



Honorable August B. Landis
United States Bankruptcy Judge

Entered on Docket
July 17, 2017

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
ATHANASIOS E. AGELAKOPOULOS, ESQ.
Nevada Bar No. 14339
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
Telephone: (702) 262-6899
Facsimile: (702) 597-5503
Email: baxelrod@foxrothschild.com
Email: aagelakopoulos@foxrothschild.com
Counsel for Bishop Gorman Development Corporation

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

BISHOP GORMAN DEVELOPMENT
CORPORATION, a Nevada nonprofit
corporation,

Debtor.

Case No. BK-S-17-11942-ABL

Chapter 11

**FINAL ORDER PURSUANT TO 11
U.S.C. §§ 105, 362, 363 AND 364, FED R.
BANKR. P. RULE 4001(C) AND 9014
AND L.R. 4001(B) AND (C): (I)
AUTHORIZING DEBTOR TO OBTAIN
POST-PETITION FINANCING; (II)
GRANTING RELATED RELIEF**

Hearing Date: June 14, 2017

Hearing Time: 1:30 p.m. (PT)

1 The Court, having reviewed and considered the Motion (the "Motion") filed by Bishop
2 Gorman Development Corporation ("BGDC," "Debtor" or "Borrower") for entry of a final order
3 (the "Final DIP Order"), pursuant to sections 105, 362, 363(c), 364(b), and 364(e) of title 11 of the
4 United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), and Rules 2002,
5 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking,
6 among other things¹:

7 (a) authorization for the Debtor to obtain unsecured post-petition financing in an aggregate
8 principal amount of up to \$500,000.00 (the "Post-Petition Financing"), pursuant to section 364(b) of
9 the Bankruptcy Code, from Service Campaign Corporation ("Lender"), pursuant to the terms of this
10 Final DIP Order and that certain Debtor in Possession Revolving Credit Agreement by and among
11 the Borrower and the Lender, in substantially the form attached to the Motion as Exhibit A (as the
12 same may be amended, restated, supplemented or otherwise modified from time to time,
13 collectively, the "Credit Agreement"), and any related documents required to be delivered by or in
14 connection with the Credit Agreement (together with the Credit Agreement, collectively, the "Loan
15 Documents");

16 (b) authorization for the Borrower to execute and enter into the Loan Documents and to
17 perform such other and further acts as may be required in connection with the Loan Documents;

18 (c) the grant of section 364(e) status to the Lender;

19 (d) the modification of the automatic stay imposed under section 362 of the Bankruptcy
20 Code to the extent necessary to permit the Borrower and the Lender to implement the terms of this
21 Final DIP Order.

22 A final hearing on the Motion was held by this Court on June 14, 2017 at 1:30 p.m. (PT)
23 ("Final Hearing"). The Court reviewed and considered the Motion, and all pleadings related thereto,
24 including all objections to the Motion, as well as the record made by the Debtor and other parties at
25 the Final Hearing, and after due deliberation and consideration, and the Court having overruled the

26
27 ¹ Capitalized terms used, but not defined herein, shall have the meanings ascribed to such terms in the Credit
28 Agreement or the Motion, and capitalized terms used but not immediately defined in this Final DIP Order shall have the
meanings ascribed to them later in this Final DIP Order.

1 Limited Opposition filed by J.A. Tiberti Construction, Inc. (ECF No. 105) to the extent not
2 otherwise addressed by Debtor’s reply thereto (ECF No. 111) or by Debtor’s presentation to the
3 Court on the record at the hearing, and good and sufficient cause appearing therefor, and based
4 upon the findings of fact and conclusions of law as stated by the Court on the record at the Final
5 Hearing pursuant to Bankruptcy Rules 7052 and 9014, which findings of fact and conclusions of
6 law are incorporated expressly by this reference as part of this Final DIP Order:

7 **THE COURT HEREBY FURTHER FINDS AND CONCLUDES AS FOLLOWS:**

8 **I. Background, Jurisdiction and Notice.**

9 A. On April 17, 2017 (the “Petition Date”), Debtor commenced its bankruptcy case by
10 filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is
11 continuing to operate its business and manage its property as debtor-in-possession pursuant to
12 sections 1107(a) and 1108 of the Bankruptcy Code. Neither a case trustee nor an examiner has been
13 appointed in this case. And no statutory committees have been appointed in this case.

14 B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334.
15 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court
16 pursuant to 28 U.S.C. §§ 1408 and 1409.

17 C. The Debtor has complied with Bankruptcy Rule 4001(c) and (d), LR 4001(b) and LR
18 9006 to hold the Final Hearing by serving the Motion and providing notice of the Final Hearing to
19 the Office of the United States Trustee for the District of Nevada, counsel for any Committee, and if
20 no such committee was appointed, then to the parties listed on the List of Creditors Holding the 20
21 Largest Unsecured Claims, all secured creditors, and all other parties requesting notice pursuant to
22 Bankruptcy Rule 2002. Given the nature of the relief sought in the Motion, the Court concludes that
23 the foregoing notice was sufficient and adequate under the circumstances and complies with
24 Bankruptcy Rules 2002, 4001, and 9014 in all respects.

25 **II. Findings Regarding the Post-Petition Financing Based on the Record at the Final Hearing.**

26 D. The Debtor has demonstrated to the Court’s satisfaction that it is necessary for Debtor to
27 obtain the Post-Petition Financing, and that Debtor incurring such obligations constitutes a
28 reasonable exercise of Debtor’s business judgment under the circumstances. The Court further

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

1 finds that it is necessary for Debtor to obtain the Post-Petition financing in order to prosecute its
2 Chapter 11 Case. The proceeds of the Post-Petition Financing will be used to fund fees (“US
3 Trustee Fees”) assessed by the Office of the United States Trustee (“US Trustee”), fees of the Clerk
4 of Court (“Court Fees”), and fees and expenses (“Professional Fees”) of (i) professionals employed
5 and/or compensated pursuant to Bankruptcy Court order in accordance with Bankruptcy Code
6 sections 327 and/or 1103 (as appropriate) to be compensated for services rendered pursuant to
7 Bankruptcy Code sections 327, 328, 329, 330 or 331, as well as expenses incurred by the Lender
8 pursuant to the Credit Agreement. The Borrower’s access to sufficient liquidity through the
9 incurrence of the Post-Petition Financing under the terms of this Final DIP Order is necessary to
10 preserve and maintain the going concern value of the Borrower’s estate and to further the
11 Borrower’s ongoing efforts towards a successful reorganization. Consequently, without access to
12 the Post-Petition Financing to the extent authorized pursuant to this Final DIP Order, the Borrower
13 and its estate would be harmed, and Debtor’s reorganization prospects would be significantly
14 impaired.

15 E. The Borrower is unable to obtain adequate unsecured credit allowable under section
16 364(a) of the Bankruptcy Code in the ordinary course of its business. The only sufficient source of
17 credit available on such favorable terms to the Borrower is the Post-Petition Financing. The
18 Borrower requires the Post-Petition Financing to fund expenses of administration in the form of
19 professional fees, United States Trustee fees, Clerk of the Court fees and costs, and the Lender’s
20 expenses under the Credit Agreement.

21 F. The Lender has indicated a willingness to provide the Borrower with certain financing,
22 but solely on the terms and conditions set forth in this Final DIP Order and in the Loan Documents.
23 After considering all of its alternatives, the Borrower has concluded, in an exercise of its sound
24 business judgment, that the financing to be provided by the Lender pursuant to the terms of this
25 Final DIP Order and the Loan Documents is the best financing presently available to the Borrower.

26 G. The Lender is related to the Debtor.

27 H. Debtor’s Motion satisfies the requirements of Bankruptcy Rule 4001(c)(2), such that
28 immediate entry of the Final DIP Order is appropriate. Entry of this Final DIP Order is in the best

1 interest of the Borrower, its estate and creditors. The Post-Petition Financing reflects the Borrower’s
2 exercise of prudent business judgment consistent with its fiduciary duties, and is supported by
3 reasonably equivalent value and fair consideration.

4 I. Although the Borrower and Lender are related to each other, the terms and conditions of
5 the Post-Petition Financing, the Loan Documents and this Final DIP Order, which are reflective of
6 good faith arm’s length negotiations between the Lender and Borrower, are in good faith, and any
7 credit extended and loans made to the Borrower pursuant to this Final DIP Order shall be, and
8 hereby are, deemed to have been extended, issued or made, as the case may be, in “good faith”
9 within the meaning of section 364(e) of the Bankruptcy Code such that Lender is entitled to the
10 protections afforded by 11 U.S.C. § 364(e).

11 J. Based on the foregoing, and upon the record made before this Court at the Final
12 Hearing, and good and sufficient cause appearing therefor;

13 **III. Disposition**

14 1. The Motion is approved on a final basis. This Final DIP Order shall become effective
15 immediately upon its entry. To the extent the terms of the Loan Documents differ in any material
16 respect from the terms of this Final DIP Order, this Final DIP Order shall control.

17 **IV. Authorization of the Post-Petition Financing and Entry Into the Loan Documents**

18 2. The terms and conditions of the Credit Agreement are hereby approved. The Borrower is
19 hereby authorized to enter into the Credit Agreement and other Loan Documents. Upon entry of
20 this Final DIP Order, the Borrower is hereby authorized to borrow in accordance with this Final DIP
21 Order, the Credit Agreement, and the other Loan Documents. Notwithstanding anything to the
22 contrary in the Credit Agreement, Lender’s claims with respect to the Post-Petition Financing are
23 being incurred by Debtor under the Credit Agreement solely under 11 U.S.C. §§ 364(b) and
24 503(b)(1), with a corresponding distribution priority under 11 U.S.C. § 507(a)(2).

25 3. The Borrower is hereby authorized to incur the Obligations in accordance with terms and
26 conditions set forth in the Credit Agreement, the other Loan Documents, and this Final DIP Order.

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1980 Festival Plaza Drive, Suite 700
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(702) 597-5503 (fax)

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1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

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V. Loan Obligations

4. Upon execution and delivery of the Loan Documents, the Loan Documents shall constitute valid, binding and continuing obligations of the Borrower, enforceable against Borrower in accordance with the terms thereof. No obligation, payment, or transfer under the Loan Documents or this Final DIP Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

5. All Loans made to or for the benefit of the Borrower on or after the Petition Date under the Loan Documents (collectively, the “Loans”), all interest thereon, and all other claims relating to the Loans owing by the Borrower to the Lender under the Loan Documents and this Final DIP Order shall hereinafter be referred to as the “Obligations.” The Loans: (i) shall bear interest payable at the rates set forth in the Credit Agreement; (ii) shall be payable in accordance with the terms of the Loan Documents; and (iii) shall otherwise be governed by the terms set forth herein and in the Loan Documents.

VI. Use of Loan Proceeds

6. The Borrower shall utilize the proceeds of the Post-Petition Financing to pay Professional Fees, U.S. Trustee fees, Clerk of the Court fees and costs, and Lender’s expenses incurred under the Credit Agreement. Borrower shall not be permitted to use the proceeds of the Loans: (i) to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of Lender or its rights and remedies under the Credit Agreement, the other Loan Documents, or the Final DIP Order. The Obligations shall be subordinated to the expenses described in clauses (i)-(iii) of section 1.8(a) of the Loan Agreement to the extent and under the circumstances of section 1.8.

VII. 11 U.S.C. § 364(e) Protections

7. If any or all of the provisions of this Final DIP Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any Obligations incurred pursuant this Final DIP Order or the Loan Documents, or (ii) the validity or enforceability of any claim or priority authorized or created hereby or pursuant to the Loan

1 Documents with respect to any Obligations. Notwithstanding any such reversal, modification,
2 vacation or stay, any incurrence of Obligations by the Borrower shall be governed in all respects by
3 the provisions of this Final DIP Order and the Loan Documents, and the Lender shall be entitled to
4 all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy
5 Code, this Final DIP Order, and the Loan Documents with respect to all incurrences of the
6 Obligations by the Borrower. Lender is entitled to the protections of 11 U.S.C. § 364(e) in all
7 respects with respect to Debtor's relief requested in the Motion.

8 **VIII. Vacation of the Automatic Stay**

9 8. Notwithstanding section 362 of the Bankruptcy Code, the automatic stay is hereby
10 vacated and modified to the extent necessary to permit the Lender to exercise, upon the occurrence
11 and during the continuation of any Event of Default, upon three (3) Business Days' written notice to
12 Borrower's counsel, counsel for any Committee (or the Committee if the Committee does not have
13 counsel) and the U.S. Trustee, all rights and remedies provided for in this Final DIP Order, the Loan
14 Documents or applicable law, including, without limitation, taking one or more of the following
15 actions, at the same or different times:

- 16 (a) reduce the amount of any outstanding Post-Petition Financing or suspend or
17 terminate any outstanding Post-Petition Financing;
- 18 (b) charge the Default Interest on the Post-Petition Financing;
- 19 (c) declare all or any portion of the Obligations, including all or any portion of any
20 Loan, to be forthwith due and payable, all without presentment, demand, protest or further notice of
21 any kind, all of which are expressly waived by Borrower;
- 22 (d) exercise any and all remedies under the Loan Documents, and applicable law,
23 and
- 24 (e) exercise any rights and remedies under the Loan Documents and applicable law,
25 including all remedies provided under the Bankruptcy Code, available to the Lender. The rights and
26 remedies of the Lender specified in this Final DIP Order are cumulative and not exclusive of any
27 rights or remedies that the Lender may have under the Loan Documents or otherwise.

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IX. Miscellaneous Provisions

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2 9. The provisions of this Final DIP Order shall be binding upon and inure to the benefit of
3 the Lender, the Borrower, and their respective successors and assigns. The provisions of this Final
4 DIP Order and any actions taken pursuant thereto (a) shall survive the entry of any order: (i)
5 confirming any plan of reorganization in any of the Chapter 11 Case that is not a Lender Approved
6 Reorganization Plan; (ii) converting the Chapter 11 Case to a case under chapter 7 of the
7 Bankruptcy Code; or (iii) dismissing the Chapter 11 Case; and (b) shall continue in full force and
8 effect notwithstanding the entry of any such order, and the claims granted pursuant to this Final DIP
9 Order shall maintain their priority as provided by this Final DIP Order until all of the Obligations
10 are indefeasibly paid in full and discharged in accordance with the terms of this Final DIP Order
11 and the Credit Agreement.

12 10. The Borrower is authorized, without further order of this Court, to enter into agreements
13 with Lender providing for (a) non-material modifications to the Credit Agreement and other Loan
14 Documents, or (b) any other modifications to the Credit Agreement and other Loan Documents
15 necessary to conform the Credit Agreement and Loan Documents to this Final DIP Order.

16 11. Nothing in this Final DIP Order, nor its approval of the Motion, the Post-Petition
17 Financing, the Credit Agreement, and the Loan Documents, shall be construed as a cap or limit on
18 Professional Fees awarded by the Court to any professionals pursuant to 11 U.S.C. §§ 327-331
19 and/or 363(b).

20 12. To the extent applicable, this Final DIP Order is not subject to the 14-day stay provision
21 of Rule 4001(a)(3) of the Bankruptcy Rules.

X. NOTICE OF FINAL ORDER

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23 13. Service of Notice. Debtor shall cause a copy of this Final DIP Order to be served
24 within three (3) Business Days of its entry, by first class mail, on the (a) Office of the United States
25 Trustee for the District of Nevada, counsel for any Committee, and if no such committee was
26 appointed, then to the parties listed on the List of Creditors Holding the 20 Largest Unsecured

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1 Claims; (d) all other secured creditors, and (e) all other parties requesting notice pursuant to
2 Bankruptcy Rule 2002.

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4 Prepared and respectfully submitted by:

5 **FOX ROTHSCHILD LLP**

6 By /s/ Athanasios E. Agelakopoulos

7 BRET A. AXELROD, ESQ.
8 Nevada Bar No. 5859
9 ATHANASIOS E. AGELAKOPOULOS, ESQ.
10 Nevada Bar No. 14339
11 1980 Festival Plaza Drive, Suite 700
12 Las Vegas, Nevada 89135
13 *Counsel for Bishop Gorman Development Corporation*

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(702) 597-5503 (fax)

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- The Court has waived the requirement of approval in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Approved / Disapproved

Approved / Disapproved

/S/GERALD M. GORDON

/S/LARS EVENSEN

GARMAN TURNER GORDON LLP
GERALD M. GORDON, ESQ.
ATTORNEY FOR
J.A. TIBERTI CONSTRUCTION, INC.

HOLLAND & HART LLP
LARS EVENSEN, ESQ.
ATTORNEY FOR
BANK OF AMERICA, N.A.

Approved / Disapproved

Approved / Disapproved

/S/THOMAS E. PATTERSON

/S/MICHAEL A. DIGIACOMO

KLEE, TUCHIN, BOGDANOFF &
STERN, LLP
THOMAS E. PATTERSON, ESQ.
ATTORNEY FOR DIP LENDER
SERVICE CAMPAIGN CORPORATION

BALLARD SPAHR, LLP
MICHAEL A. DIGIACOMO, ESQ.
ATTORNEY FOR THE HOWARD
HUGHES CORPORATION

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

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