

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF PENNSYLVANIA

In re: K & D Hospitality, LLC

K & D Hospitality, LLC,  
Movant,

v.

First National Bank of Pennsylvania,  
Office of the United States Trustee,  
Respondents

Bankruptcy No. 17-24167

Chapter 11

DD No. 5  
Related to DD No.

MOTION FOR ORDER AUTHORIZING USE OF CASH COLLATERAL

AND NOW the Debtor, K & D Development, through its counsel Justin P. Schantz, Esquire and the firm David A. Colecchia and Associates, files this Motion for Order Authorizing the use of cash collateral. In support of the Motion, the Debtor alleges and avers as follows:

1. This is a core matter under the Bankruptcy Code, to which this Court may enter a final Order. However, if it is later determined this Court cannot enter a final order absent consent by all parties, the Debtor consents to this Court entering a final Order.

2. This Motion relates to the Bankruptcy case filed on October 18, 2017 by the Debtor at case number 17-24167.

3. On October 18, 2017, the Debtor filed an emergency petition for relief under Chapter 11 of the Bankruptcy Code.

4. The debtor remains in full possession of his assets and is managing his business as a Debtor-in-possession pursuant to 11 USC §§1107 and 1108.

5. The Debtor is a limited liability corporation that is incorporated in Delaware, with a principal place of business in Pennsylvania.

6. As of the date of this Motion, neither a Trustee nor a Creditor's Committee have been appointed.

7. The respondent is a corporation with its principal place of business at One North Shore Center, 12 Federal Street, Pittsburgh, PA 15212.

8. On April 3, 2012, the Movant and Respondent entered into a mortgage agreement with a separate assignment of rents provision to secure the loan. Both the mortgage agreement and assignment of rents were filed with the Westmoreland County Recorder of Deeds on May 4, 2012. A copy of the mortgage is included as Exhibit "A", and a copy of the assignment of rents is attached as Exhibit "B".

9. As the Debtors cash reserves derive entirely from the operation of the hotel at 111 Sheraton Drive, this assignment of rents acts as a lien on the Debtor's cash reserves and operating funds.

10. Absent an Order of Court, or absent permission from the Respondent, the Debtor is not authorized to use the cash collateral for the lien.

11. The cash collateral is necessary for the Debtor's continuing operation, and the Debtor will be forced to shut down immediately absent use of the cash collateral.

12. The Debtor concedes that Respondent is entitled to adequate protection of its interest in the cash collateral.

13. At this time, it is unclear if the Respondent is undersecured or oversecured.

14. To protect Respondent's interest, the Debtor proposes one or more of the following methods be allowed to protect the interests of Respondent and provide adequate protection as that term is used in 11 USC §361:

- a. A replacement lien on all post-petition rents and proceeds obtained by the Debtor;
- b. And/or adequate protection payments in an amount to be determined by the court or agreed upon by the parties.

15. Due to the nature of Debtor's Motion, and due to the requirements of the Bankruptcy Code, the Debtor believes an interim order allowing the use of cash collateral is necessary and proper, with a final hearing on the use of cash collateral to be set for a future date and time.

16. A proposed interim order, as well as a final order, are attached to this Motion.

WHEREFORE, the Debtor respectfully requests this Honorable Court grant Debtor's Motion, authorize the Debtor to use his cash collateral on an interim basis, and after a final hearing on the matter, authorize debtor to use cash collateral on an ongoing basis during the pendency of the within bankruptcy.

Date: October 18, 2017

Respectfully Submitted,

/s/Justin P. Schantz

Justin P. Schantz, Esquire

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