

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

IN RE:

Chapter 11

ORECK CORP., et al.,  
  
Debtors.

Case No.13-04006  
Judge Lundin  
(Jointly Administered)

LOCAL TAX AUTHORITIES' OBJECTION TO DEBTORS' MOTION FOR APPROVAL OF SALE OF  
SUBSTANTIALLY ALL OF DEBTORS' ASSETS

TO THE HONORABLE COURT :

NOW COME Bexar County, Cypress-Fairbanks ISD, Dallas County, Fort Bend County, Frisco, Gregg County, Harris County, Hood CAD, Montgomery County, Nueces County, Round Rock ISD, Smith County, Tarrant County (jointly the "Local Texas Tax Authorities) and the Maricopa County Treasurer, AZ. (hereinafter jointly referred to as the "Local Tax Authorities" or "Tax Authorities"), and file their Objection to the Debtors' Motion for approval the sale of substantially all of their assets and other related relief. In support of their Objection, the Local Tax Authorities would show the Court as follows:

I.

The Local Tax Authorities are political subdivisions of the States of Texas and Arizona. They hold claims for ad valorem taxes assessed against the business personal property of the Debtors for the 2012 and 2013 tax years. Their claims for the pre-petition taxes total approximately \$23,000.

II.

As of January 1 of each year liability arises and a senior lien attaches to the property of the Debtors for the taxes of the Local Tax Authorities. The laws of the States of Texas (§§ 32.01 and 32.05(b) of the Texas Property Tax Code), and Arizona (A.R.S. §42-17153) give the liens securing these ad valorem taxes superior claims over any other claim or lien against the property. This state priority for tax liens is retained in the Bankruptcy Code, giving

this claim a superior position over all other claims against this property. 11 USC § 506; Stanford v. Butler, 826 F.2d 353 (5th Cir. 1987) ; Universal Seismic Associates, Inc., 288 F.3d 205 (5th Cir. 2002); In Re Winn's Stores, Inc.; 177 B.R. 253 (Bkcty W.D. Tex 1995). This lien priority has been retained through the process of the Debtors obtaining DIP Financing. The tax liens are “Permitted Prior Senior Liens” that retained their seniority over other liens.

### III.

The Local Tax Authorities object to the relief requested in the Debtors’ Motion because it fails to provide for the liens and interests of the Tax Authorities to be adequately protected.

The proceeds from the sale of the collateral of the Local Tax Authorities constitute the cash collateral of these Tax Authorities, and they object to the use of their collateral or the proceeds of the sale of their collateral to pay any other creditors of this estate. Pursuant to 11 U.S.C. § 363(c)(4), absent consent by the Tax Authorities or an order of the Court permitting use of its cash collateral, the Debtors “shall segregate and account for any cash collateral” in their possession. The Debtors have not filed a motion seeking to use the cash collateral of these Tax Authorities, nor has there been notice or a hearing on the use of these Tax Authorities’ cash collateral. Accordingly, absent their consent, these taxes must either be paid prior to distribution of any proceeds of the sale of their collateral, or a segregated account must be established from any sale proceeds to comply with the requirements of 11 USC § 363(c)(4).

The liens and claims of other parties are all JUNIOR to the liens of the Tax Authorities pursuant to applicable non-bankruptcy law and no order has been entered in this case subordinating the tax liens. Accordingly, no party should be paid any proceeds from any sale of property in the Tax Authorities’ jurisdictions unless and until all claims of the Tax Authorities, including post-petition interest pursuant to 11 U.S.C. § 506(b), have been paid in full. The final order with respect to the Sale Motion should specify that the payments to any other party from the sale proceeds shall only be made after the claims of senior lienholders, such as the Tax Authorities, are satisfied.

### IV.

Further, in the event of a credit bid on any of the assets to be sold, the proposed procedures fail to take into account that any credit bid will be of a junior lien and the purchaser should either tender sufficient cash to pay the tax claims, or the credit bid purchaser should take the property subject to the tax liens and under the terms of the final asset purchase agreement agree to pay the taxes.

V.

WHEREFORE, the Local Tax Authorities pray that the Court order the Debtors to include such provisions in the Order approving any sale as would require that any credit bid must include a cash component adequate to fund the payment in full in cash of the Tax Authorities claims (together with interest pursuant to 11 U.S.C. § 506(b)), or that the credit bid purchaser should take the property subject to the tax liens and under the terms of the final asset purchase agreement agree to pay the taxes, and that sufficient proceeds from the sale of the collateral of these Tax Authorities be segregated and their liens be attached thereto with the priority they otherwise hold pursuant to non-bankruptcy law, prior to the distribution of any further proceeds of the sale of their collateral to any other party, and further request other and such relief as is just and proper.

Dated: July 2, 2013

Respectfully submitted,

/s/ Elizabeth Weller

Elizabeth Weller

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Certificate of Service

I hereby certify that this 2<sup>nd</sup> day of July, 2013, I caused a true and exact copy of the foregoing to be served upon the parties listed below via facsimile, first class mail or electronic mail (as indicated).

/s/ Elizabeth Weller  
Elizabeth Weller

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