

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re)	Chapter 11 Cases
)	
SPIEGEL INC., <u>et al.</u> ,)	Case No. 03-11540 (BRL)
)	
Debtors.)	Jointly Administered
)	
)	

MEMORANDUM DECISION ENFORCING PLAN
INJUNCTION AND GRANTING RELATED RELIEF

Eddie Bauer Holdings, Inc. (“EBHI”), successor in interest to Spiegel, Inc. (“Spiegel”) and certain of its direct and indirect subsidiaries, as former debtors in possession(collectively, the “Debtors” and presently, the “Reorganized Debtors”), and Eddie Bauer, Inc., a reorganized debtor in these cases and a wholly owned subsidiary of EBHI (together with EBHI, “Eddie Bauer”), move pursuant to sections 105(a) and 1142(b) of title 11, United States Code (the “Bankruptcy Code”) and Rule 3020(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order (i) enforcing the permanent injunction provided for in the Plan and this Court’s Confirmation Order, (ii) providing that the sole remedy in respect of (A) the 2003 Taxes (as defined below) is the distribution on account of the Prepetition Claim and (B) in respect of taxes for the Post-Petition Period (as defined below), cash in the amount of \$27,530.47. Service of the notice of motion was made on DuPage County and TARC, Inc., a tax lien purchaser. DuPage County filed a response to the motion but did not appear for argument.

Background

On March 17, 2003 (the “Petition Date”), Spiegel and certain of its affiliates

(collectively, the “Debtors”) filed petitions commencing chapter 11 cases with this Court. On July 17, 2003, this Court entered an order (the “Bar Date Order”) that, among other things, established October 1, 2003 as the deadline for filing proofs of claim in the chapter 11 cases (the “Bar Date”). The Bar Date Order provided, *inter alia*, that (a) all persons and entities, *including governmental units*, that had a claim against the Debtors that arose or was deemed to have arisen before the Petition Date, *whether of general unsecured, priority, or secured status*, were required to file proofs of claim before the Bar Date, (b) persons that desired to rely on the schedules filed by the Debtors were responsible for determining the accuracy of their claims as listed on the schedules, (c) in the event of an amendment of the schedules, the holder of any claim affected by the amended Schedules was to be afforded an extension of 30 days from the date of such notice to file a proof of claim, and (d) that any holder of a claim that failed to file a proof of claim would be forever barred, estopped, and permanently enjoined from asserting such claim, whether directly or indirectly against the Debtor, its successors and assigns and their respective property.

Prior to the Petition Date, the Debtors owned certain real property (the “Property”) located in DuPage County, Illinois. After the Petition Date, DuPage County assessed real estate taxes on the Property in the aggregate amount of \$47,067.68 for the period from January 1, 2003 through June 30, 2003 (the “2003 Taxes”). The Debtors bifurcated the 2003 Taxes for the prepetition period from January 1, 2003 through March 16, 2003 (the “Prepetition Period”) in the amount of \$19,547.21, and the post-petition period from the Petition Date through June 30, 2003 (the “Post-Petition Period”) in the amount of \$27,530.47. In accordance with the Bar Date Order, the Debtors served a notice of the Bar Date on DuPage County on or about July 23, 2003.

The Debtors also listed DuPage County on amended Schedules dated August 24, 2004 as

holding a non-priority unsecured claim in the amount of \$19,547.21 (the “Prepetition Claim”), on account of the taxes owed to DuPage County for the Prepetition Period. On August 26, 2004, the Debtors served a notice of the amended Schedules, setting an extended deadline for filing proofs of claim for DuPage County and the other creditors listed on the amended Schedules of September 27, 2004, together with a proof of claim form indicating the amount and priority of the Prepetition Claim as listed on the amended Schedules, in accordance with the Bar Date Order.

DuPage County failed to file a proof of claim in the chapter 11 cases against any of the Debtors, despite service of notice of the Bar Date, the amended Schedules and a proof of claim form indicating that the Debtors had scheduled DuPage County as having a non-priority unsecured claim in the amount of \$19,547.21.

In May 2004, Spiegel timely paid the bifurcated portion of the 2003 Taxes relating to the Post-Petition Period in the amount of \$27,530.47. Upon receipt, DuPage County cashed the check sent by Spiegel to DuPage County for such Post-Petition Period taxes and did not return the funds or give any indication that it intended to return the funds.

On March 29, 2005, this Court approved the Debtors’ First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the First Amended Joint Plan of Reorganization of Affiliated Debtors (the “Disclosure Statement”). On April 5, 2005, the Debtors sent to DuPage County a solicitation package comprising, *inter alia*, the Disclosure Statement, a copy of the First Amended Joint Plan of Reorganization of Affiliated Debtors (as modified by the Modified First Amended Joint Plan of Reorganization of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code dated as of May 23, 2005, the “Plan”), a

ballot for DuPage County's vote to accept or reject the Plan (on which ballot the Prepetition Claim amount and priority were printed), and notice of the deadlines for voting and filing objections to the Plan and the hearing to confirm the Plan. DuPage County did not object to confirmation of the Plan, return a ballot to accept or reject the Plan, appeal the Confirmation Order or take any other action with respect to the Plan.

On May 25, 2005, this Court entered an order in the Debtors' chapter 11 cases confirming the Plan (the "Confirmation Order"). On June 21, 2005, the conditions precedent to the effectiveness of the Plan were met and the Plan's effective date occurred (the "Effective Date").

The Plan provides that each holder of an unsecured claim was to receive its pro rata share of certain cash distributions and the common stock of EBHI. *See* Plan § 4.5. In satisfaction of DuPage County's Prepetition Claim and in accordance with the treatment of Class 4 general unsecured claims under the Plan, Eddie Bauer and/or the Spiegel Creditor Trust distributed an aggregate of \$10,180.36 in cash and 787 shares of common stock of EBHI to DuPage County. These cash and shares were provided pursuant to three separate distributions. According to Bankruptcy Services, LLC, the claims agent in these cases, DuPage County returned each of the distributions to the Spiegel Creditor Trust upon receipt.

Six months after the Effective Date, in December 2005, the DuPage County Treasurer's Office sent a check in the amount of \$27,530.47 to counsel for the Spiegel Creditor Trust, stating that the funds paid to the county by Spiegel in May 2004 on account of the Post-Petition Period taxes had been held in escrow by the county and were being refunded based on the Debtors' emergence from chapter 11.

On or about April 12, 2006, Eddie Bauer received a “Take Notice” dated March 30, 2006 from DuPage County indicating that the Property had “been sold for delinquent taxes” on November 22, 2005, pursuant to a judgment entered against the Property by the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Wheaton, Illinois dated November 18, 2005 (“DuPage Circuit Court Order”). A stamp on the Take Notice indicates that the notice was filed on the real estate records for the Property on April 3, 2006. Counsel for Eddie Bauer first learned of the November 18, 2005 proceeding and the DuPage Circuit Court Order in June 2006.

Upon inquiry to the DuPage County Treasurer’s Office on April 12, 2006, counsel for Eddie Bauer learned that the purported “delinquent taxes” were for prepetition periods and the Post-Petition Period taxes. On the same date, counsel for Eddie Bauer sent a letter (the “April 12 Letter”) to the DuPage County Treasurer, and a copy of the same to TARC, Inc., giving notice that any action taken with respect to the property was in violation of the Injunction and demanding that DuPage County withdraw the Take Notice, take steps to clear title to the Property to the extent that DuPage County or its assignees had filed the Take Notice or any other notice on the real estate records related to the Property, and refrain from taking any other action in violation of the Injunction.

Also on or about April 12, 2006, Eddie Bauer sent a check to DuPage County in the amount of \$27,530.47 representing the amount paid by Spiegel on account of the Post-Petition Period taxes and returned by DuPage County. DuPage County subsequently returned the check to Eddie Bauer together with a response to the April 12 Letter indicating DuPage County’s position that there was no discharge of its claim or release of any lien that it now alleges to have held with respect to the Property.

Relief Requested

By this Motion, Eddie Bauer seeks entry of an order, pursuant to sections 105(a) and 1142(b) of the Bankruptcy Code and Bankruptcy Rule 3020(d), providing that any prepetition claim held by DuPage County was discharged and any lien held by DuPage County on the Property was released pursuant to the Plan and the Confirmation Order, limiting DuPage County's recovery on the Prepetition Claim to the cash and stock distributed pursuant to the Plan, limiting DuPage County's recovery on the Post-Petition Period taxes to the principal amount of \$27,530.47, and enforcing the Injunction to prevent DuPage County, TARC or their assigns from taking any action against the Property with respect to taxes for any period prior to the Effective Date.

Discussion

This Court has jurisdiction over these chapter 11 cases pursuant to sections 157 and 1334 of title 28, United States Code. 28 U.S.C. § § 157, 1334. The Bankruptcy Court also has inherent or ancillary jurisdiction to interpret and enforce its own orders, including the Confirmation Order, wholly independent of the statutory grant of jurisdiction under section 1334. *Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934); *Back v. LTV Corp. (In re Chateaugay Corp.)* 213 B.R. 633, 638 (S.D.N.Y. 1997). A Bankruptcy Court's jurisdiction continues post-confirmation to protect its confirmation decree, to prevent interference with the execution of a confirmed plan, and to otherwise aid in its operation. *In re Chateaugay Corp.*, 201 B.R. 48, 64 (Bankr. S.D.N.Y. 1996) *aff'd in part*, 213 B.R. 633, *supra* (citing *In re Dilbert's Quality Supermarkets, Inc.*, 368 F.2d 922, 924 (2d Cir. 1966)).

Pursuant to section 1141(a) of the Bankruptcy Code, subject to certain limited exceptions,

the provisions of a confirmed plan bind the debtor and any creditor, whether or not the claim of such creditor is impaired under the plan and whether or not such creditor has accepted the Plan. 11 U.S.C. § 1141(a); Confirmation Order ¶ 41; *see Sure-Snap Corp. v. State Street Bank and Trust*, 948 F.2d 869, 873 (2d Cir. 1991) (holding that a plan binds its “creditors as to *all* the plan’s provisions, and all related, property or not-property based claims which could have been litigated in the same cause of action”); *In re Indesco International, Inc.*, 2006 WL 2988703, *3 (Bankr. S.D.N.Y. Oct. 17,2006); *In re 401 East 89th Street Owners, Inc.*, 223 B.R. 75, 79 (Bankr. S.D.N.Y. 1998). Confirmation not only discharges the debtor from its pre-confirmation debts, it also reverts all of the property of the estate back in the debtor, and all the property dealt with in the plan is reverted free of all claims and interests of the creditors. 11 U.S.C. § 1141(b), (d); *Southwest Marine Inc. v. Danzig*, 217 F.3d 1128, 1140 (9th Cir. 2000).

As of the Effective Date of the Plan, property of the Debtors’ estates, with the exception of certain property that was transferred to the Spiegel Creditor Trust, was transferred to Eddie Bauer. Pursuant to Sections 7.1 and 7.11 of the Plan and paragraphs 50 and 84 of the Confirmation Order, the Property was transferred free and clear of all liens, claims, encumbrances or interests of any kind. Eddie Bauer therefore holds the Property free from any liens that arose prior to the Effective Date.

The Bar Date Order, of which DuPage County received notice at least two times, made it clear that all persons and entities, including governmental units, that held claims that arose or were deemed to have arisen prior to the Petition Date, including secured claims, were required to file proofs of claim on or prior to the Bar Date (or the extended Bar Date if such claim was affected by amended Schedules), or such holders of claims would be

forever barred, estopped and permanently enjoined from asserting those claims against the Debtors or their successors. Dozens of other taxing authorities from around the country, many of which asserted secured claims based on statutory liens, timely filed proofs of claim in accordance with the Bar Date Order. DuPage County failed to file a proof of claim, even when served with a form of proof of claim that reflected an amount and priority of its claim with which it apparently disagreed.

In accordance with the Bar Date Order, the Schedules and DuPage County's failure to file a proof of claim, the Plan and the Confirmation Order, the Prepetition Claim was treated as a general unsecured claim in the amount of \$19,547.21 and Eddie Bauer and the Spiegel Creditor Trust made distributions to DuPage County pursuant to the treatment provided for Class 4 claims under the Plan. Any claim that DuPage County may now assert that it held against the Debtors was discharged under the Plan. Pursuant to Section 13.2 of the Plan and paragraph 40 of the Confirmation Order, and pursuant to section 1141 of the Bankruptcy Code, all claims that arose against the Debtors on or before the date of entry of the Confirmation Order were discharged on the Effective Date. Therefore, DuPage County no longer holds any claim for prepetition taxes that could be secured by a lien on the Property.

Moreover, if the claim now asserted by DuPage County against the Debtors was secured by a lien on the Property, that lien was released on the Effective Date pursuant to the Plan. As set forth in Section 7.11 of the Plan, on or immediately before the Effective Date, each holder of a secured claim against the Debtors, or a claim against the Debtors that was purportedly secured, was required to turn over and release to the Debtors any and all property of the Debtors that secured or purportedly secured such claim, as it pertained to the properties then owned by the

Debtors, or the liens on such properties were automatically deemed released. Accordingly, any lien that DuPage County may have held on the property prior to the Effective Date was automatically deemed released upon the effectiveness of the Plan.

DuPage County erroneously relies on section 523(a)(1)(A) of the Bankruptcy Code which provides that certain taxes owed by an *individual* debtor are not discharged. That section applies only to individual debtors and is inapplicable to these corporate debtors. *See Towers v. United States (In re Pacific-Atlantic Trading Co.)*, 64 F.3d 1292, 1302 (9th Cir. 1995) (“§ 523 only applies to individual and not corporate debtors”). The discharge of DuPage County’s claims occurred pursuant to the Bar Order, the Plan and the Confirmation Order.

DuPage also erroneously relies on the termination of the automatic stay to take action against the Property. However, upon confirmation of the Plan, the automatic stay was replaced with a permanent injunction. Accordingly, any action taken by DuPage County, TARC or their assigns with respect to the Property related to taxes arising prior to the Effective Date is in violation of the permanent injunction set forth in the Plan and paragraph 51 of the Confirmation Order, which provide that all entities that may have held claims against the Debtors are permanently enjoined from, among other things, commencing or continuing any action with respect to any such claims against Eddie Bauer, or creating or enforcing any encumbrance of any kind against Eddie Bauer or its property. Accordingly, any action taken by DuPage County or its assigns against the Property in respect of taxes that accrued on or prior to the Effective Date is in violation of the Injunction and is therefore void. DuPage County’s action in selling its purported lien on the Property and any action that DuPage County or TARC have taken to file the Take Notice or any other notice on the real property records for the Property were therefore in

violation of the Injunction and void *ab initio*. See *48th Street Steakhouse, Inc. v. Rockefeller Group, Inc. (In re 48th Street Steakhouse, Inc.)*, 835 F.2d 427, 431 (2d Cir.1987) citing 2 L. King, *Collier on Bankruptcy* § 362.11 (15th ed. 1987)(“actions taken in violation of the stay are void and without effect”). Likewise, any action that DuPage County, TARC or their assigns may take to foreclose on the Property or otherwise enforce a claim for taxes that arose prior to the Effective Date is in violation of the Injunction.

Conclusion

Accordingly, Eddie Bauer’s Motion is granted. The prepetition claim held by DuPage County was discharged and any lien held by DuPage County on the Property was released pursuant to the Plan and the Confirmation Order. DuPage County’s recovery on the Prepetition Claim is limited to the cash and stock distributed pursuant to the Plan; recovery on the Post-Petition Period taxes is limited to the principal amount of \$27,530.47; DuPage County, TARC or their assigns are enjoined from taking any action against the Property with respect to taxes for any period prior to the Effective Date.

SUBMIT AN ORDER CONSISTENT WITH THIS DECISION.

Dated: New York, New York
January 23, 2007

/s/ Burton R. Lifland
United States Bankruptcy Judge