

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

IN RE: *
*
UNIVERSITY CENTRE HOTEL, INC. * Chapter 11
*
Debtor(s) * No. 02-00724
*

**ORDER ON MOTION FOR RELIEF FROM
STAY AND TO DETERMINE EXTENT, VALIDITY,
AND PRIORITY OF SECURITY INTERESTS**

THIS CASE came on for a final evidentiary hearing on the Motion of Park National Bank (Park) as successor in interest to Regency Savings Bank(successor to Southern Pacific Bank) for Relief From the Automatic Stay and to determine the extent of its security interest in certain cash accounts currently maintained by this Chapter 11 debtor-in-possession. Following a preliminary hearing on this motion, I denied the motion with respect to relief from the stay since the extent of Park's security interest, if any, in the cash accounts had yet to be determined. The matter was set for a final evidentiary to determine if, in fact, Park continues to have a claim secured by the cash. For the reasons set forth herein, I find that the sum of \$49,845.00 contained in the debtor's accounts identified as "operating account" (\$54.00) and "sweep account" (\$49,791.00) constitute cash collateral subject to Park's security interest and, therefore, payable to Park forthwith. This Order constitutes my findings of fact and conclusions of law in accordance with Fed. R. Bankr. P. 7052.

This Chapter 11 case was filed October 17, 2002, in order to stop the foreclosure sale by

Southern Pacific Bank of the debtor's primary asset, a hotel located in Gainesville, Florida. On the date of the petition, Southern Pacific Bank was owed \$7,298,826.00 secured by mortgages on the debtor's hotel and a parcel of unimproved real property located in Naples, Florida, owned by an affiliate of the debtor. In addition to the mortgage on the real property, Southern Pacific's debt was also secured by a Collateral Assignment of Rents and Profits, thereby giving it a security interest in the debtor's cash and accounts generated from the operation of the hotel. On the petition date, the debtor's schedules reflected cash on hand in the amount of \$53,160.00 and accounts receivable from hotel operations in the amount of \$77,296.00, of which \$69,296.00 was ultimately determined to be collectible.

On or about January 1, 2003, Southern Pacific Bank received payment in the amount of \$3,212,035.98 from the sale of the property in Naples. This payment represented a principal reduction of \$3,000,000.00 and payment of accrued interest to date at the contract (non-default) rate. During the course of the administration of this case various motions were filed regarding the use of cash collateral resulting in the Court entering its Final Order Authorizing Debtor's Use of Cash Collateral (the Cash Collateral Order) on March 20, 2003. As a condition for the debtor's use of cash collateral, Southern Pacific Bank, its assigns or successors was given a replacement lien on future cash to the extent that its cash collateral was used by the debtor. On June 30, 2003, an order was entered allowing the remaining claim in the amount of \$5,034,411.01. This sum included interest and attorney's fees allowable under 11 U.S.C. §506(a) based on the assumption that the value of the property far exceeded the debt. Unfortunately, this assumption proved to be erroneous. The allowed secured claim would thus be limited under §506(b) to the net proceeds from a sale of the property plus the value of the cash and accounts receivable.

On June 30, 2004, the hotel together with an adjacent parcel not encumbered by the mortgage were sold for a total sales price of \$6,100,000.00. Of this sum, \$5,225,000.00 was allocated to the hotel, resulting in net proceeds from the hotel in the amount of \$4,896,492.18. Shortly after the closing, Regency received a payment in the amount of \$4,298,826.00 representing the remaining principal balance due under its note and mortgage. On June 6, 2005, this Court entered an order directing the disbursement to Regency of \$608,251.85 representing the balance of the net proceeds from the sale of the hotel together with interest earned on those funds pending their distribution. As of this disbursement, Regency has received, on account of its allowed claim of \$5,034,411.01, the sum of \$4,907,077.00 leaving a balance of \$127,334.00.

Adding together the value of the cash (\$53,160.00) and collectible accounts receivable (\$69,296.00) on the date of the petition results in cash collateral in the amount of \$122,456.00. The \$49,845.00 on hand in the debtor's sweep account and operating account are, therefore, Park's cash collateral which should be paid forthwith.

The debtor's argument that Park has, in fact, been overpaid based on the deficiency judgement it obtained against the guarantor, Anthony Liuzzo, in state court is without merit. The debtor asserts that since the state court disallowed as against Liuzzo, \$571,691.72 in default interest that the debtor had agreed to as part of the allowed claim, that sum should now be deducted from Park's claim. This assertion totally ignores the state court finding that while Liuzzo was entitled to prevail on that issue based on an accord and satisfaction, the debtor, despite such accord and satisfaction, subsequently agreed to pay the default interest. The debtor also argues, without any logical explanation, that additional attorney's fees, interest, and late fees included in the deficiency

judgment should be deducted from Park's claim against the debtor. Incredibly, the debtor asserts that Park has been overpaid by the debtor by \$1,682,020.49, which the debtor claims should be disgorged and returned to the debtor. This claim is so ludicrous that it merits no further discussion.

Finally, at the conclusion of the hearing, Park moved, *ore tenus*, and subsequently filed a written motion to amend its motion to conform to the evidence. The motion giving rise to the hearing dealt only with Park's cash collateral based on the debtor's cash position on the petition date. At the hearing, the evidence proffered, and admitted without objection, included the evidence regarding accounts receivable. The debtor does not object to this motion and, therefore, it is granted. However, this amendment does not permit the court, at this time, to grant any relief beyond ordering that the remaining cash collateral be paid to Park. Any shortfall would come not from Park's collateral (as there is none remaining) but would have to be paid as an administrative expense claim from unencumbered funds derived from the sale of the adjacent parcel. This relief was not encompassed in the original motion nor was it noticed as required under §503(b). A separate application for such allowance may be made consistent with the findings contained in this order. Therefore, it is

ORDERED AND ADJUDGED that:

1. Park's motion be and same is hereby GRANTED.
2. The debtor-in-possession shall pay to Park within ten (10) days of the date of this order the sum of \$49,845.00 from its operating account and its "sweep account."
3. This order is without prejudice to Park's further application for an administrative claim for the remaining balance of its cash collateral as of the petition date.

DONE AND ORDERED at Tallahassee, Florida, this 4th day of April,
2006.



LEWIS M. KILLIAN, JR.
Bankruptcy Judge