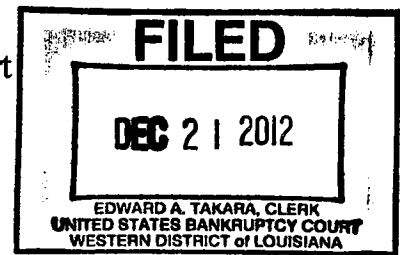


In the United States Bankruptcy Court
Western District of Louisiana
LaFayette Division



In re

Piccadilly Restaurants, LLC, *et alia*,

Debtors.

Case No. 12-51127

(Jointly Administered)

Chapter 11

Chief Judge Robert Summerhays

**The DeKalb County Tax Commissioner's Objection to
The Debtors Motion to Obtain Post-Petition Financing (re: 391)**

The Tax Commissioner of DeKalb County, Georgia ("Tax Commissioner") has a lien on Piccadilly Restaurants, LLC's personal property assets in DeKalb County, Georgia, for its 2012 personal property ad valorem taxes. Piccadilly's 2012 ad valorem taxes amounted to \$15,587.34, the current sum of its personal property taxes on six different parcels. The bills are attached as Exhibit A. As to Piccadilly's DeKalb County personal property assets, the Tax Commissioner's ad valorem tax lien has a superior status to all of the other creditors, as explained below. The Tax Commissioner's status at present is that of a fully secured lien holder.

The Tax Commissioner is asking the Court for adequate protection to preserve her unique status, thus protect it from being impaired by the DIP Lenders.

Piccadilly has moved for postpetition financing which would give the DIP Lenders a superpriority claim in accordance with Section 364(c)(1) of the

Bankruptcy Code.” This superpriority status would impair the Tax Commissioner’s secured interest. When lumped with the estate’s other administrative expenses, the DIP liability could devour the estate’s assets and impair the Tax Commissioner’s interest in Piccadilly’s DeKalb County personal property. Of course, this scenario is why the DIP Lenders seek superpriority status, among other reasons.

To make matters worse, no hard numbers were listed on Piccadilly’s petition, which makes matters more, rather than less, unpredictable.

Therefore, for the very same reasons that the DIP Lenders are to be given a “super priority” administrative claim status under Section 507(b) of the bankruptcy code, in which it argued that its interests should not be impaired, so should the Tax Commission’s interests be unimpaired. The Tax Commissioner’s argument is stronger than the DIP Lenders, because the Tax Commissioner has a superior position to these assets than do the DIP Lenders.

1. Georgia Law provides the Tax Commissioner a superior lien interest in the property taxed.

The Tax Commission’s superior lien status to Piccadilly’s business personal property is based on Georgia law, as follows. The Tax Commissioner assesses the inventory and other assets for personal property ad valorem taxes, and the real estate and improvements for real property ad valorem taxes. These taxes were assessed in accordance with Official Code of Georgia Title 48, Chapter 5, Article 1, *et sequentes*; the pertinent sections state that:

- “Each return by a taxpayer shall be for property held and subject to taxation on January 1 next preceding each return.” O.C.G.A. § 48-5-10.
- “ Liens for any ad valorem taxes shall cover the property of taxpayers liable to tax from the time fixed by law for valuation of the property in each year until such taxes are paid . . .”¹ O.C.G.A. § 48-2-56 (d)(1).
- Annual taxes are assessed against the owner of the property if known, or if the owner is not known, against the property in rem. O.C.G.A. § 48-5-9.
- An ad valorem tax becomes a lien on the property as of January 1. O.C.G.A. § 48-5-10. The ad valorem lien attaches not only to the property taxed, but also to all property of the taxpayer in that county. O.C.G.A. § 48-2-56(a).
- Ad valorem tax liens are senior to all other security interests in the particular item of property taxed, and junior to security interests in all of the taxpayer's other property. O.C.G.A. § § 48-2-56(b), (d)(1) and (d)(2).
- A lien on all of a taxpayer's property arises when a particular item of property is valued for ad valorem tax purposes, and the lien continues

¹ O.C.G.A. § 48-2-56 (d)(1).

until such taxes are paid. O.C.G.A. § 48-5-56(d)(1). Nothing further is required to perfect the Tax Commissioner's lien. *Ellenberg v. J.M. Tull Metals (In re McTyre Grading & Pipe, Inc)*, 193 B.R. 983, 989 (Bankr. N.D. Ga. 1996).

- Georgia ad valorem taxes became liens on the Debtor's physical assets in DeKalb County, Georgia on January 1, 2012, the date of initial assessment, and the liens continue until these taxes are paid.

Therefore, as to Piccadilly's DeKalb County assets, the personal property tax liens attached to all of Piccadilly's DeKalb County property as of January 1, 2012. And, very importantly, these tax liens are superior to prior security deeds.

2. The Tax Commissioner is entitled to adequate protection.

A secured creditor is entitled to adequate protection—as a matter of right, not merely as a matter of discretion—when the estate proposes to use, sell or lease property in which it has an interest. See U.S.C. §§ 361, 363(e),² *In re Metromedia Fiber Network, Inc.*, 290 B.R. 487,491 (Bankr. S.D.N.Y. 2003) (“Section 363(e) is not permissive or discretionary—it states that the court ‘shall’ grant the relief specified, at any time, on the request of a secured entity.”); *see also In re*

² Specifically, section 363(e) provides that:

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used . . . as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e).

Continental Airlines, Inc., 146 B.R. 536, 539 (Bankr. D. Del 1992); 3 Collier on Bankruptcy ¶ 361.02 (15th rev. ed. 2006) (“An entity is entitled to adequate protection as a matter of right, not merely as a matter of discretion . . . when the estate proposes to use, sell or lease property in which the entity has an interest”) (citing H.R. Rep. No. 95-595, at 340, 343-44 (1977)).

This protection is provided both as a matter of policy and as a matter of constitutional law. *See In re Townlev*, 256 B.R. 697, 700 (Bankr. D.N.J. 2000) (“The right of a secured creditor to the value of its collateral is a property right protected by the Fifth Amendment. Before the plan is confirmed, that property right is protected by the requirements of Code section 361.”). The imposition of the automatic stay may prevent or delay the Secured Lenders from exercising their rights with respect to property that is subject to the stay. Any diminution in value resulting therefrom must be compensated in the form of adequate protection. The primary function of adequate protection is to protect against the possibility that the debtor’s use of property securing a creditor’s claim will “result[] in a decrease in the value of such entity’s interest in such property.” *See* 11 U.S.C. § 361(1); *In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re JKJ Chevrolet, Inc.*, No. 96-1836, 1997 U.S. App. LEXIS 18180 (4th Cir. May 21, 1997).

The burden of proof as to the “adequacy” of adequate protection is on the debtor. *See* 11 U.S.C. §§ 363(e) and 363(p) (as to use of collateral); *Continental*

Airlines, 146 B.R. at 539; *In re Grant Broadcasting of Philadelphia Inc.*, 75 B.R. 819, 823 (E.D.Pa. 1987) (“[T]he Debtor has the burden of proof on all issues except the validity, priority, and extent of the alleged secured party’s security interest, including all other component elements relevant to the ‘issue of adequate protection’”). If the debtor cannot demonstrate that a secured creditor’s interest in collateral is not adequately protected despite the debtor’s continuing use of the collateral, the debtor cannot use the collateral. *See* 3 Collier on Bankruptcy ¶ 363.05[2] (“If adequate protection cannot be offered, such use, sale or lease of the collateral must be prohibited.”)

Therefore, the burden is on Piccadilly to prove that it is providing the Tax Commissioner with adequate protection by allowing the DIP Lenders a superpriority interest in, among other things, Piccadilly’s DeKalb County personal property. But this is absurd because it diminishes adequate protection and jeopardizes the Tax Commissioner’s interest in the personal property.

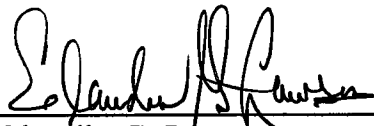
3. Conclusion: The Court should allow the DIP Lenders superpriority status if, and only if, an exception is carved out for the Tax Commissioner’s liens.

If this motion were to be approved, it would amount to a denial of adequate protection. The Tax Commissioner would have no other alternative but to seek relief from the automatic stay and move the Court for permission to immediately

sell Piccadilly's equipment in order to satisfy these liens, as its status would be significantly impaired by the DIP Lenders' status as a super priority creditor.

The Tax Commissioner would waive her objection to this motion if the interested parties would consent to allowing the Tax Commissioner's status to these assets to remain unimpaired, protecting the *status quo*, and that it would not have a super priority interest as to Piccadilly's DeKalb County personal property.

This 19th day of December, 2012.



Claudia G. Lawson
Tax Commissioner of DeKalb County, Georgia
Post Office Box 100004
Decatur, GA 30031-7004
404 298-3053

Please direct all communications to

Mark A. Thompson
Senior Assistant County Attorney
DeKalb County Law Department
1300 Commerce Drive, 5th Floor
Decatur, GA 30030
(404) 371-3011
(404) 371-3024 fax
mathompson@dekalbcountyga.gov

In the United States Bankruptcy Court
Western District of Louisiana
LaFayette Division

In re

Piccadilly Restaurants, LLC, *et alia*,

Debtors.

Case No. 12-51127

(Jointly Administered)

Chapter 11

Chief Judge Robert Summerhays

Certificate of Service

I certify that on December 19, 2012, I served the **DeKalb County Tax Commissioner's Objection to the First Amended Plan** on the following counsel by mail:

Patrick L. McCune

Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP
8555 United Plaza Boulevard
Baton Rouge, LA 70809

R. Patrick Vance

Elizabeth J. Futrell

Mark A. Mintz

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201 St. Charles Ave. 49th Floor
New Orleans, LA 70170-5100

David F. Waguespack

1100 Poydras Street - Energy Centre, Suite 3100
New Orleans, LA 70163

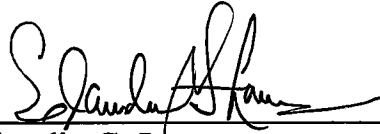
Louis M. Phillips

One American Place

301 Main Street, Suite 1600

Baton Rouge, LA 70825-0004

This 19th day of December 2012.



Claudia G. Lawson
Tax Commissioner of DeKalb County, Georgia

Post Office Box 100004
Decatur, GA 30031-7004
404 298-3053

EXHIBIT

A



2012 DEKALB COUNTY PERSONAL PROPERTY TAX STATEMENT

PAY ONLINE AT www.yourdekalb.com/taxcommissioner
or by phone at 404-298-4000

CLAUDIA G. LAWSON
TAX COMMISSIONER



OWNER		APPRaisal VALUES AND EXEMPTION INFORMATION		
OWNER	PICCADILLY RESTAURANTS LLC	TOTAL APPRAISAL	167,397	
CO-OWNER	ATNLP 1056	40% ASSESSMENT	66,959	
PARCEL / PIN	3538544 / 3538544	APPEAL ASSESSMENT	N/A	
TAX DISTRICT	04 UNINCORPORATED	EXEMPTION CODE	STATE - STATE EXEMPTIONS FOR PP	
PROPERTY ADDRESS	2000 CRESCENT CENTRE BLVD			
AUTHORITY	RATE	BILLED	PAID	TOTAL DUE
School Opns	.0239800	1,605.68	0.00	1,605.68
County Opns	.0104300	698.38	0.00	698.38
Hospitals	.0009400	62.94	0.00	62.94
County Bonds	.0007000	46.88	0.00	46.88
Unic Bonds	.0017200	115.16	0.00	115.16
Fire	.0032900	220.30	0.00	220.30
Unic Taxdist	.0003800	25.44	0.00	25.44
Police Servc	.0037500	251.10	0.00	251.10
State Taxes	.0002000	11.96	0.00	11.96
Penalty		75.95	0.00	75.95
TOTALS	.0453900	3,113.79	0.00	3,113.79

MAKE CHECK PAYABLE TO:
DEKALB COUNTY TAX COMMISSIONER
P.O. BOX 100004
DECATUR, GA 30031-7004
PAY BY PHONE - (404) 298-4000 or online
at www.yourdekalb.com/taxcommissioner

DUE DATE
November 15, 2012
5% PENALTY FOR LATE PAYMENT
RETURN COUPON WITH PAYMENT

2012 DEKALB COUNTY	
Parcel ID:	3538544
Address:	2000 Crescent Centre Blvd
Total Due:	3,113.79
Installment Due:	3,113.79
Enter amount paid:	

PICCADILLY RESTAURANTS LLC
ATNLP 1056
3232 S SHERWOOD FOREST BLVD
BATON ROUGE LA 70816 2292

Date of Bill: 10/09/2012
OP: AGBOOTH



PIN: 3538544

01353854430000031137930000031137939



2012 DEKALB COUNTY PERSONAL PROPERTY TAX STATEMENT

PAY ONLINE AT www.yourdekalb.com/taxcommissioner
or by phone at 404-298-4000

CLAUDIA G. LAWSON
TAX COMMISSIONER

2

OWNER		PICCADILLY RESTAURANTS LLC		APPRaisal VALUES AND EXEMPTION INFORMATION	
CO-OWNER	ATDRU 1064	TOTAL APPRAISAL	92,065		
PARCEL / PIN	1771111 / 1771111	40% ASSESSMENT	36,826		
TAX DISTRICT	04 UNINCORPORATED	APPEAL ASSESSMENT.	N/A		
PROPERTY ADDRESS	2226 N DRUID HILLS RD NE	EXEMPTION CODE	STATE - STATE EXEMPTIONS FOR PP		
AUTHORITY	RATE	BILLED	PAID	TOTAL DUE	
School Opns	.0239800	883.08	0.00	883.08	
County Opns	.0104300	384.10	0.00	384.10	
Hospitals	.0009400	34.62	0.00	34.62	
County Bonds	.0007000	25.78	0.00	25.78	
Unic Bonds	.0017200	63.34	0.00	63.34	
Fire	.0032900	121.16	0.00	121.16	
Unic Taxdist	.0003800	14.00	0.00	14.00	
Police Servc	.0037500	138.10	0.00	138.10	
State Taxes	.0002000	6.00	0.00	6.00	
Penalty		41.75	0.00	41.75	
TOTALS	.0453900	1,711.93	0.00	1,711.93	

MAKE CHECK PAYABLE TO:
DEKALB COUNTY TAX COMMISSIONER
P.O. BOX 100004
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DUE DATE
November 15, 2012
5% PENALTY FOR LATE PAYMENT
RETURN COUPON WITH PAYMENT

2012 DEKALB COUNTY	
Parcel ID:	1771111
Address:	2226 N Druid Hills Rd Ne
Total Due:	1,711.93
Installment Due:	1,711.93
Enter amount paid:	

PICCADILLY RESTAURANTS LLC
ATDRU 1064
3232 S SHERWOOD FOREST BLVD
BATON ROUGE LA 70816 2292

Date of Bill: 10/09/2012
OP: AGBOOTH



PIN: 1771111

01177111110000017119370000017119379



2012 DEKALB COUNTY PERSONAL PROPERTY TAX STATEMENT

PAY ONLINE AT www.yourdekalb.com/taxcommissioner
or by phone at 404-298-4000

CLAUDIA G. LAWSON
TAX COMMISSIONER

3

OWNER		PICCADILLY RESTAURANTS LLC		APPRAISAL VALUES AND EXEMPTION INFORMATION			
CO-OWNER		ATND 1038		TOTAL APPRAISAL	141,693		
PARCEL / PIN		2342072 / 2342072		40% ASSESSMENT	56,677		
TAX DISTRICT		04 UNINCORPORATED		APPEAL ASSESSMENT	N/A		
PROPERTY ADDRESS		2595 NORTH DECATUR RD		EXEMPTION CODE	STATE - STATE EXEMPTIONS FOR PP		
AUTHORITY	RATE	BILLED	PAID	TOTAL DUE			
School Opns	.0239800	1,359.12	0.00	1,359.12			
County Opns	.0104300	591.14	0.00	591.14			
Hospitals	.0009400	53.28	0.00	53.28			
County Bonds	.0007000	39.66	0.00	39.66			
Unic Bonds	.0017200	97.48	0.00	97.48			
Fire	.0032900	186.46	0.00	186.46			
Unic Taxdist	.0003800	21.54	0.00	21.54			
Police Servc	.0037500	212.54	0.00	212.54			
State Taxes	.0002000	9.92	0.00	9.92			
Penalty		64.28	0.00	64.28			
TOTALS	.0453900	2,635.42	0.00	2,635.42			

MAKE CHECK PAYABLE TO:
DEKALB COUNTY TAX COMMISSIONER
P.O. BOX 100004
DECATUR, GA 30031-7004
PAY BY PHONE - (404) 298-4000 or online
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DUE DATE
November 15, 2012

5% PENALTY FOR LATE PAYMENT
RETURN COUPON WITH PAYMENT

2012 DEKALB COUNTY

Parcel ID:	2342072
Address:	2595 North Decatur Rd
Total Due:	2,635.42
Installment Due:	2,635.42
Enter amount paid:	

PICCADILLY RESTAURANTS LLC
ATND 1038
3232 S SHERWOOD FOREST BLVD
BATON ROUGE LA 70816 2292

Date of Bill: 10/09/2012
OP: AGBOOTH



PIN: 2342072

01234207220000026354250000026354259



2012 DEKALB COUNTY PERSONAL PROPERTY TAX STATEMENT

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or by phone at 404-298-4000

CLAUDIA G. LAWSON
TAX COMMISSIONER

4

OWNER		PICCADILLY RESTAURANTS LLC		APPRaisal VALUES AND EXEMPTION INFORMATION	
CO-OWNER				TOTAL APPRAISAL	157,725
PARCEL / PIN	1788773 / 1788773			40% ASSESSMENT	63,090
TAX DISTRICT	04 UNINCORPORATED			APPEAL ASSESSMENT	N/A
PROPERTY ADDRESS	2801 CANDLER RD			EXEMPTION CODE	STATE - STATE EXEMPTIONS FOR PP
AUTHORITY	RATE	BILLED	PAID	TOTAL DUE	
School Opns	.0239800	1,512.90	0.00	1,512.90	
County Opns	.0104300	658.02	0.00	658.02	
Hospitals	.0009400	59.30	0.00	59.30	
County Bonds	.0007000	44.16	0.00	44.16	
Unic Bonds	.0017200	108.50	0.00	108.50	
Fire	.0032900	207.56	0.00	207.56	
Unic Taxdist	.0003800	23.98	0.00	23.98	
Police Servc	.0037500	236.60	0.00	236.60	
State Taxes	.0002000	10.94	0.00	10.94	
Penalty		71.55	0.00	71.55	
TOTALS	.0453900	2,933.51	0.00	2,933.51	

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DUE DATE
November 15, 2012
5% PENALTY FOR LATE PAYMENT
RETURN COUPON WITH PAYMENT

2012 DEKALB COUNTY

Parcel ID:	1788773
Address:	2801 Candler Rd
Total Due:	2,933.51
Installment Due:	2,933.51
Enter amount paid:	

Date of Bill: 10/09/2012
OP: AGBOOTH

PICCADILLY RESTAURANTS LLC
3232 S SHERWOOD FOREST BLVD
BATON ROUGE LA 70816 2292



PIN: 1788773

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2012 DEKALB COUNTY PERSONAL PROPERTY TAX STATEMENT

PAY ONLINE AT www.yourdekalb.com/taxcommissioner
or by phone at 404-298-4000

CLAUDIA G. LAWSON
TAX COMMISSIONER



OWNER		APPRaisal VALUES AND EXEMPTION INFORMATION		
PICCADILLY RESTAURANTS LLC		TOTAL APPRAISAL	172,977	
CO-OWNER		40% ASSESSMENT	69,191	
PARCEL / PIN	4400290 / 4400290	APPEAL ASSESSMENT	N/A	
TAX DISTRICT	24A CHAMBLEE ANX	EXEMPTION CODE	STATE - STATE EXEMPTIONS FOR PP	
PROPERTY ADDRESS	5647 PEACHTREE INDUSTRIAL BLVD			
AUTHORITY	RATE	BILLED	PAID	TOTAL DUE
School Opns	.0239800	1,659.20	0.00	1,659.20
County Opns	.0104300	721.66	0.00	721.66
Hospitals	.0009400	65.04	0.00	65.04
County Bonds	.0007000	48.44	0.00	48.44
Unic Bonds	.0017200	119.02	0.00	119.02
Fire	.0032900	227.64	0.00	227.64
Police Servc	.0001300	9.00	0.00	9.00
State Taxes	.0002000	12.18	0.00	12.18
City Taxes	.0074000	512.00	0.00	512.00
Cham Taxdist	.0001600	11.06	0.00	11.06
Penalty		84.63	0.00	84.63
TOTALS	.0489500	3,469.87	0.00	3,469.87

MAKE CHECK PAYABLE TO:
DEKALB COUNTY TAX COMMISSIONER
P.O. BOX 100004
DECATUR, GA 30031-7004
PAY BY PHONE - (404) 298-4000 or online
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DUE DATE

November 15, 2012

5% PENALTY FOR LATE PAYMENT
RETURN COUPON WITH PAYMENT

2012 DEKALB COUNTY

Parcel ID:	4400290
Address:	5647 Peachtree Industrial Blvd
Total Due:	3,469.87
Installment Due:	3,469.87
Enter amount paid:	

Date of Bill: 10/09/2012
OP: AGBOOTH



PIN: 4400290

01440029050000034698730000034698739



2012 DEKALB COUNTY PERSONAL PROPERTY TAX STATEMENT

PAY ONLINE AT www.yourdekalb.com/taxcommissioner
or by phone at 404-298-4000

CLAUDIA G. LAWSON
TAX COMMISSIONER

6

OWNER		PICCADILLY RESTAURANTS LLC		APPRaisal VALUES AND EXEMPTION INFORMATION		
CO-OWNER	#TMEN 1004			TOTAL APPRAISAL	92,647	
PARCEL / PIN	1788765 / 1788765			40% ASSESSMENT	37,059	
TAX DISTRICT	04 UNINCORPORATED			APPEAL ASSESSMENT	N/A	
PROPERTY ADDRESS	5644 MEMORIAL DR			EXEMPTION CODE	STATE - STATE EXEMPTIONS FOR PP	
AUTHORITY	RATE	BILLED	PAID	TOTAL DUE		
School Opns	.0239800	888.68	0.00	888.68		
County Opns	.0104300	386.52	0.00	386.52		
Hospitals	.0009400	34.84	0.00	34.84		
County Bonds	.0007000	25.94	0.00	25.94		
Unic Bonds	.0017200	63.74	0.00	63.74		
Fire	.0032900	121.92	0.00	121.92		
Unic Taxdist	.0003800	14.08	0.00	14.08		
Police Servc	.0037500	138.98	0.00	138.98		
State Taxes	.0002000	6.10	0.00	6.10		
Penalty		42.02	0.00	42.02		
TOTALS	.0453900	1,722.82	0.00	1,722.82		

MAKE CHECK PAYABLE TO:
DEKALB COUNTY TAX COMMISSIONER
P.O. BOX 100004
DECATUR, GA 30031-7004
PAY BY PHONE - (404) 298-4000 or online
at www.yourdekalb.com/taxcommissioner

DUE DATE
November 15, 2012

5% PENALTY FOR LATE PAYMENT
RETURN COUPON WITH PAYMENT

2012 DEKALB COUNTY

Parcel ID:	1788765
Address:	5644 Memorial Dr
Total Due:	1,722.82
Instalment Due:	1,722.82
Enter amount paid:	

Date of Bill: 10/09/2012
OP: AGBOOTH

PICCADILLY RESTAURANTS LLC
#TMEN 1004
3232 S SHERWOOD FOREST BLVD
BATON ROUGE LA 70816 2292



PIN: 1788765

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