

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

)	
In re)	
SW BOSTON HOTEL VENTURE LLC, et al.,¹)	Chapter 11
Debtors.)	Case No. 10-14535 (JNF)
)	Jointly Administered
)	

LIMITED RESPONSE OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA IN RESPECT OF NOTICE OF NONEVIDENTIARY HEARING ON MOTION FILED BY DEBTOR SW BOSTON HOTEL VENTURE LLC TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT

The Prudential Insurance Company of America on behalf of and solely for the benefit of, and with its liability limited to the assets of, its insurance company separate account, PRISA (“Prudential”) as and for this Limited Response to Notice of Nonevidentiary Hearing on Motion Filed By Debtor SW Boston Hotel Venture LLC to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement [Docket No. 405] (the “Notice of Rehearing”), respectfully states as follows:

1. On November 10, 2010, the Debtors filed the Second Motion by Debtors Pursuant to 11 U.S.C. §§ 1121(d) and 362(d)(3) to Extend the Deadlines to File a Plan of Reorganization and Solicit Acceptances of the Plan [Docket No. 350] (the “Motion”).

2. On November 15, 2010, Prudential filed the Objection by the Prudential Insurance Company of America to the Second Motion by Debtors Pursuant to 11 U.S.C. §§

¹ The “Debtors” are SW Boston Hotel Venture LLC (Case No. 10-14535-JNF), Auto Sales & Service, Inc. (Case No. 10-14528-JNF), General Trading Company (Case No. 10-14532-JNF), Frank Sawyer Corporation (Case No. 10-14533-JNF), 100 Stuart Street, LLC (Case No. 10-14534-JNF), 30-32 Oliver Street Corporation (Case No. 10-16173-JNF), General Land Corporation (Case No. 10-16174-JNF), and 131 Arlington Street Trust (Case No. 10-16177-JNF) (their cases collectively the “Chapter 11 Cases”).

1121(d) and 362(d)(3) to Extend the Deadlines to File a Plan of Reorganization and Solicit Acceptances of Plan [Docket No. 357].

3. On November 15, 2010, the Deputy Clerk filed the Notice of Nonevidentiary Hearing on the Motion Filed By Debtor SW Boston Hotel Venture LLC to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement [Docket No. 362] indicating that a hearing on the Motion would be held before this Court on November 17, 2010 at 11:00 am.

4. On November 17, 2010, this Court held a hearing on the Motion (the "Hearing").

5. Also on November 17, 2010, this Court entered the Order granting the relief sought by the Debtors in the Motion (the "Exclusivity Order") [Docket No. 377], extending the exclusive period through which the Debtors may (i) file a plan through and including March 31, 2011 and (ii) solicit acceptance of such plan through and including May 31, 2011.

6. On November 29, 2010, Prudential timely appealed the Exclusivity Order by filing (i) the Notice of Appeal [Docket No. 399] (the "Notice of Appeal") and (ii) the Statement of Election to Appeal to the United States District Court [Docket No. 400].

7. Subsequent to the filing of the Notice of Appeal, it became known that the transcript of the Hearing was not available owing to technological difficulties with the recording of the proceedings.

8. On November 30, 2010, Prudential's counsel was advised by counsel to the Debtors that the Court intended to hold a re-hearing on the Motion.

9. On November 30, 2010, the clerk of this court filed the Notice of Rehearing, purporting to schedule a rehearing on the Motion for Monday, December 6, 2010.

10. "After a notice of appeal is timely filed, the [bankruptcy court] has no power to vacate the judgment, [to grant the Motion], or to allow the filing of amended or supplemental

pleadings.” In re Markarian, 228 B.R. 34, 47 (B.A.P. 1st Cir. 1998) (quoting 9 Moore’s Federal Practice, 2d ed., ¶ 203.11, pp. 734-36). Any orders issued by the Bankruptcy Court at a time when it no longer has jurisdiction over the matters on appeal are void. Id. at 48.

11. As a result of filing the Notice of Appeal, this Court no longer has jurisdiction to reconsider the Motion or the Order. See In re Bradshaw, 284 B.R. 520 (Bankr. D. Mass. 2002). Specifically, the Court in Bradshaw relied on well-established precedent in stating that:

“The filing of a notice of appeal is an event of jurisdictional significance--it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58, 103 S.Ct. 400, 402, 74 L.Ed.2d 225 (1982) (per curiam). “The rule is well established that the taking of an appeal transfers jurisdiction from the Bankruptcy Court to the Appellate Court with regard to matters involved in the appeal and divests the Bankruptcy Court of jurisdiction to proceed further with such matters.” In re Kendrick Equipment Corporation, 60 B.R. 356, 358 (Bankr. W.D.Va. 1986) (citations omitted). “This is so because a bankruptcy judge does not have concurrent jurisdiction with the district court [or BAP] over the subject matter of an appeal Once a notice of appeal is filed ‘no lower court should be able to vacate or even modify an order under appeal, not even a bankruptcy court attempting to eliminate the need for a particular appeal.’ ... The rationale for this rule is the avoidance of confusion and waste of time that might result from putting the same issues before two courts at the same time.” In re Emergency Beacon Corporation, 58 B.R. 399, 402 (S.D.N.Y. 1986).

Id. at 523.

12. Accordingly, this Court lacks jurisdiction to grant any further consideration to the Motion unless and until otherwise directed by the District Court.

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Respectfully submitted,

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA ON BEHALF OF AND SOLELY
FOR THE BENEFIT OF, AND WITH ITS
LIABILITY LIMITED TO THE ASSETS OF, ITS
INSURANCE COMPANY SEPARATE
ACCOUNT, PRISA

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America on Behalf of and Solely for the Benefit of,
and with its Liability Limited to the Assets of, its
Insurance Company Separate Account, PRISA*

Dated: December 2, 2010

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and copies will be sent by electronic mail and/or Federal Express to those indicated as non-registered participants.

/s/ Gina Lynn Martin