

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

SAN JUAN RESORT OWNERS, INC.

Debtor

CASE NO.: 15-01627 (MCF)

CHAPTER 11

**MOTION TENDERING REPLY TO OMNIBUS MOTION IN OPPOSITION TO
MOTION FOR APPROVAL OF ASSET PURCHASE AGREEMENT AND SALE OF
ASSETS**¹

COMES NOW the proposed stalking horse bidder, SJ Beach PR LLC (“SJLLC”), an affiliate of Paulson PRV Acquisitions, LLC, through the undersigned counsel, and very respectfully states and prays:

1. The above-captioned debtor (the “Debtor”) filed for Chapter 11 bankruptcy protection on March 5, 2015, and has operated as debtor-in-possession ever since. Docket No. 1.

2. On March 27, 2015, the Debtor, jointly with secured creditor Banco Popular de Puerto Rico (“BPPR”), moved for approval of bidding procedures and a stalking horse proposal executed with SJLLC. See Docket No. 21.²

3. On April 14, 2015, the Debtor’s motion was opposed by Condado San Juan Hotel 2, LLC (“CSJH”), a third party who purports to hold a valid prebankruptcy option agreement to purchase the Debtor’s property. Docket No. 37.³

¹ SJLLC requested leave to reply on April 21, 2015 as well as an extension of time to do so until April 27, 2015. See Docket No. 55. The Court has yet to rule upon SJLLC’s motion.

² As of the petition date, BPPR held a claim of \$18,017,618.58 secured by the Debtor’s main asset, a 96-room boutique-style beachfront hotel in the Condado area.

³ Both the Debtor and BPPR deny that CSJH holds a valid option to purchase the property and has represented so at all times throughout the underlying sale process. See Dockets No. 11, 21 and 66. The Debtor has also moved to reject any agreement it may have with CSJH. See Docket No. 11.

4. Most of CSJH's contentions revolve around the Debtor's affairs and negotiations with BPPR and challenge the proposed sale as contrary to the distribution scheme of Chapter 11.⁴ SJLLC has not participated in any of the negotiations between the Debtor and BPPR, and therefore, is not in a position to respond to CSJH's contentions on this front. Nevertheless, inasmuch as CSJH's contentions with regard to the Chapter 11 process may constitute an attempt to improperly derail the proposed sale, SJLLC respectfully joins in BPPR's well-supported motion explaining the many reasons why the posture CSJH has adopted is fatally flawed. See Docket No. 66.

5. CSJH's motion in opposition, however, is not limited to the unfounded contentions just mentioned. It also challenges the proposed sale on two grounds: (i) the Debtor's property has not been sufficiently exposed to the market or to a competitive bid; and (ii) the sale process has not been conducted in good faith, and was delineated in collusion between the Debtor, BPPR and SJLLC. See Docket No. 37.

6. Simply put, those contentions are belied by the record before the Court.

7. Regarding the first, the sale motion provides a detailed narrative as to the process followed before and after the bankruptcy filing to secure the best possible suitor for the Debtor's property. See Docket No. 21, ¶¶ 15 to 18. As stated in that motion, before the bankruptcy filing, the Debtor's property was marketed through a carefully crafted bid procedure which was circulated to CSJH and all others who had communicated an interest in acquiring the Debtor's property. Id. That process provided interested parties with the exact terms and conditions under which the proposed transaction would take place as well as sufficient time to ponder over the pros and cons of a possible bid. Id. Although CSJH ultimately chose not to submit a bid, SJLLC

⁴ In this regard, CSJH's motion asserts that (i) the Sale Motion is a *sub rosa* plan of liquidation; (ii) the sale seeks to divert assets and value to Debtor's principal; and (iii) the estate and creditors will not benefit from a competitive sale, as proposed by Debtor and BPPR. Id.

and another suitor did, both providing better and higher offers than those which the Debtor had been able to obtain in his previous attempts to market the property. And, of course, both of those offers were better and higher than the offer CHJS had submitted many months earlier. Id.

8. CHSJ's motion nowhere addresses the foregoing facts, which alone provide ample evidence to discard the disingenuous proposition that the Debtor's property has not received sufficient market exposure. But there is more.

9. After the Debtor's prebankruptcy initial marketing efforts, its property has continued exposed to the market, now with the formalities, exigencies and certainty inherent to a bankruptcy sale.

10. As part of the bankruptcy sale process, all the terms and conditions of the agreement reached with SJLLC have been published, an auction has been slated, and all interested parties have been duly notified of both the sale terms and the auction date. See Docket No. 21.

11. Moreover, the Debtor has opened its doors for any and all interested parties to inspect its property and conduct the necessary due diligence before determining whether to bid in the proposed auction. That due diligence period, which will last at least 30 days, is reportedly being taken advantage of by a number of interested parties. See Docket No. 66, ¶ 43.

12. When measured up against the foregoing undisputed facts, all of which CJSH's motion conveniently ignored, it is evident that the contention that the Debtor's property has not been exposed to the market is simply not true. Accordingly, this Honorable Court should not sanction CSJH's less than candid contentions to the contrary, which only purpose is to improperly derail the proposed sale.

13. The same holds true for CSJH's contention that collusion and bad faith have tainted the sale process. To begin with, at no point prior, during or after its participation in the underlying sale process, has SJLLC colluded with another party or engaged in any other type of reproachable conduct or activity. All the contrary, at all relevant times, SJLLC has openly and straightforwardly dealt with all the parties, and the public record before this Honorable Court contains all the details of those dealings. CSJH's opposite contention is irresponsible and false. The best evidence of this is that CSJH's own motion fails to articulate any grounds whatsoever to predicate its serious accusations, and simply provides the Court with passing, boilerplate remarks.

14. For example, CSJH's motion mentions the fact that the proposed transaction (i) is subject to a minimum bid and not contingent upon financing; (ii) provides potential bidders some wiggle room in determining whether to acquire certain assets; (iii) requires a refundable 10% good faith cash deposit; and (iv) sets forth minimum bid increments. Then, without any further elaboration, CSJH's motion appears to indicate that those terms somehow evidence collusion and bad faith.

15. Such a proposition is nonsensical, to say the least. As this Court is aware, the foregoing terms are customary in the type of transaction at issue. To avoid duplicity, SJLLC respectfully underscores the many citations already provided by BPPR where terms similar to those involved here have been approved by this Honorable Court as well as by other sister bankruptcy courts. See Docket No. 66, ¶ 47.

16. Similarly, CSJH's motion mentions in passing the "good faith" standard applicable to the findings this Court will eventually be called upon to make in approving the proposed sale. The motion, however, nowhere explains how or why is this Honorable Court to

find that SJLLC has abridged that standard. On itself, such a lackluster effort should suffice to discard CSJH's contentions altogether. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("Judges are not expected to be mindreaders. Consequently, a litigant has an obligation 'to spell out its arguments squarely and distinctly,' or else forever hold its peace.").

17. If more were needed, however, the record before the Court unequivocally shows that SJLLC has done nothing but facilitate and advance the sale process for the benefit of all stakeholders. In fact, by serving as the stalking horse for the proposed sale, SJLLC provided a benchmark for all interested parties to bid against, which, as reported in BPPR's submission at Docket No. 66, appears to have stirred interest on the Debtor's property.

18. SJLLC's participation in the sale process has also provided the necessary foundation for the Debtor and BPPR to negotiate a significant carve-out that would allow the Debtor's creditors to receive a distribution otherwise unavailable.

19. In sum, for the reasons stated above, as well as those stated in BPPR's submission at Docket No. 66, CSJH's motion is devoid of merit and should be denied out of hand.

WHEREFORE, it is respectfully requested that this Honorable Court deny CSJH's omnibus opposition and approve the proposed sale as jointly requested by the Debtor and BPPR.

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico, this 27th day of April, 2015.

WE HEREBY CERTIFY: That on this date a true and exact copy of the foregoing document has been filed with the Clerk of Court using the CM/ECF system, which automatically serves notification of the filing to parties in interest.

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