

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Roanoke Division (Abingdon)

In re: ) Chapter 11  
 )  
PANCH TIRTH LLC, ) Case No. 17-70025  
 )  
Debtor )

**ORDER AUTHORIZING THE DEBTOR’S INTERIM USE OF CASH COLLATERAL**

The matter before the Court is the motion filed by the above-referenced debtor and debtor-in-possession (the “Debtor”) for entry of an order on an emergency basis authorizing it to use cash collateral (the “Motion”).<sup>1</sup> Having reviewed the Motion, and the records of this case, the Court makes the following findings:

A. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Prior to the Petition Date, on or about April 16, 2008, the Debtor entered into a loan agreement with Four Leaf Financial Corporation, under which the Debtor borrowed the original principal amount of One Million Four Hundred Twenty Thousand Dollars (\$1,420,000.00). Subsequent to that original loan transaction, Four Leaf Financial Corporation assigned all of its rights and obligations under its loan agreement with the Debtor to Lee Bank & Trust Company (“Lee Bank”). As of the Petition Date, the Debtor is indebted to Lee Bank in the amount of \$1,301,46.60 (the “Lee Bank Loan”). Upon the Debtor’s information and belief, additional interest and other charges continue to accrue on the balance owed to Lee Bank.

C. The Lee Bank Loan is secured by, among other things, a Deed of Trust dated April 16, 2008 (the “Deed of Trust”) on property owned by the Debtor known as 2139 Lee

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<sup>1</sup> Capitalized items not otherwise defined herein shall have the meanings set forth in the Motion.

Highway, Bristol, VA 24201 (the “Real Estate”). In addition, upon the Debtor’s information and belief, the original loan agreement with Four Leaf Financial Corporation, assigned to Lee Bank, included a lien on substantially all of the Debtor’s personal property assets, including the cash it receives from its guests in exchange for rental of its motel rooms.

D. The cash generated in connection with the post-petition operation of the Debtor’s business constitutes “cash collateral” under § 363(a) of the Bankruptcy Code. “Cash Collateral” as used herein includes, without limitation, any and all cash and guest receipts currently held by the Debtor and to be acquired by the Debtor, including post-petition proceeds subject to a security interest as provided in Section 552(b) of the Bankruptcy Code.

E. It is necessary to permit the Debtor to use Cash Collateral on an interim basis to avoid immediate and irreparable harm to the estate. The Debtor’s ability to finance its operations is vital to its ability to maintain operations. The Debtor requires the use of cash, including cash constituting Cash Collateral, to preserve and maintain its operations. Absent its ability to use Cash Collateral, the value of the Debtor’s assets will decrease. The preservation and maintenance of the going concern value of the Debtor and its assets is significant and important to the success of this chapter 11 case.

F. Adequate notice of the Motion and opportunity for objection has been given to Lee Bank and to the Office of the United States Trustee.

WHEREFORE, finding it reasonable and necessary to do so, it is accordingly hereby

**ORDERED**

1. That the Motion is GRANTED in its entirety on an interim basis pursuant to the terms stated therein, subject to any modifications in this Order.

2. The Debtor is hereby authorized to use Cash Collateral on the express terms and conditions set forth in this Order and as provided for in the Budget attached hereto as **Exhibit A**.

3. Subject to the terms and conditions of this Order, the Debtor is authorized to use Cash Collateral and pay the expenses set forth on the Budget. The Debtor has warranted and represented that the Budget includes all reasonable, necessary, and foreseeable expenses to be incurred in the ordinary course of business in connection with the operation of its business for the period set forth in the Budget. In no event shall the Debtor use any Cash Collateral to pay any items except substantially as set forth in the Budget or as may be consented to by Lee Bank. In this regard, absent prior written authorization from Lee Bank, the Debtor shall not pay any items greater than 110% of any line item expense set forth in the Budget. Notwithstanding the foregoing, the Debtor may use line item budgeted amounts on a cumulative basis, provided, however, that the Debtor may not modify allocations by line item within the Budget without the consent of Lee Bank, or order of this Court.

4. The Debtor's right to collect and use Cash Collateral shall apply retroactively to the Petition Date.

5. Debtor shall provide a weekly reporting by email to counsel for Lee Bank which identifies all revenue received and all expenses paid for such period.

6. Nothing in this Order shall be deemed to modify the validity, enforceability, or priority of Lee Bank's liens and security interests in the Collateral as they existed prior to the Petition Date. Additionally, this Order shall not be deemed to be a waiver of Lee Bank's rights in any way.

7. For the purpose of providing adequate protection for Lee Bank's interests in the Collateral, Lee Bank is hereby granted, as security to the extent of the diminution in the value of

its Collateral, a valid, perfected and enforceable security interest (the “Lee Bank Replacement Lien”) in and upon the Debtor’s guest receipts and other forms of Cash Collateral created after the Petition Date to the same extent, nature, and priority held by Lee Bank by virtue of the Loan Documents (but not including claims or causes of action arising solely under Bankruptcy Code §§ 544, 547, 548, and 553). Additionally, Lee Bank shall have an administrative claim under section 503(b) of the Bankruptcy Code, with priority under section 507(b) of the Bankruptcy Code, to the extent its interest in the Collateral diminishes during the pendency of the case as a result of the Debtor’s use of the Cash Collateral.

8. The Replacement Lien herein granted is and shall be valid, perfected, enforceable, and effective to the same extent, nature and priority as under Lee Bank’s loan documents, as of the date of the entry of this Order, without any further action by the Debtor or Lee Bank, without the necessity of the execution, filing, or recordation of any financing statements or security agreements.

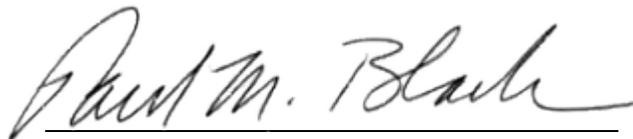
9. Except as otherwise expressly provided herein, this Interim Order shall not constitute a waiver or release of the rights of any party to assert any rights, remedies, or defenses available to such party or to respond or oppose any motion, application, proposal, or other action. Further, this Interim Order shall not constitute a waiver of any prepetition default declared by Lee Bank.

10. The Debtor's authority to use Cash Collateral shall continue absent further order of this Court through and including the Continued Hearing (as defined below).

11. A further hearing to consider the Debtor’s continued use of Cash Collateral on an interim basis in this matter shall be held on February 2, 2017 at 11:00 a.m. at the United States Bankruptcy Court, Abingdon, VA (the “Continued Hearing”).

Upon entry, the Clerk is directed to provide a copy of this Order to counsel for the Debtor for service on all parties in accordance with the Local Rules of the Court.

Date: 1/20/2017

  
UNITED STATES BANKRUPTCY JUDGE

REQUESTED:

PANCH TIRTH LLC

/s/ Richard D. Scott  
Richard D. Scott, Esq. (Va. Bar No. 44527)  
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302 Washington Avenue, SW  
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Proposed Counsel for the Debtor

SEEN AND AGREED:

/s/ Kenneth D. Hale by Richard D. Scott with permission based on 1/19/2017 e-mail  
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**Exhibit A**  
**To Order Authorizing the Debtor’s Use of Cash Collateral**

Panch Tirth LLC  
 Budget through January 31, 2017

Debtor’s estimated receipts during month of January: \$13,000

|  |                      |
|--|----------------------|
| Lee Bank & Trust:  | \$4,000              |
| Electricity, Water, and Sewer (BVU Authority):   | \$1,500              |
| Cable, Phone, and Internet (BVU Authority):  | \$650                |
| Atmos (gas):   | \$250                |
| Trash (Waste Management):  | \$100                |
| Insurance:   | \$1,000              |
| Real estate taxes:   | \$1,000 <sup>2</sup> |
| Local occupancy taxes (9%):  | \$1,200              |
| Sales taxes (5%):  | \$650                |
| Payroll:   | \$1500               |
| Supplies:  | \$150                |
| Repairs & Maintenance:   | \$100                |
| Bankruptcy case administrative expenses (est. funds necessary to hold for payment of U.S. Trustee quarterly fees): | \$300                |
| Miscellaneous:   | \$500                |
|  | \$12,900             |

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<sup>2</sup> Debtor agrees to set aside \$1,000 on a monthly basis for real estate taxes and place that amount into a segregated real estate tax escrow account maintained at the same institution as the Debtor’s debtor-in-possession accounts.