



FILED & JUDGMENT ENTERED
Steven T. Salata

July 31 2017

Clerk, U.S. Bankruptcy Court
Western District of North Carolina

Laura T Beyer

Laura T. Beyer
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

| | | |
|--------------------------------------|---|--------------------------|
| In re: |) | |
| |) | |
| GRAND DAKOTA PARTNERS, LLC |) | Case No. 17-31184 |
| |) | |
| Debtor. |) | Chapter 11 |
| _____ |) | |
| In re: |) | |
| |) | |
| GRAND DAKOTA HOSPITALITY, LLC |) | Case No. 17-31185 |
| |) | |
| Debtor. |) | Chapter 11 |
| _____ |) | |

SECOND INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL

THIS MATTER came on for continued hearing on July 26, 2017. Based upon the evidence presented and argument of counsel, and the consent and agreement of the Debtors and American Bank Center (“American”) and the lack of objection of the Bankruptcy Administrator, the Court hereby makes the following findings of fact and conclusions of law:

A. Based on the record before this Court, it appears that American is the only entity that may have a security interest in, or lien on or against, cash that may constitute cash collateral, as such

term is defined at 11 U.S.C. § 363(a). The Court does not make any finding regarding the perfection or priority of any security interest or lien that American may have in respect of any of the Debtors' assets. As a result, the use of the term "cash collateral" in this Second Interim Order refers to (i) cash in any bank account owned by or in which either debtor has a legal or equitable interest, (ii) any cash on hand, and (iii) cash (including without limitation funds from credit card transactions) derived from the Debtors' post-petition operations, regardless of whether American has perfected interests in or liens against such items.

B. American has consented to the Debtors' use of cash collateral, through August 20, 2017 (the period from the petition date through August 20, 2017, is the "Second Interim Period") on the terms contained in this Second Interim Order.

C. The Debtors need to use cash collateral to fund day-to-day operations at the Grand Dakota Lodge (the "Hotel").

D. The Debtors have waived all claims under 11 U.S.C. § 506(c) that they may assert against American, to the extent that such claims may arise in or relate to the Second Interim Period.

E. Good cause exists for the entry of this Second Interim Order.

WHEREFORE, the Debtors' motion to use cash collateral on an interim basis is GRANTED, subject to the terms, conditions and restrictions set forth below:

1. The Debtors may use cash collateral for the payment of sales taxes that are due this week, in the amount of approximately \$14,000.

2. The Debtors may use cash collateral to reimburse Kinseth Hospitality Company, Inc. ("Kinseth") approximately \$56,000 for the Hotel's bi-weekly payroll that will be paid next week (this authorization is subject to the limitation in Paragraph 6, below).

3. The Debtors may not assert any claim under 11 U.S.C. § 506(c) against American or any of American's collateral for the Second Interim Period.

4. During this Second Interim Period, the Debtors shall not use cash collateral to pay any pre-petition expense due and outstanding as of the petition date unless and except to the extent that, prior to the petition date, either Debtor or Kinseth had issued a check in payment of such pre-petition expense and payment under such check was pending on the petition date.

5. American shall have replacement liens on such of the Debtor's post-petition assets that American had before the commencement of these cases, including but not limited to cash and any receivables generated by post-petition operations of the Debtors' operating assets. If, however, the Court subsequently determines that there is a defect in the perfection or priority of American's pre-petition liens and interests, the replacement liens granted in this Paragraph 5 shall remain subject to the challenge by the Debtors or any other party in interest.

6. During the Second Interim Period, the Debtors may not use cash collateral to make payment to any insider or affiliate or to make payment to or toward any professional fees incurred by the Debtors (**provided, however**, that this Paragraph 6 shall not preclude Grand Dakota Partners, LLC, from transferring funds to Grand Dakota Hospitality, LLC, for the ordinary course of business purchase of liquor, beer or other alcoholic beverages to be used or sold at the Hotel).

7. The Debtors are authorized to use cash collateral during the Second Interim Period to pay the Hotel's operating expenses and other expenditures set forth in the cash collateral budget attached as Exhibit A. Total expenditures of cash collateral by the Debtors during this Second Interim Period shall not exceed the total set forth in Exhibit A. With respect to any line item category of expense set forth in Exhibit A, the Debtor may exceed the amount of such line item expense by up to five percent (5%) of such amount. Notwithstanding the foregoing, if the Debtors

first obtain the advance written consent of American or a subsequent order of this Court (entered after notice and reasonable opportunity for hearing) so providing, the Debtors then also may (a) make total expenditures of cash collateral during the Second Interim Period in excess of the total set forth in Exhibit A and (b) exceed by more than five percent (5%) the line item expense set forth in Exhibit A.

8. No later than Monday, August 14, 2017, the Debtors shall provide to American a written report (i) of actual use and expenditure of cash collateral and (ii) comparing such actual use against the budgeted expenditures set forth in Exhibit A. Such report shall cover the period through August 12, 2017.

9. During the Second Interim Period, American shall have the right to inspect the Hotel, and to inspect and copy the Debtors' books and records regarding the Hotel and its operations, and any other records or documents regarding cash collateral or American's asserted collateral, including but not limited to any such collateral, documents or information in the possession of the Kinseth or any of the Debtors' affiliates; **provided, however**, that such inspection shall be upon reasonable advance notice provided by American to the Debtors and, if applicable, Kinseth.

10. Nothing in this Second Interim Order shall impair, constrain or prejudice the rights, interests or positions of the Debtor or American regarding further use of cash collateral beyond the Second Interim Period. Nor shall this Second Interim Order preclude the Debtors from seeking further relief from the Court (upon notice and reasonable opportunity for hearing) if either Debtor identifies a need to use cash collateral during the Second Interim Period beyond the parameters of the budget attached as Exhibit A and is unable to obtain American's consent to such deviation from such budget.

11. The Debtors' request for authority to use cash collateral beyond the Second Interim Period will be considered further by this Court at a continued hearing at 9:30 a.m. on Wednesday, August 16, 2017 (prevailing Eastern time).

12. The Court has and will retain jurisdiction to enforce this Second Interim Order in accordance with its terms and to adjudicate all matters arising from or related to the interpretation or implementation of this Second Interim Order.

13. Entry of this Second Interim Order is without prejudice to this Court's ongoing consideration and future ruling upon the pending motion regarding proper venue of this case under 28 U.S.C. §1408 and possible transfer of venue under 28 U.S.C. §1412.

SO ORDERED.

This Order has been signed electronically. The Judge's signature and the Court's seal appear at the top of the Order.

UNITED STATES BANKRUPTCY COURT

EXHIBIT A

| Ramada Grand Dakota (2017.07.26) | | |
|---|------------------------|--------------------------|
| Ramada Grand Dakota (2017.07.26) | | |
| Cash Collateral Budget for July 2017 & August 2017 | July Budget | August Budget |
| Pay Roll Expense | \$129,000.00 | \$123,000.00 |
| Pay Roll Taxes | \$12,000.00 | \$11,000.00 |
| Employee Insurance and Benefit Cost | \$9,000.00 | \$9,000.00 |
| Kinseth Management Fees | \$13,000.00 | \$14,000.00 |
| Rooms Cost of Goods Sold | \$19,000.00 | \$20,000.00 |
| Rooms Cost of Goods Sold- Bed Skirts & Scarves | \$0.00 | \$20,000.00 |
| Restaurant/Lounge/Banquet Cost of Goods Sold | \$42,000.00 | \$44,000.00 |
| Restaurant/Lounge/Banquet Direct Expenses | \$5,000.00 | \$5,000.00 |
| Vending/Telephone/Other Expense | \$2,000.00 | \$2,000.00 |
| Marketing Direct Expenses & Advertising | \$2,000.00 | \$3,000.00 |
| Franchise Fees | \$25,000.00 | \$24,000.00 |
| Maintenance Supplies and Direct Expenses | \$10,000.00 | \$8,000.00 |
| General and Administrative Supplies and Direct Expenses | \$13,000.00 | \$15,000.00 |
| Insurance | \$4,000.00 | \$4,000.00 |
| Utilities | \$26,000.00 | \$27,000.00 |
| Property Taxes | \$12,000.00 | \$12,000.00 |
| Total | \$323,000.00 | \$341,000.00 |

Note: Numbers Rounded