

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

In Re:)
)
COLUMBIA HOSPITALITY SERVICES, LLC.) **Case No. 16-20272-drd-11**
)
Debtor.)

**ORDER AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING ADEQUATE
PROTECTION**

On April 12, 2016, Columbia Hospital Services, LLC filed its Amended Motion for Use of Cash Collateral with attached Income Projections and Cash Flow Analysis.

Creditor Private Capital Group, Inc., having reviewed the Second Motion for Use of Cash Collateral with attached Income Projections and Cash Flow Analysis, has consented to entry of this order.

The Court, having jurisdiction hereof, and upon review of the file and pleadings in this matter, and the statements of counsel, hereby finds as follows:

1. Debtor filed its Chapter 11 proceeding in this court on April 5, 2016, under threat of foreclosure by Private Capital Group, Inc., its mortgage holder.
2. The Court has jurisdiction to hear the Cash collateral Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a “core proceeding” within the meaning of 28 U.S.C. §157.
3. Adequate and sufficient notice of the relief requested in the Cash Collateral Motion as evidence by the applicable certificates of service filed with the Court and as stated on the record, have been given in accordance with the provisions of Code §363 and Bankruptcy Rules 2002, and 4001(d). Under the circumstances,

no further notice if required.

4. Debtor has one asset which is a hotel located in Columbia, Missouri which is located near the intersection of Highways 63 and 70, and debtor continues to operate the business and manage its property as a debtor in possession pursuant to Code §§1107 and 1108.
5. It is undisputed that Private Capital Group, Inc. has a blanket security interest in and to all of Debtor's assets relating to its operation of the single asset real estate including the real and all related personalty of Debtor which is the subject to this filing.
6. Private Capital Group, Inc. asserts that prior to the Petition Date, Private Capital Group, Inc. loaned money to Debtor pursuant to the terms and conditions of various loan agreements and documents. Private Capital Group, Inc. further asserts that Debtor was liable to Private Capital Group, Inc. in an approximate amount of \$8,000,000.00, including interest, late charges and other charges, plus fees, authorized under the Private Capital Group, Inc. loan documents and applicable law.
7. Private Capital Group, Inc. further asserts that as security for repayment of the Pre-Petition Indebtedness, Debtor granted it security interests in, and liens upon, substantially all of its assets, as more fully described in the Private Capital Group, Inc. loan documents, including, without limitation, the collateral and cash collateral.
8. Debtor had a soft opening of its hotel on October 2, 2015, and on November 26, 2015, opened under the Best Western banner in order to generate more significant income based on the benefit of third party reservation systems.

9. Debtor has issued checks for payroll and utilities from the operating account in the approximate amount of \$11,700.00 in order to continue operating. Otherwise, Debtor has not used the cash collateral generated since its filing and has retained that cash collateral in its Debtor in Possession account.
10. In its Amended Motion to Use Cash Collateral, Debtor seeks authority to use cash collateral.

NOW, THEREFORE, IT IS HEREBY:

ORDERED that the recitals above are true and accurate and are incorporated herein by this reference.

ORDERED that Debtor is granted the use of Cash Collateral for the expenses listed in and for the time periods covered by (1) the budget attached as Exhibit A to the Amended Motion for Use of Cash Collateral from April 1, 2016, to the date of Debtor's confirmed plan, or dismissal from Chapter 11; and (2) for payment of United States Trustee fees owed pursuant to 28 U.S.C. Section 1930 (a)(6).

ORDERED that Debtor shall pay adequate protection payments to Private Capital Group, Inc. of \$37,500 per month, which payments shall be made to Private Capital Group, Inc. by wire transfer received on or before the 15th day of each month on account of the preceding month beginning on May 15, 2016.

IT IS FURTHER ORDERED that Debtor's use of cash collateral is expressly conditioned upon the following:

- a. Without prior approval of the Court or the express written consent of the Lender, Debtor shall pay the reasonable amounts which are actual, necessary expenses in the operation of its business not to exceed one hundred and ten percent (110%) of the amount stated for each category of expense in the budget attached hereto as

Exhibit A; PROVIDED, HOWEVER, that in no event shall the total amount for operating expenses as set forth on Exhibit A to the Amended Motion exceed \$69,000.00 monthly for the period from the date of this order, to the date of confirmation of debtor's plan or dismissal. The parties agree that the \$69,000.00 monthly expense cap will not include expenditures required to be paid by Debtor for sales and city tax. FURTHER PROVIDED, Debtor will also be required to incur capital expenditures related to signage, equipment to meet breakfast standards and pool repair required by Best Western ("the capital improvements") which will be permitted to be paid from any surplus of cash collateral and/or through further equity investments by principal into Debtor. Before any capital improvements are commenced Debtor must provide Private Capital Group, Inc. with a firm bid for such capital improvement and proof that such improvement is required by Best Western. Such capital improvement expense will not be incurred without Private Capital Group, Inc.'s approval or a Court order. As with the preceding taxes, such capital expenditures will be exceptions to the \$69,000.00 monthly cap but the parties additionally agree that such additional expense exceptions will not exceed, in the aggregate, a further \$10,000.00 monthly in addition to the \$69,000.00 for Ex. A expenses, unless otherwise authorized by Private Capital Group, Inc, in writing or a Court order. Any cash collateral remaining after such expenditures will be paid to Private Capital Group, Inc, as additional adequate protection. FURTHER PROVIDED, that in no event should cash collateral in this period be used to pay pre-petition claims or obligations, other secured claims, or obligations to insiders unless specifically authorized by separate order from this Court. FURTHER ADDITIONALLY

PROVIDED that notwithstanding the foregoing, in no event shall Debtor's obligation to pay the agreed to adequate protection payments be impaired as to the timing and amount of such payment.

- b. Debtor shall provide a monthly report on actual revenue and expenses on the 20th day of each month for the month preceding the month in which the report is made, beginning with the report due on May 20, 2016. Such report shall show the extent of deviation from the projected expenses in the proposed cash collateral budget.
- c. Lender is hereby granted replacement security interests in, and liens on, the same type of assets which constitute their pre-petition collateral that are acquired post-petition by the debtor, including, without limitation, inventory, chattel paper, accounts receivable, equipment and general intangibles, up to the amount of the debt to the Lender, and to the extent that Lender holds valid and perfected security interests in the pre-petition collateral. Moreover, the priority between the Lender, and any other prospective lender, with respect to the replacement liens shall be in the same priority as the Lender's pre-petition liens and security interests
- d. The adequate protection granted in this Order is without prejudice to the Lender seeking further and other adequate protection to the extent it deems the same necessary and appropriate. Further, this Order is without prejudice to Lender seeking the early termination of Debtor's use of cash collateral prior to the expiration of this Order for cause, including lack of adequate protection.
- e. Debtor shall continue to maintain the types and amounts of insurance on all its property and assets as required by the loan documents; and
- f. Except as set forth herein, Debtor shall pay all budgeted expenses when due,

including insurance and taxes, and Lender shall be notified of any failure or inability to do so.

IT IS FURTHER ORDERED that this Order shall expire and Debtor's right to use cash collateral shall terminate, unless extended by further order of this court or by express written consent of Lender, on (1) the failure of debtor to comply with any provision of this Order, including but not limited to timely payment of adequate protection payments by Debtor; (2) the entry of an order authorizing, or if there shall occur, a conversion or dismissal of this case under Code Section 1112; (3) the entry of an order appointing a trustee, or appointing an examiner with powers exceeding those set forth in Code Section 1106(b); (4) the closing of a sale of all or a substantial portion of the assets of the debtor; (5) the cessation of day-to-day operations of Debtor; (6) any loss of accreditation or licensing of debtor that would materially impede or impair debtor's ability to operate as a going concern; and (7) any material provision of this Order for any reason ceases to be enforceable, valid or binding upon Debtor.

IT IS FURTHER ORDERED that should Debtor default under this Order that Lender shall send Debtor and its counsel a notice of default via email providing ten (10) business days to cure such default and that if such default is not cured then after the expiration of the tenth day following such notice that the automatic stay shall terminate as to Lender and Lender shall be permitted to exercise its state law remedies, including foreclosure of its lien and security interest in its real and personal property collateral without further order of this Court. Counsel for Debtor shall provide Lender with email addresses for the purpose of receiving such notices. Upon a failure of Debtor to cure the default Lender shall be permitted to file a Notice of Default in the Court records and receive a confirmatory order terminating the stay as to its real and personal property collateral for the purpose of exercising its state law remedies.

IT IS FURTHER ORDERED that to be effective, any waiver by Lender of the provisions

of this Order or consent required under this Order must be in writing, which includes electronic mail.

IT IS FURTHER ORDERED that the provisions of this Order shall be binding upon and inure to the benefit of Lender, Debtor, and their respective successors and assigns (including without limitation, any Chapter 11 or Chapter 7 trustee, examiner, or other fiduciary hereafter appointed for Debtor or with respect of any of Debtor's property); provided, however, nothing herein shall prohibit any party from challenging the amount of Lender's claims or the nature, extent and priority of Lender's security interests in, and liens on, the Collateral.

IT IS FURTHER ORDERED that this Order shall become effective and enforceable upon approval and entry as an Order of the Bankruptcy Court. If any provision of this Order is hereafter modified, vacated or stayed by subsequent order of this or any other Court for any reason, such modification vacation, or stay shall not affect the validity of an obligation or liability incurred pursuant to this Order.

IT IS SO ORDERED.

Dated: April 27, 2016

/s/Dennis R. Dow
Honorable Dennis R. Dow,
United States Bankruptcy Judge

Submitted by:

/s/ Gwen Froeschner Hart

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