



Honorable August B. Landis
United States Bankruptcy Judge



Entered on Docket
May 31, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 22-11824-abl
)	
FRONT SIGHT MANAGEMENT, LLC,)	Chapter 11
)	
Debtor.)	
)	Hearing Date: May 27, 2022
)	Hearing Time: 9:30 a.m.
)	
)	

INTERIM ORDER ON DEBTOR’S EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS: (I) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING, (II) GRANTING PRIMING LIENS AND ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE DEBTOR’S USE OF CASH COLLATERAL, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF

On May 27, 2022 at 9:30 a.m., an interim hearing (“Interim Hearing”) was held before the Honorable August B. Landis, Chief United States Bankruptcy Judge for the District of Nevada, for the Court to consider the *Emergency Motion for Entry of Interim and Final Orders: (I) Authorizing Debtor to Obtain Post-Petition Financing, (II) Granting Priming Liens and Administrative Expense Claims, (III) Authorizing the Debtor’s Use of Cash Collateral, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Doc. #4] (“Motion”) filed by Front Sight Management LLC, the chapter 11 debtor in possession herein (“Debtor”). By the Motion, the Debtor sought the following: (1) interim approval of post-petition financing (“DIP

1 Financing”) from FS DIP, LLC (“Lender”), (2) granting priming liens and administrative
2 expense claims, (3) authorization to use cash collateral on an interim basis, (4) the setting of a
3 final hearing on the relief requested in the Motion, and (5) final approval of the debtor in
4 possession financing and use of cash collateral after a final hearing on the Motion. Appearances
5 were made as noted on the record.

6 The Court has reviewed the Motion, the declarations and other documents filed in support
7 thereof, the pleadings and other documents filed in opposition thereto, the arguments and
8 representations of counsel at the Interim Hearing, and any evidence presented at the Interim
9 Hearing. The Court has specifically considered the Statement of Objections to Proposed Order
10 in Accordance with Local Rule 9021(b)(2) (“Order Objection”) filed by counsel for Las Vegas
11 Development Fund, LLC (“LVDFL,” ECF No. 46).¹ The Court has also considered the
12 responsive Declaration of Susan K. Seflin as amended (ECF Nos. 47 and 48, collectively the
13 “Seflin Declaration”).

14 Local Rule 9021(b)(2) provides generally that “[u]less the court orders otherwise, parties
15 will have three (3) business days from receiving proposed orders to communicate their approval
16 or disapproval to the transmitting attorney,” then “the disapproving party shall have five (5)
17 business days from receipt of the proposed Order to serve and file a detailed statement of
18 objections with the proposed order and an alternate proposal for the order,” then “[a]ny response
19 to the objection must be filed within five (5) business days after the objection is filed.”
20 (Emphasis added). In the vast majority of cases, the process and procedure spelled out in Local
21 Rule 9021(b)(2) works well.

22 But not here. Exigency is present. All interested parties, including without limitation the
23 Debtor and LVDFL, know it. Payment of the wages of 135 employees of the Debtor is
24 dependent upon the prompt entry of an order consistent with the Court’s ruling on the Motion
25 made during the May 27, 2022 Interim Hearing. The Court has the benefit of the Order

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27 ¹ In this Order all references to “ECF No.” are to the numbers assigned to the documents
28 filed in the bankruptcy case identified in the caption as they appear on the docket maintained by
the Clerk of the Court.

1 Objection filed by LVDFL, the responsive Sefflin Declaration, and is fully mindful of its own
2 intent in ruling on the Motion at the Interim Hearing. On the record before it, the Court
3 expressly “orders otherwise” under Local Rule 9021(b)(2), and in lieu of the usual procedure for
4 order preparation under that rule, enters this Order as its own.

5 Based on the review and consideration and for the reasons stated on the record,² **THE**
6 **COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**
7 **CONCLUSIONS OF LAW:**

8 A. **Petition Date.** On May 24, 2022, the Debtor filed a voluntary petition under
9 chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its
10 affairs as a debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

11 B. **Jurisdiction and Venue.** The Court has subject matter jurisdiction to consider
12 this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28
13 U.S.C. § 157(b)(2)(A), (D) and (M). The statutory predicates for the relief sought herein are
14 Section 105, 361, 362, 363, and 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(b),
15 6004, and 9014, and Local Rule 4001. Venue is proper before this Court pursuant to 28 U.S.C.
16 §§ 1408 and 1409.

17 C. **Notice.** Notice of the Interim Hearing and the relief requested in the Motion was
18 provided by the Debtor by electronic mail, overnight mail, or electronic delivery through the
19 Court’s CM/ECF system, on May 25, 2022 [Doc. #30], to: (i) the Office of the United States
20 Trustee for the District of Nevada (“US Trustee”), (ii) the Debtor’s 20 largest non-insider
21 unsecured creditors, (iii) the Lender and counsel to Lender, and (iv) all parties known by the
22 Debtor to assert liens or security interests in the assets of the Debtor (“Noticed Parties”). Under
23 the circumstances, such notice of the Motion, the relief requested therein and the Interim Hearing

24 ² As contemplated by FED. R. CIV. P. 52(a)(1), made applicable in Debtor’s bankruptcy
25 case by operation of FED. R. BANKR. P. 9014(a) and (c) and 7052, the Court’s findings of fact
26 and conclusions of law as stated on the record during the Interim Hearing on the Motion are
27 incorporated herein by this reference. To the extent any of the Court’s rulings, findings of fact,
28 or conclusions of law set forth on the record at the Interim Hearing differ from what is reflected
in this Interim Order, the terms set forth on the record at the Interim Hearing shall control. To
the extent that the record at the Interim Hearing is silent as to any legal or factual issue addressed
in this Interim Order, the terms of this Interim Order shall control.

1 complies with Bankruptcy Rule 4001(b), (c) and (d) and the Local Rules.

2 D. **Interim Approval of the Motion.** Based upon the Motion, all relevant pleadings
3 filed with this Court, and the record made at the Interim Hearing, the Court granted the Motion
4 on an interim basis, authorized post-petition financing not to exceed \$600,000 on an interim
5 basis, and granted related relief.

6 E. **Final Hearing.** The final hearing on the Motion will be held pursuant to the
7 authorization of Bankruptcy Rule 4001 and Local Rule 4001 on June 24, 2022 at 9:30 a.m.
8 (“Final Hearing”). The Debtor may file a supplement to the Motion by June 3, 2022. Any
9 opposition to the Motion (or any supplement thereto) must be filed by June 10, 2022. Any reply
10 to any opposition must be filed by June 20, 2022. Upon entry of this Order, the Debtor is to serve
11 notice of the Final Hearing on the Noticed Parties via regular mail or e-mail.

12 F. **Budget and DIP Financing.** The budget attached as **Exhibit 3** to the Motion
13 (“Budget”) will allow the Debtor to operate, and to pay post-petition operating expenses incurred
14 in the ordinary course of its chapter 11 case, subject to the terms of this Interim Order.

15 G. **Need for Funding.** Based upon the pleadings and proceedings of record in the
16 case, Debtor does not have sufficient available sources of working capital and financing to carry
17 on the operation of its business without the DIP Financing and authorized use of Cash
18 Collateral.³ As a result of the Debtor’s financial condition, the use of Cash Collateral alone will
19 be insufficient to meet the Debtor’s immediate postpetition liquidity needs. The Debtor’s ability
20 to continue its postpetition operations is dependent on the DIP Financing. The Debtor’s ability to
21 finance its operations postpetition is essential to preserving the going concern value of the
22 Debtor’s business, maximizing the value of its estate for the benefit of all stakeholders, and
23 paying its employees. Approval of the DIP Financing on an interim basis is in the best interest of
24 the Debtor, its estate, and its creditors.

25 H. **No Credit on More Favorable Terms.** Debtor is unable to obtain financing on
26 terms more favorable than the terms offered by the Lender. Debtor is likewise unable to obtain

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28 ³ Any capitalized term that is not defined herein has the same meaning as set forth in the Motion.

1 sufficient unsecured credit allowable as an administrative expense under §§ 364(a), 364(b), or
2 503(b)(1) of the Bankruptcy Code. The Debtor is also unable to obtain secured credit under
3 Sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) without granting to the Lender (i) priming
4 first priority, valid, bidding, enforceable and non-avoidable postpetition security interests and
5 liens (collectively, “DIP Liens”), senior and superior in priority to all other liens existing on the
6 Petition Date in all of the Debtor’s assets, and (ii) a superpriority claim under Section 364(c)(1),
7 (iii) automatically perfected liens under 364(c)(1), 364(c)(2), 364(c)(3) and 364(d).

8 I. **Use of Cash Collateral.** An immediate and critical need exists for the Debtor to
9 use the Cash Collateral (in addition to the DIP Financing) in accordance with the Budget to
10 continue to operate its business, pay wages, and generally conduct its business affairs so as to
11 avoid immediate and irreparable harm to its estate and the value of its assets.

12 J. **Good Cause.** The relief granted in its Interim Order is necessary, appropriate, in
13 Debtor’s best interests, and will benefit the Debtor, its creditors and its estate, as its
14 implementation will, among other things, provide the Debtor with the necessary liquidity to (1)
15 allow the Debtor to operate its business, (2) minimize any disruption to the Debtor’s business
16 and ongoing operations, (3) provide reassurance to the Debtor’s vendors, and (4) preserve and
17 maximize the value of the Debtor’s estate.

18 K. **Good Faith.** There is not a sufficient evidentiary record for the Court to make a
19 Section 364(e) “good faith” finding on an interim basis.

20 L. **Immediate Entry.** Sufficient cause exists for immediate entry of this Interim
21 Order pursuant to Bankruptcy Rules 4001(a)(3), 6004(h) and 7062.

22 Based on the foregoing, and upon the record made before this Court at the Interim
23 Hearing, and good and sufficient cause appearing therefore,

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

25 1. **Motion Granted in Part.** The Motion is granted in part on an interim basis to the
26 extent provided in this Interim Order. The Court’s Interim Order shall be effective immediately
27 upon entry.

28 2. **Authorization to Borrow/Use of Cash Collateral.** Pursuant to this Interim

1 Order, the Debtor is immediately authorized to borrow from the Lender up to an aggregate
2 principal amount of \$600,000 (“Advance”), subject to and in accordance with the terms of this
3 Interim Order and (b) subject to the Permitted Variance, the Debtor is authorized to use the
4 proceeds of the DIP Financing and the Collateral (including the Cash Collateral) in accordance
5 with the terms of this Interim Order and the Budget.

6 3. **Termination.** Debtor’s authority to use the DIP Financing or any Collateral,
7 including Cash Collateral, and the Lender’s commitment to make DIP Financing available
8 beyond the \$600,000.00 Advance provided for in this Interim Order, shall terminate on June 24,
9 2022 absent further Court order.

10 4. **Interest on the DIP Financing Advance.** The rate of interest to be charged on
11 the \$600,000.00 DIP Financing Advance authorized by this Interim Order shall be 9.5% per
12 annum and shall accrue as payment in kind except the Lender’s fees and costs, which shall be
13 paid as set forth in the Loan Documents, or as otherwise agreed by the parties as set forth in the
14 Loan Documents.

15 5. **Superpriority Claim.** In accordance with Section 364(c)(1) of the Bankruptcy
16 Code the Lender shall have a superpriority administrative expense claim against the Debtor, in
17 an amount not to exceed the amount of the Advance authorized under this Interim Order
18 (“Superpriority Claim”), with priority in payment over any and all administrative expenses,
19 adequate protection claims, diminution claims and all other claims against the Debtor, now
20 existing or hereafter arising, of any kind whatsoever, including, without limitation, any and all
21 administrative expenses or other claims of the kinds specified or ordered pursuant to any
22 provisions of the Bankruptcy Code, including pursuant to Sections 105, 326, 328, 330, 331, 364,
23 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise, including those resulting
24 from the conversion of this case pursuant to Section 1112 of the Bankruptcy Code, whether or
25 not such expenses or claims may become secured by a judgment lien or other non-consensual
26 lien, levy or attachment. For purposes of Section 1129(a)(9)(A) of the Bankruptcy Code, the
27 Superpriority Claim shall be considered an administrative expense allowed under Section 503(b)
28 of the Bankruptcy Code against Debtor, and shall be payable from and have recourse to all

1 prepetition and postpetition property of the Debtor.

2 6. **DIP Liens.** As security for all DIP Obligations under this Interim Order, Lender
3 is hereby granted (effective upon the date of this Interim Order, without the necessity of the
4 execution by the Debtor or the filing or recordation of liens, security agreements, lock box or
5 control agreements, financing statements, or any other instruments or otherwise) valid, priming,
6 binding and fully perfected, security interests in and liens (“DIP Liens”) upon all present and
7 after-acquired property of the Debtor of any nature whatsoever, real or personal, tangible,
8 intangible, or mixed, now existing or hereafter acquired, whether existing prior to the Petition
9 Date or arising thereafter, and all other property of the estate within the meaning of Section 541
10 of the Bankruptcy Code, including, without limitation, any tort claims, the Cash Collateral and
11 Prepetition Collateral (collectively “Collateral”) to an extent and in an amount not to exceed the
12 Advance authorized under this Interim Order.⁴ For clarity and avoidance of doubt, during the
13 interim period, “Collateral” shall not include any property recovered as a result of transfers or
14 obligations avoided or actions maintained or taken pursuant to (among others) Sections 506(c),
15 542, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of Bankruptcy Code (“Avoidance
16 Actions”).

- 17 a) **First Lien on Unencumbered Property.** Pursuant to Section 364(c)(2) of
18 the Bankruptcy Code, the DIP Liens shall constitute a valid, binding,
19 continuing, enforceable, fully perfected first priority senior lien upon and
20 security interest in all of the Debtor’s right, title, and interest in, to and
21 under any such Collateral, to an extent and in an amount not to exceed the
22 Advance authorized under this Interim Order;⁵ and
- 23 b) **Priming Liens.** Pursuant to Section 364(d) of the Bankruptcy Code, the
24 DIP Liens shall constitute a valid, binding, continuing, enforceable, fully

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26 ⁴ For clarity and avoidance of doubt, the amount and extent of the priming portion of
27 DIP Liens on any of the Collateral shall not exceed \$600,000.00, absent further order of the
28 Court.

⁵ For clarity and avoidance of doubt, the amount and extent of the DIP Liens on any of
Debtor’s unencumbered property shall not exceed \$600,000.00, absent further order of the Court.

1 perfected first priority priming lien upon and security interest in all of the
2 Debtor's right, title, and interest in, to and under all Collateral senior to the
3 Lender's Liens to an extent and in an amount not to exceed the Advance
4 authorized under this Interim Order.⁶

5 Upon entry of this Interim Order, the DIP Liens shall be deemed to be automatically perfected as
6 of the Petition Date, without the need for further action of any kind: provided, however, that if
7 the Lender determines, in its sole discretion, to file any financing statements, notice of liens,
8 mortgages or any other similar instruments, the Debtor will cooperate and assist in such filings
9 and the automatic stay shall be lifted without the need for further order of this Court to allow
10 such filings. Other than the aforementioned limited stay relief, no other waivers of modifications
11 of Bankruptcy Code provisions related to the automatic stay are allowed on an interim basis.

12 7. **Findings of Fact and Conclusions of Law.** This Interim Order constitutes, where
13 applicable, findings of facts and conclusions of law and shall take effect and be fully enforceable
14 immediately upon the entry thereof. Findings of fact shall be construed as conclusions of law,
15 and conclusions of law be construed as findings of facts, pursuant to Bankruptcy Rule 7052.

16 8. **All Rights Reserved.** All rights are reserved with respect to the DIP Financing.

17 9. **Final Hearing.** The Bankruptcy Court shall hold a hearing to determine the final
18 approval of the Loan Documents, the Budget and the relief requested by the Debtor in the
19 Motion on June 24, 2022 at 9:30 a.m.

20 10. **Retention of Jurisdiction.** The Court shall retain jurisdiction to hear and
21 determine all matters arising from the implementation of this Interim Order.

22 11. **LR 9021(b)(1).** The Court has waived the requirement set forth in LR 9021(b)(1)
23 for all parties present at the hearing except for counsel for the United States Trustee, counsel for
24 FS DIP, LLC and counsel for Las Vegas Development Fund, LLC.

25 **IT IS FURTHER ORDERED THAT** the 21-day time period imposed by Bankruptcy
26 Rule 6003 is waived to avoid immediate and irreparable harm.

27 _____
28 ⁶ For clarity and avoidance of doubt, the amount and extent of the priming portion of
DIP Liens on any of the Collateral shall not exceed \$600,000.00, absent further order of the
Court.

IT IS SO ORDERED.

Copies sent to all parties via CM/ECF Electronic Filing.

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