

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

In re: * **Case No. 17-10359**
RUXTON DESIGN AND BUILD, LLC * **(Chapter 11)**
Debtor/Movant *

* * * * *

**MOTION OF RUXTON DESIGN AND BUILD, LLC
TO USE CASH COLLATERAL, OR, IN THE ALTERNATIVE,
THAT THERE IS NO VALID SECURITY AGREEMENT AND THE DEBTOR
MAY UTILIZE CASH COLLATERAL**

Ruxton Design and Build, LLC, (“Ruxton”), by its undersigned counsel, files this motion seeking entry of an order for the use of cash collateral by the debtor, or, in the alternative, that there is no valid Security Agreement and the Debtor may utilize cash collateral, the UCC filing of 1st Global Capital Financial Services (the “1st Global”), in the above-captioned case (the “Motion”), and, in support of the Motion, Ruxton states as follows:

Background

1. Ruxton Design and Build, LLC, the debtor-in-possession in the above-captioned case (the “Debtor”), commenced this proceeding (the “Bankruptcy Case”) by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code on January, 10, 2017 (the “Petition Date”).

2. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

3. Prior to the Petition Date, on or about November 4, 2012, Debtor executed a Merchant Agreement in favor of 1st Global Capital Financial Services in the principal amount of

\$75,000.00 (the “Agreement”). A true and correct copy of the Agreement is attached hereto as **Exhibit “1”**, and is incorporated herein by reference. 1st Global contends it is secured by multiple assets as owned by the Debtor, however, the UCC filing does not depict 1st Global’s name and is dated prior to the Merchant Agreement (**Exhibit “2”**) so it is therefore probably invalid. 1st Global filed a Proof of Claim relying on these two (2) documents and contending it is a secured creditor.

Argument

4. The definition of cash collateral, pursuant to 11 U.S.C. § 363(a), states as follows:

“In this section, “cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and any entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 522(b) of this title whether existing before or after the commencement of a case under this title.”

5. Pursuant to 11 U.S.C. §363(c)(2), “The [Debtor] may not use, sell, or lease cash collateral . . . unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2).

6. There has been no consent nor opposition to the use of this cash collateral.

7. The Debtor is unclear if it is prevented from the use of cash collateral.

8. The listing in both the UCC and the Agreement does not match or fit the definition of “cash collateral” as defined in 11 U.S.C. §363(a) nor does the alleged UCC filing fit this definition.

9. In light of the foregoing, this Motion seeks entry of an order allowing the Debtor's use of cash collateral, or, in the alternative, that the UCC filing of 1st Global does not prohibit use by the Debtor of cash collateral.

10. A copy of Debtor's proposed budget is attached hereto which reflects his monthly operating expenses and, hence, the need for use of cash collateral. **(Exhibit "3")**.

11. As required by Local Bankruptcy Rule 9013-2, Movant hereby states that no memorandum will be filed and that it will rely solely upon this Motion.

WHEREFORE, for the foregoing reasons, Ruxton Build and Design, LLC. respectfully requests this Court to enter an Order:

- (A) Allowing the Debtor's use of cash collateral as the Security Agreement and/or the UCC filing does not cover cash collateral and does not bind the Debtor;
- (B) Allow the Debtor to use cash collateral to fund its operations pursuant to 11 U.S.C. §363(c)(2); and
- (C) Granting such other and further relief as the nature of its cause may require.

/s/ Stephen J. Kleeman
Stephen J. Kleeman, Esquire
Bar No. 01040
401 Washington Avenue
Suite 800
Towson, Maryland 21204
(410) 494-1220
Attorney for Ruxton Build and Design, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2017, a copy of the foregoing Motion of Ruxton Design and Build, LLC to Use Cash Collateral, or, in the Alternative, That There is No Valid Security Agreement and the Debtor may utilize Cash Collateral was served on the parties listed below by first-class mail, unless said party is a registered CM/ECF participant and the Notice of Electronic Filing indicates that Notice was electronically mailed to said parties:

Office of the U.S. Trustee
Federal Garmatz Building
101 W. Lombard Street
Baltimore, Maryland 21202

Ruxton Design and Build, LLC
11347 York Road
Cockeysville, Maryland 21030

All Creditors on the attached Matrix

/s/ Stephen J. Kleeman