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**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
THE LASALLE GROUP, INC., et al.,	§	Case No. 19-31484-sgj-11
	§	
Debtors.	§	(Jointly Administered)

United States Trustee’s Objection to Debtors Motion for Authorization to Obtain Post-Petition Financing

TO THE HONORABLE STACEY G. C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

The United States Trustee for Region 6 objects to *Debtors Motion for Authorization to Obtain Post-Petition Financing* (“Interim DIP”). [docket no. 288]. The United States Trustee would respectfully show:

Overview

The Debtors seek approval of a \$382,500 Interim DIP. The United States Trustee objects for the following reasons:

- The Interim DIP cross-collateralizes the West Houston pre-petition note debt with post-petition collateral;

- The §552(b) waiver completely forecloses the Court from applying the equities of the case exception to the DIP Liens

FACTS

1. On May 5, 2019, The Lasalle Group Inc., Cinco Ranch Memory Care LLC, (“Cinco Ranch”), Pearland Memory Care, LLC (“Pearland”), Riverstone Memory Care, LLC, (“Riverstone”) and West Houston Memory Care, LLC (“West Houston”) filed voluntary petitions for Chapter 11 Bankruptcy.
2. On May 7, 2019, the Court entered an order jointly administering the above-mentioned debtors.
3. On August 8, 2019, Cinco Ranch, West Houston, and Pearland filed a motion on an expedited basis for entry of interim orders authorizing the debtors to obtain post-petition financing.
4. The Interim DIP Lenders to the agreement are Origin Bank and Veritex Bank. Under the Interim DIP, Origin Bank would commit to providing the Debtors with \$82,500 in financing, and Veritex would commit to providing the Debtors with \$300,000.00 in financing.
5. The above amounts are to be collateralized by a “first priority, perfected lien upon all of the Debtors’ right, title, and interest in, to, and under all of the Debtors’ assets.”

Cross-collateralization concerning West Houston note payable to Origin Bank

6. Paragraph 18 of the Interim DIP states, in pertinent part, that “[t]he Post Petition Collateral with respect to the Origin Bank DIP Loan shall also secure a promissory note dated July 6, 2012, executed by West Houston payable to the DIP Lender in the original principal amount of \$8,550,000.00, and which is subject to a Modification of Real Estate Lien and Note among West Houston and the DIP Lender effective as of April 12, 2018.”

7. According to West Houston's Schedule D, the above mentioned note gives Origin Bank a secured claim of \$8,136,088.43 against the real and personal property at 1725 Eldridge Parkway Houston, TX. West Houston's Schedule D also states that the value of the collateral securing the note is \$4,690,064.00. As a consequence of the Interim DIP, the entirety of the \$8,136,088.43 owed to Origin Bank under the note would be secured by a super priority, perfected lien on all of the Debtors assets. This would include the post-petition assets of the Debtors who were not originally party to the note.

§ 552(b) not applicable to DIP Liens

8. Paragraph 25 of the Interim DIP order states that "the equities of the case exception under section 552(b) of the Bankruptcy Code shall not apply" in regards to the DIP liens created by the Interim DIP

Objection

The cross-collateralization of the West Houston Note is an impermissible encumbrance of post-petition assets.

9. The Interim DIP seeks to cross-collateralize the West Houston Note by securing it with post-petition assets. Some Courts have held that cross-collateralization is inconsistent with bankruptcy law because: 1) cross-collateralization is not authorized as a method of post-petition financing under § 364; and 2) cross-collateralization is beyond of the scope of the bankruptcy court's inherent equitable power because it is directly contrary to the fundamental priority scheme of the Bankruptcy Code. *In re Saybrook Mfg. Co., Inc.*, 963 F.2d 1490 (11th Cir. 1992).

10. Even among those courts that accept cross-collateralization, it is a disfavored means of financing. *See In re Vanguard Diversified Inc.*, 31 B.R. 364 (Bankr. E.D.N.Y. 1983). As stated above, the collateral securing the West Houston note is valued at about \$3,446,024.43 less than

the claim created by the note. If the Interim DIP were approved, the note entire amount would become a super priority claim secured by post-petition assets. This would likely harm unsecured creditors, and the Court should deny the Interim DIP to the extent it seeks cross-collateralization.

Prohibition of Equities of the Case Exception in the §552(b) Waiver Provision

11. The equity of the case exception of §552(b) was intended to create “an appropriate balance between the rights of secured creditors and the rehabilitative purposes of bankruptcy.” *United Va. Bank v. Slabfork Coal Co.*, 784 F.2d 118(4th Cir. 1986).

12. Courts generally limit the application of this exception to Chapter 11 cases in which the evidence establishes that the lender is oversecured, and will obtain a windfall from collateral that has appreciated in value as a result of the trustee's/debtors-in-possession's use of other assets of the estate (which normally would go to general creditors) to cause the appreciated value.” *In re Tower Air, Inc.*, 268 B.R. 404 (Bankr. D. Del. 2001).

13. The Interim DIP would prohibit the use of the equity exception. It is not clear that the exception would apply in this case, in fact, it rarely does in any case. However, the United States Trustee objects to the exception being completely excised from the case before it can even be determined that it would ever apply. Furthermore, the exception could only be utilized if the Court determines that fairness demands it, so the Secured Lender’s security interest would only be limited if it is necessary for the case to proceed in an equitable manner.

Conclusion

Wherefore, the United States Trustee requests that the Court sustain his objection, and grant to the United States Trustee such other and further relief as is just and proper.

DATED: August 13, 2019

Respectfully submitted,

WILLIAM T. NEARY

UNITED STATES TRUSTEE

/s/ Stephen P. McKitt

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Certificate of Service

I certify that I sent copies of the foregoing document on August 13, 2019 all parties requesting service via ECF.

s/ Stephen P. McKitt

Stephen P. McKitt