



Honorable August B. Landis
United States Bankruptcy Judge

Entered on Docket
December 13, 2016

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

<p>In re</p> <p>AVERY LAND GROUP, LLC, a Nevada limited liability company,</p> <p>Debtor.</p>	<p>Case Nos. BK-S-16-14995-abl</p> <p>Chapter 11</p> <p>ORDER PURSUANT TO 11 U.S.C. §§ 105, 364, FED R. BANKR. P. RULE 4001(C) AND L.R. 4001(B) AND (C): (I) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING; (II) GRANTING RELATED RELIEF</p> <p>Hearing Date: December 7, 2016 Hearing Time: 1:30 p.m.</p>
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The motion of the debtor and debtor-in-possession (the "Debtor" or "Borrower") in the above-captioned chapter 11 case (the "Chapter 11 Case"), dated October 31, 2016 [Docket No. 90] (the "Motion"), requesting the entry of a final order pursuant to sections 105, 361, 362, 363(c), 364(c)(2),

1 364(c)(3), and 364(e) of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the “Bankruptcy
2 Code”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the
3 “Bankruptcy Rules”), seeks, among other things¹:

4 (a) authorization for the Debtor to obtain secured post-petition financing in an aggregate
5 principal amount of up to \$500,000 (the “Post-Petition Financing”), pursuant to section 364 of the
6 Bankruptcy Code, from BDH Gypsum (“Lender”), pursuant to the terms of this Final DIP Order and
7 that certain Debtor in Possession Revolving Credit Agreement by and among the Borrower, and the
8 Lender, in substantially the form attached to the Supplemental Declaration of James Rhodes as Exhibit
9 A [Docket No. 124] (as the same may be amended, restated, supplemented or otherwise modified from
10 time to time, collectively, the “Credit Agreement”), and any related documents required to be delivered
11 by or in connection with the Credit Agreement (together with the Credit Agreement, collectively, the
12 “Loan Documents”);

13 (b) authorization for the Borrower to execute and enter into the Loan Documents and to perform
14 such other and further acts as may be required in connection with the Loan Documents;

15 (c) the grant of security interests and liens pursuant to section 364(c)(2) and (3) of the
16 Bankruptcy Code to the Lender to secure all obligations of the Borrower under and with respect to the
17 Post-Petition Financing as well as section 364(e) status;

18 (d) the modification of the automatic stay imposed under section 362 of the Bankruptcy Code to
19 the extent necessary to permit the Borrower and the Lender to implement the terms of this Final DIP
20 Order.

21 A final hearing on the Motion was held by this Court on December 7, 2016 (“Final Hearing”).
22 The Court read and considered the Motion, the Objection [Docket No. 117] filed by the United States
23 Trustee and all pleadings related thereto, as well as the record made by the Debtor and other parties at
24 the Final Hearing, and after due deliberation and consideration, and good and sufficient cause appearing
25 therefor:

26 _____
27 ¹ Capitalized terms used, but not defined herein, shall have the meanings ascribed to such terms
28 in the Credit Agreement and capitalized terms used but not immediately defined in Order shall have the
meanings ascribed to them later in this Order.

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1 1. **IT IS HEREBY ORDERED** that the Motion is GRANTED and the Court’s finding of
2 facts and conclusions of law are incorporated into this Order pursuant to FRBP 7052; and

3 2. **IT IS FURTHER ORDERED** that Debtor shall obtain secured post-petition financing
4 in an aggregate principal amount of up to \$500,000 (the “Post-Petition Financing”), pursuant to section
5 364 of the Bankruptcy Code, from BDH Gypsum (“Lender”), pursuant to the terms of this Final DIP
6 Order and that certain Debtor in Possession Revolving Credit Agreement by and among the Borrower,
7 and the Lender, in substantially the form attached to the Rhodes Declaratrion (as the same may be
8 amended, restated, supplemented or otherwise modified from time to time, collectively, the “Credit
9 Agreement”), and any related documents required to be delivered by or in connection with the Credit
10 Agreement (together with the Credit Agreement, collectively, the “Loan Documents”); and

11 3. **IT IS FURTHER ORDERED** that Debtor shall cause a copy of this Final DIP Order to
12 be served within three (3) Business Days of its entry, by first class mail, on the (a) Office of the United
13 States Trustee for the District of Nevada, counsel for any Committee, and if no such committee was
14 appointed, then to the parties listed on the List of Creditors Holding the 20 Largest Unsecured Claims;
15 (d) all other secured creditors, and (e) all other parties requesting notice pursuant to Bankruptcy Rule
16 2002.

17 DATED: December 12, 2016.

18 Prepared and respectfully submitted by:

19 **FOX ROTHSCHILD LLP**

20 By /s/Brett A. Axelrod
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1 APPROVED/DISAPPROVED:

2 UNITED STATES DEPARTMENT OF JUSTICE

3 By Edward M. McDonald Jr.

4 Edward M. McDonald Jr., Trial Attorney
5 For the United States Trustee for Region 17,
6 Tracy Hope Davis
7 Office of the United States Trustee
8 300 Las Vegas Blvd. So., Suite 4300
9 Las Vegas, Nevada 89101

10 CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

11 In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- 12 The Court has waived the requirement of approval in LR 9021(b)(1).
- 13 No party appeared at the hearing or filed an objection to the motion
- 14 I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

15 Edward M. McDonald Jr.,
16 Trial Attorney
17 For the United States Trustee
18 for Region 17, Tracy Hope Davis

19 Richard F. Holley, Esq. Waived
20 Holley Driggs Walch Fine Wray Puzey
& Thompson
Counsel for Utica Leaseco, LLC

- 21 I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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