

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
ON THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

In re § Case No. 03-4569
MIRANT CORPORATION, *et al.*, § Chapter 11
§
Debtors. § Jointly Administered

ORDER REGARDING MOTIONS FOR LIMITED PROTECTIVE ORDERS

CAME ON FOR CONSIDERATION the:

(1) Objection to Debtors' Notices of Depositions and Motion for Limited Protective Order filed by the Towns of Haverstraw, New York ("Haverstraw"), Stony Point, New York ("Stony Point"), and the Haverstraw – Stony Point School District (the "School");

(2) Motion for Limited Protective Order filed by the Town of Forestburgh ("Forestburgh"), New York, and the Town of Lumberland, New York ("Lumberland");¹

(3) Debtors' Omnibus (i) [sic] Response to Various Taxing Authorities' Motions for Limited Protective Orders and (ii) Status Conference Report; and

(4) Reply to the Debtors' Omnibus (i) [sic] Response to Various Taxing Authorities' Motions for Limited Protective Orders and (ii) Status Conference Report.

The Court, having considered the foregoing pleadings, arguments of counsel and evidence presented at the hearing held on June 16, 2004 (the "Hearing"), and for the reasons stated at the Hearing, finds that good cause exists for the relief granted herein and hereby enters the following Order:

ORDERED that the Debtors are authorized to take the depositions of the following Assessors: (1) David Adams, Haverstraw; (2) Franklin Stein, former Assessor, Haverstraw; (3) John O'Shaughnessy, Stony Point; (4) David M. Griffin, Forestburgh; and (5) Minke M. Kwak, Lumberland (collectively, the "Assessors"). It is further

¹ Haverstraw, Stony Point, School, Forestburgh, and Lumberland, collectively, the "Tax Authorities".

ORDERED that each of the depositions of the Assessors shall be no more than one (1) hour in length. It is further

ORDERED that the scope of the Debtors' depositions of the Assessors is limited to (i) matters relating to any improper conduct in the assessment or Board of Assessment Review ("BAR") process, and (ii) discovery, to the extent that such discovery might, directly or indirectly, provide or lead to evidence which could be admissible in New York tax *certiorari* proceedings pursuant to Article 7 of the New York Real Property Tax Laws (the "RPTL"). It is further

ORDERED that the Debtors are authorized to take the depositions of a representative of Haverstraw and Stony Point, pursuant to FED. R. CIV. P. 30(b)(6) (the "Town Representatives"). It is further

ORDERED that each of the depositions of the Town Representatives shall be no more than one (1) hour in length. It is further

ORDERED that the scope of the Debtors' depositions of the Town Representatives is limited to discovery of matters which might, directly or indirectly, lead to evidence which could be admissible in New York tax *certiorari* proceedings pursuant to Article 7 of the RPTL, or regarding matters relating to any improper conduct in the assessment or BAR process. It is further

ORDERED that any documents in the possession of the Tax Authorities not already produced to the Debtors pursuant to outstanding document production requests of the Debtors, shall be produced by the Tax Authorities, but limited solely to the extent that such documents fall within the scope and limitations of the depositions of the Assessors and Town Representatives ordered herein. It is further

ORDERED that the Tax Authorities shall answer any outstanding interrogatories propounded by the Debtors but previously objected to on relevance grounds, subject to and consistent with the limitations ordered herein regarding the depositions and the document production. It is further

ORDERED that the Debtors are not authorized at this time to depose any witness on matters relating issues that are pertinent only to the Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 505(a) for the Determination of Tax Liability (the "505 Motion"), nor must the Tax Authorities produce documents or answer interrogatories relating to issues that are pertinent only to the 505 Motion. It is further

ORDERED that that Debtors and Tax Authorities will provide a schedule of the agreed deposition dates and times to this Court. It is further

ORDERED that at 8:30 a.m. (CENTRAL)² on the first business day following any scheduled deposition (as ordered herein), this Court will hear any disputes regarding questions asked and questions for which objections were lodged or otherwise not answered, and rule accordingly. The parties are instructed that the Court will err towards ordering the answering of any question; however, any question which is clearly beyond the limitations established by this Order will be deemed a clear violation of this District's standards for conduct, as established by *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n.*

Signed this 23rd day of June 2004.



D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

² Or as otherwise scheduled by this Court.