

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

CAFÉ HOLDINGS CORP., *et al.*

Debtors.

**Case No. 18-05837-hb
Chapter 11**

**GREENWOOD COUNTY'S LIMITED OBJECTION TO DEBTORS' NOTICE OF
PROPOSED SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, ENCUMBRANCES AND OTHER INTEREST,
THE ACTION, AND THE SALE HEARING**

NOW COMES Greenwood County, South Carolina ("Greenwood County"), and files this Objection to the Debtors' Notice of Proposed Sale of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interest, the Action, and the Sale Hearing. On January 10, 2019, the Debtors filed a Notice of Proposed Sale of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests [Doc. # 337] ("Notice"). The Notice provides that objections to the proposed sale of the Debtors' assets shall be filed on or before February 1, 2019, at 4 p.m. In support of this Objection, Greenwood County respectfully states as follows:

1. Greenwood County is a creditor in this case and has filed Claim No. 144, which is a first priority tax claim pursuant to S.C. Code § 12-49-10 for unpaid business personal property taxes on the personal property owned by the Debtors (the "Personal Property") at the restaurant leased by the Debtors, located at 1302 Montague Avenue Extension, Greenwood, South Carolina SC 29649 (the "Greenwood Restaurant").

2. Upon reviewing the Notice of Filing of Revised Asset Purchase Agreement [Doc. # 354], Greenwood County is informed and believes the Personal Property at the Greenwood Restaurant is included in the assets to be acquired by any purchaser at Closing.

3. In addition, the Debtors lease the Greenwood Restaurant property from STORE Master Funding V, LLC, and are proposing to cure and assume that lease (the “Lease”). See Section 3.5 of the Revised Asset Purchase Agreement. It is unclear from the debtor’s filings that the proposed cure amount includes the amounts necessary to pay the delinquent taxes.

4. Greenwood County has a first priority tax lien pursuant to S.C. Code § 12-49-10 and S.C. Code § 12-49-20 on the real property for all amounts due in 2018 and all taxes “to be paid during the ensuing year,” which includes a portion of the current year 2019. S.C. Code § 12-49-20. Accordingly, any lease of the Greenwood Restaurant is also encumbered by the County’s tax lien as a matter of law. S.C. Code § 12-49-10.

5. Although the Debtors are proposing to sell all Assets, including the Lease and Personal Property, it is not clear that the Assumed Liabilities include Greenwood County’s tax liens. Any liabilities that are not transferred after the sale must either attach to the proceeds of the sale or else survive the closing of the sale.

6. The form of Sale Notice lacks important information for Greenwood County to evaluate the sale in that it does not identify the other liens on the property subject to Greenwood County’s first priority tax liens or the estimated value of the assets to be sold.

7. As a result, it is impossible to determine whether Greenwood County’s interests in the Personal Property and Lease meet the requirements under 363(f) such that the property may be sold free and clear.

8. Undersigned counsel has reached out to Debtors’ counsel to resolve these questions, and South Carolina local counsel for the Debtors forwarded the undersigned’s inquiry on January 29 to out-of-state counsel, who has not yet responded.

WHEREFORE, Greenwood County respectfully requests that the sale proceeds be used to pay Greenwood County's tax liens in full and, to the extent such tax liens are not fully paid, that Greenwood County's tax liens shall survive any sale, continue to encumber the Greenwood Restaurant and the Personal Property respectively, and shall continue to be enforceable and collectible according to applicable South Carolina law.

This the 1st day of February, 2019.

s/ Robert C. Byrd, Esq. _____
Robert C. Byrd (Fed. Id. #1643)
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
Telephone: (843) 727-2650
Facsimile: (843) 727-2680
bobbybyrd@parkerpoe.com

Attorneys for Greenwood County, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **LIMITED OBJECTION TO THE MOTION** was served upon the following parties in interest, via electronic filing (CM/ECF), and by electronically mailing and by depositing a copy of the same in the United States Mail, first-class postage prepaid, on the 1st of February, 2019, to their emails and addresses as stated below:

Haynes and Boone, LLP
Attention: Ian T. Peck
J. Frasher Murphy
2323 Victory Avenue, Suite 700
Dallas, Texas 75219,
email: ian.peck@haynesboone.com
email: frasher.murphy@haynesboone.com
counsel to the Debtors

Office of the U.S. Trustee
Attention: Elisabetta G. Gasparini
1835 Assembly Street, Suite 953
Columbia, South Carolina 29201
Facsimile: (803) 765- 5260

Pachulski Stang Ziehl & Jones LLP,
Attention Bradford Sandler
919 North Market Street, 17th Floor, Wilmington
email: bsandler@pszjlaw.com
counsel to the Committee

Holland & Knight LLP
200 Crescent Court, Suite 1600, Dallas, Texas 75201
Attention: Brent McIlwain
email: brent.mcilwain@hklaw.com
counsel to the Stalking Horse Bidder and First Lien Secured Lender

This is the 1st day of February, 2019.

s/ Robert C. Byrd, Esq.
Robert C. Byrd (Fed. Id. #1643)
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, South Carolina 29401
Telephone: (843) 727-2650
Facsimile: (843) 727-2680
bobbybyrd@parkerpoe.com

Attorneys for Greenwood County, South Carolina