

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN THE MATTER OF:

CASE NO. 19-12415

HRI Holding Corp., *et al*

DEBTORS

CHAPTER 11

THE COUNTY OF DENTON, TEXAS' OBJECTION TO THE ORDER (I) AUTHORIZING THE DEBTORS, ON AN INTERIM BASIS, TO (A) OBTAIN POST-PETITION FINANCING, (B) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS TO POST-PETITION LENDERS AND (C) UTILIZE CASH COLLATERAL, (II) PROVIDING ADEQUATE PROTECTION TO THE PRE-PETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, (IV) GRANTING RELATED RELIEF, PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363, 364, AND 507, AND (V) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001 AND LOCAL RULE 4001-2

TO THE HONORABLE BANKRUPTCY JUDGE:

NOW COMES The County of Denton, Texas, (hereinafter, referred to as "Denton County") is a secured creditor in the above bankruptcy case, and files this Objection to The Order (I) Authorizing the Debtors, on an Interim Basis, to (A) Obtain Post-Petition Financing, (B) Grant Liens and Superpriority Administrative Expense Claims to Post-Petition Lenders, and (C) Utilize Cash Collateral, (II) Providing Adequate Protection to the Pre-Petition Secured Parties, (III) Modifying the Automatic Stay, (IV) Granting Related Relief, Pursuant to 11 U.S.C. Sections 105, 361, 362, 363, 364, and 507, and (V) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2 on the following grounds:

1. Denton County is a political subdivision of the State of Texas authorized to assess and collect ad valorem taxes pursuant to the laws of the State. Denton County has filed secured claims for 2019 ad valorem taxes totaling \$11,909.21.
2. As of January 1, 2019, liability arose and a senior lien attached to the business personal property of the Debtors for the 2019 taxes of Denton County to be \$11,909.21.



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3. Denton County objects to The Order to the extent that the pre- and post-petition liens are being primed. Denton County objects to the entry of any interim or final order that purports the superior lien position of Denton County. The tax liens arise 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. App. –Dallas 1994). The tax liens are *in solido* and a lien on all personal property of the Debtor. See *In re Universal Seismic*, 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. See *In re: Winns Store*, 177 B.R. 253 (Bankr. W.D. Tex. 1995)
4. The Interim Order also does not adequately protect the tax liens and claims as required by 11 U.S.C. § 363 (e). The proceeds from the sale of the Denton County’s collateral constitutes their cash collateral, and they object to the use of the collateral to pay any other creditors of this estate. Pursuant to 11 U.S.C. § 363(c) (4), absent consent by Denton County or an order of the Court permitting use of the cash collateral, the Debtor “shall segregate and account for any cash collateral” in its possession. Accordingly, absent consent, a segregated account must be established from the sale proceeds to comply with the requirement of § 363(c) (4), These proceeds from the sale the Denton County’s collateral should not be distributed to any other party unless and until its claims, including any interest thereon as allowed under 11 U.S.C. §§ 506(b), 511 and 1129, are paid in full.

5. The inclusion of the following language in the Orders authorizing the Debtor to use cash collateral would be adequate to enable the Claimant to withdraw its Objection to this Interim Order:

- a. Notwithstanding any other provisions included in the Interim Order or Final Order, or any agreements approved hereby, any statutory liens (collectively, the “Tax Liens”), of Denton County shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties’ rights to object to the priority, validity, amount, and extent of the claims and liens asserted by Denton County are fully preserved. From the proceeds of the sale of any of the Debtors’ assets located in the state of Texas, the amount of \$11,909.21 shall be set aside by the Debtors in a segregated account as adequate protection for the asserted secured claims of Denton County prior to the distribution of any proceeds to any other creditor. The liens of Denton County, if any, shall attach to these proceeds to the same extent and with the same priority as the liens they now hold against the property of the Debtors. These funds shall be on the order of adequate protection and shall constitute neither the allowance of the claims of the Denton County, nor a cap on the amounts they may be entitled to receive.

WHEREFORE, Denton County objects to The Order and requests this Court to order appropriate provisions to assure the protection of the position of their secured tax claim and further request other such relief as is just and proper.

Dated: December 2, 2019

Respectfully submitted,
MCCREARY, VESELKA, BRAGG & ALLEN, P.C.

/s/Tara LeDay

Tara LeDay

State Bar Number 24106701

P.O. Box 1269

Round Rock, Texas 78680

Telephone: (512) 323-3200

tleday@mvbalaw.com

Attorneys for Denton County

CERTIFICATE OF SERVICE

I hereby certify that the above Objection to The Interim Order has been served upon the following parties as well as all parties receiving the Court's ECF service on December 2, 2019, by Electronic Notification.

/s/Tara LeDay

Tara LeDay