

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re)	Chapter 7
)	
TRADE AM INTERNATIONAL, INC.,)	Case No. 13-62588-MGD
)	
Debtor.)	Judge Diehl
_____)	

**JUPITER'S OBJECTION TO THE
TRUSTEE'S MOTION FOR AUTHORITY TO USE CASH COLLATERAL
IN ORDER TO PAY CERTAIN TAX CLAIMS.**

Jupiter IL, LLC, a Texas LLC (“Jupiter”) objects as follows to the Trustee's motion, identified in the caption, and filed on March 5, 3014 at Docket No. 84 (the "Motion").

Jupiter asserts an interest in all cash collateral.¹ As we understand the Motion, the trustee asserts the following: the trustee took postpetition money from the insurer; that taking triggers a post-petition taxable event; the trustee estimates that an AMT of some amount is now due; and the trustee wants to pay that money now from Jupiter's cash collateral.

Jupiter understands neither the need for speed in writing the IRS a check nor the legal basis for taking Jupiter's money to do so.

In reverse order, the fact that a debtor incurs a tax liability for taking receipt of liened funds does not ipso facto give a trustee any right to take that money from its secured lender. That sentence should require no citation. Rather, the bankruptcy code requires adequate protection. The Motion offers none.

1. See Jupiter's Motion to Reconsider, etc., filed on October 15, 2013 at Docket No. 61, par. 15 et seq.

The bankruptcy code does contain an exception to the rule: 11 U.S.C. § 506(c). But the trustee twice tells us that Motion does not argue that exception; rather, the trustee "reserves [this] right[.]" Motion footnotes 1 and 3.

What the trustee appears to argue instead is that an exception exists where (i) the secured lender has not filed a proof of claim, (ii) the secured lender is controlled by a former insider who may have contributed to the asserted tax problem; (iii) the secured lender is (allegedly) late on discovery requests; and (iii) the secured lender has not yet proven that it has rights to its asserted cash collateral. We find no citation for that exception.²

In addition, Jupiter has a two part objection to the trustee's apparent need for speed. First, there is no such need. Administratively insolvent estates are not happy moments, but this case is not unique. Trustees occasionally incur taxes that they cannot yet pay. That is why 28 U.S.C. § 960(c)(2) exists:

§ 960. Tax liability

* * *

(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11,], if--

(1) the tax was not incurred by a trustee duly appointed or elected under chapter 7 of title 11 or

(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.³

2. If the trustee seeks \$114,620 as a discovery penalty, he has not complied with BLR 7037-1, NDGa.

3. Perhaps the trustee has a tactical reason for not asking the court to make the needed finding of "probable insufficiency." But today that fact is true, and making that finding today does not prejudice the court's power to amend the finding tomorrow if the trustee proves, or shows a sufficient probability of proving, the estate's solvency.

Second, if postpetition taxes are indeed due now, the trustee caused the problem. As we understand tax law, the debtor has a taxable event when the money leaves the transferor. (We are told that there is pre-petition taxable income for the money that King & Spalding received earlier in 2013, with a corresponding expense.) Yet this trustee rushed in to get a transfer of that money. He has made no showing that the transferor -- an insurance company -- was insolvent, or had any risk of insolvency in the near future. He has made no showing that he thought through the timing consequences of tax payments when he demanded the money in 2013, rather than in 2014 or later. He has made no showing that he could not safely delay receipt until he sorted out how he could pay the resulting taxes. He did not fear to tread.

Jupiter can speculate on the intent behind the Motion. But the trustee's intent is irrelevant. The law is that the trustee cannot take this money for this use at this time on this showing.

WHEREFORE Jupiter requests that the Motion be denied and for such further relief as is just.

Dated: March 21, 2014
Atlanta, Georgia

/s/Bill Rothschild
William L. Rothschild
Georgia Bar No. 616150
Ogier, Rothschild & Rosenfeld, P.C.
170 Mitchell Street, S.W.
Atlanta, GA 30303-3424
404/525-4000

Counsel for Jupiter IL, LLC

CERTIFICATE OF SERVICE

I hereby certify that today I served the document to which this certificate is attached by causing a copy to be deposited in the United States mail, postage prepaid, and by email, to

Sean Kulka, Esq.
Arnall Golden Gregory LLP
171 17th Street, N.W., Suite 2100
Atlanta, GA 30363

/s/ Bill Rothschild