



U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 6, 2014

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

**COUTURE HOTEL CORPORATION  
a/k/a HUGH BLACK-ST MARY  
ENTERPRISES, INC.**

**Debtor.**

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**Case No. 14-34874-BJH-11**

**Chapter 11**

**AMENDED FINAL ORDER ON AMENDED MOTION FOR AN INTERIM AND FINAL  
ORDER (I) AUTHORIZING THE USE OF CASH COLLATERAL PURSUANT TO  
SECTIONS 105, 361, 362, 363 AND 364 OF THE BANKRUPTCY CODE AND FEDERAL  
RULE OF BANKRUPTCY PROCEDURE 4001(B) AND (II) GRANTING ADEQUATE  
PROTECTION TO SECURED LENDERS**

CAME ON FOR CONSIDERATION the Amended Motion for an Interim and Final Order (I) Authorizing the Use of Cash Collateral Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001(B) and (II) Granting Adequate Protection to Secured Lenders (the "Motion") filed by Couture Hotel Corporation (the "Debtor") pursuant to Sections 105(a), 363(b) and 507(a) of the United States

Bankruptcy Code and 11 U.S.C. §§ 101 *et. seq.* (the “Bankruptcy Code”) in the above-referenced bankruptcy case.

The Court finds that due and adequate notice of the Motion was served via the Court’s electronic transmission facilities and/ or facsimile transmission and United States First Class Mail upon the alleged secured lender(s), the twenty largest unsecured creditors, all parties requesting notice, and the United States Trustee.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Court further finds that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court further finds that venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

The Court makes the following findings:

On October 7, 2014 (“Petition Date”), the Debtor filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its property as a debtor-in-possession.

The Debtor owns and operates four (4) separate hotels (collectively the “Hotels”): a Wyndham Garden Inn in Dallas, Texas, consisting of 356 rooms (the “Dallas Hotel”); a Howard Johnson in Corpus Christi, Texas, consisting of 140 room (the “Corpus Hotel”); a Howard Johnson in Las Vegas, Nevada, consisting of 110 rooms (the “Las Vegas HoJo”); and an independent hotel in Las Vegas, Nevada, consisting of 121 rooms (the “Las Vegas Independent”)(together with the Las Vegas HoJo the “Las Vegas Hotels”). The Las Vegas Hotels are located at one of the entrances to Nellis Air Force base in North Las Vegas.

Prior to the Petition Date, the Debtor and Ability Insurance Company (“Ability”) entered into a number loan documents (as described below, collectively the “Ability Loan Documents”) that Ability alleges creates Security Interests (as that term is defined in the Bankruptcy Code) in certain assets owned by the Debtors. Those documents include:

1. that certain Promissory Note (the “Ability Note”) dated June 11, 2013 executed in favor of Southwest Guaranty Mortgage Corporation, in the original amount of \$3,200,000.00;
2. that certain Deed of Trust, Assignment of Rents and Security Agreement (the “Ability Deed of Trust”) dated June 11, 2013;
3. that certain Absolute Assignment of Leases and Rents (the “Ability Assignment of Rents”);
4. those certain Continuing Unconditional Guaranty agreements (the “Ability Guaranties”) dated June 11 , 2013, executed by John Blomfield and Shelby Weaver in favor of Southwest Guaranty Mortgage Corporation;
5. that certain Transfer of Note and Lien dated June 11, 2013, executed by Southwest Guaranty Mortgage Corporation in favor of Ability, which purports to transfer, assign, grant, and convey to Ability the Ability Note, together with all liens, including the Ability Deed of Trust, held by Southwest Guaranty Mortgage Corporation securing the payment of the Ability Note;
6. that certain Assignment of Collateral Security dated July 9, 2013, executed by Southwest Mortgage Guaranty Corporation in favor of Ability, purporting to endorse, negotiate, sell, assign, convey, and transfer to Ability all of Southwest Mortgage Guaranty Corporation’s right, title and interest in and to the Ability Assignment of Rents; and
7. that certain Forbearance and Loan Modification Agreement (the “Ability Forbearance Agreement”) dated September 1, 2014, executed by Debtor in favor of Ability

Prior to the Petition Date, the Debtor and Mansa Capital LLC (“Mansa”) entered into a number loan documents (as described below, collectively the “Mansa Loan Documents”), that Mansa alleges creates Security Interests (as that term is defined in the Bankruptcy Code) in certain assets owned by the Debtor. Those documents include:

1. that certain Loan Agreement (the “Loan Agreement”) dated July 3, 2013 by and between Mansa Capital, LLC and Couture Hotel Corporation, John Blomfield and Shelby Weaver, together with the addendums thereto;
2. that certain Secured Promissory Note (the “Mansa Note”) dated July 3, 2013, in the original principal amount of \$8,870,000.00, executed in favor of Mansa Capital, LLC;
3. that certain Deed of Trust, Assignment of Rents, and Security Agreement (the “Mansa Deed of Trust”) acknowledged July 5, 2013, which purports to secure the obligations as set forth therein, including in the Note;
4. that certain All Assets Security Agreement (the “Mansa Security Agreement”) dated July 3, 2013, which purports to create additional Security Interests in the Debtor’s assets to secure the obligations as set forth therein, including in the Note;
5. those certain Continuing Guarantees dated July 3, 2013 executed by John F. Blomfield and Shelby C. Weaver in favor of Mansa Capital, LLC and such other documents concurrently executed as part of the lending transaction with Mansa.

Prior to the Petition Date, the Debtor borrowed money and incurred certain debts to certain lenders related to the payment of ad valorem property taxes related to the Hotels.

Pursuant to the Ability Loan Documents and Mansa Loan Documents described above, and in consideration of the loans and other financial accommodations extended to the Debtor under such agreements, and to secure the payment and performance of the Debtor’s obligations under the loan agreements, the Debtor granted the following: (1) to Ability a senior Security Interests and lien in the Debtor’s real and personal property described in the Ability Loan Documents, located at the Corpus Hotel (the “Ability Collateral”), and (2) to Mansa a senior Security Interests and lien in the Debtor’s real and personal property described in the Mansa Loan Documents, located at the Dallas Hotel, and Security Interests in the personal property described in the Mansa Security Agreement, related to the Las Vegas Hotels and the Corpus Hotel (the “Mansa Collateral,”)(collectively with the Ability Collateral, the “Collateral”).

Ability and Mansa both assert that they duly perfected their Security Interests and liens on their respective collateral by filing financing statements and deeds of trust in the applicable jurisdictions and offices.

Mansa asserts that, on the Petition Date, the Debtor was in default under the terms of the Mansa Note and that Mansa has a Security Interest and lien on all cash and the cash proceeds of the Collateral which cash proceeds constitutes its cash collateral.

Based upon the evidence at the hearing held on November 7, 2014, on the Petition Date, the value of the Corpus Hotel was greater than the amount of debt owed to Ability.

It is therefore,

**ORDERED** that the Motion is **GRANTED** on a final basis, pursuant to the terms stated herein. It is further

**ORDERED** that the Debtor is authorized to use alleged cash collateral for the payment of any U.S. Trustee fees and the approved expenses (the "Approved Expenses") set forth in the budget for the Corpus Hotel, attached hereto as **Exhibit A** (the "Corpus Budget"), and the budget for the Dallas Hotel, attached hereto as **Exhibit B** (the "Dallas Budget") (collectively with the Corpus Budget, the "Budgets") and as otherwise set forth in the Motion and on the record at the hearing on the Motion. Further, the Debtor is authorized to use the alleged cash collateral to pay such Approved Expenses listed in the Budgets within a 10% variance of each item in the Budgets, unless Ability and Mansa agree in writing to a greater variance, but in no event more than a 5% variance of the total amount set forth in the applicable Budget, unless Ability and Mansa agree in writing to a greater variance. To be clear, in order to obtain a variance on the Corpus Budget, the Debtor shall need the written permission of both Ability and Mansa;

however, in order to obtain a variance related to the Dallas Budget, the Debtor shall only need the written agreement of Mansa. It is further

**ORDERED** that, in the event the Debtor has not confirmed a plan of reorganization in this case prior to March 30, 2015, the Debtor shall provide proposed, supplemental six-month budgets substantially similar to Exhibits A and B to this Order. The Debtor must provide a copy of the proposed supplemental budgets (“Supplemental Budgets”) to Ability and Mansa on or before March 1, 2015 and no later than thirty (30) days prior to the expiration of any other subsequent budget period. If neither Ability nor Mansa fail to specifically object to the Supplemental Budgets within twenty (20) business days of receipt of those Supplemental Budgets, or the Debtor and Ability and/or Mansa make modifications acceptable to the Debtor within that period, the Supplemental Budgets (as may have been modified solely by written agreement) are deemed approved, and the Debtor shall then file the approved Supplemental Budget with the Court. Absent such required objection, the Debtor will be authorized to use cash collateral to fund the expenses itemized for that month as stated in the approved Supplemental Budget, subject to the provisions of this Order. If either Ability or Mansa properly objects (which shall include sending written correspondence via email or first class mail to counsel for the Debtor of its objection and non-consent) to the Supplemental Budgets, Debtor will be denied the further use of cash collateral; provided, however, that the Debtor may seek an Order from the Court on an expedited basis authorizing the use of cash collateral not to exceed the total expenses itemized for that period. If the objection is received less than 21 days prior to the expiration of the budget period, Ability and Mansa agree not to oppose such request for an expedited hearing. Ability and Mansa shall not unreasonably withhold approval of the Debtor’s proposed Supplemental Budgets. The Debtor shall promptly respond to any requests for additional

information that Mansa and/or Ability may make in order to understand and evaluate the Supplemental Budget. Each approved Supplemental Budget, together with the budgets approved at the final cash collateral hearing shall be included in the definition of the “Budgets.” It is further,

**ORDERED** that the right to use Cash Collateral under this Order shall expire upon the occurrence of any of the following events: (1) appointment of a Chapter 11 Trustee; (2) conversion of this case to a Chapter 7 case; or (3) a determination by the Court, in a separate Court Order, of a default of any terms of this Order by the Debtor.

**ORDERED** that the use of Ability’s Cash Collateral is adequately protected by Debtor agreeing to make monthly adequate protection payments to Ability in the amount of \$16,769.91. As additional adequate protection for the use of Ability’s Cash Collateral, Ability shall be granted valid, binding, enforceable and automatically perfected replacement liens on and security interest in the same types and items of the Debtor’s property that Ability held a valid, enforceable, properly perfected lien or Security Interest in pre-petition (the “Ability Replacement Liens”), but such Ability Replacement Liens shall only be effective to the same extent, validity, and priority as the respective lien held by Ability as of the Petition Date and will secure the same respective obligations as are secured by the pre-petition liens, but only to the extent of any diminution in value of Ability’s collateral position. Moreover, such Ability Replacement Liens shall not, under any circumstances, attach to any cause of action, or recoveries from such cause of action, that may arise pursuant to Chapter 5 of the Bankruptcy Code. Nothing in this order or in any prior order shall be construed to alter the priority of ad valorem property tax liens that secure all amounts owed for tax year 2014 and all subsequent tax years pursuant to Texas law. It is further,

**ORDERED** that as adequate protection for the use of Cash Collateral, Mansa shall be granted valid, binding, enforceable and automatically perfected replacement liens on and security interest in the same types and items of the Debtor's property acquired in which Mansa held a valid, enforceable, properly perfected lien pre-petition (the "Mansa Replacement Liens"), but such Mansa Replacement Liens shall only be effective to the same extent, validity, and priority as the respective lien held by Mansa as of the Petition Date and will secure the same respective obligations as are secured by the pre-petition liens, but only to the extent of any diminution in value of Mansa's collateral position. Further, to be clear, any Mansa Replacement Liens related to the Corpus Hotel are junior and subordinate to the Ability Replacement Liens in the same collateral, to the extent that Ability holds valid, enforceable, properly perfected Security Interests and Liens on the Corpus Hotel. Finally, with the exception of 549 actions to which the Mansa Replacement Liens attach, such Mansa Replacement Liens shall not, under any circumstances, attach to any other causes of action, or recoveries from such causes of action, that may arise pursuant to Chapter 5 of the Bankruptcy Code. Nothing in this order or in any prior order shall be construed to alter the priority of ad valorem property tax liens that secure all amounts owed for tax year 2014 and all subsequent tax years pursuant to Texas law. It is further,

**ORDERED** that the Ability Replacement Liens and Mansa Replacement Liens granted pursuant to this Order shall be subject and subordinate to any and all fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and the Clerk of the Bankruptcy Court (collectively, the "Carve Out"). Further, any Ability Replacement Liens or Mansa Replacement Liens granted pursuant to this Order will not attach to Chapter 5 actions of the Debtor or the proceeds of the recovery upon such actions, except as to Section 549 actions to which Mansa's Replacement Liens shall attach. It is further,

**ORDERED** that as additional adequate protection for the use of Mansa's Cash Collateral, Mansa shall be granted, solely to the extent of any diminution in the value of Mansa's Collateral, a valid, binding, enforceable and automatically perfected junior lien in the real property related to the Corpus Hotel (the "Corpus Junior Lien"). For the removal of doubt, the Corpus Junior Lien is only to the extent of any diminution in the value (as of the Petition Date) of Mansa's Collateral. Further, to the extent that Ability holds valid, enforceable, properly perfected Security Interests and Liens on the Corpus Hotel, the Corpus Junior Lien is junior to any such liens and Security Interests held by Ability. It is further,

**ORDERED** that as adequate protection of the state sales taxes and other taxes Couture is required to assess and remit to the State of Texas (the "Trust Fund Taxes"), the Debtor shall:

- 1) establish a "Trust Fund Tax Escrow Account" at an approved depository institution;
- 2) deposit, at least weekly, into such account all Trust Fund Taxes collected as a part of the Debtor's operations; and
- 3) provide online access to the Trust Fund Tax Escrow Account to Mansa and Ability.

**ORDERED** that the Debtor shall, at all times, operate in accordance with all laws, rules, regulations which may be applicable in each jurisdiction where it conducts business and maintains its assets, to keep in effect all permits or licenses which may be required for the operation of the Debtor's business in connection therewith. Further, notwithstanding anything herein to the contrary, the relief granted herein is without prejudice to any rights of the Texas Comptroller of Public Accounts ("Comptroller") to funds which do not constitute property of the estate but which may qualify as trust fund taxes. The Comptroller is not precluded from pursuing such funds by this Order, nor is any party in interest precluded from contesting any action of the Comptroller to recover any such trust funds. Nothing in this order shall be

construed to prevent the Debtor from complying with 28 U.S.C. § 959 and 960 with respect to payment of taxes owed to the Comptroller. It is further

**ORDERED** that the Ability Replacement Liens and Mansa Replacement Liens shall be deemed duly perfected under all applicable laws, and no further notice, filing, recordation or order shall be required to effect such perfection. The Debtor, Ability, and Mansa shall not be required to execute mortgages, security agreements, corporate resolutions or other documents or record further financing statements or take any other steps under applicable law, or otherwise, to create or perfect the Replacement Liens granted hereunder; provided, however, that in the event Ability or Mansa decide to have any additional documents, instruments and agreements executed and/or filed concerning the Replacement Liens granted hereunder, the Debtor shall cooperate with Ability and/or Mansa and shall execute such additional documentation as either lender may reasonably require from time to time. The liens granted hereunder (a) shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the above-captioned proceedings or any successor case and shall be in all respects valid and enforceable against any trustee appointed in this case or any successor case, or upon dismissal of this case or any successor case and (b) shall not be subject to Sections 506(c), 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to such liens. It is further,

**ORDERED** that the Debtor and any secured party has until January 4, 2015, to investigate and examine whether all liens and Security Interests asserted by Ability, Mansa and any Tax Lender (as that term is defined in the Motion) are properly perfected, valid, continuing, fully enforceable, unavoidable and infeasible in this bankruptcy case or otherwise (the "Investigation Deadline"). In the event that the Debtor or a secured party on motion to the Court

fails to commence an adversary proceeding or file a motion (i) objecting to the asserted liens by the Investigation Deadline, or (ii) in the case of a secured party, file a motion with the Court seeking authority to pursue such an adversary on behalf of the estate, the Debtor will be deemed to have acknowledged that all liens and security interests granted to Ability and Mansa are properly perfected, valid, continuing, fully enforceable, unavoidable and infeasible in this bankruptcy case or otherwise. It is further,

**ORDERED** that upon providing forty-eight (48) hours written notice to the Debtor's counsel, Ability, Mansa and/or representatives of the Comptroller shall have the right to inspect the Debtor's books and records, except that no inspection of the books or records may be conducted on Sundays or legal holidays. Notwithstanding the foregoing, the any request pursuant to this paragraph may not occur prior to December 1, 2014. It is further,

**ORDERED** that by the 20<sup>th</sup> of each month, Debtor shall provide to counsel for Ability and Mansa financial statements reflecting the Debtor's revenue, expenses and use of cash during the prior month, individually and collectively from the date of filing of this case, and the Debtor shall arrange for and provide Mansa and Ability to have on-line access to the Debtor's accounts for the limited purpose of reviewing the balances, uses and expenditures of cash pursuant to the Budgets; it is further

**ORDERED** that nothing in this Order or in any prior order shall be construed to alter the priority of ad valorem property tax liens that secure all amounts owed for tax year 2014 and all subsequent tax years pursuant to Texas Law. It is further

**ORDERED** that Debtor shall ensure that no funds of or proceeds from (i) the Dallas Hotel shall be used to pay expenses incurred for the benefit of the Corpus Hotel, and (ii) the Corpus Hotel shall be used to pay expenses incurred for the benefit of the Dallas Hotel.

Accordingly, to the extent any employees are providing services or otherwise working for multiple properties or other such expenses are paid by one property on behalf of or for the benefit of another (whether administrative, operational or otherwise), an appropriate allocation of the relative payroll expenses, salary, wages and other expenses shall be made with respect to the reasonable value of services provided to each such property for which any employee has provided services and, to the extent any hotel has paid more than its share of such allocated expenses on a pro rata basis, it shall be entitled to reimbursement from the revenues of any other property to which such employee provided services or such expenses were incurred for its pro rata share of such expenses upon agreement of the relevant secured creditors and Debtor or further order of the Court. It is further,

**ORDERED** that any of the requirements of this Order, as they apply to Ability, may be modified or waived as agreed in writing by Ability and the Debtor jointly in writing. Similarly, any of the requirements of this Order, as they apply to Mansa, may be modified or waived as agreed by Mansa and the Debtor and executed jointly in writing. It is further,

**ORDERED** that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**### END OF ORDER ###**

Prepared by:

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