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Major Battle Brewing Over Transwest Resort Properties' Use of Cash Collateral

A dispute with large potential implications on the chapter 11 cases of Transwest Resort Properties, Inc. and its affiliates was revealed on Friday in documents filed in the U.S. Bankruptcy Court for the District of Arizona. On Friday, the companies' senior lender, JPMCC 2007-C1 Grasslawn Lodging, LLC, filed a notice of two debtors' default under the [bankruptcy court's second interim order authorizing their use of JPMCC's cash collateral](#) and the resulting termination of those debtors' right to use JPMCC's cash collateral. The two debtors, Transwest Tucson, LLC and Transwest Hilton Head, LLC, are the owners of two resorts - the [Westin La Paloma Resort and Country Club in Tucson, Arizona](#) and the [Westin Hilton Head Resort and Spa in Hilton Head, South Carolina](#).

The senior lender also filed an [application asking that the debtors be held in contempt of court for violating the terms of the court's second interim cash collateral order and also asking the bankruptcy court to appoint a chapter 11 trustee for the debtors](#). In that application, the senior lender argued that the debtors had "intentionally, willfully and knowingly" violated the cash collateral order by "unilaterally reducing" a required March 23rd adequate protection payment by \$600,000. The debtors and the senior lender disagree, however, on the validity of the debtors' basis for deciding to make less than the full adequate protection payment.

According to the lender's motion, which attaches several chains of e-mail correspondence between representatives of the debtors and the lender, the debtors' decision to make less than the full payment was "egregious" and based solely upon "their concerns about adequate cash on-hand at the Westin La Paloma property in June 2011, a period beyond the authorized use of cash collateral under the Cash Collateral Order, which expires on May 20, 2011." Moreover, asserts the lender in court filings, the debtors could have sought "relief from the Court prior to unilaterally violating the Order," but elected not to do so despite the lender having the sole right under the cash collateral order to "opt to forego, reduce or postpone the Adequate Protection Payment."

The debtors, however, were quick to respond to the lender's various allegations. Monday morning, the debtors filed their own [motion asking the court to enter a new emergency interim cash collateral order allowing the debtors to use the lender's cash collateral pursuant to a proposed emergency budget](#) (which is attached to the debtors' motion). In the motion, the debtors admit that they failed to make the full March 23rd adequate protection payment, but argue that the cash collateral dispute is the result of "the belligerent and irresponsible conduct of creditor JPMCC 2007-C1 Grasslawn Lodging, LLC in response to the Debtors using prudent and cautious business judgment in order to preserve the going concern value of their estates." The debtors claim that they were willing to "work on responsible solutions that would allow for additional adequate protection payments but that also protect the Resorts' operations," but the lender "declined to engage in any discussion regarding practical solutions to the anticipated cash flow problems at La Paloma" unless and until the full adequate protection payment was made. The debtors further assert that the lender's decision to terminate the debtors' right to use its cash collateral put at risk "the payroll checks of over



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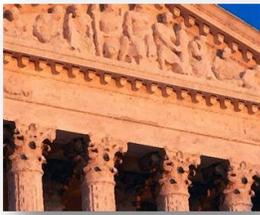
400 hardworking Tucsonans that are scheduled for this coming Friday April 1, 2011," the debtors' "already fragile" relationships with their vendors, and the resorts' ability to operate and going concern value.

In order to avoid the dire circumstances predicted, the debtors propose that they be authorized to use the lender's cash collateral for four weeks pursuant to a new emergency budget and interim order. According to the debtors, the primary differences between the second interim cash collateral order and their proposed new emergency interim order are the term of the interim cash collateral usage, the elimination of certain additional adequate protection payments which the lender is entitled to receive under the second interim order, and a more flexible default provision (the lender's right to assert a default would be "modified to provide that the variance must exceed 10% over three weeks before the Lender has the right to act"). Otherwise, the debtors' proposed emergency budget is "consistent with the Budgets agreed to with the Senior Lender in the Second Interim Order," according to the debtors' motion. The debtors' assert that the lender's interest in the cash collateral is adequately protected, notwithstanding the reduced March 23rd adequate protection payment, by "the Debtors complying with the Emergency Budget, by the \$2.4 million adequate protection payments on March 22, 2011, and by the Debtors pre-funding two months of minimum adequate protection payments (\$400,000) into a lock box account for the benefit of the Senior Lender in accordance with the Second Interim Order," in addition to the replacement liens, super-priority administrative expense treatment, and reporting requirements that were provided by the second interim order.

The bankruptcy court has set a hearing on both the lender's and the debtors' motions for tomorrow, March 30th, beginning at 9:30 a.m. local time.

For more information on this topic, click on any of the following links to access copies of the relevant bankruptcy court filings:

- [Second Interim Order Authorizing Use of Cash Collateral signed on 3/1/2011](#)
- [Application for Order to Show Cause Against Transwest Tucson, LLC and Tranwest Hilton Head, LLC for Contempt filed by ETHAN BENNETT MINKIN of BALLARD SPAHR LLP on behalf of JPMCC 2007-C1 Grasslawn Lodging, LLC \(Attachments: # \(1\) Exhibit Exhibit A to Westin Application# \(2\) Exhibit Exhibit B to Westin Application# \(3\) Exhibit Exhibit C to Westin Application\)](#)
- [Emergency Motion to Approve Use of Cash Collateral COMBINED EMERGENCY MOTION FOR INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL PENDING FINAL HEARING AND EMERGENCY MOTION FOR EXPEDITED HEARING filed by KASEY C. NYE of QUARLES & BRADY LLP on behalf of TRANSWEST RESORT PROPERTIES, INC. \(related document\(s\)\[208\] Notice of Default\) \(Attachments: # \(1\) Exhibit 1 - Emergency Budget# \(2\) Exhibit 2 - Limited Official Service List\)](#)



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- [ORDER Granting Application for Order to Show Cause \(Related Doc # \[207\]\) signed on 3/28/2011. Order to Show Cause set for 3/30/2011 at 09:30 AM at 38 S. Scott Avenue, Courtroom 446, Tucson, AZ](#)
- [ORDER Setting Expedited Hearing on Emergency Motion for Interim Order Authorizing Use of Cash Collateral signed on 3/28/2011 \(related document\(s\)\[209\] Motion to Approve Use of Cash Collateral\) Hearing set for 3/30/2011 at 09:30 AM at 38 S. Scott Avenue, Courtroom 446, Tucson, AZ](#)

*To access copies of all significant documents filed in these bankruptcy cases,
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http://www.chapter11cases.com/Transwest-Resort-Properties-Inc_c_116.html#axzz1Hwb5RKR2