

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:) Case No. 16-33437-hdh-11
TPP ACQUISITION, INC.)
d/b/a The Picture People,) Chapter 11
Debtor.) Hearing: March 16, 2017 at 1:30 p.m. CT

**Local Texas Tax Authorities’ Objection to:
Confirmation of Debtor’s and Official Committee of Unsecured Creditors’ Second
Amended Joint Plan of Liquidation for TPP Acquisition, Inc. d/b/a The Picture People
Under Chapter 11 of the United States Bankruptcy Code**

Now come Bexar County, Dallas County, Fort Bend County, Frisco, Harris County, Montgomery County and Tarrant County (jointly the “Local Texas Tax Authorities” or “Tax Authorities”) and object to the confirmation of the Debtor’s and Committee’s proposed Plan. In support of their objection, the Local Texas Tax Authorities would show the Court as follows:

1. The Tax Authorities have filed secured claims for unpaid 2016 and prior years’ ad valorem property taxes totaling \$9,952.74. The claims of the Local Texas Tax Authorities are secured by first priority liens on the Debtors’ personal property pursuant to Texas Property Tax Code §§ 32.01 and 32.05.

2. 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. App. - Dallas 1994). The tax lien is a lien *in solido* and is 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, 177 B.R. 253 (Bankr. W.D. Tex. 1995).

3. The Plan provisions which deal with the secured claims of the Local Texas Tax Authorities under "Class 3 – Allowed Secured Tax Claims" fail to provide fair and equitable treatment to these secured claims as required by 1129(b)(1) and (2)(A) in that:

A. The Tax Authorities are entitled to post-petition interest on their claims at their statutory rate under Texas Law (1% per month – Texas Property Tax Code § 33.01(c)) as required by 11 U.S.C § 511, and that it be paid through the date such claims are paid in full. Secured claims must be paid with interest from and after the effective date in order for the payment of the claim to paid the value as of the effective date in order for the plan to be confirmed. U.S. v. Graham, 59 Fed. Appx. 660 (6th Cir. 2003); 11 U.S.C. §1129(b)(2)(A)(i)(II). Further, as oversecured creditors, the Tax Authorities are entitled to interest from the Petition Date through the Effective Date at their statutory rate pursuant to 11 U.S.C. § § 506(b) and 511. U.S. v. Ron Pair Enterprises, Inc., 489 U.S. 235 (1989). This interest becomes part of the tax claim to be paid under the plan. See Rake v. Wade, 508 U.S. 464, 471 (1993); In re T-H New Orleans Limited Partnership, 116 F.3d 790, 796-797 (5th Cir. 1997). The claim objection bar date is 180 days after the Effective Date, subject to extension. Failure to provide for the payment of post-confirmation interest essentially gives

the Debtor no incentive to timely resolve any issues concerning the taxes and pay them. It essentially is an interest-free loan to the estate to the detriment of the Tax Authorities.

B. Pursuant to the terms of the DIP financing Order, the Debtors are holding funds in a segregated tax account, which funds are the Tax Authorities' cash collateral. Further, to the extent the segregated funds are insufficient to pay their tax claims in full, the Tax Authorities have liens on all of the proceeds from the sale of the Debtor's assets. The Tax Authorities object to the use of their cash collateral to pay any other Creditors prior to the Tax Authorities being paid in full.

WHEREFORE, based upon the foregoing, the Local Texas Tax Authorities request the Court to deny confirmation of the proposed Second Amended Joint Chapter 11 Plan, unless and until appropriate provisions are included to adequately protect the interests of the Tax Authorities in the proceeds from the sale of their collateral and provide for the payment of their claims with interest from the petition date through the date of payment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this 9th day of March, 2017, I caused a true and exact copy of the foregoing to be served upon all parties to the Court's electronic noticing system and upon the parties set forth on the Service List via electronic mail as indicated.

/s/ Elizabeth Weller
Elizabeth Weller

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