UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re:

Fox Valley Pro Basketball, Inc.,

Debtor.

Case No. 19-28025-bhl
Chapter 11 Proceedings
Judge Brett H. Ludwig

MOTION FOR INTERIM AND FINAL APPROVAL OF DEBTOR-IN-POSSESSION FINANCING FROM TWO WILLOWS <u>WITH A REQUEST FOR AN EXPEDITED HEARING ON OCTOBER 2, 2019 FOR INTERIM APPROVAL</u>

Fox Valley Pro Basketball, Inc. (the "Debtor") moves, pursuant to § 364(c)(2) of the Bankruptcy Code and Fed. R. Bankr. P. 4001(c), for interim and final approval of debtor-in-possession financing from Two Willows, LLC ("Two Willows") on the terms stated in the attached DIP Financing Agreement and proposed order filed with this motion (the "Motion"). The Debtor requests that interim approval of this Motion be held on October 2, 2019 at 11:00 a.m. In support of this Motion, the Debtor states as follows:

Jurisdiction

1. The Debtor filed its case under chapter 11 of the Bankruptcy Code on August 19, 2019. The Debtor continues to manage its business and affairs pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1344(a) and 157(a), and the order of reference filed in this district. Venue of this proceeding is proper in this district and before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Jerome R. Kerkman
Evan P. Schmit
Kerkman & Dunn
839 N. Jefferson St., Suite 400
Milwaukee, WI 53202-3744
Phone: 414.277.8200
Facsimile: 414.277.0100
Email: jkerkman@kerkmandunn.com

3. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (D). It concerns the administration of the Debtor's estate and the Debtor's obtaining credit.

Background Facts

4. The Debtor operates a 3,500-seat indoor arena in Oshkosh and owns a professional women's basketball team. It has a ground lease with the City of Oshkosh. Professional basketball teams use the arena, and the Debtor promotes and holds other events there, such as concerts. The Debtor employs approximately 150 people. It built the arena, raised funding for it in a limited private offering and began operations in December 2017. The offering fell short and construction costs exceeded estimates. These led to financial difficulties. Presently, on an EBITDA basis, the Debtor is breaking even. The Debtor filed this case on an emergency basis after Bayland Buildings, Inc. ("Bayland") filed suit seeking a receiver that will wipe out all other creditors of the Debtor and interested parties.

5. The Debtor has two pre-petition secured creditors: Bayland and Two Willows. Bayland purports to have a lien on all the Debtor's leasehold estate, equipment, fixtures, contract rights, intangible rights, rents, and accounts receivable, and claims to be owed approximately $13 million in the receiver case. Two Willows is owed approximately $1.3 million with a second position lien on the same collateral as Bayland. The Debtor presently reserves all rights on the pre-petition perfection of security interests of Bayland. It is examining the documents and will determine their validity as soon as practicable. Preliminarily, however, the liens appeared to be validly perfected pre-petition liens. The Debtor has reviewed the documents relating to Two Willows and believes it has validly perfected pre-petition liens, most of which are subordinate to Bayland.

Encumbered and Unencumbered Assets

6. Under § 552 of the Bankruptcy Code, property acquired by the Debtor after the commencement of the case is not subject to a pre-petition security interest. Proceeds of pre-petition assets and post-petition rents are still subject to pre-petition security interests. § 552(b).

7. As of August 19, 2019, the Debtor's records show that it had pre-petition cash collateral totaling $31,416. (Geurts Declaration, dkt. no. 10-6, ¶ 7.) Additionally, the Debtor has Fixed Assets with a book value of $23 million. (*Id.* ¶ 8.) Their fair market value is unknown.

8. The Debtor also has a right to receive rebates on a yearly basis from the City of Oshkosh if the Debtor performs certain requirements – referred to as "TIF funds." The TIF funds are unencumbered by pre-petition liens. However, the City of Oshkosh may have rights to set off any amounts due the City that are unpaid when payment of the TIF funds is due. The Debtor has agreed to respect this right and permit the City to set off. The projected payment in November 2019 is $419,000. The amount that will be setoff is less than $25,000 plus an additional $24,300 for pre-petition attorney fees (not yet agreed to by the Debtor) will be deposited into the trust account of the City's outside counsel.

9. Additionally, on a post-petition basis, the Debtor will be acquiring assets by generating revenue that is not subject to the pre-petition liens. That revenue will be from tickets for concerts, basketball games and other events promoted and sponsored by the Debtor, sponsorships fees resulting from advertising displayed in the arena, food and beverage sales, vending games and APW streaming. In each instance, nothing is presently owed the Debtor nor will it be owed for these until the Debtor has performed in the future. The revenue will be the income from the business operated by the Debtor.

10. The Debtor also will receive rent from Auntie Anne and the Milwaukee Bucks

basketball team. Pre-petition liens do attach to those rents. § 552(b)(2).

11. On August 23, 2019, the Court an order approving approved interim debtor-in-possession financing of $200,000 provided by Windward Wealth Strategies, Inc. ("Windward"). Windward had stepped in at the last minute to provide post-petition financing because the Debtor was unable to reach a deal with Two Willows. However, the Debtor and Two Willows have continued discussing post-petition financing. An agreement was reached late in the afternoon of September 26, yesterday.

Proposed DIP Financing Terms

12. The proposed Debtor-in-Possession Financing Agreement with Two Willows is attached (the "Two Willows DIP Agreement"). Subject to the terms of the Two Willows DIP Agreement, the material terms are summarized below:

(a) The cap is $300,000, 9% interest, through the effective date of a plan.

(b) A loan fee of $9,000, and reasonable costs and fees of the loan, including reasonable attorney fees, will be added to the principal and payable at maturity.

(c) Liens on all post-petition unencumbered assets, including the TIF funds.

(d) Subordination by Windward of its post-petition liens to secure the $200,000 debtor-in-possession loan that Windward provided.

(e) Payment of all amounts due under the loan upon receipt of the TIF funds. Loans after that will be in the discretion of Two Willows. The $300,000 DIP loan will exist throughout the case – until the effective date of a plan, conversion to chapter 7, dismissal of the case or the appointment of a chapter 11 trustee, whichever occurs first; and

(f) Entry of an order approving the DIP Financing Agreement.

Adequate Protection to Pre-Petition Lien Holders

13. Post-Petition, the Debtor will establish a separate DIP bank account to receive pre-petition cash collateral. Upon the collateral being converted to cash, it will be deposited into the account and held pending further court order. Any inadvertent use of pre-petition cash collateral will be protected by a post-petition lien on the same assets and in the same priority position as existed on August 19, 2019.

14. The Future Bucks, LLC claims an interest in ticket revenues, concession revenues, parking revenues, and fixed advertising under the Development and Lease Agreement between it and the Debtor. The Future Bucks' rights to payment is not affected by the proposed financing and the post-petition liens granted to Two Willows are subject to the rights of the Future Bucks.

Need for Secured DIP Financing

15. The $200,000 DIP loan from Windward has enabled the Debtor to survive the initial 6 weeks of the case. However, the Debtor knew $200,000 would be insufficient to meet the Debtor's operating needs during slow season of its operations. The motion to approve the DIP financing with Windward anticipated needing further DIP financing of $300,000. (DIP Motion, dkt. nos. 10, ¶ 18, 10-3.) Without the additional cash, the Debtor's business will cease operating. Cash is needed to purchase supplies, pay its 150 employees and book talent for concerts by making deposits. Exhibit A to this motion shows the financing necessary on an interim basis for the Debtor to avoid immediate and irreparable harm to the Debtor's business pending a final hearing. Attached to the Two Willows DIP Agreement, Exhibit B to this Motion, is a monthly budget which is Exhibit A. It shows the need for financing to be provided by the Two Willows DIP Agreement. If these expenses are not paid, the Debtor's business will fail and

its going concern value will be lost. The Debtor needs to purchase supplies and pay its employees.

16. The Debtor is unable to obtain unsecured credit allowable under § 503(b)(1) as an administrative expense without granting a lien in post-petition cash collateral. (Pierce Declaration, dkt. no. 10-4, ¶ 22.) If Mr. Hoopman, who asserted DIP financing could be on an unsecured basis, is willing to provide financing on terms better than offered by Windward or Two Willows, the Debtor would agree to it. However, the Debtor believes that is unrealistic.

Legal Basis for Relief Requested

17. Under the Bankruptcy Code, a debtor can obtain credit on a secured basis in order to operate its business. § 364(c)(2). The credit may be obtained on an interim basis to avoid immediate harm to its estate. Fed. R. Bankr. P. 4001(c)(2).

Notice of the Motion

18. Service on the Motion must be on the list of 20 largest creditors and on any other party as the Court directs. Rule 4001(c)(1)(C). However, the Debtor is providing notice to all parties on the mailing matrix by regular mail or by ECF.

Conclusion

Wherefore, the Debtor requests (i) a hearing on October 2, 2019 at 11:00 a.m. to approve DIP financing with Two Willows on an interim basis on the terms of the interim order being filed with this motion, (ii) approval of DIP financing on a permanent basis with Two Willows on the terms of the final order, and (iii) other relief as is just.

Dated: September 27, 2019.

/s/ Jerome R. Kerkman
Jerome R. Kerkman
Evan P. Schmit
Gregory M. Schrieber

Kerkman & Dunn
Attorneys for the Debtor

P.O. Address:

839 N. Jefferson St., Suite 400
Milwaukee, WI 53202-3744
Phone: 414.277.8200
Facsimile: 414.277.0100
Email: jkerkman@kerkmandunn.com