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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Case No. 25-22156 (ABA)
	Chapter 11
Skyline Tower Resort Vacation Condominium Association, Inc.,	
	Judge Andrew B. Altenburg Jr.
Debtor.	Hearing Date: February 10, 2026, at 10:00 a.m.

OBJECTION OF THE UNITED STATES TRUSTEE TO DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I)(A) APPROVING AUCTION AND BIDDING PROCEDURES, (B) SCHEDULING BID DEADLINES AND AUCTION, AND (C) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (II)(A) AUTHORIZING THE SALE OF ASSETS AND (B) GRANTING RELATED RELIEF

The United States Trustee (the "U.S. Trustee"), by and through counsel, in furtherance of his duties and responsibilities under 28 U.S.C. §§ 586(a)(3) and (5), hereby respectfully submits this Objection (the "Objection") to the Debtor's Motion for Entry of an Order (i)(a) Approving Auction and Bidding Procedures, (b) Scheduling Bid Deadlines and Auction, and (c) Approving the Form and manner of Notice Thereof, and (ii) (a) Authorizing the Sale of Assets and (b) Granting Related

Relief (the "Motion").[1] In support of the Objection, the U.S. Trustee respectfully represents as follows:

JURISDICTION, VENUE AND STANDING

1. This Court has jurisdiction to hear and determine this Objection.

2. Under 28 U.S.C. § 586, the U.S. Trustee is charged with overseeing the administration of Chapter 11 cases filed in this judicial district. This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

3. Pursuant to 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on this Objection. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.),* 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest).

FACTUAL BACKGROUND

4. On November 15, 2025 (the "Petition Date"), Skyline Tower Resort Vacation Condominium Association Inc. d/b/a The Boardwalk Brew (the "Debtor") filed a voluntary petition under Chapter 11 of title 11, United States Code (the "Bankruptcy Code"). *See* Dkt. 1.

A. The Debtor and the Property

5. The Debtor is a not-for-profit corporation organized under the laws of the State of

[1] Debtor's counsel advised that the sale of the Property will not include the sale of any personally identifiable information of any individual who owns a Vacation Ownership Interest. As such, the appointment of a consumer privacy ombudsman pursuant to section 363(b) of the Bankruptcy Code is not necessary.

New Jersey pursuant to a Certificate of Incorporation filed with the State Treasurer of New Jersey on October 19, 2004. *See* Dkt. 90-1 at ¶ 8.

6. The Debtor was formed pursuant to a Master Deed and Timeshare Plan for Fairfield Atlantic City-Skyline Tower, A Condominium dated October 8, 2004, which was amended from time to time. *See* Dkt. 9 at ¶ 7.

7. The property governed by the Debtor is located at 100 S. North Carolina Ave. Atlantic City, New Jersey (the "Property"). *See* Dkt. 90-1 at ¶ 12. The Property was built in 1982, and consists of a 32-story, concrete-constructed high rise above a parking deck. *See id.* The Property contains 20 commercial units and 296 residential units - with 192 one-bedroom units, 98 two-bedroom units, 5 three-bedroom units and 1 four-bedroom unit. *See id.* The Property operates as a timeshare community. *See id.*

8. Building floors one through six contain commercial units each owned by Wyndham Vacation Resorts, Inc. *See id.* at ¶ 14. The residential units located on floors seven through twelve and fourteen through thirty-three of the Property are organized pursuant to the Master Deed as a timeshare plan. *See id.* at ¶ 15.

9. Pursuant to Section 5.4 of the Master Deed, each owner of a Vacation Ownership Interest ("VOI") has a fractional undivided interest in one or more residential units and will also have a fractional ownership interest in the sum of the percentage interests in the common elements for all such residential units. *See id.* at ¶ 17. Record owners of VOIs and Commercial Units, including the Developer, are members of the Association. *See id.*

10. The Association owns 9,369,000 of the 2,640,478,000 tenant-in-common fee simple

VOIs at the Property, and a concomitant share of the common elements at the Property. *See id.* at ¶ 18. The Association Interest comprises approximately .35% of the total VOIs at the Property. *See id.* The Association is a tenant in common with all other VOI owners and commercial unit owner(s) at the Property. *See id.*

11. WVR owns approximately 10.17% of the total VOIs at the Property. *See id.* at ¶ 19. PTVO Owners Association, Inc. ("PTVO") owns 1,790,597,000 of the 2,640,478,000 tenant-in-common fee simple VOIs at the Property, and a concomitant share of the common elements at the Property. *See id.* PTVO owns approximately 67.81% of the total VOIs at the Property. *See id.* PTVO is a tenant in common with all other VOI owners and commercial unit owner(s) at the Property. *See id.*

12. The remaining 572,105,000 of the 2,640,478,000 tenant-in-common fee simple VOIs at the Property, and a concomitant share of the common elements at the Property, are owned by approximately 8,848 parties to approximately 5,126 contracts. *See id.* at ¶ 21. These Owners own approximately 21.67% of the Property. *See id.*

B. The Bidding Procedures Motion and Requested Bid Protections

13. On January 14, 2026, the Debtors filed the Motion. *See* Dkt. 90.

14. Through the Motion, the "Debtor seeks approval of the Bidding Procedures to establish an open process for the solicitation, receipt, and evaluation of Bids (as defined below) in a fair, accessible, and expeditious manner." *See* Dkt. 90-1 at ¶ 23. In addition, the "Debtor seeks to sell the Property to the highest and best bidder to maximize value for the bankruptcy estate." *See id.* at ¶ 24.

15. Pursuant to the Motion, bids for the Property would be required by April 17, 2026, and an Auction will be scheduled for April 28, 2026. *See id.* at ¶ 31.

16. The Debtor seeks approval of certain stalking horse bid protections that would award a yet-to-be-determined bidder with a break-up fee not to exceed three percent (3%) of the applicable yet-to-be-determined purchase price for the Property, and an expense reimbursement not to exceed $100,000.00. *See id.* at ¶ 51.

OBJECTION

A. Bid Protections

17. The Debtor should not be permitted to award bid protections concerning the sale of the Property where not only is there no asset purchase agreement, but there are no offers on the table nor is there a potential stalking horse.[2]

18. No bid protections should be provided concerning the sale of the Property until there is an actual stalking horse bidder with a *bona fide* asset purchase agreement that is finalized and signed and filed with the Court with a separate hearing to consider allowance of any proposed bid protections with the opportunity for parties in interest to object to same.

19. Bid protections must be sought pursuant to, and analyzed under, Section 503(b) of the Bankruptcy Code. *See Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010) ("[A] bidder must seek a break-up fee under 11 U.S.C. § 503(b)[.]") (citing *Calpine Corp. v. O'Brien Envt'l Energy* (*In re O'Brien Envt'l Energy, Inc.*), 181 F.3d 527 (3d Cir. 1999)). Section 105(a) is

[2] The U.S. Trustee files this Objection out of an abundance of caution as it is unclear whether the Debtor seeks pre-approval of a 3% break-up fee and a $100,000 expense reimbursement at this time or if there will be some process to obtain separate Court approval for a break-up fee and/or expense reimbursement later. If it is the latter, the Debtor should advise of the process to obtain separate Court approval for the break-up fee and/or expense reimbursement.

not a basis to award an administrative expense. *See In re Woman First Healthcare, Inc.,* 332 B.R. 115, 120-21 (Bankr. D. Del. 2005).

20. The analysis of bid protections under Section 503(b) "must be made in reference to general administrative expense jurisprudence. In other words, the allowability of bid protections, like that of other administrative expenses, depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate." *O'Brien*, 181 F.3d at 535; *see In re Energy Future Holdings Corp. ("EFH I")*, 904 F.3d 298, 313 (3d Cir. 2018) ("[T]ermination fees are subject to the same general standard used for all administrative expenses under 11 U.S.C. § 503[.]").

21. The benefit to the estate of an administrative expense "must be *actual*, not hypothetical." *In re Energy Future Holdings Corp.* ("*EFH II*"), No. 19-3492, 2021 WL 957301 at *10 (3d Cir. Mar. 15, 2021) (emphasis in original) (citing *In re Continental Airlines, Inc.*, 146 B.R. 520, 526 (Bankr. D. Del. 1992)).

22. A break-up fee may provide a benefit to the estate where (1) assurance of the break-up fee promotes more competitive bidding, such as by inducing a bid that otherwise wouldn't have been made, (2) availability of the break-up fee induces a buyer to perform diligence and set a floor price. *See EFH I*, 904 F.3d at 313-14 (citing *O'Brien*, 181 F.3d at 537).

23. Even if a break-up fee would benefit the estate, the Court is not required to approve it. *See EFH I*, 904 F.3d at 313-14 ("We have never held that bankruptcy courts must allow fees whenever they find that [a break-up fee confers a benefit on the estate.]"). The Court must determine, based on the totality of the circumstances of the case, "whether the proposed fee's

potential benefits to the estate outweigh any potential harms, such that the fee is actually necessary to preserve the value of the estate." *See id.* (citing *O'Brien*, 181 F.3d at 535) (quotation marks omitted).

24. The party requesting bid protections has the burden of showing that the fee is actually necessary to preserve the value of the estate. *See O'Brien*, 181 F.3d at 535.

25. In *EFH II*, the United States Court of Appeals for the Third Circuit considered, in the context of a motion to dismiss based upon the sufficiency of the pleading, an administrative expense application submitted by an unsuccessful bidder. Initially, the unsuccessful bidder argued that the lower courts erred in measuring whether its bid had conferred a benefit using hindsight (as opposed to measuring the benefit at the time the bid was submitted). *See EFH II* at *12. The Third Circuit rejected that argument and concluded that, consistent with the well-established Bankruptcy Code policy of limiting administrative expenses, it was "entirely appropriate to consider" the asserted benefit "through the rearview mirror." *Id.*

26. The unsuccessful bidder in *EFH II* also asserted two potential benefits to the process: that it served as a stalking horse bidder, and that its unsuccessful efforts provided a "roadmap" for other viable bids that were later submitted, including the successful bid. *Id*. The Third Circuit rejected the argument that the unsuccessful bidder had stated a plausible argument for allowance of an administrative expense on a theory that its bid served as a catalyst for the submission of other bids, as it was the only bid at the time it was submitted. *Id.* While the bid did not technically establish a "floor" because the estates ultimately accepted a substantially lower offer after the unsuccessful bid fell through, the Third Circuit found that the argument that the bid had provided a

"roadmap" for other bids post-termination was a plausible argument in favor of benefit to the estate. *Id.* at *12-13. The Third Circuit remanded the matter in *EFH II* so that a sufficient record could be developed to enable the bankruptcy court to determine, in hindsight, the extent to which the unsuccessful bidder's participation had actually benefited the estate more than it had harmed the estate. *Id.* at *15.

27. In this case, as to the sale of the Property, there is no present stalking horse, so any benefit a stalking horse could provide to the Debtor's estate cannot be determined. Taking up bid protections (or the process for awarding them) before a bid is even in hand, is premature. At this initial juncture in this case, the Court cannot predict whether a future bid or bids containing unknown terms submitted by an unidentified, non-existent bidder will help elicit qualified bids. Accordingly, the Court does not have a basis to determine that bid protections will confer an "actual" benefit on the Debtor's estate that outweighs any potential harms.

28. Consistent with the Third Circuit's guidance, the Court should not consider bid protections until there is a sufficient evidentiary record on which to make the legal determinations outlined in *O'Brien* and subsequent Circuit cases.

29. In sum, the Debtors' request for authority to award bid protections should be denied as it undermines this Court's control of administrative expenses.

B. Miscellaneous

30. The Debtor seeks to establish initial overbid minimum and subsequent bidding increment requirements. *See* Dkt. 90-1 at ¶ 35. However, such overbids and increments are not included in the Motion but the bidding procedures provide what appears to be incremental bidding of

at least $100,000. *See* Dkt. 90-2 at page 21 of 29. The Debtor should be required to advise of the initial overbid amount and the incremental biding amount. Again, as there is no stalking horse, it is possible that the bidding floor has not been set, making it difficult to evaluate the bidding increments.

31. It appears that each bid must ensure that it is irrevocable if chosen as the Back-Up Bid. *See id.* at ¶ 27. However, it appears that bidders are provided with the choice whether to serve as a Back-Up Bidder. *See id.* These two provisions in the bidding procedures are at odds as one allows a bidder to choose not to be a Back-Up-Bidder and the other requires the bidder to be a Back-Up Bidder.

32. The bidding procedures provide that the Debtor must provide notice of the selection of a section 363(i) bid as the successful bid within two (2) business days after conclusion of the Auction. *See id.* at ¶ 31. However, the bidding procedures provide that the notice of a successful bidder other than a section 363(i) bidder must be provided three (3) business days after the conclusion of the Auction. *See id.* There does not appear to be any rhyme or reason why these two notice provisions are different.

33. The bidding procedures provide that the Sale objection Deadline will be at 5:00 pm. prevailing Eastern Time on the date that is three (3) business days after the filing of the Sale Approval Request. *See id.* The Debtor instead should be required to schedule a date for the sale to be approved by the Court and provide that objections be filed at least seven (7) days prior in accordance with the Local Bankruptcy Rules. The Debtor has provided no basis to deviate from or shorten the objection deadline for parties-in-interest.

CONCLUSION

34. Wherefore, for the foregoing reasons, the U.S. Trustee respectfully requests that the Motion be denied or revised to the extent set forth above, and the Court to grant such other and further relief that is deemed just and equitable.

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 & 9

By: /s/ Jeffrey M. Sponder
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Dated: February 3, 2026