

Andrea Sheehan
LAW OFFICES OF ROBERT E. LUNA, P.C.
4411 N. Central Expressway
Dallas, Texas 75205
(214) 521-8000
(214) 521-1738 FAX
sheehan@txschoollaw.com

ATTORNEYS FOR LEWISVILLE INDEPENDENT SCHOOL
DISTRICT AND CARROLLTON-FARMERS BRANCH
INDEPENDENT SCHOOL DISTRICT

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In Re:	§	Chapter 11
	§	
BLOCKBUSTER, INC., et al.,	§	CASE NO. 10-14997(BRL)
	§	
Debtors.	§	Jointly Administered
	§	

**OBJECTION OF CARROLLTON-FARMERS BRANCH INDEPENDENT SCHOOL
DISTRICT AND LEWISVILLE INDEPENDENT SCHOOL DISTRICT TO MOTION
PURSUANT TO 11 U.S.C. 105(a) AND 363 AND FED. R. BANKR. P. 6004
REQUESTING AN ORDER AUTHORIZING THE DEBTORS TO CONTINUE TO
CONDUCT STORE CLOSING SALES AND BULK INVENTORY SALES, APPROVING
PROCEDURES WITH RESPECT TO ORDINARY COURSE STORE CLOSING SALES
AND GRANTING ANCILLARY AND RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Now come Carrollton-Farmers Branch Independent School District and Lewisville Independent School District (hereinafter “the School Districts”), and file this their Objection to the Debtors’ Motion ... Requesting an Order Authorizing the Debtors to Continue to Conduct Store Closing Sales and Bulk Inventory Sales, Approving Procedures with Respect to Ordinary Course Store Closing Sales, and Granting Ancillary and Related Relief and would respectfully show the Court in support thereof the following:



1. The School Districts are political subdivisions in the State of Texas.
2. The School Districts hold claims for 2009 and 2010 business personal property taxes, and are secured creditors of Debtor's bankruptcy estate by virtue of their statutory tax liens. Further, on January 1, 2011, statutory tax liens attached to any taxable property of Debtors within the School Districts' taxing jurisdiction to secure any and all taxes assessed for the 2011 tax year.
3. Pursuant to Texas law, on January 1, of each tax year a lien automatically attaches to Debtors' business personal property located within the School Districts' taxing jurisdiction to secure payment of all taxes, penalties, and interest ultimately imposed for the associated tax year. Texas Tax Code §32.01 provides in relevant part:

- (a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property . . .
- (b) A tax lien on inventory, furniture, equipment, or other personal property is a lien in solido and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.

- ...
4. Pursuant to TEX. TAX CODE ANN. §32.05(c), the School Districts' secured tax liens, with limited exceptions not relevant in the case, "take[] priority over the claim of any creditor of a person whose property is encumbered by the lien[s] and over the claim of any holder of a lien on property encumbered by the tax lien[s], whether or not the debt or lien existed before the attachment of the tax lien[s]." Therefore, the School Districts have first priority liens on the property.

5. In the Motion, Debtors seek to continue conducting store closing sales and bulk inventory sales, asserting such sales are being conducted in the ordinary course of business. Debtors seek to conduct such sales free and clear of liens.

6. The School Districts have not consented and do not consent to the sale of property free and clear of its liens. Further, the School Districts have not consented to the use of proceeds of the sale which may constitute the School Districts' cash collateral. The School Districts object to the sale of assets subject to their first priority statutory tax liens without provision for payment of the taxes from the first sale proceeds or, in the alternative, segregation of sale proceeds in an amount sufficient to satisfy the School Districts' taxes, including estimated 2011 taxes, and any interest on its taxes under 11 U.S.C. Section 506(b). To the extent that Debtors have conducted store closing sales or bulk inventory sales at locations within the School Districts' taxing jurisdictions since the commencement of Debtors' cases without paying any taxes thereon or segregating funds for payment of such taxes, the School Districts request that, upon entry of any order granting the Motion, Debtors be required to immediately pay such taxes or segregate proceeds sufficient to pay such taxes.

7. Payment of the taxes at the time of sale and/or segregation of taxes is necessary to adequately protect the senior liens of the School Districts to ensure such proceeds are not used to pay creditors of lower priority. Further, the Final DIP Order provided for distribution of proceeds to the DIP lender and others only after provision for senior liens, including ad valorem liens. (*See*, Final DIP Order, Paragraph 17.)

WHEREFORE, PREMISES CONSIDERED, Carrollton-Farmers Branch Independent School District and Lewisville Independent School District hereby request that any order approving the Motion require that Debtors use the first proceeds from the sale of collateral to immediately satisfy the taxes incurred on the property or segregate sufficient proceeds to satisfy the taxes, including any interest thereon and any estimated 2011 taxes. The School Districts further pray for any such other relief to which they may show themselves justly entitled.

Respectfully submitted,

/s/ Andrea Sheehan

Andrea Sheehan

Texas Bar No. 24002935

LAW OFFICES OF ROBERT E. LUNA, P.C.

4411 North Central Expressway

Dallas, Texas 75205

(214) 521-8000 Phone

(214) 521-1738 Fax

sheehan@txschoolaw.com

Attorney for Lewisville Independent School District
and Carrollton-Farmers Branch Independent School
District

/s/ J. Ted Donovan

J. Ted Donovan, Esq.

Goldberg Weprin Finkel Goldstein LLP

1501 Broadway, 22nd Floor

New York, NY 10036

General phones: (212) 221-5700 / (212) 344-2929

Telecopier: (212) 422-6836

tdonovan@finkgold.com

Local Counsel for Carrollton-Farmers Branch
Independent School District and Lewisville
Independent School District

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and correct copy of the attached Objection of Carrollton-Farmers Branch Independent School District and Lewisville Independent School District via facsimile and/or United States first class this 3rd day of January, 2011 to the parties listed below.

/s/ Andrea Sheehan
ANDREA SHEEHAN

Stephen Karotkin
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Fax : (212) 310-8007

Sidley Austin LLP
Attn: James P. Seery, Esq.
Paul S. Caruso, Esq.
787 Seventh Avenue
New York, New York 10019
Fax: (212) 839-5599

Martin Sosland
Weil, Gotshal & Manges, LLP
200 Crescent Court
Suite 300
Dallas, TX 75201
Fax : (214) 746-7777

Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Peter Neckles, Esq.
4 Times Square
New York, New York 10036
Fax: (212) 735-2000

Brian Shoichi Masumoto
Elisabetta Gasparini
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
Fax : (212) 668-2255

Emmet, Marvin & Martin, LLP
Attn: Edward P. Zujkowski, Esq.
120 Broadway, 32nd Floor
New York, New York 10271
Fax: (212) 238-3100

Jay R. Indyke
Richard Kanowitz
Jeffrey L. Cohen
Cooly LLP
1114 Avenue of the Americas
New York, New York 10036
Fax: (212) 479-6275

Sheppard, Mullin, Richter & Hampton, LLP
Attn: Kyle J. Mathews, Esq.
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071
Fax: (213) 620-1398