

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
) Case No. 18-90833-BHL-11
SCOTTSBURG HOSPITALITY, LLC,)
Debtor.)
_____)

DEBTOR’S FIRST DAY MOTION PURSUANT TO 11 U.S.C. §§ 363, 361, AND 105
FOR AUTHORIZATION TO USE CASH COLLATERAL
AND PROVIDE ADEQUATE PROTECTION

Scottsburg Hospitality, LLC, the debtor and debtor-in-possession (the “**Debtor**” or “**Scottsburg**”), by the undersigned proposed counsel, hereby files its *First Day Motion Pursuant to 11 U.S.C. §§ 363, 361, and 105, for Authorization to Use Cash Collateral and Provide Adequate Protection* (the “**Motion**”) and in support of the Motion states the following:

JURISDICTION AND VENUE

1. On June 11, 2018 (the “**Petition Date**”), the Debtor filed a voluntary petition in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtor seeks to operate its businesses and manage its property as debtor-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code.

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

3. The Debtor will shortly be filing its application to hire Fultz Maddox Dickens, PLC, as counsel for the Debtor.

BACKGROUND

DEBTOR'S BUSINESS OPERATIONS

4. The Debtor is the owner of certain real property and improvements located in Scottsburg, Indiana, operated as the Hampton Inn and Suites by Hilton Scottsburg (the "Hotel"), under the terms of a Franchise Agreement with Hilton Franchise Holding, LLC ("Hilton").

5. The Hotel is located at 1535 McClain Avenue, Scottsburg, Indiana, and first opened on January 31, 2000. The Hotel is a 4-story building, with 86 guest rooms, a breakfast dining area, meeting space, an indoor pool and whirlpool, a fitness room, a guest laundry area, and vending areas.

6. At the time of filing, the Debtor had twenty-six (26) employees (16 full-time and 10 part-time).

ORGANIZATIONAL STRUCTURE

7. The Debtor is an Indiana limited liability company formed in 1998, and is managed by its members. Michael A. Dora ("Mike Dora") and Shirley M. Dora ("Shirley Dora") each hold 50% of the membership interests in the Debtor. Mike Dora is the President of the Debtor.

8. Pursuant to the terms of a Management Agreement, since the date the Hotel first opened, the day-to-day operations of the Hotel have been managed by Indiana Motel Developers, Inc., ("IMD"), an entity that is also owned by Mike Dora and Shirley Dora. IMD provides management services for other hotels in addition to the Debtor's Hotel.

FINANCIAL STRUCTURE

9. On or about April 30, 2007, the Debtor refinanced an existing loan when it obtained a loan from PNC Bank, N.A. ("Original Lender") in the amount of Four Million and no/100 Dollars (\$4,000,000) (the "Loan"). The Loan was evidenced by a Promissory Note.

10. On that same date, the Debtor executed a *Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing* (the “Mortgage”) in favor of the Original Lender. The Mortgage was recorded on May 2, 2007, in the Office of the Recorder of Scott County, Indiana, as Instrument Number 200700001856. The Debtor also executed an *Assignment of Leases and Rents* (the “Assignment”) and a *Security Agreement* (the “Security Agreement”) in favor of the Original Lender.

11. By virtue of a series of assignments, U.S. Bank, N.A., as Trustee for the Registered Holders of ML-CFC Commercial Mortgage Pass-Through Certificates Series 2007-7, alleges it is the assignee of the Loan (“U.S. Bank”)¹.

12. LNR Partners, LLC (“LNR”) is acting as the successor special servicer of the loan for U.S. Bank.

13. On or about May 4, 2007, the Original Lender filed a UCC-1 Financing Statement, with assignments filed on 3/17/09, 12/6/10, and 12/8/10. Continuation statements were filed on 11/10/11 and 11/28/16.

14. By its terms, the Loan matured on May 1, 2017, and the Debtor and U.S. Bank entered into a Forbearance Agreement and an Extension of Forbearance Agreement providing for a forbearance period through August 1, 2017.

15. U.S. Bank contends that as of April 1, 2018, it was owed \$3,402,200.92. Since that time, the Debtor has made monthly payments of principal and interest to U.S. Bank on or about the 1st of each month, and upon information and belief, U.S. Bank also effectuated a setoff against certain of Debtor’s bank accounts in the amount of over \$230,000.00², thereby substantially reducing the claim of U.S. Bank (the “U.S. Bank Claim”).

¹ Debtor’s counsel has not yet had an opportunity to review a complete set of the loan documents and assignments, and therefore Debtor is not in a position to acknowledge the validity and effectiveness of the assignment of the loan to U.S. Bank.

² The Debtor has requested, but has not received the detail from U.S. Bank as to the balance in the accounts that were swept, or the application of those amounts against the claim of U.S. Bank.

16. The Debtor believes the going concern value of the Hotel is substantially in excess of the U.S. Bank Claim.

17. Despite the general success of the Debtor's business operations and the significant value and equity in Debtor's property, to date the Debtor has been unable to secure refinancing to repay the obligations related to the Loan. An aggressive collection action by another party against Mike Dora and Shirley Dora has significantly hampered the refinancing efforts.

18. On May 4, 2018, U.S. Bank filed its Complaint for Foreclosure against the Debtor in the Scott County Superior Court. Together with the Complaint, U.S. Bank also filed its Motion for Immediate Appointment of Receiver (the "Receiver Motion"), and a hearing on the Receiver Motion is currently scheduled for June 11, 2018.

19. The Debtor's business operations have been generally successful, and during the 10-year term of the Loan, there were no payment defaults, until the loan matured and the Debtor was unable to timely refinance the Loan.

THE CASH COLLATERAL

20. By virtue of the loan documents described above, and the UCC-1 Financing Statement, U.S. Bank claims a security interest in the Debtor's cash and accounts receivable.

21. The Debtor is unaware of any other creditors claiming a security interest in the cash and accounts receivable.

22. The Debtor's "accounts receivable" are limited due to the nature of the Debtor's business operations as a hotel. A guest becomes obligated to pay a room charge after expiration of a reservation cancellation deadline. A deposit hold is placed on the guest's credit card when the guest checks in, and the balance due is then paid in full by the guest, or settled to the credit card at the time of check-out. As such, the time period between the date when the payment becomes due and

owing to the Debtor and the date when the funds are received in the Debtor's bank account is typically only a few days or less.

23. As of the Petition Date, the Debtor believes its accounts receivable totaled approximately \$15,172.48 (the "Accounts Receivable"), consisting mainly of credit card payments from customers that are in process, but have not yet been credited to Debtor's accounts.

24. The Debtor maintains three (3) bank accounts over which it maintains direct control, including the following:

- a. Wesbanco x1615 (formerly known as Your Community Bank) – Operating Account containing approximately \$20,800.00.
- b. Wesbanco x1607 – Petty Cash Account, containing approximately \$2,558.93
- c. First Financial Bank x9908 – Payroll Account, containing approximately \$22,328.40.

(the "Local Bank Accounts").

25. Pursuant to the terms of a Cash Management Agreement (described and defined below) two (2) additional bank accounts are maintained under the Debtor's FEIN, but under the sole and exclusive control of U.S. Bank, as follows:

- a. PNC Bank x???? – Capital Reserve Account
- b. PNC Bank x4664 – Cash Management/Checking Account

(the "Lender Bank Accounts").

26. As of the Petition Date, the Local Bank Accounts contained cash in the amount of approximately \$45,000.00 (the "Cash" and together with the Accounts Receivable, the "Cash Collateral"). The Debtor's Cash includes approximately \$3,667.90 of customer prepayments made pursuant to the Hilton Advance Purchase program, which is a program that allows guests to make a non-refundable pre-payment for room charges at a discounted rate (the "Customer Prepayments").

27. The Debtor does not have regular access to monitor the Lender Bank Accounts, so is uncertain of the balances in those accounts. The Debtor believes the Capital Reserve Account contained approximately \$200,000.00 and the Cash Management/Checking Account contained approximately \$30,000.00 as of May 15, 2018, but has been informed that those accounts were swept by U.S. Bank and applied against the claim of U.S. Bank.

THE CASH MANAGEMENT SYSTEM

28. Shortly prior to the Petition Date, the Debtor was obligated to enter into a Cash Management Agreement with U.S. Bank (the “Cash Management Agreement”) by which all funds collected by the Debtor will flow to payment of immediate operating expenses, funding of tax, insurance and “other charges” escrow accounts, to a monthly payment to U.S. Bank, and to an excess cash flow account to be swept by U.S. Bank and applied to the U.S. Bank Claim (the “Cash Management System”).

29. The Cash Management System as set forth in the Cash Management Agreement is untenable for the Debtor in that the funds made available to the Debtor to pay operating expenses is determined based on operations of the prior month and therefore leaves the Debtor unable to adjust to the seasonal nature of its business and to adjust to fluctuations in business from month to month. The Cash Management System is structured to anticipate consistent monthly activity by the Debtor, and that simply is not the case in the hotel business.

30. Additionally, the Debtor is obligated pursuant to its Franchise Agreement to satisfy the terms of a Product Improvement Plan (the “PIP Plan”) requiring substantial updates and renovations to the property over an 18-month period to meet Hilton Worldwide standards. It is customary in the hotel industry that hotel owners are obligated to perform in accordance with PIP Plans on a periodic basis in order to ensure that hotel properties continue to meet brand standards established by the franchisor.

31. The Cash Management System prevents the Debtor from funding the PIP Plan improvements necessary to satisfy its obligations under the Franchise Agreement.

RELIEF REQUESTED

32. By this Motion, the Debtor seeks entry of an order authorizing the Debtor to utilize Cash Collateral, in accordance with the budget attached hereto as Exhibit A, and seeks authority to provide adequate protection to U.S. Bank as more specifically set forth in this Motion.

BASIS FOR RELIEF REQUESTED

33. The statutory bases for the relief requested herein are Sections 105, 361, 363, and 364 of the Bankruptcy Code.

34. If the Debtor is not permitted to use the Cash Collateral to operate its business and maintain the property securing the Indebtedness, the Debtor will have to cease operations immediately.

35. In order to continue to generate income, the Debtor must continue to operate the hotel, to honor guest reservations, and provide the services expected pursuant to its Franchise Agreement, to pay wages/salaries to employees, to pay franchise fees, to acquire the inventory and equipment necessary to enable the hotel to continue to operate, and to gradually fund renovations and improvements required pursuant to the PIP Plan.

36. The Debtor believes the costs of continuing to operate its business are less than the income it will generate from such operations over time, thereby creating replacement collateral for the protection of its secured creditors, and posing no threat to its unsecured creditors.

37. The Debtor is without funds, credit or unencumbered assets with which to pay its employees or with which to deal with its trade creditors to secure necessary goods and services, and therefore requires the use of Cash Collateral to meet those operating expense requirements.

38. An immediate, urgent and ongoing need exists for Debtor to use Cash Collateral to meet payroll obligations to continue to operate as a going concern, including, but not limited to, the payment of payroll expenses incurred prior to the Petition Date.

39. In order to maintain the viability of the Debtor's business for the benefit of the estate and its creditors, and to maximize the value of said business, it is essential that the Debtor be granted authority to use Cash Collateral.

40. As adequate protection for the use of Cash Collateral as outlined in Exhibit A, the Debtor proposes the following:

- a. U.S. Bank will be granted replacement liens on post-petition receivables and accounts to the same extent and validity as such liens existed in the pre-petition Cash Collateral;
- b. The Debtor will continue to maintain appropriate insurance and pay tax obligations as they come due;
- c. The Debtor will make monthly debt service payments of principal and interest to U.S. Bank in the amount of \$23,598; and
- d. The Debtor will make periodic financial and operational reporting to U.S. Bank.

NOTICE AND NO PREVIOUS REQUEST

41. Pursuant to Bankruptcy Rule 4001(d)(1), notice of the relief requested in this Motion has been given to U.S. Bank, the Debtor's other secured creditors, the Debtor's twenty (20) largest unsecured creditors, and the Office of the United States Trustee.

42. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, based on the foregoing, the Debtor respectfully requests that this Court enter an interim order authorizing the Debtor to use Cash Collateral substantially in accordance with

the budget attached hereto, and scheduling a final hearing on the Debtor's request for authority to use Cash Collateral.

Respectfully submitted this 11th day of June, 2018,

/s/ Wendy D. Brewer

Wendy D. Brewer (#22669-49)
FULTZ MADDOX DICKENS PLC
333 N. Alabama Street, Ste. 350
Indianapolis, IN 46204
Telephone: (317) 215-6220
wbrewer@fmdlegal.com

and

Laura M. Brymer
FULTZ MADDOX DICKENS, PLC
101 South Fifth Street, 27th Floor
Louisville, Kentucky 40202
(502) 588-2000 – Telephone
(502) 588-2020 – Facsimile
lbrymer@fmdlegal.com

Proposed Attorneys for the Debtor

In re: Scottsburg Hospitality, LLC

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Cash Collateral Budget

	Estimate*		
Starting Cash:	20,800.00	50,442.00	69,626.03
<u>INCOME</u>	June	July	August
Rooms Occupied	2,275	2,315	2,350
Rooms Available	2,580	2,666	2,666
Occupancy %	88.18%	86.83%	88.15%
Average Daily Rate	\$106.50	\$105.18	\$96.18
Room Income	242,287.50	243,491.70	226,023.00
Sales & Occupancy Tax	31,705.40	29,219.00	27,122.76
Telephone Income	100.00	100.00	100.00
Miscellaneous Income	2,189.00	2,206.00	2,240.00
GROSS INCOME:	276,281.90	275,016.70	255,485.76
<u>EXPENSES</u>			
Cost & Department Expense			
Salaries - Rooms	35,151.00	34,061.00	34,930.00
Rooms Dept. Expense	26,414.00	25,618.00	24,065.00
Sales & Occupancy Tax Expense	31,705.40	29,219.00	27,122.76
Telephone Expense	1,670.00	1,670.00	1,670.00
Miscellaneous Expense	1,050.00	1,250.00	1,050.00
Total Cost & Dept. Expense	95,990.40	91,818.00	88,837.76
General & Unappropriated Expense			
Salaries - Administrative	4,978.00	7,978.00	4,978.00
Other Administrative Expense	30,079.00	20,193.00	19,500.00
Debtor's Counsel	0.00	15,000.00	15,000.00
Quarterly UST Fees	0.00	1,950.00	0.00
Advertising & Sales Promotion	26,657.00	25,622.00	24,163.42
Utilities	9,860.00	10,853.00	12,410.00
Repairs & Maintenance	9,486.00	12,403.00	10,508.00
P/R Taxes & Employee Benefits	9,275.00	9,653.00	10,377.00
Total General & Unapprop. Expense	90,335.00	103,652.00	96,936.42
Taxes & Insurance			
Property Taxes - Real	4,851.00	4,851.00	4,851.00
Property Taxes - Personal	552.00	552.00	552.00
Taxes Other	0.00	0.00	0.00
Insurance	2,654.00	2,654.00	2,654.00
Total Taxes & Insurance	8,057.00	8,057.00	8,057.00
Lease Payments & Management Fees			
Operating Lease - Internet Equipment	1,200.00	1,200.00	1,200.00
Management Fees (4%)	9691.50	9739.67	9040.92
Total Lease Payments & Management Fees	10,891.50	10,939.67	10,240.92
Adequate Protection/Debt Service			
Monthly Payment to U.S. Bank	23,598.00	23,598.00	23,598.00
Tax & Insurance Escrow Monthly Set Aside	10,702.00	10,702.00	10,702.00
Capital Reserve Monthly Set Aside	7,066.00	7,066.00	7,066.00
Total Adequate Protection Payments:	41,366.00	41,366.00	41,366.00
TOTAL EXPENSES	246,639.90	255,832.67	245,438.10
NET INCOME	29,642.00	19,184.03	10,047.66
Ending Cash:	50,442.00	69,626.03	79,673.69