

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

**JEFFERSON COUNTY, ALABAMA,
a political subdivision of the State of
Alabama,**

Debtor.

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**Case No. 11-05736-TBB9
Chapter 9**

**JEFFERSON COUNTY'S MOTION FOR AN ORDER ENFORCING
THE PLAN AND DISCHARGE INJUNCTION**

Jefferson County, Alabama (the "County"), pursuant to 11 U.S.C. §§ 105 and 944 and sections 6.1, 6.2, and 6.4 of the *Chapter 9 Plan of Adjustment of Jefferson County, Alabama (Dated November 6, 2013)* [Docket No. 2182] (the "Plan")¹, moves for an order enforcing the discharge of 11 U.S.C. § 944 and the Permanent Injunction, as follows:

BACKGROUND

1. On October 19, 2011, Tellabs North America, Inc. ("Tellabs") filed a Complaint on Notice of Appeal (the "Complaint") against the County in the Circuit Court of Montgomery County, Alabama, thereby commencing Civil Action Number CV-2011-001279.00 (the "State Court Action"). In the Complaint, Tellabs alleges, among other things, that the County is liable to Tellabs for the refund of certain sales taxes.

2. On November 9, 2011 (the "Filing Date"), the County filed a voluntary petition for relief under chapter 9 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").

¹ Unless otherwise defined, all capitalized terms shall have the meaning provided in the Plan or Confirmation Order (as that term is defined herein).



3. On November 16, 2011, the County filed a Notice of Bankruptcy in the State Court Action. A copy of the Notice of Bankruptcy is attached hereto as **Exhibit A**.

4. Tellabs's counsel received electronic notice of the Notice of Bankruptcy.

5. On March 4, 2012, this Court entered the order for relief in the County's case [Docket No. 778], confirming the County's eligibility to be a debtor under chapter 9 of the Bankruptcy Code.

6. By order dated November 22, 2013 [Docket No. 2248] (the "Confirmation Order"), the Court confirmed the Plan.

7. The Effective Date of the Plan occurred on December 3, 2013. *See* Docket No. 2274.

8. Pursuant to section 944 of the Bankruptcy Code, the provisions of the Plan bind the County and all of its creditors. Without limitation, the County was discharged from all debts arising before the Effective Date.

9. To effectuate the County's discharge, the Confirmation Order includes a permanent injunction prohibiting certain actions against the County and its Related Parties (including officers and officials):

Except as otherwise provided in the Plan or this Confirmation Order, on and after the Effective Date, all Persons who have held, currently hold, or may hold a Claim that is based on any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, that otherwise arose or accrued prior to the Effective Date, or that otherwise is discharged pursuant to the Plan, are permanently and completely enjoined from taking any of the following actions on account of any such discharged Claim (the "Permanent Injunction"): (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind against or affecting the County, its property, its obligations, or any of its Related Parties that is inconsistent with the Plan or this Confirmation Order; (ii) attaching, collecting, enforcing, levying, or otherwise recovering in any manner any award, decree, judgment, or order against or affecting the County, its property, its obligations, or any of its Related Parties other than as expressly permitted under the Plan; (iii) creating, perfecting, or

otherwise enforcing in any manner any lien or encumbrance of any kind against or affecting property of the County, other than as expressly permitted under the Plan; (iv) asserting any right of recoupment, setoff, or subrogation of any kind against any obligation due to the County with respect to any such discharged Claim, except as otherwise permitted by Bankruptcy Code section 553; (v) acting or proceeding in any manner, in any place whatsoever, that does not comply with or is inconsistent with the provisions of the Plan, this Confirmation Order, or the discharge provisions of Bankruptcy Code section 944; and (vi) taking any actions to interfere with the implementation or consummation of the Plan; provided, however, that the foregoing provision shall not include or affect the liability of any Related Party of the County (x) in any action brought by the Securities and Exchange Commission or (y) on account of any violation of the securities laws. The County and any other Person injured by any willful violation of the Permanent Injunction shall recover actual damages, including costs, expenses, and attorneys' fees, and, in appropriate circumstances, may recover punitive damages, from the willful violator, and the [Bankruptcy] Court retains jurisdiction over any Causes of Action resulting from any willful violation of the Permanent Injunction.

Confirmation Order at pp. 71-72; *see also* Plan § 6.2.

10. The County has notified Tellabs's counsel that the Plan and Confirmation Order discharged the County's liability to Tellabs, if any, and permanently enjoined the State Court Action. Tellabs continues to prosecute the State Court Action in violation of the Plan, Confirmation Order, and the County's discharge under section 944 of the Bankruptcy Code. Without limitation, the State Court Action is scheduled for a hearing on March 3, 2015 and Tellabs has failed to dismiss the State Court Action.

JURISDICTION AND NOTICE

11. The County brings the instant Motion (the "Motion") pursuant to 11 U.S.C. §§ 105 and 944 and sections 6.1, 6.2, and 6.4 of the Plan.

12. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Section 6.4 of the Plan. The Motion is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of the County's case and the Motion is proper before the Court under 28 U.S.C. §§ 1408 and 1409.

13. The County will serve a copy of this Motion on Tellabs's counsel.

ARGUMENT

14. Section 944 of the Bankruptcy Code governs chapter 9 discharges and provides that confirmation of a plan discharges the debtor from all debts except those "owed to an entity that, before confirmation of the plan, had neither notice nor actual knowledge of the case." 11 U.S.C. § 944(c)(2). This language is unambiguous and discharges the claims of all creditors that had notice or actual knowledge of the case before confirmation of a plan. *See Neb. Sec. Bank v. Sanitary & Imp. Dist. No. 7*, 119 B.R. 193, 195 (D. Neb. 1990); *see also Gladeview Drainage District v. Keyes*, 258 F.2d 273 274-76 (5th Cir.1958) (bondholder bound by the terms of plan under Chapter IX of the Bankruptcy Act regardless of whether the creditor had actual notice of the claims bar date); *Matter of Sanitary & Imp. Dist. No. 7, Lancaster Cnty., Neb.*, 112 B.R. 990, 994 (Bankr. D. Neb. 1990) (only limitation on discharge in chapter 9 is for obligations owed to creditors who did not have notice or actual knowledge of the case before confirmation).

15. Tellabs had notice and actual knowledge of the County's chapter 9 case and is bound by the terms of the Plan and Confirmation Order. Among other things, the Notice of Bankruptcy provided Tellabs with notice of the County's case. The County's counsel also discussed the chapter 9 case with Tellabs's counsel prior to entry of the Confirmation Order. Tellabs's continued prosecution of the State Court Action violates the Plan, the Confirmation Order, and section 944 of the Bankruptcy Code and has caused the County to pursue relief from this Court. Accordingly, the Court should enter an order enforcing the Permanent Injunction and the County's discharge under section 944 of the Bankruptcy Code. *See Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 970-71 (11th Cir. 2012) (only the bankruptcy court that issues an injunctive order possesses the power to enforce the order and punish contempt of the order); *In*

re Residential Capital, LLC, 512 B.R. 179, 188-90 (Bankr. S.D.N.Y. 2014) (recognizing that bankruptcy court is the appropriate forum to rule on scope of injunctions in confirmed plan and ordering plaintiffs to dismiss lawsuit prosecuted in violation of confirmed plan).

16. The County reserves the right to seek an award of contempt sanctions, actual damages, including attorneys' fees, and punitive damages against Tellabs pursuant to, without limitation, section 105 of the Bankruptcy Code, section 6.2 of the Plan, and 28 U.S.C. § 1927. *See Residential Capital*, 512 B.R. at 190-92 (discussing sanctions available against party that refuses to dismiss complaint that violates confirmed plan injunction).

WHEREFORE, the County respectfully requests the Court to enter an order directing Tellabs to dismiss the Complaint and State Court Action with prejudice and granting such other, further, and different relief as may be just and proper.

Respectfully submitted this 24th day of February, 2015.

/s/ Patrick Darby

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Counsel for Jefferson County, Alabama

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on:

Blake A. Madison
Chad L. Hobbs
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electronically and by Federal Express for next day delivery, on this 24th day of February, 2015.

/s/ Patrick Darby
Of Counsel

EXHIBIT A



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

TELLABS NORTH AMERICA, INC., *
*
Plaintiff, *
*
v. * CASE NO. CV 11-1279
*
JEFFERSON COUNTY, ALABAMA, *
*
Defendant. *

NOTICE OF BANKRUPTCY

Notice is hereby provided that Jefferson County, Alabama¹ (hereinafter "County"), is a Chapter 9 Debtor in the U.S. Bankruptcy Court for the Northern District of Alabama, Case No. 11-05736-9, which was filed on November 9, 2011.

Pursuant to 11 U.S.C. §§ 362 and 922, the County's bankruptcy filing operates as an automatic stay of (A) the continuation of all judicial, administrative or other actions or proceedings against the County that were commenced before the filing of the bankruptcy petition; (B) the enforcement, against the County or against any property of the County, of any judgment obtained before the commencement of the County's bankruptcy case; (C) any act to obtain possession of property of or from the County; (D) any act to exercise control over property of the County; (E) any act to enforce any lien against property of the County; (F) any act to collect, assess or recover a claim against the County that arose before the commencement of the County's bankruptcy case; (G) the setoff of any debt owing to the County that arose before the commencement of the County's bankruptcy case

¹ Named Defendant Jefferson County Revenue Department is a department of Jefferson County, Alabama.

against any claim against the County; (H) the commencement or continuation of any proceeding against any officer or inhabitant of the County that seeks to enforce a claim against the County; and (I) the enforcement of a lien on or arising out of taxes or assessments owed to the County. See 11 U.S.C. §§ 362(a)(1)-(7), 922(a); see also id. § 902(1).

Respectfully submitted this 16th day of November, 2011.

/s/ Shawнна H. Smith

SHAWNNA H. SMITH (SMI317)

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2011, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to the following:

Blake A. Madison

bmadison@rosenharwood.com

/s/ Shawнна H. Smith

Assistant County Attorney