

valuation, including Debtor's 2015 protests, for August 27, 2015 at 10:00 a.m. [Doc. 983].

However, because Debtor's counsel had a conflict on both August 27th and 28th, the deputy clerk for the Board of Supervisors offered alternative dates to Debtor's counsel on August 20, 2015.

See Exhibit "C" attached hereto (Affidavit of Susan Lasserre). It appears thereafter that counsel for Debtor attempted contact with Jackson County and Special Counsel for the Jackson County Board of Supervisors, Ryan A. Frederic, regarding the hearing before the Board of Supervisors.

Contrary to the assertion of Debtor's counsel (Mr. Geno), on the afternoon of Tuesday, August 18, 2015, Mr. Frederic, returned the phone call of Debtor's counsel. However, Mr. Geno was unavailable and therefore, Mr. Frederic left a message with Mr. Geno's office staff. *See* Exhibit "D" attached hereto (Affidavit of Ryan A. Frederic).

On August 19, 2015, Debtor filed its Emergency Motion for Enforcement of the Automatic Stay and for Other Relief [Doc. 983] and noticed said motion for hearing on August 26, 2015 at 10:00 a.m. [Doc. 984]. Since Debtor's motion filing, Jackson County has offered further dates to counsel for Debtor, those being August 31 and September 1, 2015, to attend a hearing on the tax protest. *See* Exhibit "E" attached hereto (email from Susan Lasserre dated August 21, 2015)

II. Argument and Citation of Authority

Miss. Code Ann. § 27-35-89 provides:

(1) The board of supervisors of each county shall hold a meeting at the courthouse, or at the chancery clerk's office in counties where the chancery clerk's office is in a building separate from the courthouse, on the first Monday of August, to hear objections to the assessment. The board shall examine the assessment rolls, and hear and determine all exceptions thereto, and shall sit from day to day until the same shall have been disposed of, and all proper corrections made, or may take objections under advisement as provided in subsection (2) of this section. The board shall equalize the assessment and may increase or

diminish the valuation of any property, so that property of the same value shall be assessed for an equal sum. Where an individual assessment has been increased immediate notice in writing shall be sent by mail to the person whose assessment is increased by the clerk of the board of supervisors. At the said meeting the board shall have the power to change erroneous assessments or to add omitted property but any person affected by such action shall have notice as next above provided. If the board adjourn before considering the objections filed, such objections shall be heard at the next regular meeting of the board.

(2) The board of supervisors may take an objection under advisement to allow the taxpayer or his designee, the tax assessor or the board to compile information relating to the objection; however, **the board shall enter an order on the objection on or before the first Monday of September.**

Miss. Code Ann. § 27-35-89 (emphasis by author).

In accordance with Miss. Code Ann. § 27-35-89(1), the Board of Supervisors set the hearings regarding objections to property valuation, including Debtor's 2015 protests, for August 27, 2015 at 10:00 a.m. However, because Debtor's counsel was unavailable on that date, he was offered additional dates – to which debtor's counsel was either unavailable or no response was received by counsel. *See* Exhibits "C" and "E".

Furthermore, pursuant to Section 27-35-89(2), the Board of Supervisors must "enter an order on the objection on or before the first Monday of September" as to the applicable Real and Personal Property Assessment Rolls (i.e. 2015). Regardless of whether or not Debtor's counsel is available for the protest hearing to occur regarding Debtor's 2015 tax assessment, the Board of Supervisors is required by statute to rule on all objections by the first Monday of September. It follows that because all objections must be ruled upon by the first Monday of September, the Board of Supervisors cannot grant any continuance or postpone the hearing regarding Debtor's objection(s) at issue beyond September 8, 2015, because it would not allow the Board of Supervisors to certify the entire 2015 tax assessment as required by law. Therefore any request

by Debtor to prevent the Board of Supervisors from fulfilling its statutory obligation under Miss. Code Ann. § 27-35-89 of ruling on all objections to assessment is beyond the authority of the United States Bankruptcy Court as conferred by the United States Bankruptcy Code and should be denied.

Additionally, with respect to the automatic stay, the Bankruptcy Code provides a specific exception for the assessment of tax so long as no enforcement action is taken. §11 U.S.C.

362(b)(9)(D). That section provides that:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, **does not operate as a stay**—

* * * * *

(9) under subsection (a), of--

* * * * *

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

§11 U.S.C. 362(b)(9)(D) (emphasis added). Therefore, the automatic stay has no application to the actions anticipated to be taken by the Jackson County Board of Supervisors on or before the 1st Monday of September 2015, when it certifies the tax assessment. As such, the Debtor's Motion should be denied.

In any event, regardless of the certification of the tax assessment for 2015, the Debtor continues to have remedies available to it to seek changes to the assessment pursuant to Miss.

Code Ann. §§27-35-135 and 27-35-143 as well as the provisions of the United States Bankruptcy Code, to the extent they apply, for which Debtor is already seeking relief.² Certification of the assessment by the Jackson County Board of Supervisors on September 8,³ 2015, will in no way diminish Debtor's available remedies and/or avenues for relief. Thus, there is no justification for requesting the Court to enforce the automatic stay to prevent certification of the tax assessment for the year 2015.

III. Conclusion

Certification of the 2015 tax assessment by the Jackson County Board of Supervisors is specifically excepted from the automatic stay in this case by virtue of 11 U.S.C. §362(b)(9)(D). Therefore, the Court should not enforce the automatic stay to prevent the Jackson County Board of Supervisors from fulfilling its statutory duties with regard thereto. Furthermore, the certification will not in any way prejudice Debtor nor foreclose its ability to seek relief regarding the assessment through State or Bankruptcy remedies. The assessment is just that: an assessment. Jackson County recognizes that due to the pending bankruptcy proceedings, it cannot execute any tax lien on the subject properties of Debtor, and Jackson County has no intent to attempt to do so. Its certification of the assessment, regardless of a hearing on Debtor's tax protest, however, is exempt from the automatic stay, and 11 U.S.C. §362 affords Debtor no relief therefrom.

Debtor's Emergency Motion for Enforcement of the Automatic Stay and for Other Relief

² Jackson County's undersigned counsel has only recently received a copy of the Motion Requesting Determination of Value for the Purpose of Calculating Tax Liability Pursuant to Sections 105, 505, and 506 of the Bankruptcy Code, and for Relief from Excess Taxation for Tax Years 2013, 2014, and 2015 [Doc. 951]. Counsel for Jackson County will be seeking, separately, additional time to respond to said Motion since he has not had time to adequately review, research, and respond to said Motion.

³ The first Monday in September (September 7, 2015) is the Labor Day holiday and the Board of Supervisors will actually certify the assessment on Tuesday, the next business day, September 8.

[Doc. 983] should be denied for the reasons set forth herein.

Dated: August 24, 2015.

BRYAN, NELSON, SCHROEDER,
CASTIGLIOLA & BANAHAN
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**JACKSON COUNTY, A Political Subdivision of
the State of Mississippi**

BY: s/H. Benjamin Mullen
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CERTIFICATE OF SERVICE

I, **H. BENJAMIN MULLEN**, one of the attorneys for the Respondent, **JACKSON COUNTY, A Political Subdivision of the State of Mississippi**, do hereby certify that I have this date electronically filed the foregoing Response in Opposition to the Emergency Motion for Enforcement of the Automatic Stay and for Other Relief [Doc. 983] with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

Dated: August 24, 2015.

s/H. Benjamin Mullen _____
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