

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE	§	
	§	
RAAM GLOBAL ENERGY COMPANY, <i>et al.</i>	§	CASE NO. 15-35615
	§	
	§	(Chapter 11)
	§	
DEBTORS.	§	JOINTLY ADMINISTERED

**BUSINESS PROPERTY LENDING, INC.’S  
OBJECTION TO CONFIRMATION OF PLAN AND LIMITED  
OBJECTION TO TRANSACTION OR ALTERNATIVE TRANSACTION**

**TO THE HONORABLE MARVIN ISGUR:**

Business Property Lending, Inc./Everbank (“BPL”), by and through its undersigned counsel, hereby files this objection (the “Objection”) to the confirmation of the *[Proposed Debtors’ Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code]* [Docket No. 263] (the “Proposed Plan”) and to the Transaction or Alternative Transaction.<sup>1</sup>

In support of this Objection, BPL respectfully states as follows:

***Background***

1. On October 26, 2015 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above-captioned cases (the “Cases”).

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<sup>1</sup> Capitalized terms which are not otherwise defined herein shall have the meanings set forth in the Court’s *Order Authorizing and Approving (A) Stalking Horse Purchase Agreement, (B) Bidding Procedures, (C) Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases, and (D) Related Relief* [Docket No. 180] (the “Bid Procedures Order”).

2. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

3. Prior to the Petition Date, on August 8, 2005, RAAM Global Energy Company (“RAAM”), one of the Debtors in the Cases, entered into a Promissory Note (Fixed Rate) (the “Note”) and promised to pay to the order of GE Commercial Finance Business Property Corporation (“GECF”) (and any subsequent holder of the Note) the principal sum of \$3,485,000.00 together with interest on the terms set forth in the Note.

4. RAAM used the loan proceeds to construct an office building in Houston, Texas.

5. The Note is secured by a first position Commercial Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the “Deed of Trust”) in the office building, pursuant to which RAAM irrevocably granted, conveyed and assigned to Jax Paxton, as Trustee (for the benefit of GE Commercial Finance Business Property Corporation and its successors and assigns) certain real property located in the City of the Woodlands, County of Montgomery, State of Texas commonly known as 10210 Grogan’s Mill Road, and more particularly described on Exhibit A of the Deed of Trust (the “Woodlands Real Property”) and certain personal property and fixtures as further described in the Deed of Trust (the “Woodlands Personal Property”). Collectively, the Woodlands Real Property and the Woodlands Personal Property shall be referred to collectively herein as the “Woodlands Office Building.”

6. On December 21, 2015, Business Property Lending, Inc. (“BPL”)<sup>2</sup> filed Claim No. 16 (the “Claim”) and appended the Note, recorded Deed of Trust and filed UCC financing

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<sup>2</sup> On October 10, 2012, Wells Fargo Bank, NA, not in its individual capacity, but solely as Trustee on behalf of the GE Business Loan Trust 2005-2 (the “Trust”), appointed Business Property Lending, Inc., as successor to General Electric Capital Corporation, solely in its

statements showing the perfection of BPL's first position mortgage interest in the Woodlands Office Building as exhibits to the Claim.

7. The Claim evidences that, as of December 10, 2015, RAAM owed \$2,705,123.70 under the Note (the "Indebtedness"), which includes post-petition interest, attorney's fees and other charges.

8. RAAM has not objected to the Claim.

9. The Debtors do not dispute that the value of the Woodlands Office Building exceeds the Indebtedness. Therefore, BPL is an oversecured creditor under 11 U.S.C. § 506.

10. On December 22, 2015, the Court entered an Order (I) Approving Disclosure Statement and the Form and Manner of Service Related Thereto; (II) Setting Dates for the Objection Deadline and Hearing Relating to Confirmation of the Plan; and (III) Authorizing Related Relief [Docket No. 271] (the "Order Approving Disclosure Statement").

11. Although the Proposed Plan is somewhat vague regarding the Debtors intended treatment of BPL, counsel for the Debtors has informed the undersigned counsel for BPL that the Debtors do not intend to make any payments to BPL through the Proposed Plan. Instead, the Proposed Plan is one of liquidation and the Debtors intend to treat BPL as set forth in Section 3.04(e)(ii)(D) of the Proposed Plan (*see* Docket No. 263, page 28 of 68).

12. Specifically, the Debtors contend that BPL is unimpaired because the liquidating plan entails consummation of the Transaction (or an Alternative Transaction) in which a purchaser will buy the Woodlands Office Building, no payments will be made to BPL, but the purchaser will assume the Deed of Trust.

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capacity as Master Servicer of the Trust, as its true and lawful attorney-in-fact and agent to do or cause to be done any and all things in connection with servicing and administering, *inter alia*, the Note and Deed of Trust.

13. On December 2, 2015, the Court entered the Bid Procedures Order.

14. The Bid Procedures Order, among other things, conditionally approves the terms of the Stalking Horse Purchase Agreement between a Stalking Horse Bidder and the Debtors and sets forth the criteria for other interested purchasers to submit a valid competing bid.

15. A copy of the Stalking Horse Purchase Agreement was attached as an exhibit to the *Motion to Authorize and Approve (A) Stalking Horse Purchase Agreement, (B) Sale of Substantially All Assets Free and Clear of Claims, Liens, Encumbrances and other Interests, (C) Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Bidding Procedures, (E) Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases, and (F) Related Relief* [Docket No. 90] and can be found on the docket at Docket No. 90-1. Although the Stalking Horse Purchase Agreement was later amended [Docket No. 181-1], the amendments are not relevant to this Objection.

16. Article II, Section 2.1(g) of the Stalking Horse Purchase Agreement<sup>3</sup> sets forth the tracks of land which the Debtors intend to sell to the Stalking Horse Bidder.

17. The Woodlands Office Building is listed as part of the land tracts to be sold to the Stalking Horse Bidder. *See* Docket No. 90-1, Section 2.1(g) and Exhibit D-1, Description of Fee Surface Tracts – Tract 6: Woodlands Office Building.

18. The Stalking Horse Purchase Agreement also provides that the Stalking Horse Bidder will assume the Deed of Trust and Financing Statements.

19. Importantly, the Stalking Horse Purchase Agreement does not include the Note as an assumed obligation.

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<sup>3</sup> For purposes of this Objection, BPL will address solely the Stalking Horse Purchase Agreement, however it is presumed that any allowed competing bid and ultimate purchase agreement would also include a sale of the Woodlands Office Building, on better terms than set forth in the Stalking Horse Purchase Agreement.

20. There is no provision in the Stalking Horse Purchase Agreement, or in any of the filings regarding the Transaction, for payment of any of the sales proceeds from the Transaction or any Alternative Transaction to BPL on account of the Note.

21. Additionally, the Stalking Horse Purchase Agreement and the Proposed Plan are silent as to whether the Stalking Horse Bidder will have *in personam* liability to pay BPL for the principal, interest, attorneys' fees and other charges which are all due to BPL under the Note and which should be paid to BPL under 11 U.S.C. 506(b) as an oversecured creditor.

22. The Sale Hearing is set for January 14, 2016 and the Bid Procedures Order set a deadline of January 11, 2016 to object to the sale Transaction (or any Alternative Transaction).

23. The Order Approving Disclosure Statement set a Confirmation Hearing for January 14, 2016 (the "Confirmation Hearing") and set a deadline of January 12, 2016 to object to confirmation of the Proposed Plan.

### *Argument*

#### *A. Objection to Plan Confirmation*

24. BPL objects to the Proposed Plan because it improperly categorizes BPL as an unimpaired creditor, provides no payments or property to BPL in violation of 11 U.S.C. §§ 1129(a)(7) and (8) and is not fair and equitable to BPL under 11 U.S.C. § 1129(b)(2)(A).

25. BPL is an impaired creditor because the Debtors' Proposed Plan will result in no payments to BPL by the Debtors (either directly or through sales proceeds resulting from the Transaction), which is an alteration of BPL's contractual rights under the Note and the Proposed Plan does not propose any mechanism for curing the defaults under the Note. *See* 11 U.S.C. § 1124.

26. Notwithstanding the fact that BPL is impaired, the Debtors improperly classified BPL with unimpaired creditors whose claims are not substantially similar to BPL's Claim.

27. Once BPL's Claim is properly and separately classified, the Debtors will have to cramdown BPL's interest under § 1129(b)(2)(A). As the Proposed Plan does not provide for BPL to receive deferred cash payments totaling at least the allowed amount of the Claim, the Debtors cannot confirm the Proposed Plan over BPL's objection.

28. Additionally, the Proposed Plan does not meet the best interests of the creditors test under 11 U.S.C. § 1129(a)(7) as BPL will not receive or retain under the Proposed Plan on account of its Claim property of a value, as of the effective date of the Proposed Plan, that is not less than the amount that it would receive or retain if the Debtors were liquidated under chapter 7 (including post-petition interest, attorneys' fees and costs allowable under 11 U.S.C. § 506(b)), and therefore the Proposed Plan does not meet the best interests of the creditors test. Specifically, if the Debtors' estates were to be liquidated under Chapter 7, BPL would immediately receive payment in full of its entire Claim, including post-petition interest, attorneys' fees and charges, as the value of the Woodlands Office Building is almost \$3,500,000 greater than BPL's Claim and BPL is the first position lienholder on the Woodlands Office Building. *See* Docket No. 195, RAAM's Schedules at Schedule A, p. 11 of 39, valuing the Woodlands Office Building at \$6,200,000.

29. Based upon the foregoing, the Proposed Plan is not confirmable over BPL's objection.

*B. Limited Objection to Sale*

30. Although the Transaction will result in the Stalking Horse Bidder assuming the Deed of Trust and Financing Statement relative to the Deed of Trust, the Stalking Horse

Purchase Agreement does not provide for the Stalking Horse Bidder to assume the Note and *in personam* liability of the amounts owed thereunder.

31. At present, confirmation of the Proposed Plan and consummation of the Transaction would result in no party making any payments whatsoever to BPL on account of the Note.

32. Thus, upon the consummation of the Proposed Sale and the transfer of the title of the Woodlands Office Building to the ultimate purchaser (be it the Stalking Horse or another bidder), the Woodlands Office Building will no longer be property of the estate, the defaults under the Note will remain uncured, BPL will immediately have a right to pursue its *in rem* rights in the Woodlands Office Building.

33. This is an absurd result. Either the Stalking Horse Purchase Agreement needs to be amended to provide for the Stalking Horse Bidder to assume the Note, provide for cure of the monetary defaults and begin making payments under the Note, or the Woodlands Office Building should be carved out of the Transaction (or any Alternative Transaction) and the Court should lift the automatic stay to permit BPL to pursue its *in rem* rights in the Woodlands Office Building now, rather than having to wait out a meaningless – as to its interests – sales process.

#### ***Conclusion***

34. For the reasons set forth herein, BPL respectfully requests that the Court enter orders (i) denying confirmation of the Proposed Plan; and (ii) denying approval of the Transaction (or any Alternative Transaction that likewise does not provide for cure of the defaults under the Note and subsequent Note payments).

Dated: January 11, 2016

Respectfully submitted,

ADAMS AND REESE LLP

/s/Scott R. Cheatham

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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the Business Property Lending, Inc.'s Objection to Confirmation of Plan and Limited Objection to Transaction or Alternative Transaction was served upon all parties requesting notice via **ELECTRONIC FILING** through the court's electronic notification filing system, and upon those parties listed on the Debtors' Revised Master Service List [Docket No. 316], on January 11, 2016.

/s/Scott R. Cheatham

SCOTT R. CHEATHAM