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\$155M Transfers OK'd On Appeal In Detroit Casino's Ch. 11

By **Cara Salvatore**

Law360, New York (January 24, 2018, 10:09 PM EST) -- A Michigan federal court on Tuesday approved prebankruptcy transfers of \$155 million from downtown Detroit's Greektown Casino to two couples who had years earlier owned a large indirect stake, disregarding the protests of the bankruptcy trustee and saying a safe harbor applied to the transaction considered in context.

U.S. District Judge Paul Borman affirmed the 2015 opinion of U.S. Bankruptcy Judge Walter Shapero that the transfers, about \$95 million to one couple, the Papases, and about \$60 million to another, the Gatzaroses, cannot be clawed back, citing the bankruptcy code's safe harbor for payments "connected to" securities transactions.

Before 2000, the two couples had owned 86 percent of Monroe Partners LLC, which owned half of Greektown Casino. The other half was owned by Kewadin Greektown Casino LLC.

The 2005 transfers of \$155 million were made as final payment on a 2000 buyout of the couples' stakes, and were predicated on the issuance of over \$180 million in notes to Merrill Lynch. The trustee said that since the money didn't go directly to Dimitrios and Viola Papas and Ted and Maria Gatzaros but first went to Greektown Holdings — a new company that the Michigan Gaming Control Board required the parties to set up — and Holdings then paid the two couples, the latter payment was a separate transaction and not "connected to" a securities transaction. Both the bankruptcy judge and the district judge considering the appeal disagreed.

"Every facet of this 2005 transaction expressly contemplated and accepted that the very purpose of the note sale was to raise funds to satisfy the debts that Monroe and Kewadin owed" to the Papases and Gatzaroses, Judge Borman said. "Judge Shapero's decision to integrate the various components of the 2005 transaction for purposes of analysis and to view them as parts of their larger whole is supported by the record in this case."

"There can be no dispute that the intent of the 2005 transaction was to satisfy the redemption obligations to the Papas and Gatzaros defendants. It is also undisputed that the MGCB order and the covenants made by [Greektown] Holdings ... required that the proceeds of the note sale once received by Holdings could be used only to satisfy the redemption obligations to the Papas and Gatzaros defendants," he said.

The transfers also allegedly made Holdings insolvent, but the judge said whether that's true or not is not legally relevant here.

The litigation trustee had argued that the transfers were "dividend payments" not covered by the safe harbor.

In 2000, Monroe bought out the Papas and Gatzaros membership interests, and Kewadin bought them from Monroe. Kewadin and Monroe began making installment payments to the Papases and Gatzaroses under a plan. Some \$66 million had been paid out by the time Monroe and Kewadin ran into trouble making the payments in 2005, Judge Borman said.

In early 2005, after multiple debt restructurings, both couples agreed to accept lump sums as final payoffs under the 2000 deal. The casino began to restructure its debt in preparation to make the two lump-sum payments.

But they ran into trouble when the parties went to get approval from the Michigan Gaming Control Board for the transactions. It didn't like how the deal was structured and forced the creation of Greektown Holdings, a holding company that would replace Monroe and Kewadin as the owner of Greektown Casino. That was in mid-November 2005.

Soon after, all the parties executed the deal in which, virtually simultaneously, Greektown would issue over \$180 million worth of notes to Merrill Lynch and would use most of the money to make the promised payments to the Papases and Gatzaroses.

Greektown Casino, Greektown Holdings, Monroe, Kewadin and others filed for Chapter 11 bankruptcy protection in May 2008.

Litigation trustee Buchwald Capital Advisors is represented by Joel Applebaum and Linda Watson of Clark Hill and Mark Parry of Moses and Singer.

The Papases and Gatzaroses are represented by James Morgan, Lisa Gretchko, and Patrick McCarthy of Howard & Howard Attorneys PLLC.

Kewadin Casinos Gaming Authority is represented by Douglas Lutz and Grant Cowan of Frost Brown.

The case is In re Greektown Holdings LLC, case number 2:15-cv-14289, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Alanna Weissman.