

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)

_____	)	
In re	)	
	)	
FREDERICKSBURG PARK, LLC,	)	
	)	Case No. 17-32287-KLP
Debtor.	)	
	)	
_____	)	

**JOINT MOTION FOR ORDER PROHIBITING USE OF CASH COLLATERAL  
AND MEMORANDUM IN SUPPORT THEREOF**

Telegraph Hill Investments, LLC, a Virginia limited liability company (“THI”), and David D. Horstick (“Mr. Horstick”), by counsel, move the Court to prohibit the Debtor, Fredericksburg Park, LLC (the “Debtor”), from using their joint cash collateral and authorizing additional related relief and, in support thereof, represent as follows:

**Jurisdiction**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code § 363(c)(2).

---

Bruce E. Arkema (VSB No. 18625)  
Kevin J. Funk (VSB No. 65465)  
Durette Crump PLC  
1111 East Main Street, 16<sup>th</sup> Floor  
Richmond, Virginia 23219  
Telephone: (804) 775-6900  
Facsimile: (804) 775-6911  
*Counsel for THI and Mr. Horstick*

### **Background**

3. The Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code in this Court on May 2, 2017.

4. The Debtor's schedules indicate that it owns seven (7) parcels of real property in the City of Fredericksburg that were assembled for a mixed-use development (the "Real Estate") and that it receives rental income from the Real Estate.

5. THI and Mr. Horstick are affiliated parties, and they have liens against the Real Estate to secure money owed to them by the Debtor.

6. The notes that secure THI and Mr. Horstick's liens matured in February of 2017 but were not paid by the Debtor.

7. THI commenced foreclosure proceedings against the Real Estate, and the foreclosure sale was scheduled for May 2, 2017.

8. Within a few hours of the scheduled foreclosure sale, the Debtor filed this case, seeking protection under Chapter 11 of the Bankruptcy Code.

### **Facts**

9. On or about February 5, 2015, the Debtor executed a promissory note in favor of THI in the original principal amount of \$3,437,500.00 (the "THI Note").

10. Despite the fact that the THI Note matured and was due and payable on February 5, 2017, the Debtor failed to pay the indebtedness when it became due.

11. On or about February 5, 2015, the Debtor executed a promissory note in favor of Mr. Horstick in the original principal amount of \$300,000.00 ("Horstick Note No. 1").

12. Despite the fact that Horstick Note No. 1 matured and was due and payable on February 5, 2017, the Debtor failed to pay the indebtedness when it became due.

13. On or about February 5, 2015, the Debtor executed a promissory note in favor of Mr. Horstick in the original principal amount of \$111,967.48 (“Horstick Note No. 2”).

14. Despite the fact that Horstick Note No. 2 matured and was due and payable on February 5, 2017, the Debtor failed to pay the indebtedness when it became due.

15. Debtor’s obligations under the THI Note, Horstick Note No. 1 and Horstick Note No. 2 otherwise are secured by first- and second-priority liens pursuant to a certain Deeds of Trust, dated February 5, 2015 (the “Deed of Trust”), against all of the real estate of the Debtor. Pursuant to the Deeds of Trust, THI and Mr. Horstick have a lien and an assignment of all of the rents derived from the Property. Copies of the three (3) Deeds of Trust are attached hereto and marked Exhibit 1, Exhibit 2 and Exhibit 3.

16. The rents derived from the property constitute “cash collateral,” as that term is defined in § 363 of the Bankruptcy Code.

17. THI and Mr. Horstick have communicated to the Debtor that they do not consent to the Debtor’s use of their cash collateral.

**Relief Requested**

18. THI and Mr. Horstick request that the Court prohibit the Debtor from using their cash collateral and to escrow it in a special account for the benefit of THI and Mr. Horstick.

**Legal Authority**

19. Section 363(c)(2)(B) of the Bankruptcy Code prohibits the use of Cash Collateral if the parties secured by it do not consent, unless the Court, after notice and hearing, authorizes such use in accordance with the provisions of § 363. *In re Nat’l Promoters & Servs.*, 499 B.R. 192, 208 (Bankr. D.P.R. 2013); *In re Park at Dash Point L.P.*, 121 B.R. 850, 860 (Bankr. W.D. Wash. 1990); *In re Nat’l Fin. Alternatives*, 96 B.R. 844, 848-9 (Bankr. N.D. Ill. 1989).

**Notice**

20. As of the filing of this Motion, no trustee, examiner, or creditors' committee has been appointed in this Chapter 11 case.

21. Notice of this Motion has been given to: (a) the Office of the United States Trustee; (b) the Debtor's twenty largest unsecured creditors, as identified in its Chapter 11 petition; and (c) the Debtor's known secured creditors. In light of the nature of the relief requested herein, THI and Mr. Horstick submit that no other or further notice is required.

WHEREFORE, Telegraph Hill Investments, LLC and David D. Horstick respectfully request that the Court (a) enter an Order in the form of the attached sketch Order that prohibits the Debtor's use of Cash Collateral and (b) grant such other and further relief as the Court deems proper.

TELEGRAPH HILL INVESTMENTS, LLC  
and  
DAVID D. HORSTICK

By:           /s/ Kevin J. Funk          

Bruce E. Arkema (VSB No. 18625)  
barkema@durettecrump.com  
Kevin J. Funk (VSB No. 65465)  
kfunk@durettecrump.com  
DuretteCrump, PLC  
Bank of America Center  
1111 East Main Street, 16th Floor  
Richmond, Virginia 23219  
Telephone: (804) 775-6900  
Facsimile: (804) 775-6911

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of May, 2017, a true and correct copy of the foregoing motion, together with a proposed order granting the requested relief, was served via the Court's ECF system or by first-class mail, postage prepaid, to each of those on the attached Service List.

\_\_\_\_\_  
/s/ Kevin J. Funk

**SERVICE LIST**

Bowman Consulting Group, Ltd.  
650A Nelms Circle  
Fredericksburg, Virginia 22406

Davis Carter Scott  
1676 International Drive  
Fifth Floor  
McLean, Virginia 22102

Hirschler Fleischer  
725 Jackson Street, No. 200  
Fredericksburg, Virginia 22401

MVB Bank  
1000 Johnson Avenue  
Bridgeport, West Virginia 26330

Nationwide  
c/o Harleysville Insurance Co.  
355 Maple Avenue  
Harleysville, Pennsylvania 19438

Treasurer, City of Fredericksburg  
Post Office Box 267  
Fredericksburg, Virginia 22404-7216

Robert B. Van Arsdale, Esquire  
Office of the United States Trustee  
701 East Broad Street, Suite 4304  
Richmond, Virginia 23219-1849

David D. Horstick  
c/o Horstick Developments, Inc.  
Post Office Box 41190  
Fredericksburg, Virginia 22404-1190

Telegraph Hill Investments, LLC  
c/o Horstick Developments, Inc.  
Post Office Box 41190  
Fredericksburg, Virginia 22404-1190

Robert B. Goodall, Esquire  
Goodall, Pelt & Carper, P.C.  
1259 Courthouse Road, Suite 101  
Stafford, Virginia 22554

Daniel M. Press, Esquire  
Chung & Press, P.C.  
718 Whittier Avenue, Suite 200  
McLean, Virginia 22101