date: April 3, 2009 @ 9:30 a.m.

LIMITED OBJECTION OF PNC BANK, NATIONAL ASSOCIATION TO MOTION OF DEBTORS FOR AN ORDER, PURSUANT TO SECTIONS 105, 363 AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004 AND 6006, (I)(A) SCHEDULING AN AUCTION AT WHICH THE DEBTORS WILL SOLICIT HIGHER AND BETTER OFFERS IN CONNECTION WITH THE SALE OF CERTAIN ASSETS, (B) APPROVING THE BIDDING PROCEDURES FOR SUCH ASSETS, (C) APPROVING THE FORM AND SCOPE OF NOTICE AND (D) GRANTING RELATED RELIEF; (II) APPROVING THE SALE OF THE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; AND (III) GRANTING RELATED RELIEF AS REQUESTED HEREIN [DOCKET NO. 93]

PNC Bank, National Association ("PNC Bank"), by its undersigned counsel, hereby files this Objection to the Motion of Debtors for an Order, Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, (I)(A) Scheduling an Auction at Which the Debtors Will Solicit Higher and Better Offers in Connection with the Sale of Certain Assets, (B) Approving the Bidding Procedures for Such Assets, (C) Approving the Form and Scope of Notice and (D) Granting Related Relief; (II) Approving the Sale of the Assets Free and Clear of all Liens, Claims and Encumbrances; and (III) Granting Related Relief as Requested Herein (the "Motion") filed herein by Magna Entertainment Corp. and the other debtors referenced in the Motion (collectively, the "Debtors"), and for its reasons states as follows:

Background

PNC Bank previously extended certain loans ("PNC Loans") to Pimlico Racing Association, Inc. ("Pimlico Racing") and Laurel Racing Association Limited Partnership ("Laurel



Racing”), which are guaranteed by several of the Debtors, including Laurel Racing Association, Inc., The Maryland Jockey Club of Baltimore City, Inc., The Maryland Jockey Club, Inc., Maryland-Virginia Racing Circuit, Inc., Prince Georges Racing, Inc., Southern Maryland Racing, Inc. and Southern Maryland Agricultural Association (collectively, the "Guarantors"). The PNC Loans are secured by first priority liens and security interests in, to and against substantially all of the assets of Pimlico Racing, Laurel Racing and the Guarantors (collectively, the “Debtor Obligors”), including, without limitation, Pimlico Race Course, the “Preakness” name, the “Preakness Stakes,” the “Pimlico” name, Laurel Park, all related real estate assets of the Debtor Obligors and substantially all other tangible and intangible assets of the Debtor Obligors (collectively, the “PNC Collateral”). The PNC Collateral is subject to the transactions proposed in the Debtors’ Motion.

As part of the Motion, the Debtors seek the entry of an order approving bid procedures (“Proposed Bidding Procedures”), the form of a proposed purchase agreement (“Form Agreement”) and other relief in connection with an auction or sale the Debtors intend to conduct with respect to certain assets of the Debtors, including Santa Anita Park, Pimlico Race Course, Laurel Park, the other PNC Collateral, Thistledown, Remington Park, Portland Meadows and Magna Racing. As a secured creditor of the Debtor Obligors, PNC Bank has a significant interest in assuring that it is adequately protected in connection with the Debtors’ attempt at auctioning or selling the PNC Collateral and in assuring that the indebtedness owed to PNC Bank on account of the PNC Loans is satisfied in a timely fashion from the proceeds arising from such sale(s) or auction(s). The Motion and the relief sought therein fail to provide any such protections to PNC Bank and other secured creditors and are otherwise deficient for a variety of reasons.

Although PNC Bank is in favor of a prompt and efficient sale of the PNC Collateral so that the proceeds arising therefrom can be promptly paid to PNC Bank to the extent necessary to satisfy the PNC Loans, PNC Bank does not believe that the transactions proposed in the

Motion will result in any such sale. Furthermore, PNC Bank believes that the secured claims of PNC Bank and the other secured creditors will be placed at substantial risk if the transactions proposed in the Motion, including the Proposed Bidding Procedures, the Form Agreement and other relief, are approved by this Court.

Bidding procedures should only be approved by a bankruptcy court where the proposed procedures would allow the debtor to conduct an auction in a "controlled, fair, and open fashion" that will maximize the sale price of the assets being sold. *See e.g., In re Dura Automotive Sys., Inc.*, 2007 Bankr. Lexis 2764, * 253-254 (Bankr.D.Del. Aug. 15, 2009). For the reasons set forth below, the Proposed Bidding Procedures fall short of this standard and, therefore, the Motion should be denied.

Objections

I. The Motion and the Form Agreement are Vague, Inconsistent and Do Not Provide Adequate Notice of the Transactions Which the Debtors Propose to Undertake.

The Motion indicates that: "the Debtors seek to continue the sales process and establish bidding and sales procedures for substantially all of their remaining significant assets (collectively, the "Assets"), including:

- (a) Racetracks: Santa Anita Park, Pimlico Race Course, Laurel Park, Thistledown, Remington Park, Portland Meadows, and Magna Racino."

See Motion at p. 3. The Motion further indicates that the Debtors are seeking the entry of an order approving bidding procedures, in the form annexed to the Motion as Exhibit A, "for the sale of the Assets" as described above. See Motion at pp. 21 and 22. Based upon these provisions in the Motion, creditors would assume that the Debtors are contemplating a sale of the "Assets," free and clear of all liens, claims and encumbrances, with all liens of secured creditors to attach to the proceeds of sale in the order of their priority. However, a close reading of the Form Agreement attached to the Motion indicates that the Debtor intends to sell stock interests, membership interests and partnership interest in the various entities that own the

Assets. This inconsistency renders the Motion very confusing and is significant for a number of reasons.

First, if it is truly the Debtors' intention to sell interests in the Debtors, as opposed to the specific Assets, or if it is the Debtors' intention to offer both interests in the Debtors and the specific Assets for sale, the Debtors should be required to unequivocally set forth the terms of the sale in the Motion so that creditors can govern themselves accordingly. Second, if it is the Debtors' intention to merely offer interests in the Debtors for sale, it is the position of PNC Bank that the proposed transaction will effectively chill all meaningful bidding and will not result in any meaningful sale since there will be very few, if any, purchasers who would be willing to purchase interests in the Debtors as opposed to the specific Assets. Third, in the unlikely event that the Debtors are successful in selling their interests in the entities that own the PNC Collateral, there are no terms set forth in the Motion or the Form Agreement indicating how the PNC Loans and corresponding secured claims will be dealt with.

At a minimum, the Debtors should be required to specifically state whether it is their intention to merely offer interests in the Debtors for sale, or if it is their intention to offer both interests in the Debtors and the specific Assets for sale, and how secured claims like those of PNC Bank will be dealt with in connection with any such transactions.

II. The Motion Proposes a Transaction Over an Inordinately Long Period of Time and Provides the Debtors With Absolute Discretion Regarding Whether to Accept or Reject Bids.

By their Motion, the Debtors propose that bids for whatever it is that the Debtors are proposing to sell be received by the Debtors on or before July 8, 2009 (more than three (3) months after the filing of the Debtors' Motion). PNC Bank asserts that the time period proposed by the Debtors is inordinately long and will result in bids for certain of the PNC Collateral being significantly less than would be received if such assets were offered for sale in a prompt and expeditious fashion. One of the significant assets comprising the PNC Collateral consists of the Pimlico Race Course, all related real estate, the "Preakness" name, the "Preakness Stakes"

and other related assets (collectively, the "Pimlico/Preakness Assets"). The Preakness Race is scheduled to take place during the third week of May, 2009 and will result in millions of dollars of revenues to the Debtors which own the Pimlico/Preakness Assets. If the Pimlico/Preakness Assets were sold prior to the Preakness Race, the assets would yield a significantly higher purchase price than if the assets are offered for sale after the Preakness Race since the bulk of the revenues that Pimlico Race Course generates result from the Preakness Race itself. The Debtors, however, do not propose to take offers on the Pimlico/Preakness Assets until July 8, 2009, well after the conclusion of the Preakness Race, and do not contemplate closing in connection with any sale of such assets until September or October of this year. The method selected by the Debtors for offering the Pimlico/Preakness Assets for sale is seriously defective and will result in a much lower proposed sales price for such assets than would result if the Debtors immediately offered the Pimlico/Preakness Assets for sale along with the revenues to be generated by the Preakness Race and provided for a closing to occur shortly thereafter so that the highest possible price for the Pimlico/Preakness Assets can be achieved.

In addition, the Motion and the Proposed Bidding Procedures set forth therein provide the Debtors with almost absolute discretion over whether to accept or reject bids that are offered by qualified bidders. The problem with providing the Debtors with this much discretion is that it permits the Debtors to orchestrate a sale of the assets being offered for sale to their "stalking horse bidder" in a collusive fashion and irrespective of whether a qualified bidder's offer is a higher and better offer for the assets being offered for sale. The Debtors should not be permitted to have absolute discretion over whether to accept or reject qualified bids and, instead, should be required to submit all qualified bids to this Court for review and decision on whether to accept or reject the same.

In view of these significant deficiencies with respect to the Proposed Bidding Procedures, the Motion should be denied.

III. The Proposed Bidding Procedures and the Proposed Form Agreement Do Not Require the Purchaser to Allocate the Purchase Price.

Nothing in the Proposed Bidding Procedures or the proposed Form Agreement requires the purchaser of the Purchased Assets to allocate the amount that the purchaser is paying for each asset being sold. The Purchased Assets involve at least six (6) racetracks and there are several secured creditors who hold liens against certain of the assets being sold by the Debtors (see Motion at p. 36-27). Without an allocation of the purchase price being paid for each of the Purchased Assets, secured creditors such as PNC Bank will be left to guess as to how much their collateral is being sold for by the Debtors and how much the creditor can expect to receive on its secured claim from the proposed sale transaction.

This Court should not permit the Debtors to proceed with the auction pursuant to the Proposed Bidding Procedures unless bidders are required to allocate the purchase price being offered for each of the Purchased Assets and the proposed Form Agreement specifies an allocation of the purchase price. See *e.g.*, *Mission Iowa Wind Co. v. Enron Corp.*, 291 B.R.39 (S.D.N.Y. 2003) (requiring an allocation hearing prior to closing of the sale). Absent such a requirement of allocation, the Motion should be denied.

IV. The Proposed Bidding Procedures Obviate PNC'S Credit Bid Rights.

Absent a showing of "cause" by a debtor, a sale motion cannot obviate a secured creditors credit bid rights under Section 363 (k) of the Bankruptcy Code. 11 U.S.C. § 363(k); See *e.g.*, *Cohen v. KB Mezzanine Fund II, LP, et al (In re Submicron Systems Corp.)*, 432 F.3d 448, 459 (3d Cir. 2006) (permitting credit bid at full face value of secured claim over plan administrator's objection).

By requiring bidders to bid on all of the Purchased Assets as an entirety, the Proposed Bidding Procedures effectively negate PNC Bank's credit bid rights under Section 363 (k) of the Bankruptcy Code without a showing of cause by the Debtors. The Proposed Bidding Procedures do not provide a mechanism for secured creditors such as PNC Bank to bid on the

specific assets against which the secured creditor holds a lien. By structuring the Proposed Bidding Procedures in this manner, PNC Bank is not allowed an effective way to exercise its credit bid rights under Section 363(k). For this reason the Motion should be denied.

WHEREFORE, for the foregoing reasons, PNC Bank respectfully requests that this Court deny the Debtors' Motion.

March 26, 2009

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CERTIFICATE OF SERVICE

The undersigned counsel for PNC Bank, National Association hereby certifies that on March 26,2009, he caused a true and accurate copy of the Objection to the Motion of Debtors for an Order, Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, (I)(A) Scheduling an Auction at Which the Debtors Will Solicit Higher and Better Offers in Connection with the Sale of Certain Assets, (B) Approving the Bidding Procedures for Such Assets, (C) Approving the Form and Scope of Notice and (D) Granting Related Relief; (II) Approving the Sale of the Assets Free and Clear of all Liens, Claims and Encumbrances; and (III) Granting Related Relief as Requested Herein filed herein by PNC Bank, National Association to be served by overnight mail on the following individuals:

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Dated: March 26, 2009

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