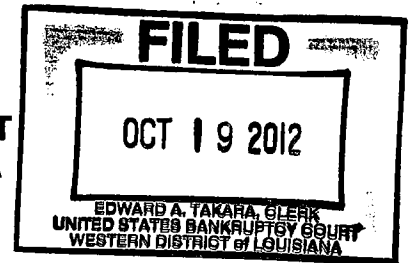


IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION



In re: Case No. 12-51127
PICCADILLY RESTAURANTS, LLC, *et al.*, Chapter 11
Debtors. JUDGE ROBERT SUMMERHAYS

**HENRICO COUNTY, VIRGINIA'S LIMITED OBJECTION
TO THE DEBTORS' EMERGENCY MOTION FOR AN ORDER (I) AUTHORIZING THE
DEBTORS TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C.
§ 364(c) AND PURSUANT TO 11 U.S.C. § 364(d); (II) AUTHORIZING THE
DEBTORS' USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363(c); (III)
GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. § 361; AND (IV)
SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(c)**

NOW COMES the County of Henrico, Virginia ("Henrico"), by and through its undersigned counsel, and files its Limited Objection to the Debtors' Emergency Motion for an Order (I) Authorizing the Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364(c) and Pursuant to 11 U.S.C. § 364(d), (II) Authorizing the Debtors' Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c); (III) Granting Adequate Protection Pursuant to 11 U.S.C. § 361; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c) (the "Emergency Motion"), and would show the Court the following:

I.
Henrico's Ad Valorem Tax Liens Have Superpriority

1. Henrico is a political subdivision of the Commonwealth of Virginia.
2. The Debtors owe Henrico business personal property taxes for the 2012

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Counsel(s) for Henrico County, Virginia

tax year in the amount of \$3936.33 on property owned by the Debtors and located at 8004 West Broad Street, Henrico, Virginia, 23294. See Ex. 1.

3. Pursuant to Virginia Code § 58.1-3942(C), this ad valorem business personal property tax debt is secured with an automatically perfecting security interest that is superior to that of any other secured claim (the "2012 Henrico Tax Liens").

4. If the Debtors' retain possession of the taxed business personal property on January 1, 2013, additional ad valorem business personal property taxes for the 2013 tax year will arise pursuant to Virginia Code § 58.1-3515. These secured, first priority taxes will constitute secured administrative expenses against the estate, for which no request for payment need be filed under 11 U.S.C. §§ 503(b)(1)(B), (C), and (D).

II.

Henrico Objects to the Emergency Motion and Stipulation to the Extent They Prime or Otherwise Diminish Henrico's Tax Liens

5. Henrico objects to any priming of its senior, perfected, and unavoidable tax liens on the Debtors' property, specifically by the superpriority security interests and superpriority administrative expense claims referenced or provided by Paragraphs 25-29 of the Emergency Motion; Article III(h) and Sections 5.02, 11.01, 12.01, and 17.18 of the Interim Stipulation; Paragraph 9 of the Interim Order granting the Emergency Motion and approving the Interim Stipulation; and elsewhere. In support of its Limited Objection, Henrico will show that granting priming liens without a demonstration on the record that its ad valorem tax liens are adequately protected is prohibited by the provisions of Section 364(d) of the Bankruptcy Code. Accordingly, Henrico requests this Court order the Debtors to include such provisions in the Final Stipulation and Final Order as would protect Henrico's tax liens from any priming liens or administrative

priority claims granted therein.

6. Pursuant to 11 U.S.C. § 364(d), a debtor may only obtain credit or incur debt “secured by a senior or equal lien on the property of the estate that is subject to a lien” if the debtor provides for “adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” Through the Stipulation, the Debtors seek to incur post-petition financing secured by “priming, superpriority post-petition security interests” on “Collateral,” consisting of “any and all property, assets and interest in property and assets of the Debtors . . . , including all property of the estate.” Stipulation at 1, 3, 48. This broad definition of “Collateral” necessarily includes the Debtors’ business personal property located at 8004 West Broad Street, Henrico, Virginia, 23294, which is currently the subject of the 2012 Henrico Tax Liens. Paragraph 25 of the Emergency Motion and Section 11.01 of the Interim Stipulation attempt to subordinate the 2012 Henrico Tax Liens to “DIP Liens” securing “all DIP obligations.” Therefore, pursuant to 11 U.S.C. § 364(d)(1)(B), the Debtors are required to provide adequate protection to Henrico’s tax liens.

7. Section 14.01 of the Stipulation does provide for “Adequate Protection Liens” for “Pre-Petition Secured Parties,” such liens consisting of “(i) valid, enforceable, binding, non-avoidable and full perfected postpetition security interests and liens . . . on all of the Collateral.” However, the term “Pre-Petition Secured Parties” is not clearly defined by the Stipulation, so Henrico is unaware of whether it qualifies as part of this group. Moreover, Section 14.01 of the Stipulation makes the Adequate Protection Liens established therein “junior and subordinate in all respects to the DIP Liens.” Accordingly, even if Henrico qualified as a “Pre-Petition Secured Party” for purposes of

the Stipulation, the Adequate Protection Liens granted by Section 14.01 would be insufficient to adequately protect the 2012 Henrico Tax Liens, which are entitled to superpriority status under Virginia law. Because the Debtors have entirely failed to provide the requisite adequate protection, the issuance of credit secured by priming liens on the business personal property that is the subject of the 2012 Henrico Tax Liens violates 11 U.S.C. § 364(d)(1)(B). Accordingly, Henrico requests clarification that its senior, perfected and unavoidable tax liens are not primed under the Interim Order, any Final Order, or the Interim or Final Stipulation to be entered authorizing this DIP financing. In the alternative, Henrico requests the provision of adequate protection for the 2012 Henrico Tax Liens.

8. Henrico additionally objects to the provisions of Paragraph 25 of the Emergency Motion and Section 12.01 of the Interim Stipulation purporting to grant “[a]ll DIP Obligations and the DIP Liens . . . priority under the provisions of section 364(c)(1) of the Bankruptcy Code over all administrative expenses . . . of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code[.]” Stipulation at 48. As noted above, if the Debtors’ retain possession of the taxed business personal property on January 1, 2013, ad valorem business personal property taxes for the 2013 tax year will arise. These debts are secured by superpriority tax liens automatically perfected upon assessment and constitute secured administrative expenses against the estate. See 11 U.S.C. § 503(b)(1)(B) and (D). The Debtors are operating subject to all state and local laws, including those laws pertaining to taxes. 28 U.S.C. §§ 959 and 960. Accordingly, Virginia Code § 58.1-3942(C) provides Henrico’s tax liens with superpriority and the Debtors are required to pay these tax debts in the normal course of business. There is no reason or basis for granting consensual lenders a priority and status contrary to

applicable state and local law and the Debtors fail to provide any such explanation in the Emergency Motion or Interim Stipulation. Moreover, the Debtors should not be permitted to favor one secured creditor over others in the payment of administrative expenses.

III.

Waiver of Requirement of Local Counsel

9. Pursuant to Local Rule 83.2.7 of the Local Rules for the United States District Court of the Western District of Louisiana, the Court may authorize counsel ineligible for admission to the bar of the Court to appear without joinder of local counsel upon a showing that the party would suffer hardship by joinder of local counsel and the obligations and duties of counsel in the particular litigation will be fulfilled. Given the amount in controversy in this instance, it is not fiscally reasonable for Henrico to undertake the expense of employing local counsel to appear on its behalf. The undersigned is a member of the bars of the Supreme Court of Virginia, the United States Court of Appeals for the Fourth Circuit, the United States District Court for the Eastern District of Virginia, and the United States Bankruptcy Court for the Eastern District of Virginia and is familiar with both the Local Rules for the United States District Court of the Western District of Louisiana as well as the Local Rules of Court Applicable to Bankruptcy Proceedings in the United States District Court for the Western District of Louisiana. Accordingly, the undersigned is capable of fulfilling the obligations and duties of counsel for Henrico as a creditor in this case and would request authorization to file this Limited Objection without joinder of local counsel.

IV.

Waiver of Personal Appearance

10. As Henrico is located more than 1,100 miles from this Court, Henrico

respectfully requests the Court waive any requirement of personal appearance on the part of Henrico and rule on Henrico's objection on the pleadings alone. In the alternative, Henrico respectfully requests the Court grant leave for the undersigned to enter a telephonic appearance before the Court.

IV.

Leave to File Objection Within Seven Days of Hearing

11. Henrico respectfully requests the Court grant leave for Henrico to file its Limited Objection within seven days of the hearing. Pursuant to Local Bankruptcy Rule 9014-1(B), the Court may hear objections filed within seven days of a hearing upon consideration of: "the reason opposition was not timely filed; the need for the court to consider the defenses alleged in order to determine the appropriate action, and the injury that might result to the untimely filed opponent." The undersigned counsel did not learn of the Emergency Motion, Stipulation, or upcoming hearing until October 16, 2012. Upon learning of the Stipulation, the undersigned counsel immediately contacted various Henrico departments to determine what, if any, amounts were owed by the Debtors. Upon learning of the outstanding 2012 Henrico Tax Liens, the undersigned counsel immediately drafted this Limited Objection and mailed it overnight to the Court and counsel for the Debtors. It is imperative that the Court consider Henrico's Limited Objection in order to determine the appropriate action to take with regard to the Debtors' Emergency Motion and Stipulation, as the Stipulation proposes action in violation of 11 U.S.C. § 364(d). Further, refusal to consider Henrico's Limited Objection will result in irreversible injury to Henrico's interests, as the priming of its liens in the manner proposed by the Stipulation will significantly lessen the likelihood that Henrico will be able to recover its debt through the bankruptcy, and may allow the Debtors to strip

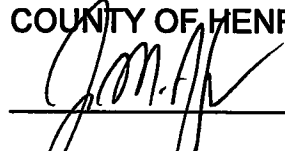
Henrico's liens altogether. Accordingly, Henrico respectfully requests this Court consider its Limited Objection.

V.
Conclusion

WHEREFORE, Henrico objects to the Emergency Motion and Interim Stipulation and requests this Court to order the Debtors to include such provisions in the Final Stipulation and Final Order as would protect Henrico's tax liens from any priming liens or administrative priority claims granted therein and further requests other and such relief as is just and proper.

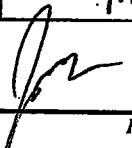
Respectfully submitted,

COUNTY OF HENRICO, VIRGINIA



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Richmond, Virginia 23273-7032
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Facsimile: (804) 501-4140
Email: har55@co.henrico.va.us

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT <u>WESTERN</u> DISTRICT OF <u>LOUISIANA</u>		PROOF OF CLAIM
Name of Debtor: PICCADILLY RESTAURANTS;secured to equity;excess 507(a)(8)priority		Case Number: 12-51127
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): HENRICO COUNTY, VIRGINIA (Acct # 005-00160713)		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: JASON M. HART, ASSISTANT COUNTY ATTORNEY P.O. BOX 90775 HENRICO, VIRGINIA 23273-0775 Telephone number: (804) 501-4200		
Name and address where payment should be sent (if different from above): Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ 3936.33 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a)(). Amount entitled to priority: \$ _____ *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: <u>2012 Fur,Fix & Comp</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe: Value of Property: \$ <u>106.184</u> Annual Interest Rate <u>4</u> % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: <u>VA CODE</u> Amount of Secured Claim: \$ <u>3936.33</u> Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: <u>10/17/12</u>  Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. /s/JASON M. HART, Assistant County Attorney		FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Account # : 005-00160713
Customer : PICCADILLY RESTAURANTS LLC

Department of Finance
PO Box 90775
Henrico, Virginia 23273-0775



3232 S SHERWOOD FOREST BLVD
BATON ROUGE LA 70816-2218

Bill Number 904138
Bill Date 05/05/2012
Due Date 11/30/2012

Item #	Description	Assessment	Tax Rate	Billed	Paid	Due
145549001	Tangible Business Property					
	2012 Total Tax Due	3,673.81	104,966	\$3.500		
	Installment 1 (Jan - Jun)			1,836.91	0.00	1,836.91
	Penalty			183.69	0.00	183.69
	Interest			33.68	0.00	33.68
	Installment 2 (Jul - Dec)			1,836.90	0.00	1,836.90
145549002	Computer Equipment					
	2012 Total Tax Due	42.63	1,218	\$3.500		
	Installment 1 (Jan - Jun)			21.32	0.00	21.32
	Penalty			2.13	0.00	2.13
	Interest			0.39	0.00	0.39
	Installment 2 (Jul - Dec)			21.31	0.00	21.31
Late Payment Penalty is 10% of the unpaid balance. Interest accrues at an annual rate of 4%				Amount Due By 11/30/2012		2,078.12
				Total Amount Due		3,936.33

The taxes and fees shown above are past due. Full payment must be received within 15 days from the date of this notice. If payment in full is not received the County may pursue collection of these taxes and fees through all legal means available including holds on the renewal of State Vehicle registrations through DMV (release fee \$20.00) and any State income tax refunds through the Virginia Set-Off Debt Collection program. Interest will continue to accrue until the balance is paid in full.

Tear Here and Return the Bottom Portion with Payment



COUNTY OF HENRICO, VIRGINIA
Department of Finance
P.O. Box 90775
Henrico, VA 23273-0775
PERSONAL PROPERTY TAX BILL

00500009041380000002078123



904138

Account Number	Amount Due	Due Date	Amount Enclosed
005-00160713	2,078.12	11/30/2012	

MAKE CHECK PAYABLE TO COUNTY OF HENRICO
AND ENTER ACCOUNT NUMBER ON YOUR CHECK

TO AVOID ADDITIONAL CHARGES THE AMOUNT DUE
MUST BE RECEIVED BY THE DUE DATE ABOVE

PICCADILLY RESTAURANTS, LLC
3232 S SHERWOOD FOREST BLVD
BATON ROUGE LA 70816-2218



COUNTY OF HENRICO-14
P O BOX 3369
HENRICO, VA 23228-9769




CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October 2012, a true and exact copy of the foregoing *Limited Objection to the Debtors' Emergency Motion for an Order (I) Authorizing the Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 364(c) and pursuant to 11 U.S.C. § 364(d), (II) Authorizing the Debtors' Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c); (III) Granting Adequate Protection Pursuant to 11 U.S.C. § 361; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c)* was sent via overnight delivery to:

Edward A. Takara, Clerk of the Bankruptcy Court
United States Bankruptcy Court
Western District of Louisiana,
214 Jefferson Street, Suite 100
Lafayette, Louisiana 70501

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