



ORDERED in the Southern District of Florida on October 14, 2009.

A. Jay Cristol, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov**

In re:

Chapter 11

FONTAINEBLEAU LAS VEGAS
HOLDINGS, LLC, ET AL.,¹

Case No. 09-21481-BKC-AJC

Debtors.

(Jointly Administered)

**ORDER APPOINTING EXAMINER TO EXAMINE,
NEGOTIATE AND SUPERVISE § 363 SALE OF ASSETS**

Based upon the order entered *sua sponte* by this Court on October 2, 2009, requiring parties to show cause why an examiner should not be appointed to examine, negotiate and supervise a § 363 sale of assets (the “Assets”) by the Debtors, and having considered the arguments raised by parties in interest, including the Term Lenders whose

¹ The last four digits of each Debtor's tax identification number are: (i) Fontainebleau Las Vegas Holdings, LLC [9337]; (ii) Fontainebleau Las Vegas, LLC [9332]; and (iii) Fontainebleau Las Vegas Capital Corp. [7822]. The Debtors' current mailing address is 19950 West Country Club Drive, Aventura, Florida 33180.

position this Court has afforded substantial weight (including their express willingness to allow the use of their cash collateral to pay the Examiner's fees and costs, and the costs of Examiner's professionals), this Court finds and concludes that appointment of an Examiner to expedite the sale process and avoid any conflict or appearance of conflict of interest, is in the best interests of the estate and its creditors. Counsel for the Debtors-in-Possession and counsel for the Term Lenders each submitted proposed orders, and the Court considered same, together with the comments submitted by other interested parties, including certain statutory lien holders and Bank of America NA. This order was drafted by the Court after consideration of all of the foregoing submissions.

Accordingly, pursuant to 11 U.S.C. § 1104(c), this Court orders the United States Trustee to appoint a Chapter 11 Examiner. The Court directs the Examiner not to "reinvent the wheel." In addition to the duties specified in 11 U.S.C. § 1106(b), the Examiner's powers, duties and functions shall also consist of the following:

1. The Examiner shall supervise the negotiation of any sale or contract for a "stalking horse" bid and the sale of the Assets, including without limitation, the formulation and implementation of any sale procedures that are approved by order of this Court (the "Sale Procedures"). With respect to the sale process, the Debtors-in-Possession and their professionals, including attorneys, shall report to the Examiner and shall assist the Examiner in the performance of his or her functions. Clearly, counsel for the Debtors-in-Possession may have a conflict of interest if trying to represent the Debtors-in-Possession and the Examiner; therefore, it will probably be necessary for the Examiner to engage independent counsel.
2. The Examiner shall supervise the "Data Room" which, according to the Debtors, has already been created and contains materials to be made available to potential bidders as may be provided in the Sale Procedures. The Examiner

shall confirm that the Data Room includes, without limitation, any and all documents, materials and information provided by the Debtors to Penn Gaming or to any other bidder, and shall supplement the Data Room with such other available materials as the Examiner shall deem advisable. For avoidance of doubt, nothing in this paragraph shall limit the Debtors' access to the Data Room to the extent such access is deemed necessary by the Debtors to operate the business, preserve the Assets, and otherwise perform their functions in these bankruptcy cases.

3. The Examiner shall be responsible for negotiating the terms of any agreements with potential purchasers of the Assets, including any "stalking horse bidder." The Examiner shall have unrestricted access to participate in any negotiations conducted on behalf of the estate with potential purchasers of the Assets. No agreements between the Debtors-in-Possession and a prospective "stalking horse" bidder or buyer shall become final without the approval of the Examiner or without the Court overruling the Examiner's objection, after notice and hearing. In negotiating the terms of any agreement, the Examiner shall consult with the Debtors and representatives of a) the Lenders to the Debtors under that certain Credit Agreement, dated as of June 6, 2007, b) the Administrative Agent under that certain Credit Agreement, dated as of June 6, 2007, and its title insurers, c) the Lenders to Fontainebleau Las Vegas Retail, LLC under that certain Loan Agreement dated June 6, 2007, d) creditors asserting statutory liens against the Assets, e) the Unsecured Creditors Committee, and f) any other party in interest, as determined by the Examiner in his or her discretion.
4. The Examiner shall be given prompt and unrestricted access to all documents and information in the possession, custody or control of the Debtors relating

to the Assets and their sale. In addition, the Examiner shall be given unrestricted access to all professionals and personnel of the Debtors (including any professionals and personnel employed by other entities but paid by the Debtors). Such access shall include, without limitation, any communications with potential purchasers of the Assets.

5. If the Examiner determines that it is in the best interest of the estate and its creditors to make available, to parties in interest, any documents or information otherwise subject to privilege or protection, the Examiner shall be entitled, on notice to the Debtors and other parties in interest, to request such authority from this Court and, upon entry of an order granting such authority, may be entitled to make available such documents or information to parties in interest.
6. Notwithstanding anything in this Order to the contrary, the Examiner shall be bound by the terms of any agreements that have been approved by this Court, and by any orders that have been entered by this Court.
7. Within 10 days of the entry of this Order and every 10 days thereafter, the Examiner shall report to the Court (filed in writing and supplemented orally, if update is necessary, during any hearing) on the status of the sale process. The Examiner shall, at any time, have the right to request, on notice to parties in interest, any relief from the Court that he or she deems to be warranted in connection with the performance of the functions set forth herein.
8. Arguments over whether the expenses of the Examiner shall be paid from cash collateral and given priming lien status or deducted from proceeds of the sale are unimportant. The Examiner, Examiner's expenses and the expense of the Examiner's professionals shall be a first priority and either way will be superior to the disputed liens and mortgage claims on the Debtors' property.

The provisions of this Order shall be effective immediately upon entry of this Order.

###

Copies to:

Michael I. Goldberg (Bar No. 886602)
AKERMAN SENTERFITT
One Southeast Third Avenue, 25th Floor
Miami, Florida 33131-1714
Telephone: (305) 374-5600
Facsimile: (305) 374-5095

(Attorney Goldberg shall upon receipt serve a copy of this Order upon all interested parties and file a certificate of service.)