

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:

DELTAVILLE BOATYARD, LLC, *et al.*,¹

Debtors

Case No.

16-35974-KLP

Chapter

11

**DEBTORS' MOTION FOR ENTRY OF AN
ORDER AUTHORIZING POST-PETITION
FINANCING PURSUANT TO 11 U.S.C. § 364(c)
AND MEMORANDUM IN SUPPORT THEREOF**

The above-captioned debtors and debtors-in-possession (the “Debtors”), by counsel, hereby move the Court for the entry of an order authorizing them, pursuant to § 364(c) of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to obtain post-petition financing (the “Financing” and/or the “Post-Petition Financing”) in an amount up to two hundred fifty thousand dollars from Arthur Wilton, Waddy Garrett, Paul Howle, Bev Columbine, James Rogers, Donnie Hatchett, John Ward, Ed Ruark and/or Glen Doncaster (collectively, the “Lender” and each a “Lender”). In support of this Motion, the Debtors represent the following facts to the Court:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Boatyard Rentals, LLC (1032), Deltaville Marina, LLC (8245), and Deltaville Boatyard, LLC (6818).

Lynn Lewis Tavenner, Esquire (Va. Bar No. 30083)
Paula S. Beran, Esquire (Va. Bar No. 34679)
David N. Tabakin, Esquire (Va. Bar No. 82709)
Tavenner & Beran, PLC
20 North Eighth Street, Second Floor
Richmond, Virginia 23219
Telephone: (804) 783-8300
Telecopy: (804) 783-0178

Background

1. On November 2, 2016, Debtors Deltaville Marina, LLC (“Deltaville Marina”) and Boatyard Rentals, LLC filed for relief under Chapter 11 of the Bankruptcy Code; Debtor Deltaville Boatyard, LLC (“Deltaville Boatyard”) filed for relief under Chapter 11 of the Bankruptcy Code on December 6, 2016.

2. The Debtors are continuing in possession of their property and are operating and managing their business, as Debtors-in-Possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3. The 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).

The Debtors’ Businesses

4. Boatyard Rentals owns certain real property (the “Yard”), which Yard is leased to the Debtor, originally by way of the Boatyard Lease. Deltaville Marina is an entity that owns certain real property (the “Marina”). A portion of the Marina is in turn leased to the Deltaville Boatyard. Deltaville Boatyard is the entity that operates a world renowned boat yard and marina in Deltaville, Virginia.

5. The Debtors prospects for a successful reorganization are good. In fact, in connection with successfully reorganizing, on June 5, 2017, the Debtors filed the Debtor’s Plan of Reorganization (Boatyard Rentals, LLC), ECF No. 139, Debtor’s Plan of Reorganization (Deltaville Marina, LLC), ECF No. 140, Debtor’s Plan of Reorganization (Deltaville Boatyard, LLC), ECF No. 141, (collectively, the “Plans”), and the Joint Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code For Each of the Plans of Reorganization Filed by the

Deltaville Entities, ECF No. 142. On June 6, 2017, the Debtors filed the Debtor's First Amended Plan of Reorganization (Deltaville Boatyard, LLC), ECF No. 143, (the "First Amended Plan," and together with the Plans, the "Plans"). Pursuant to the Order Granting Appointment of Judicial Mediator, ECF No. 167, the Debtors are currently negotiating with the assistance of the Honorable Frank J. Santoro, as judicial mediator, terms of consensual Chapter 11 plans of reorganization.

Relief Requested

6. The Debtors respectfully request entry of an order authorizing them, pursuant to § 364(c) of the Bankruptcy Code, to obtain the Financing as provided herein after having expended all amounts currently in the Infrastructure Account.

7. As this Court is aware, Deltaville Marina is the holder of two (2) Boating Infrastructure Grants² (the "Grants") from the U.S. Department of Fish and Wildlife Services. Boating Infrastructure Grants (commonly referred to as BIG Grants) are for improvements to marinas focused on transient boaters. Funding is from the U.S. Department of Fish and Wildlife Service, and these grants are administered by the Virginia Department of Health. BIG Tier I grants (statewide) can be awarded up to \$200,000 (this amount was previously \$100,000), whereby the Grant pays 74% of project cost and the grant holder pays 26% as match. BIG Tier II grants (national) can be awarded for amounts between \$200,000 and \$1,500,000, whereby the Grant pays 74% of project cost and the grant holder pays 26% as match. No money is received

² Pursuant to an error of counsel, these assets inadvertently were listed on the Schedules for Deltaville Boatyard and not Deltaville Marina. Upon detection, the Deltaville Entities reported this to the United States Trustee and also stated the same on the record during the Deltaville Entities' 341 meetings. It was also reported that the error would be corrected with the filing of amended schedules. Also, the original Schedules indicate three (3) grants and two grants were merged into one; thus there are only two (2) grants. These items were corrected in the amended Schedules filed on or about May 4, 2017 (ECF No. 126 (Deltaville Boatyard), 69 (Deltaville Marina), and 67 (Boatyard Rentals)).

under the Grants until such time as the project is complete and approved by the requisite governmental entity. These Grants relate to the construction, renovation and/or maintenance of boating infrastructure facilities and associated amenities for transient, non-trailerable recreational boats at least 26 feet long.

8. On March 15, 2017, the Debtors filed their Motion for Entry of an Order Approving Decision to Enter into Agreements and Authorizing the Use of Funds Related Thereto and Memorandum in Support Thereof. ECF No. 79. The hearing on the Dock Motion occurred on April 5, 2017 (the “April Hearing”). During the April Hearing, this Court heard extensive evidence about preserving and enhancing various properties of one or more of the Debtors. After hearing all the evidence, the Court granted this request, and entered an order on April 18, 2017, ECF No. 119 (the “Dock Order”). Since that time, the Debtors have made significant improvement to the Yard and Marina including but not limited to converting portions of docks to accommodate the requisite transient vessels. A summary of the work completed is attached hereto as Exhibit B. A pictorial summary of the progress is attached hereto as Exhibit C.

9. The Debtors have funded portions of the work completed pursuant to the Dock Order with funds available in the Infrastructure Account (as said term is defined in the Dock Motion) as permitted under the Dock Order. Other aspects of the work completed are being carried by the contractor.

10. The contractor has indicated that it thought that the Debtors were going to pay 50% of the contract amount as the project progressed. There, however, is not enough funds in the Infrastructure Account to fund 50% of the project while waiting for reimbursement pursuant to the Grants. To date, the Debtors have paid approximately \$345,000.00.

11. The Debtors contacted various sources about a bridge loan. No such prospective lenders were willing to provide unsecured or secured financing to the Debtors under terms that were more favorable than the terms provided herein.

12. Accordingly, the Debtors have negotiated with the Lender, who are current and/or former customers of Deltaville Boatyard and/or professional/personal colleagues of Keith Ruse, for certain debtors-in-possession financing, and the parties have agreed to the terms thereof, which the Debtors believe are normal and customary (if not more favorable to the Debtors than current market terms) for financing of this nature.

13. The Debtors are seeking the Financing to fund approximately 50 percent of the cost of the project in relation to completing the construction of the docks and other improvements articulated in the Dock Motion.

14. The Lender agreed to provide the Financing under the terms and conditions described herein (the "Post-Petition Financing Agreement"). In summary, the Lender will provide up to two hundred fifty thousand dollars (the "Principal Balance") to the Debtors in exchange for a first position lien solely on the cash received by the Debtors from payment of the Grants (as defined and thoroughly described in the Dock Motion). Upon receipt of the funds from the Grants, the Debtors will immediately pay the Principal Balance plus interest over to the Lender in respective amounts to each Lender. The terms of the Financing are as follows:

- (a) Loan Amount: Principal amount not to exceed \$250,000.00;
- (b) Interest Rate: Interest shall accrue on the outstanding principal balance at a rate equal to 10 % per annum;
- (c) Payment Terms: All outstanding principal and interest shall be due and payable without notice, demand, or setoff on the earlier of (a) the day after the

date the Grants are collected, (b) conversion of the Debtors' Chapter 11 case to Chapter 7 and/or (c) the sale of substantially all of the assets of any Debtor;

(d) Security: The Lender shall have a perfected first-priority lien solely in cash received in payment of the Grants.

15. The Financing is necessary for the Debtors to complete the construction described in the Dock Motion.

Legal Authority

16. Section 364 of the Bankruptcy Code provides in pertinent part as follows:

(a) . . . unless the Court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the Court, after notice and a hearing may authorize the obtaining of credit or the incurring of debt –

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(a) through (c)(3).

17. Section 364 is structured with “an escalating series of inducements which a debtor may use to attract credit in the post-petition period.” *Mulligan v. Sobiech*, 131 B.R. 917, 921 (S.D.N.Y. 1991). In deciding whether to approve such a transaction, a bankruptcy court acts in

its “informed discretion.” *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 37 (S.D.N.Y. 1990); *see also Suntrust Bank v. Den-Mark Constr., Inc.*, 406 B.R. 683, 691 (E.D.N.C. 2009) (citations omitted).

18. The Bankruptcy Code requires notice and hearing but not the consent of creditors as a prerequisite to judicial approval of a financing agreement because that would undermine the authority of the bankruptcy court. *In re Adams Apple*, 829 F.2d 1484, 1491 (9th Cir. 1987).

19. Before a court should authorize a credit facility under § 364(c) of the Bankruptcy Code, a debtor must demonstrate that it cannot obtain necessary credit without resorting to § 364(c). *In re Sobiech*, 131 B.R. at 921; *see Suntrust Bank* 406 B.R. at 691. It is disputed how actively a debtor must look for financing before a court may authorize financing under § 364. However, § 364 does not require that the debtor seek credit from every possible source. *Bray v. Shenandoah Fed. Sav. And Loan Assoc. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Instead, a debtor must demonstrate a “good faith effort” that the financing is not available without the lien. *Id.*

20. The very circumstances of this situation require the Debtors to obtain their financing under § 364(c). The Debtors have been unable to locate any unsecured and/or secured financing. The terms of the Financing are more favorable to the Debtors than the market terms of similar loans. Accordingly, this Court should authorize the Debtors to obtain the Financing pursuant to the terms of the Post-Petition Financing Agreement.

21. Pursuant to § 552 of the Bankruptcy Code, “property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.”

22. The Debtors believe that the terms and conditions of the Financing are fair and reasonable. The terms of the Financing are not only beneficial to the Debtors' estates, but also, the obtaining and implementation of the Financing is critical to the Debtors ultimate reorganization.

Notice

23. No trustee, examiner, or creditors' committee has been appointed in these chapter 11 cases.

24. Notice of this Motion has been given to: (a) the Office of the United States Trustee; (b) the Debtors' twenty largest unsecured creditors, as identified in their chapter 11 petitions; (c) the Debtors' known secured creditors; (d) any known legal counsel for the Debtors' secured creditors. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form of Exhibit A attached hereto: (i) approving the Financing; (ii) authorizing the Debtors to execute any and all necessary Financing documents; and (iii) granting such other and further relief as the Court may deem proper.

Respectfully submitted,

DELTAVILLE BOATYARD, LLC
DELTAVILLE MARINA, LLC
BOATYARD RENTALS, LLC

Dated: January 25, 2018
Richmond, Virginia

By: /s/ Paula S. Beran
Lynn L. Tavenner, Esquire (VSB No. 30083)
Paula S. Beran, Esquire (VSB No. 34679)
David N. Tabakin, Esquire (VSB No. 82709)
Tavenner & Beran, PLC
20 North 8th Street
Richmond, Virginia 23219
Telephone: (804) 783-8300
Telecopier: (804) 783-0178

Counsel for the Debtors

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2018, a true and correct copy of the Debtors' Motion For Entry Of An Order Authorizing Post-Petition Financing Pursuant To 11 U.S.C. § 364 And Memorandum In Support Thereof was served via first-class mail postage prepaid and/or electronic delivery to the Debtors' twenty largest unsecured creditors as identified in the chapter 11 petition, the Debtors known secured creditors, any known legal counsel for the Debtors secured creditors and the IRS.

/s/ Paula S. Beran
Counsel

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:

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Debtors

Case No.

16-35974-KLP

Chapter

11

**ORDER AUTHORIZING POST-PETITION
FINANCING PURSUANT TO 11 U.S.C. § 364**

This matter came before the Court upon the motion of the above-captioned debtors and debtors-in-possession (the “Debtors”) for Entry of an Order Authorizing Post-Petition Financing Pursuant to 11 U.S.C. § 364(c) (the “Motion”). It appearing to the Court that the Debtors and Glen Doncaster (the “Lender”) have reached an agreement pursuant to which Lender will provide certain post-petition financing (the “Post-Petition Financing”) to the Debtors to be secured by a first-priority, senior security interest in and lien upon the cash received in payment of the Grants pursuant to § 364 of the Bankruptcy Code, with the consent of SummitBridge solely to the extent contained in this Order (and notwithstanding that SummitBridge claims (and the Debtors dispute said claim) a first priority lien in and to the Grants and all proceeds thereof and without prejudice to the Debtors and SummitBridge's positions in all respects concerning

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those liens and claims) and having reviewed the Motion and having heard the statements of counsel in support of the relief requested in the Motion at a hearing before the Court (the “Hearing”); and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; it is hereby

FOUND, DETERMINED, ORDERED, AND ADJUDGED, that:

1. The Motion is GRANTED to the extent set forth herein.
2. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.
3. The Debtors are authorized to enter into the Post-Petition Financing in accordance with the terms provided in the Motion, provided, however that the liens granted pursuant to the Motion shall only extend to cash received in payment of the Grants. To the extent any document is executed to evidence the Post-Petition Financing, the same shall be in form and substance reasonably satisfactory to SummitBridge to reflect the foregoing. Upon receipt of payments from the Grants, the Debtors shall immediately forward such sums to the Lender to the extent necessary to satisfy the Post-Petition Financing.
4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2) and (c) notice of this Motion and the Hearing was sufficient under the circumstances.
5. The Post-Petition Financing is necessary to allow the Debtors manage and maximize the value of their assets in the pursuit of a reorganization in accordance with Chapter 11 of the Bankruptcy Code. Without the relief requested, the Debtors will not be able to pay for

the construction of the docks and other improvements on the real property of the Yard and Marina. Interruption of the construction will significantly harm the Debtors' estates and fundamentally undermine their reorganization efforts.

6. A financing facility is not available to the Debtors except in accordance with the terms of this Order. Neither this Order nor the granting of the Motion shall constitute a finding or otherwise be interpreted to admit or otherwise be construed as an indication, that SummitBridge has, or does not have, a first priority lien on the Grants and all proceeds thereof. Except as expressly provided herein as it relates to the lien upon the cash received in payment of the Grants, nothing contained in this Order shall impair or modify any rights, claims or defenses available in law or equity to SummitBridge and/or any of the Debtors.

7. The Lender shall have a perfected first-priority security interest solely in the cash received by the Debtors in payment of the Grants.

8. The Post-Petition Financing has been negotiated in good faith and at arms' length between the Debtors and the Lender. The terms of the Post-Petition Financing are fair and reasonable under the circumstances, reflect the Debtors exercise of sound business judgment, and are supported by reasonably equivalent value and fair consideration. Thus, any loans made to the Debtors by the Lender shall be deemed to have been extended in good faith, as that term is used in Bankruptcy Code § 364(e), and shall be entitled to the protections of § 364 in the event of the modification or reversal on appeal of the authorization granted by this Order to enter into the Post-Petition Financing.

9. This Order shall constitute valid, binding obligations of the Debtors enforceable against the Debtors in accordance with their terms.

10. The Debtors are authorized and directed to do and perform all acts, to make, execute, and deliver all instruments and documents, and to pay fees, which may be required or necessary. However, the provisions of this Order shall be self-executing. Neither the Lender nor the Debtors shall be required to take any action or obtain any additional Orders to enjoy the benefits and/or protections of this Order.

11. The provisions of this Order shall be binding upon the Lender and the Debtors and their respective successors and assigns (including any Trustee hereinafter appointed for the estate of the Debtors) and inure to the benefit of the Lender and the Debtors and their respective successors and assigns.

12. The notice given by the Debtors of the Motion constitutes due and sufficient notice in accordance with the Bankruptcy Rules and the Local Rules of this Court.

13. Upon entry the Clerk shall serve copies of this Order on: the Office of the United States Trustee, the Debtors' counsel, the Debtors' twenty largest unsecured creditors as identified in their chapter 11 petitions, the Debtors' known secured creditors, any known legal counsel for the secured creditors.

Entered:

UNITED STATES BANKRUPTCY JUDGE

I ask for this:

Lynn L. Tavenner, Esquire (Va. Bar No. 30083)
Paula S. Beran, Esquire (Va. Bar No. 34679)
David N. Tabakin, Esquire (Va. Bar No. 82709)
Tavenner & Beran, PLC
20 North Eighth Street, Second Floor
Richmond, Virginia 23219

Telephone: (804) 783-8300

Telecopy: (804) 783-0178

Counsel to the Debtors

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order was served upon all necessary parties.

/s/ _____
Counsel

EXHIBIT B

1. floating dock fabrication, 100 percent
2. floating dock installation - 70 percent
3. anchor piles - ordered and waiting for delivery date, expected within 10 days (of 1/2/2018)
4. water system piping - 80 percent
5. pump out piping - 60 percent
6. electrical cable -onsite to be pulled week of 1/2/2018
7. electrical - pedestal order on standby
8. fuel system - piping installed - 85 percent
9. fuel dispensers - ordered and on standby
10. substantial completion - planned for [2/28/18](#)
11. minor and final details completed by [3/15/18](#)