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

In re:	)	
	)	
PREMIER KINGS, INC., *et al.*,[1],	)	**Chapter 11**
	)	
Debtors.	)	**CASE NO.: 23-02871-TOM-11**
	)	
	)	**Jointly Administered**

LIMITED OBJECTION AND RESPONSE OF PREMIER HOLDINGS, LLC, PREMIER HOLDINGS OF GEORGIA, LLC, PREMIER KINGS HOLDINGS, LLC, PREMIER KINGS HOLDINGS OF ALABAMA, LLC, AND PREMIER KINGS HOLDINGS OF GEORGIA, LLC TO THE DISCLOSURE STATEMENT PROPOSED BY THE DEBTORS

COME NOW Premier Holdings, LLC, Premier Holdings of Georgia, LLC, Premier Kings Holdings, LLC, Premier Kings Holdings of Alabama, LLC, and Premier Kings Holdings of Georgia, LLC (collectively, "Holdings"), and submits this its limited objection (this "Objection") to the Disclosure Statement for Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors (the "Disclosure Statement") [Doc. No. 474]. For its Objection, Holdings states as follows:

JURISDICTIONAL INFORMATION

1. On or about October 25, 2023 (the "Petition Date"), Debtors filed for bankruptcy protection under Chapter 11 of 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"). Debtors continue to operate its business and manage its property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

[1] The Debtors in these cases are: Premier Kings, Inc.; Premier Kings of Georgia, Inc.; and Premier Kings of North Alabama, LLC. The Court has entered an order for joint administration on October 30, 2023 [Doc. No. 84].

2. This Court has jurisdiction over the Motions and this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtors' Chapter 11 case, the Motions, and this Objection in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND FACTS

3. Debtors and Holdings are parties to over fifty (50) commercial real estate leases (the "Leases") for the operation of Burger King restaurants (the "Restaurants"), which Restaurants, along with the furniture, fixtures, and equipment used to operate said Restaurants (the "FF&E"), were purchased by Holdings with funds loaned to Holdings (the "Loans") by various Lenders (the "Lenders"). Through other documentation, Debtors were responsible for the payment to Holdings of certain of the debts of the Loans.

4. On January 2, 2024, Holdings filed its proof of claims (the "Claims"). The Claims evidence the Debtors' obligation to Holdings for the past due amounts owed under the Leases and portions of the Loans under which Debtors have an obligation to pay Holdings, and rejection damages.

5. On February 16, 2024, the Debtors filed the Disclosure Statement. Article N, Section 2 of the Disclosure Statement states that:

> [E]ach of the Debtors, the Estates, *each of the Debtors' and the Estates' current and former affiliates* (collectively, the "Debtor Releasing Parties") shall be deemed to have provided a full, complete, unconditional, and irrevocable release to the Released Parties from any and all Causes of Action and any other debts, obligations, rights, suits, judgments, damages, actions, remedies and liabilities, whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing on or before the Effective Date . . . .

The term "affiliates" is not defined in the Disclosure Statement or the Plan (defined below).

6. Section 1.56 of the *Plan of Liquidation* (the "Plan"), attached to the Disclosure Statement as Exhibit A, defines the Released Parties as:

> [E]ach of (a) the Debtors, (b) each Debtor's current officers, managing members, directors, Independent Board and its members, financial advisors, attorneys, investment bankers, and other professionals, each in their capacity as such, (c) the Prepetition Agent and Prepetition Lenders (as defined in the Final Cash Collateral Order), (d) with respect to each entity in clause (c), each such entity's current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such."

Thus, the term "Prepetition Lenders" is defined in the Final Cash Collateral Order.

7. Section (I) of the Final Cash Collateral Order (the "Cash Collateral Order") [Doc. No. 205] defines the "Prepetition Lenders" as the lenders under a "Second Amended and Restated Credit Agreement, dated as of February 25, 2021." While this "Second Amended and Restated Credit Agreement" is mentioned in various documents throughout the bankruptcy docket, the parties thereto are not provided. Moreover, there is no statement in the Disclosure statement as to what entities may constitute the Prepetition Lenders' subsidiaries and the like, as enumerated in subsection (d) in the definition of Released Parties.

8. Article N, Section 2 of the Disclosure statement also reserves some of Debtors' rights, stating:

> [T]he foregoing release shall not prohibit the post-confirmation Debtors from asserting any and all defenses and counterclaims in respect of any Disputed Claim asserted by any of the Released Parties; provided, further, that the Released Parties shall not be released from any act or omission that constitutes fraud, willful misconduct, or gross negligence as determined by a Final Order. Notwithstanding anything to the contrary in the foregoing, the releases set forth in section 13.2 of the Plan do not release (1) any Causes of Action identified in Section 1.61 or (2) any post-Effective Date obligations of any party or Entity: (A) arising under the Plan or any document, instrument, or agreement executed to implement the Plan; or (B) expressly set forth in and preserved by the Plan or related documents.

Under this provision, only the Debtors are permitted to assert defenses and counterclaims, but not any of the other Debtor Releasing Parties.

OBJECTION

9. Section 1125(b) of the Bankruptcy Code makes clear that before a debtor may solicit acceptance of a plan, the court must approve the written disclosure statement as containing adequate information. 11 U.S.C. § 1125(b). "Adequate information" is defined as:

> Information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor of the relevant class to make an informed judgment about the plan[.]

11 U.S.C. § 1125(a)(1).

10. Relevant factors to consider when determining the adequacy of the information supplied in a disclosure statement include:

> (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor, including compensation of insiders, directors and officers of the debtor; (11) the Chapter 11 plan or summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projectable realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Howell, 2011 WL 1332176 (Bankr. N.D. Ga. Jan. 21, 2011)(citing *In re Metrocraft Pub. Svcs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984); *see also In re Scioto Valley Mortgage Co.*, 88 B.R. 168 (Bankr. S.D. Ohio 1988).

11. This Objection relates to the adequacy of the Disclosure Statement and the accuracy of the information contained therein, primarily as it relates to Article N, Section 2 of the Disclosure Statement. Specifically, Holdings objects because the definitions of "Releasing Parties" and "Released Parties" as used in the Disclosure Statement are vague and ambiguous.

12. The Disclosure Statement includes "the Estates' [defined in the Plan as the bankruptcy estates of the Debtors] current and former affiliates . . ." in the definition of "Releasing Parties." Due to the undefined use of the word "affiliates" and the nature of the businesses of Holdings and Debtors, the term "Releasing Parties" could be construed to include Holdings.

13. The Plan attached to the Disclosure Statement includes the term "Prepetition Lenders" in its definition of "Released Parties." While the Disclosure Statement alleges that "Prepetition Lenders" is defined in the Cash Collateral Order as certain lenders involved with a "Second Amended and Restated Credit Agreement," Holdings finds the definition of "Prepetition Lenders" included in the Cash Collateral Order is insufficient, as the lending entities involved with the Second Amended and Restated Credit Agreement, are not listed. The Disclosure Statement is therefore inadequate because it is unclear which entities the term "Prepetition Lenders" includes.

14. Moreover, the definition of "Released Parties" includes the Prepetition Lenders' "current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such." Therefore, it is impossible to identify the entities and persons that are included in the definition of "Released Parties."

15. Because the term "Releasing Parties" used in the Disclosure Statement could be construed to include Holdings, and because the term "Released Parties" used in the Disclosure

Statement, is not adequately defined, Article N, Section 2 of the Disclosure Statement could be construed as Holdings releasing parties that are unknown to Holdings. Holdings objects to any language that results in Debtors' releasing claims on Holdings' behalf.

WHEREFORE, Holdings requests that, absent the Debtors' inclusion of information to satisfy the above-referenced deficiencies, this Court:

(a) deny approval of the Debtors' Disclosure Statement; and

(b) grant Holdings such other and further relief that the Court may deem just.

DATED this the 13th day of March, 2024.

/s/ Heather A. Jamison
Heather A. Jamison
Chloe E. Champion

Counsel for Premier Holdings, LLC, Premier Holdings of Georgia, LLC, Premier Kings Holdings, LLC, Premier Kings Holdings of Alabama, LLC, and Premier Kings Holdings of Georgia, LLC

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CERTIFICATE OF SERVICE

Service of the foregoing shall be made via e-mail, and if e-mail is not available via U.S. mail, upon the Master Service List with the addition of any other parties requiring service as set forth in the *Order (i) Authorizing the Debtors to File a Consolidated List of Unsecured Creditors for Giving Notice in Lieu of Submitting a Separate List for Each Debtor, (ii) Authorizing the Debtors to Implement Certain Notice and Case Management Procedures, and (iii) Granted Related Relief* [Doc. No. 86], on this the 13th day of March, 2024.

/s/ Heather A. Jamison
OF COUNSEL