

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION, CLEVELAND

In re:)	Chapter 11
)	
U.S. Tommy, Inc.,)	Case No. 17-16150
)	
Debtor.)	JUDGE: Jessica Price Smith
)	

**EMERGENCY MOTION OF DEBTOR AND DEBTOR IN POSSESSION FOR
INTERIM AND FINAL ORDER (I) AUTHORIZING DEBTOR’S USE OF CASH
COLLATERAL, (II) GRANTING ADEQUATE PROTECTION THEREFOR AND
RELATED RELIEF AND (III) SETTING A FINAL HEARING TO CONSIDER AND
APPROVE DEBTOR’S POST-PETITION USE OF CASH COLLATERAL *NUNC PRO
TUNC***

U.S. Tommy, Inc., debtor and debtor in possession (the “Debtor”), hereby moves this Court for entry of an interim order: (i) authorizing the Debtor’s use of cash collateral, (ii) granting adequate protection therefor, and (iii) setting a final hearing to consider and approve the Debtor’s future post-petition use of cash collateral and past use *nunc pro tunc*. In support of this motion, the Debtor respectfully represents as follows:

Jurisdiction, Venue and Bases for Relief

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Venue of these cases and this motion is proper pursuant to 28 U.S.C. §§1408 and 1409. Sections 361 and 363 of title 11 (the “Bankruptcy Code”) of the United State Code and Fed. R. Bankr. P. 4001 provide the bases for

the relief sought herein.

Background

2. On October 16, 2017 (the “Petition Date”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. The Debtor is continuing to operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no committee, trustee or examiner has been appointed in this case.

4. The Debtor is a family-owned New York corporation that operates a hotel business located at 3614 Euclid Avenue in Cleveland known as University Hotel and Suites. The shareholders are: Yueh-Or Lin and her 3 sons -- Robert Lin, James Lin and Mark Lin. Each owns 50 shares or 25% of the corporation. Yueh-Or Lin and James Lin reside in Taiwan; Mark Lin resides in Illinois. Robert Lin is the secretary and treasurer of the corporation and is the general manager of the hotel. He resides in the hotel and is responsible for the day-to-day operations of the business.

5. The building in which the business is operated was built in 1964 as a Holiday Inn hotel. Chao-Hsuing Hsu, Robert’s uncle and a resident of New York, formed U.S. Tommy, Inc. in that state and purchased the hotel from Holiday Inn in 1982 for about Two Million Dollars. He financed most of the purchase price. He converted the business to an independent hotel known as The Shangri La Hotel. In 1989, the current owners purchased the stock of U.S. Tommy, Inc., assumed its debt obligations, and took over management of the hotel.

6. From the mid-1990s to 2010, the Debtor entered into franchise agreements with several national hotel chains to be eligible to participate in their reservation systems. To enter into

these agreements, the property needed to meet the specifications of the franchisors which required the Debtor to remodel and refurbish the hotel and make other improvements multiple times. The Debtor took on additional debt to finance these improvements, including the current secured primary mortgage loan to Grand Pacific Holdings (“Grand Pacific Holdings”), successor to Wells Fargo Bank, NA, [the current loan was in the original amount of Four Million Dollars, evidenced by the note dated July 11, 2005] and the junior SBA mortgage loan to Growth Capital [in the original amount of One Million Seventy-six Thousand Dollars, evidenced by the note dated March 29, 2002, but junior to the then-existing prior Wells Fargo loan and subordinated to the current note by virtue of agreement]. Both mortgage loans are guaranteed by the individual shareholders; the Growth Capital loan is also guaranteed by Peter Lin, another sibling of Robert and a former shareholder.

7. In 2008 and thereafter, the Debtor’s business had significant financial difficulties, primarily as the result of three external factors: First, the travel business changed significantly in the 2000s as travelers moved away from travel agencies and increasingly used on-line services to book their reservations. These on-line reservation services became more and more competitive. In 2008, the Debtor was a franchisee of one of the major hotel chains, which required the Debtor to pay about 20 percent of its gross revenue to the franchisor to cover the flat monthly franchise fee plus a percentage of its bookings. For independently-operated hotels like the Debtor’s, this created a competitive disadvantage because it inhibited the Debtor’s ability to discount room rental rates and still cover the operating costs and pay the franchise fees. Second, the recession following the 2008 subprime lending meltdown negatively affected the travel industry in general. The Bureau of Labor Statistics reported that expenditures for pleasure travel declined a total of 13.3% in 2008 and 2009. Finally, and perhaps most significantly, the Euclid Avenue Corridor construction

project, which began in 2005 and ended in late 2009, caused Euclid Avenue, a major east-west corridor in the central Cleveland business district, to be closed, or difficult to navigate due to construction, for several years. The Debtor's hotel is located on Euclid Avenue near the corner of East 36th Street and the closing of Euclid Avenue significantly impacted its business because access to the hotel was impeded for a period lasting several years.

8. In 2010, the Debtor terminated its last franchise agreement with a major hotel chain and began operating as University Hotel and Suites. It entered into an agreement with an independent reservation booking system that charges Five Dollars per reservation, which significantly reduced its operating costs. Most of its bookings now come from on-line booking services. It also rents rooms to university students at Case Western Reserve University and Cleveland State University, both of which are nearby.

9. In addition to Robert Lin, who is employed by the Debtor as its general manager, the Debtor employs 16 employees: one salaried full-time front desk manager, six hourly full-time front desk employees, one hourly full-time housekeeping supervisor, four hourly full-time and two hourly part-time housekeeping employees, and two hourly full-time maintenance employees.

10. The Debtor leases the restaurant and bar space to Waber Bar, Inc. for rent of Five Thousand Dollars per month, but the lessee is in default and only pays a portion of the required rent each month.

11. The Debtor leases space on its roof to Voicestream PCS II Corporation where the lessee maintains a cellular telephone service tower and for which the Debtor receives Seventy-two Thousand Dollars per year which is consistently paid on a timely basis.

12. Because of its financial difficulties, the Debtor was unable to meet the debt service requirements of the Grand Pacific Holding's loan and went into default. Wells Fargo, its

predecessor, filed a foreclosure proceeding against the Debtor in 2011 [Cuyahoga Co. Court of Common Pleas Case No. 11 CV 750490]. The Debtor and Wells Fargo entered into a settlement agreement on November 2, 2012 and a forbearance agreement on December 20, 2012, which resolved the foreclosure proceeding. The Debtor remained in substantial compliance with these agreements for nearly four years paying Wells Fargo Eight Thousand Dollars per *week*, until late 2016. In late 2016, the Debtor made several necessary but expensive updates and improvements to the facility and experienced a seasonal reduction in bookings rendering it unable to meet the debt service payments required under the forbearance agreement. On April 5, 2017, Wells Fargo filed a motion to reinstate the case, which was granted. On September 5, 2017 a foreclosure judgment was entered in favor of Grand Pacific Holdings and, on October 11, 2017, the state court entered an order granting Grand Pacific Holdings' motion appointing a receiver.

13. The Debtor filed this proceeding to stay the state court proceeding and to prevent the receiver from taking control of the Debtor's business while the Debtor continues its efforts to resolve its financial issues.

14. The Debtor's business is improving, but has not improved quickly enough to overcome the financial problems it incurred in past years. In 2015 it had gross sales of \$1,265,445.00; in 2016 it had gross sales of \$1,409,359.00. This year it projects gross sales of \$1,111.936.00. The Debtor got a significant boost in income in 2016 from the Cleveland Indian's participation in the World Series, which went to seven games, four of which were played at Progressive Field, which is close to the Debtor's business, and from the Republican National Convention, which was held at Quicken Loans Arena, also close-by, in July.

15. The Debtor is currently meeting with off-shore financing sources in an effort to secure new financing with which to negotiate a reorganization with Grand Pacific Holdings, Growth

Capital's successor in interest, and the State of Ohio for its sales tax obligation. It is also exploring the possibility of turning the hotel into senior living residences, as there is a shortage of such units in the Cuyahoga County area.

Relief Requested

16. Grand Pacific Holdings, Corp. ("Grand Pacific Holdings") has a security interest in the Debtor's cash assets, which constitute cash collateral within the meaning of section 363(a) of the Bankruptcy Code, by virtue of the following:

A Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing to Grand Pacific Financing Corporation filed on July 27, 2005, as ASN Number 20057270611 of the Cuyahoga County Records, assigned to Grand Pacific via assignment filed on October 23, 2007, as AFN Number 200710230030 of the Cuyahoga County Records. True and correct copies of the Mortgage and Assignment are attached hereto as Exhibits A and B, respectively.

A UCC Form 1 Financing Statement filed on March 6, 2001 in the Cuyahoga County Records as ASN Number 200103069017.

17. Pursuant to section 363 of the Bankruptcy Code, the Debtor may not use 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 . . . in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2).

18. The Debtor has discussed with counsel the terms under which Grand Pacific Holdings would agree to the consensual use of cash collateral before and after the entry of the final order for use of the cash collateral, but no agreement has been reached. The continued use of cash collateral will ensure that the going-concern value of the Debtor and the jobs of the Debtor's employees are not lost.

19. Under section 361 of the Bankruptcy Code, the Debtor may provide adequate

protection by providing to such a secured creditor an additional or replacement lien to the extent that Debtor's use of such cash collateral during the continuation of the automatic stay results in a diminution in value of the secured creditor's interest. The concept of adequate protection is flexible. As the legislative history notes:

[t]he section specifies four means of providing adequate protection. They are neither exclusive nor exhaustive There are an infinite number of variations possible in dealings between Debtors and creditors. The law is continually developing and new ideas are continuing to be implemented in this field. The flexibility is important to permit the courts to adapt to varying circumstances and changing modes of financing.

Notes of Committee on the Judiciary, House Report No. 95-595.

20. Adequate protection exists herein. The continued operation of the Debtor's business affords adequate protection to Grand Pacific Holdings, as the Debtor has agreed to a replacement lien for Grand Pacific Holdings' security interest and to pay adequate protection payments each month in the amount of \$15,370.25, which represents the Till rate¹ of interest [the current Prime Lending Rate as reported in the Wall Street Journal (4.25%) plus a risk factor of one percent] applied to the current principal balance of \$3,513,199.00. Accordingly, Debtor requests that:

- (a) Grand Pacific Holdings be granted a valid and perfected, replacement security interests in, and lien upon (the "Replacement Lien") all assets of Debtor's estate, excepting avoidance actions and subject to post-petition administrative expenses;
- (b) Grand Pacific Holdings be granted, pursuant to section 507(b), an administrative expense priority claim to the extent of diminution of value of its collateral arising from Debtor's use thereof;
- (c) The lien and security interest granted hereunder shall relate back to the petition date and shall be deemed perfected and of the same force and effect

¹ *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004)

of Grand Pacific Holdings' pre-petition security interest without the necessity of further action by Grand Pacific Holdings;

- (d) Debtor shall pay to Grand Pacific Holdings the sum of \$15,370.25 due on the 16th day of each calendar month beginning November 16, 2017 and continuing until further order of the Court; and
- (e) Grand Pacific Holdings shall have, at any time during normal business hours, on reasonable request, access to (a) any of the premises that Debtor directly or indirectly owns, leases or otherwise has a right to occupy or use, and (b) all assets and properties of Debtor located on any such premises, including, without limitation, the books and records of account and any other Collateral.

21. Bankruptcy Rule 4001(b), (c) and (d) provides that a final hearing on a motion to use cash collateral and obtain credit pursuant to agreement of the parties may not be commenced earlier than 14 days after the service of the motion. Upon request, however, the Court is empowered to conduct a preliminary hearing on the motion and authorize the use of cash collateral and to obtain credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

22. The Debtor requests that the Court conduct an expedited hearing on the motion (the "Preliminary Hearing") and authorize the Debtor from and after entry of the interim order, until the final hearing, to use cash collateral in the manner provided in the proposed order. This will enable the Debtor to continue operating for the benefit of all parties in interest.

Notice

23. In light of Debtor's critical need for use of cash collateral to avoid immediate and irreparable harm to Debtor and its estate, the Debtor has provided actual notice, either orally or in writing by facsimile or overnight delivery to (a) the Office of the United States Trustee, (b) counsel for Grand Pacific Holdings and (c) the Debtor's 20 largest unsecured creditors, that the Court will

conduct a preliminary hearing on this motion on Thursday, **October 19, 2017 at 11:30 a.m.** in Courtroom 2B, Howard Metzenbaum Federal Courthouse, 200 Superior Ave. East, Cleveland, Ohio 44114. The Debtor submits that under the circumstances, no further notice of the Preliminary Hearing is necessary.

24. The Debtor respectfully requests that it be authorized to serve a copy of the signed interim order, which fixes the time and date for the final hearing and the deadline for the filing of objections, if any, by first class mail upon (a) counsel for any official committee of unsecured creditors appointed in this case and, if none, upon the 20 largest unsecured creditors of the Debtor; (b) the Office of the United States Trustee; (c) all parties who have filed requests for notice under Rule 2002; (d) counsel for Grand Pacific Holdings, and (e) any other parties as directed by the Court. The Debtor requests that the Court determine such notice of the final hearing to be sufficient notice under Rule 4001.

WHEREFORE, the Debtor requests entry of an order authorizing Debtor's use of cash collateral pursuant to section 363 of the Bankruptcy Code, granting Grand Pacific Holdings adequate protection as set forth herein, setting the final hearing and approve the proposed notice and granting the Debtor such other and further relief as is just and proper.

Dated: October 17, 2017.

Respectfully submitted,

/s/ Richard H. Nemeth
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