UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11
HHG CORP. A/K/A EXTREME	:	
CHAMPIONSHIP WRESTLING,	:	Case No. 01-B-11982 (ASH)
	:	
Debtor.	:	

Having considered the "Response and Counterproposal…" dated May 3, 2006 submitted on behalf of ECW, Inc. and Tod A. Gordon, the Court makes the following Findings and Conclusions.

FINDINGS OF FACT

1. On April 5, 2001, HHG Corp. (the "Debtor") filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code.

2. On June 20, 2001, the Debtor's case was converted to a case under chapter 7 of the Bankruptcy Code.

3. On June 22, 2001, Barbara Balaber-Strauss (the "Trustee") was appointed to serve as the chapter 7 trustee for the Debtor's estate.

4. On or about January 28, 2003, the Trustee entered into an Asset Purchase Agreement (the "APA") with WWE, pursuant to which WWE agreed to purchase, and the Trustee agreed to sell, the Assets (as that term is defined in the Asset Purchase Agreement).[1]

5. The APA defined the term "Assets" to include, without limitation, "[a]ny and all intellectual property owned by the Estate or used by the Debtor in connection with the

[1] Order Pursuant to 11 U.S.C. §§ 105 and 363 Approving Sale of Assets to World Wrestling Entertainment, Inc. dated June 17, 2003 (Docket No. 102) (the "Sale Order").

Debtor's professional wrestling business including without limitation, the name 'Extreme Championship Wrestling', 'ECW' and variants thereof [and]…the entire ECW library of footage…."[2]

6. On March 14, 2003, a hearing was held with respect to the Trustee's proposed sale of assets to WWE.

7. At the conclusion of that hearing, the Court determined, among other things, that WWE's offer was the highest and best offer received for the Debtor's assets, and that consummation of the APA was in the best interests of the Debtor and its estate.

8. The Court thus directed counsel for WWE to settle an order on notice to all parties in interest, approving the APA, and authorizing the Trustee to consummate the transactions contemplated thereby.

9. On March 19, 2003, WWE filed with the Court, and served on all parties in interest, including Gordon, a Notice of Settlement of Order Approving Sale of Assets to World Wrestling Entertainment, Inc. and Granting Other Relief (Docket No. 85) (the "Notice of Settlement"), which included a proposed form of order identical in all material respects to the Sale Order.

10. The Proposed Order attached to the Notice of Settlement expressly provided, among other things, that "[t]he Assets include, without limitation, copyright ownership of the entire ECW library of footage and no party, including, without limitation, Tod Gordon or any affiliate, has any Claim against the ECW library."

11. Movants admit that they received the Notice of Settlement, and had actual knowledge of the proposed form of the Sale Order, including the provisions: (i) defining the

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[2] See APA, § 1(a)(i).

assets conveyed to WWE to include "copyright ownership of the entire ECW library of footage," and (ii) declaring that "no party, including, without limitation, Todd Gordon or any affiliate, has any Claim against the ECW library."

12. Moreover, Movants admit that they made a tactical decision not to object, and "knowingly waived various ownership interests" in connection with the entry of the Sale Order.[3]

13. On June 17, 2003, the Court entered the Sale Order, which approved the APA, and authorized the Trustee to, among other things, "take all steps necessary or appropriate to carry out the terms and intent of the Asset Purchase Agreement, including, without limitation, the sale and transfer of the Assets to WWE." Sale Order, ¶ 2-3.

14. Neither the Movants, nor any other party in interest, appealed the entry of the Sale Order, or sought a stay of its implementation.

15. Following the entry of the Sale Order, Movants had actual knowledge that WWE was making active commercial use of the ECW library purchased from the Debtor.[4]

16. Nevertheless, Movants waited until October 11, 2005, more than two years after entry of the Sale Order, to file their Motion, and thereby assert an interest in the ECW library of footage notwithstanding the express terms of the Sale Order.

17. For the reasons that follow, the relief requested by the Motion must be denied in its entirety, and with prejudice.

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[3] Memorandum of Law in Response to Objection of World Wrestling Entertainment, Inc., to the Motion of Eastern Championship Wrestling and Tod A. Gordon to Enforce and Interpret Order dated 6/17/2003 pursuant to 11 U.S.C. Sections 105 and 603 Approving Sale of Assets to World Wrestling Entertainment, Inc. (Docket No. 154) (the "Response Brief"), p. 6, fn. 4.

[4] See Motion, ¶ 15, p. 5 ("Upon information and belief, WWE has made millions as a result of the Infringing Uses . . . .").

CONCLUSIONS OF LAW

18. An order approving a sale under section 363(b) of the Bankruptcy Code is a final order for *res judicata* purposes. In re Clinton Street Food Corp., 254 B.R. 523, 530 (Bankr. S.D.N.Y. 2000).

19. Moreover, because a section 363(b) sale of assets is an *in rem* proceeding, a bankruptcy sale order is "good against the world, not just the parties to a judgment or persons with notice of the proceeding." Gekas v. Pipin (In re Met-L-Wood Corp.), 861 F.2d 1012, 1016 (7th Cir. 1988).

20. As a matter of public policy, sale orders entered under section 363(b) of the Bankruptcy Code are accorded a heightened degree of finality in order to prevent precisely the sort of chaos that Movants seek to create – namely, "the chance the purchasers will be dragged into endless rounds of litigation to determine who has what rights in the [purchased] property." In re Sax, 796 F.2d. 994, 998 (7th Cir. 1986); accord In re Clinton Street Food Corp., 254 B.R. 523, 530-31 (Bankr. S.D.N.Y. 2000) (noting "the important public policy favoring the finality of orders transferring ownership of bankruptcy estate assets.").

21. The express language of the Sale Order provides that the "ECW library of footage" was among the assets conveyed to WWE by the Trustee, and that that "no party, including, without limitation, Tod Gordon or any affiliate, has any Claim against the ECW library." Sale Order, ¶ 5.

22. It is undisputed Movants had actual notice of the terms of the Sale Order prior to its entry. As such, "it was incumbent upon [them] to continue to continue to scrutinize the terms of the sale as memorialized in the Sale Order." In re Kenilworth Systems Corp., 204 B.R. 665, 669 (E.D.N.Y. 1997).

23. Nevertheless, it is undisputed that the Movants did not object to entry of the Sale Order, nor did they seek a stay of its implementation or file an appeal.

24. Instead, they made a tactical decision not to object to entry of the Sale Order, and to "knowingly waive various ownership interests" in connection with its entry.[5]

25. Having knowingly waived their opportunity to object to the entry of the Sale Order, the Movants are barred by the doctrine of *res judicata* from challenging its provisions, or seeking to assert an interest in the property expressly conveyed to WWE thereunder. See In re Clinton Street Food Corp., 254 B.R. at 530-31; In re Kenilworth, 204 B.R. at 669.[6]

26. Movants' contention that *res judicata* does not apply because this Court lacked subject matter jurisdiction to enter the Sale Order to the extent it conveyed assets that did not belong to the Debtor is legally inaccurate, and based on a mischaracterization of what the Sale Order accomplished.

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[5] Response Brief, p. 6, fn. 4.

[6] The Court notes that Movants have not sought relief based on Fed. R. Civ. P. 60(b). As a practical matter, however, the Court finds that the facts of this case would not support relief under Rule 60(b) in any event since relief from a final judgment is simply not available based on a party's "dissatisfaction in hindsight with choices deliberately made by counsel," or "an attorney's failure to evaluate carefully the legal consequences of a chosen course of action." Nemaizer v. Baker, 793 F.2d 58, 62 (2d Cir. 1986). Moreover, a Rule 60(b) motion would be time barred under both the one year and "reasonable time" standards incorporated in the Rule.

27. As a legal matter, even if the Court had not considered whether Movants had an interest in the ECW library, res judicata would still apply because Movants themselves, who had actual notice of the Sale Order, could have raised that issue as an objection to its entry. In re Clinton Street, 254 B.R. at 531 (finding that res judicata applied where "the trustee could have raised these claims to defeat Maui's bid and acquisition of the Penco assets.").

28. Moreover, as a practical matter, rather than authorizing the sale of assets that did not belong to the Debtor's estate, the Sale Order affirmatively determined that certain assets, including the ECW library of footage and related intellectual property rights, belonged to the Debtor's estate and could be sold by the Trustee. See Sale Order, ¶ 5 ("The Assets include, without limitation, copyright ownership of the entire ECW library of footage.").

29. The Sale Order further determined that no other party, including the Movants, which were identified by name, had any interest in or claim against the assets conveyed to WWE by the Sale Order. See Sale Order, ¶ 5 ("[N]o party including, without limitation, Tod Gordon or any affiliate, has any Claim against the ECW library.").

30. These determinations fall well within the bounds of this Court's subject matter jurisdiction, which clearly includes the power to "determine what is and what is not property of the estate," DiBerto v. The Meadows at Madbury, Inc. (In re DiBerto), 171 B.R. 461, 475 (Bankr. D. N.H. 1994).

31. The Court thus had ample jurisdiction to enter the Sale Order, and if Movants believed themselves to be aggrieved by any of the provisions of the Sale Order, they were obligated to file a timely appeal and to seek a stay of its implementation.[7]

[7] In the absence of such a stay, which was neither sought, nor obtained, any appeal the Movants might have taken would have been rendered moot pursuant to 11 U.S.C. § 363(m), even if, as the Movants suggest, the assets conveyed by the Sale Order did not belong to the Debtor.

32. Having failed to do so, they are now forever precluded by the doctrine of *res judicata* from relitigating the conclusions reached by the Sale Order. In re Met-L-Wood Corp., 861 F.2d at 1016 ("[A]fter the time for appeal had lapsed, the order could not be attacked in a new lawsuit brought by a party to the sale proceeding . . . such a suit would be barred by res judicata.").

33. Even if the Movants' initial failure to object could somehow be excused, their decision to lie in wait for more than two years after the entry of the Sale Order before asserting a claim of right in the ECW library cannot be, and would give rise to equitable estoppel or laches, particularly since they knew that WWE was making active commercial use of the ECW library in reliance on the Sale Order during the period of their silence. See In re DeArakie, 199 B.R. 821, 827 (Bankr. S.D.N.Y. 1996) (holding that a debtor was equitably estopped from enforcing exemption where he "stated that he was not opposed to the sale, and failed to object to the distribution of the proceeds made by the trustee."); Canino v. Bleau (In re Canino), 185 B.R. 584, 595 (9th Cir. B.A.P. 1995) (holding that a debtor's failure to object to trustee's distribution of proceeds resulting from the sale of exempt property equitably estopped her from complaining, two years after the fact, that she should have received a greater share).

34. Movants allowed WWE to act in justifiable reliance on the provisions of the Sale Order and the Movants' "tacit approval" of the same for more than two years, and it would be profoundly inequitable to allow the Movants to raise a new claim of ownership to the ECW library or any of the other assets conveyed by the Sale Order at this late date.

35. Accordingly, the Motion must be denied.

See In re Sax, 796 F.2d. 994, 998 (7th Cir. 1986) ("A stay is necessary to challenge a bankruptcy sale authorized under § 363(b)."); Gilchrest v. Westcott (Matter of Gilchrest), 891 F.2d 559, 561 (5th Cir. 1990) ("Gilchrist's failure to obtain a stay is fatal to his position, regardless of whether there was jurisdiction.").

A separate order consistent with these findings shall be entered forthwith.

Dated: White Plains, New York
May 5, 2006

Adlai S. Hardin, Jr.
United States Bankruptcy Judge