

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re )  
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JORGE ESPINOSA and ) Case No. 6:13-bk-00321-KSJ  
EVA JACQUELINE ESPINOSA, ) Chapter 7  
 )  
Debtors. )  
 )  
\_\_\_\_\_ )

**ORDER GRANTING MOTION BY REGAL  
FOUNDATION, INC. TO PROHIBIT USE OF  
CASH COLLATERAL AND TRUSTEE'S MOTION FOR  
PAYMENT OF ADMINISTRATIVE EXPENSES AS A SURCHARGE**

Debtors own a large office building in Kissimmee, Florida (the "Property"). When this bankruptcy was converted to a Chapter 7 liquidation case, a Chapter 7 Trustee, Richard Webber, was appointed. He made a valiant effort, but failed, to sell the building for more than the mortgage amount due to Regal Foundation, Inc. ("Regal"), who holds a first mortgage on the Property. Regal also has an absolute assignment of the leases, rents, and profits arising from the operation of the Property. From July 25, 2013 until March 31, 2014, the Chapter 7 Trustee collected net rental income of \$45,032.39. Regal now seeks the payment of these funds<sup>1</sup>, less \$11,890.38, which the Trustee seeks for his administrative fees and costs<sup>2</sup>, asserting the monies constitute cash collateral and are not property of this Chapter 7 estate. The Trustee opposes the motion.<sup>3</sup>

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<sup>1</sup> Doc. No. 158.

<sup>2</sup> Doc. No. 172.

<sup>3</sup> Doc. No. 173.

Pursuant to § 552(b)(2) of the Bankruptcy Code<sup>4</sup>, the monies in question are cash collateral belonging to Regal pursuant to the lender's absolute assignment of rents. Prior to filing this bankruptcy case, the Debtors assigned to Regal all their rights, title, and interest in the leases, rents, and profits from the Property.<sup>5</sup> By its terms, this assignment was "absolute."<sup>6</sup> The Trustee argues that the assignment cannot be absolute as a matter of state law because Regal failed to comply with the requirements of Section 697.07 of the Florida Statutes and because no court has adjudicated Regal's ownership of the monies. However, as Regal argued at the hearing on May 6, 2014, the 1994 amendments to § 552(b) specifically "[were] intended to obviate the need to comply with any additional requirements imposed by state law."<sup>7</sup> Under that section, the rental income collected by the Trustee is cash collateral belonging to Regal and is not property of this Chapter 7 estate.

The Trustee next argues for an equitable exception to § 552(b)(2),<sup>8</sup> saying that Regal waived its claim to its cash collateral by not objecting to the Trustee's collection of the monies and by refusing to accept less than they were due in connection with the Trustee's proposed low ball offers to buy the Property. The circumstances here do not merit an equitable exception. Certainly Regal wished the Trustee all the best in his marketing efforts. Regal only wants to receive payment on its secured debt and, if others also get paid, so much the better. But, when the offers did not materialize, Regal has no obligation to reduce its claim amount, simply to help the Trustee liquidate the Property for the benefit of the unsecured creditors. They understandably acted in their own best interest and should not be penalized by the loss of their

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<sup>4</sup> All references to the Bankruptcy Code or the Code refer to 11 U.S.C. Section 101, *et. seq.*

<sup>5</sup> Doc. No. 158, Exhibit C.

<sup>6</sup> *Id.* at ¶ 6.

<sup>7</sup> *In re Wrecclesham Grange, Inc.*, 221 B.R. 978, 981 (Bankr. M.D. Fla. 1997) (Jennemann, J.) (holding that post-petition rents subject to a valid pre-petition security agreement will "constitute cash collateral regardless of whether all state perfection requirements are met").

<sup>8</sup> 11 U.S.C. § 552(b)(2) (2014) ("...except to any extent that the court...based on the equities of the case, orders otherwise.").

cash collateral because the Trustee could not sell the Property for as much as he hoped. Regal will get no windfall. All they ask is that they get the rental income collected by Trustee on their secured collateral, less administrative fees and expenses he requests. Accordingly, it is

**ORDERED:**

1. Regal's Motion to Prohibit Use of Cash Collateral and to Require Disposition (Doc. No. 158) is granted.
2. The Chapter 7 Trustee's Motion for Reimbursement of Expenses from Regal Foundation, Inc. as a Surcharge (Doc. No. 172) is granted.
3. The Trustee is directed to disburse to Regal \$33,142.01, which is the amount of cash collateral being held (\$45,032.39) less the Trustee's administrative expenses (\$11,890.38).

DONE AND ORDERED in Orlando, Florida, June 11, 2014.



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KAREN S. JENNEMANN  
Chief United States Bankruptcy Judge

Attorney Kenneth D. Herron, Jr. is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.