

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE:

WESTERN HOSTS ASSOCIATES, INC.

DEBTOR

CASE NO: 18-02696 BKT

CHAPTER 11

**MOTION REQUESTING AUTHORIZATION TO USE CASH COLLATERAL TO
AVOID THE CONTINUANCE OF THE IMMEDIATE AND IRREPARABLE HARM TO
THE ESTATE PENDING HEARING PURSUANT TO 11 U.S.C. §363, FED. R. BANKR.
P. 4001(b) AND L.B.R. 4001-2**

TO THE HONORABLE COURT:

COMES NOW Western Host Associates, Inc. (hereinafter referred to as “Debtor”), through the undersigned attorney who respectfully requests and prays as follows:

FACTS

1. Debtor files this motion pursuant to 11 U.S.C. §363, Federal Bankruptcy Rule 4001(b) and Local Bankruptcy Rule 4001-2, in order for this Honorable Court to: (1) grant Debtor use of cash collateral to avoid immediate and irreparable damage to the estate; and (2) to schedule a hearing to discuss this matter.
2. The Debtor entered into various loan agreements with Westernbank Puerto Rico, from whom Banco Popular de Puerto Rico obtained the loans, then later on, Triangle Cayman Asset Company 2 (hereinafter Triangle) obtained the loans.
3. On May 15, 2018, Debtor had to file its voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101 *et seq.*
4. Triangle holds a secured interest over Debtor’s property for a commercial loan debt. This loan is secured by a real estate collateral which is recorded as Property No. 187, page 187 of volume 35 of San Juan, estate 1,468, Property Registry of San Juan Section (hereinafter “the

Real Estate Collateral”). Triangle has a right of cash collateral only over the structure described above located at Old San Juan, San José Street 202, San Juan, Puerto Rico 00901. Triangle has no cash collateral right over the rents generated from the rooms of the Hotel, no cash collateral right over the business interruption, and no cash collateral right over the inventory.

5. In Schedule D, Debtor included Capital Crossing, which is Triangle’s servicing company, with a secured debt over that property in the amount of \$3,900,000.00. *See, Schedule D of the voluntary petition.*

6. Nonetheless, the property’s current value is the amount of \$1,500,000.00 as per appraisal.

7. After two (2) years of Debtor making payments on time over the loan agreement since the filed stipulation, Puerto Rico faced a major drop in tourism due to false advertisement of Zika virus in 2016 which prevented a numerous of reservations and events such as the power outage on the same year that lasted a week which led to a default of payments to Capital Crossing. Once this financial hardship hit the long term, Debtor sent numerous offers to Capital Crossing to renegotiate the terms of the loan agreement which were all merely denied with no counteroffer or intention of helping the Debtor. To top it all off, Debtor’s business was mostly destroyed by Hurricane’s Irma and María that has led to a temporary closing of the hotel which up to today has been able to operate partially.

8. Triangle has cash collateral over the structure where the hotel operates, not over the inventory, nor rents generated by the hotel, nor business interruption.

9. On November 2017, Debtor filed its claim with Integrand Assurance (“Integrand”) over policy no. CP-028099949-01 to claim its structural damages, inventory damages, and business interruption. Debtor also requested a loan through Small Business Administration which was denied.

10. Once the claim over the property was partially approved, as expressed before, Integrand sent a check in the amount of \$250,000.00 on January 2018 to the order of Western Host Associates and Capital Crossing, which is Triangle's servicing company. Debtor requested a meeting with Capital Crossing, so they may endorse the check and commence the repairs to the hotel, start operating and generating some income to pay Capital Crossing and its other obligations and creditors. On the meeting between Debtor and Capital Crossing, they stated that the only way they would endorse the check was if they had full control over proceeds of such check. An agreement was not reached, and the check was sent back to Integrand Assurance, but Debtor afterwards sent various offers to Capital Crossing.

11. On December 13, 2018, this Honorable Court held a hearing in which it was stated that Integrand would consign to the Court the amount of \$721,111.92 of the insurance proceeds. *See, docket no. 85 of Adv. Proceeding (18-00058).*

12. On December 27, 2018, Integrand filed a motion to inform the consigning of the insurance proceeds with a receipt as evidence. *See, docket no. 87 of Adv. Proceeding (18-00058).*

13. The amount of \$721,111.92 consigned is composed of \$633,805.80 for structural damages and inventory loss for \$87,306.12. As evidenced in the case, and expressed by Integrand in the hearing held on December 13, 2018 (*see, docket no. 58, 64 & 83 of the adversary case number 18-00058*), Triangle has a right of cash collateral over the amount of \$633,805.80 but not over the amount of \$87,306.12 which is for inventory loss. Triangle has no cash collateral right over the inventory.

14. Triangle's argument is that they should receive all the amount of the insurance proceeds because of a mortgage deed signed stating that they have the right where those insurance proceeds should be applied. Nevertheless, 1) they have no right to all the amount of the

\$721,111.92 because, as expressed, the amount of \$87,306.12 are from inventory loss to which Triangle has no cash collateral right; 2) the amount of \$633,805.80 should be used for its purpose which is to repair the damages suffered because of hurricane Maria.

15. By the instant motion, Debtor requests this Court to authorize the use of the insurance proceeds, in order to repair the damages caused by the hurricanes and start operating so it can generate the income necessary to make payments to its creditors and obligations, and avoid the continuance of immediate and irreparable harm to the estate.

16. Debtor's request to the use of \$633,805.80, which is the amount to which Triangle has a right of cash collateral, to make the repairs needed in the hotel which amounts to \$901,118.46 in costs for repairs.

LEGAL BASIS AND DISCUSSION

17. "Cash collateral" is defined by section 363 (a) as follows: "...“cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.”

11 U.S.C. § 363 (a)

18. Section 363(b) of the Bankruptcy code states that:

(b)

(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if

such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

11 U.S.C. §363(b)

19. As to the use of cash collateral the bankruptcy code states the following:

(c)

(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection 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, sale, or lease in accordance with the provisions of this section.

11 U.S.C. §363(c)

20. Debtor owns and administers a hotel known as Hotel Plaza de Armas, which is located at 202 San Jose St., Old San Juan, Puerto Rico. The hostelry is composed of fifty (50) rooms. The resort also has a reception and office area.

21. For the hotel to be able to repair all its structural damages, start admitting more guests, generate profit, operate in the ordinary course of business, provide a service of excellence to its guests, and be kept in the best condition, Debtor needs to repair the damages that still need to be fixed so that it can satisfy certain maintenance debts and make payments to some creditors, such as:

a) Payments to secured creditor Triangle;

b) Payroll and Social Security payments;

c) Insurance;

- d) Licenses and Permits;
- e) Maintenance;
- f) Utilities, such as: electricity, water, gas, internet, cable TV and telephone;
- g) Property taxes;
- h) Room taxes;
- i) Office and hotel supplies; and
- j) Advertising;

22. Debtor by this motion request the use of the aforementioned cash collateral in order to repair the damages, so that Debtor can continue to fulfill its obligations and reopen its business in full. Also, in order for the hotel to continue to be occupied, attractive to future guests and, most important of all, profitable, Debtor needs to use the proceedings of the insurance to make the repairs needed and operate in full capacity.

23. For Triangle to receive all the rent proceedings would mean a fatal detriment of the estate.

24. Through this motion Debtor has attached as **Exhibit A** the Property Condition Report which reflects the damages caused by the hurricane and on page 3 of the Exhibit a cost summary. This report details a \$901,118.46 cost for repairs, which Debtor has yet to recoup any amount by its insurance to commence the repairs.

25. At the beginning of the case, Debtor had not been able to operate. Nevertheless, Debtor has been able to fix and open rooms partially, little by little and against the obstacles that Triangle has put Debtor through, to generate some income and be able to start to reorganize through the Chapter 11 bankruptcy case. As of today, Debtor has thirty-two (32) rooms operating

and will be able to provide Triangle the monthly amount of \$4,000.00 as adequate protection and in compliance with section 363 (e) of the Bankruptcy code.

26. If Debtor is prohibited to use cash collateral it will not be able to repair all the damages. If Debtor is not able to repair the rooms that are left and generate more income from these rooms that need to be fixed; Debtor will not be able to comply with its payroll and social security payments; payments to its creditors; licenses and permits payments; maintenance; pay the utilities, such as: electricity, water, gas, internet, cable TV and telephone; pay property taxes, sales and use taxes, room taxes; pay for office and hotel supplies; and advertising payments. Consequently, the estate would suffer irreparable harm, it would devalue, and Debtor will be forced to close its operations, causing the loss of employments and making impossible a feasible reorganization.

27. In view of the circumstances stated above, Debtors request this Honorable Court to allow the use of cash collateral. If this Honorable Court allows Debtor access to cash collateral, Debtor will be able to repair the damages suffered. If the damages are repaired, Debtor will be able to maintain the proper operation of the hotel, continue to make it profitable and Debtor will be able to reorganize its finances which will benefit creditors and provide funding for the Chapter 11 Plan of Reorganization. Debtor can provide the monthly payments of \$4,000.00 to Triangle as adequate protection.

28. As stated in In re DYNACO Corp., 162 B.R.389, 394 (Bankr. D. New Hampshire. 1993) citing In re Stein, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982), the Court must take into consideration that the holder of a lien on cash collateral must not be left unprotected by unrestricted use of cash collateral by the debtor, but said that “However, the purpose of Chapter

11 is to rehabilitate debtors and generally access to cash collateral is necessary in order to operate business”.

29. The Court in In re DYNACO Corp., 162 B.R.389, 394 (Bankr. D. New Hampshire. 1993), adds that after the broad powers given a trustee or debtor-in-possession under § 1107 of the Bankruptcy code, “it is apparent that the Congress intended business under reorganization to proceed in as normal a fashion as possible”. In re Prime, Inc., 15 B.R. 216, 219 (Bankr. W.D. Mo. 1981) citing Matter of Sullivan Ford Sales, 2 B.R. 350 (Bankr.D.Me. 1980).

30. This Honorable Court must have present that “[t]here may be situations in bankruptcy where giving a secured creditor an absolute right to his bargain may be impossible or seriously detrimental to the bankruptcy laws.” 2016 Collier Pamphlet Ed., 11 U.S.C. § 361, Legislative History to Section 361, p. 234 (Lexis Nexis 2016). For this reason, in Wright v. Union Central Life, Ins., Co., 311 U.S. 273 (1940), the Court suggested that it was the value of the secured creditor’s collateral, and not necessarily his rights in specific collateral, that was entitled to protection.

WHEREFORE, Debtor prays for an Order granting this motion allowing the use of the cash collateral in the amount of \$633,805.80 of the insurance to make the repairs needed in the hotel, grant an adequate protection payment to Triangle in the amount of \$4,000.00 until the Confirmation of Chapter 11 Plan of Reorganization or until the debt is negotiated or satisfied, with any other relief that in accordance to law this Honorable Court deems just and proper.

I HEREBY CERTIFY that a copy of this motion has been electronically filed with the Clerk of the Bankruptcy Court using CM/ECF system, which will serve a copy of the same to the office of the U.S. Trustee and to all parties in interest, and by certified mail to: Luis C. Marini-Biaggi and Maria Teresa Álvarez Santos attorneys of Triangle Cayman Asset Company 2 and

Capital Crossing at MCS Plaza, suite 500, 255 Ponce de León Ave., San Juan, Puerto Rico 00917.

In Caguas, Puerto Rico, this 4 day of March, 2019.

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PROPOSED ORDER

Debtor's Motion requesting authorization to use cash collateral in the amounts of \$633,805.80 for repair of the damages is hereby granted. The Court enters an order authorizing the use of cash collateral of creditor, Triangle Cayman Asset Company 2. Debtor will pay Triangle Cayman Asset Company 2 the monthly amount of \$4,000.00.

This order will become final and effective immediately upon being entered in docket.

IT IS SO ORDERED.

San Juan, Puerto Rico, this _____ of March of 2019.

Brian K. Tester
U.S. Bankruptcy Judge