

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION**

IN RE:

UNIVERSITY CENTRE HOTEL, INC.,

Case No. 02-00724

Debtor

Chapter 11

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**ORDER DENYING CREDITOR'S REQUEST FOR SUPERPRIORITY TREATMENT  
OF ADMINISTRATIVE EXPENSE CLAIM**

THIS MATTER came on for telephonic hearing on May 18, 2006, upon Park National Bank's ("Park") Application to Allow Administrative Expense Claim ("Application")(Doc. 780). At the hearing, Park raised for the first time the issue of its entitlement to a superpriority administrative expense claim due to a failure of adequate protection. Although the Debtor argued against superpriority status for Park's administrative expense claim, the Debtor did not oppose the allowance of a general administrative expense claim. Accordingly, the Court ruled that Park was entitled to an administrative expense claim in the amount of \$72,611.00, which ruling was memorialized in the Order dated May 24, 2006, but reserved judgment on the issue of whether such claim was entitled to superpriority treatment. The parties briefed the issue, and after consideration, and for the reasons outlined below, the Court concludes that Park's administrative expense claim allowed in the May 24, 2006, Order is not entitled to superpriority status.

Section 507(b) of the Bankruptcy Code provides that a creditor who is given adequate protection which subsequently fails shall have priority over every other administrative expense claim. 11 U.S.C. § 507(b). In *Wilson-Seafresh, Inc.*, this Court held that when adequate protection has been given to a secured creditor which later proves to be inadequate, the creditor becomes entitled to a superpriority administrative expense claim to the extent that the adequate protection was insufficient. *In re Wilson-Seafresh, Inc.*, 263 B.R. 624, 630 (Bankr. N.D. Fla. 2001). In this case, the Court determined in its Order on Motion for Relief from Stay and to Determine Extent, Validity and Priority of Security Interests (Doc. 779) that the Debtor had cash collateral in the amount of \$122,456.00 on the petition date. Subsequently, in its Order on Motion

for Relief from Stay, this Court found that Debtor had only \$49,845.00 remaining in its sweep and operating accounts. Therefore, it appears that Park's adequate protection was insufficient in the amount of \$72,611.00. If this were the end of the facts, then based on Section 507(b) and the reasoning in *Wilson-Seafresh*, Park may be entitled to superpriority treatment of its administrative expense claim. However, because of the unique circumstances present in this particular case, Park's interest is sufficiently adequately protected so as not to require superpriority treatment of its administrative expense claim.

The Debtor, Anthony Liuzzo (the Debtor's principal and guarantor of the Debtor's obligation to Park), and Park are involved in state court litigation over Park's enforcement of Liuzzo's guarantee and the Debtor's and Liuzzo's claims that the default interest rate charged by Park on its note was usurious. Park prevailed in the state trial court and was awarded judgment against Liuzzo on the guarantee for all sums remaining due under the note and mortgage. Liuzzo is appealing that judgment and has posted a cash supersedeas bond with the state court in an amount more than sufficient to make Park whole. In the event that Liuzzo loses on appeal, the bond will be turned over to Park in satisfaction of their claims against Liuzzo and the Debtor. However, if Liuzzo prevails on appeal, then Park would have been overpaid in this bankruptcy case and would actually have to disgorge money to the Debtor. The question in this matter, then, is whether or not Liuzzo's guarantee, which is fully secured by the state court cash bond, is sufficient substitute adequate protection for Park's interests, and the Court holds that it is.

Section 361 sets out three non-exclusive ways that a debtor can provide adequate protection to a creditor. 11 U.S.C. § 361. Subsection (3) provides that adequate protection may be provided by any other method that will result in the realization of the "indubitable equivalent" of the creditor's interest in the property. 11 U.S.C. § 361(3). The court in *In re South Village, Inc.* referenced in a footnote the congressional record stating that "a guarantee by a third party outside the judicial process of compensation for any loss incurred in the case" can be a form of adequate protection. 25 B.R. 987, 990, fn4 (Bankr. D. Utah 1982)(citing H.R. Rep. NO. 95-595, at 340,

U.S. Code Cong.& Admin. News, p. 6296). In cases where a third party has guaranteed payment, the key has been whether such a guarantee was secured by collateral. *Matter of Belton Inns, Inc.*, 71 B.R. 811 (Bankr. S.D. Iowa 1987)(holding that a guarantee secured by collateral may qualify as adequate protection, but a guarantee not backed by collateral generally does not provide such protection). In this case, Liuzzo's guarantee of the Debtor's obligation to Park is fully secured by sufficient collateral—the supersedeas bond. Since the guarantee is fully secured, it is sufficient to serve as substitute adequate protection of Park's interest and forecloses any entitlement Park may have had to a superpriority administrative expense for failure of adequate protection. Accordingly, it is hereby

ORDERED AND ADJUDGED that Park's request for superpriority treatment of its administrative expense claim is DENIED.

DONE AND ORDERED at Tallahassee, Florida, on July 5th, 2006.



LEWIS M. KILLIAN, JR.  
Bankruptcy Judge

cc: University Centre Hotel, Inc.  
C. Edwin Rude, Jr.  
Park National Bank  
Steven M. Berman  
United States Trustee