

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

In re:)	
)	
)	Case No. 12-22602
DICKINSON THEATRES, INC.,)	
a Kansas corporation,)	Chapter 11
)	
Debtor.)	

MOTION OF DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS: (A) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING FROM 6801 WEST 107TH, LLC; (B) GRANTING LIENS AND SUPERPRIORITY CLAIMS IN FAVOR OF 6801 WEST 107TH, LLC; AND (C) SCHEDULING A FINAL HEARING

Dickinson Theatres, Inc., debtor and debtor-in-possession (collectively, the "Debtor"), by and through its undersigned counsel, hereby represents to this Court as follows:

Preliminary Statement

1. By this motion (this "Motion"), the Debtor requests entry of interim and final orders (together, the "DIP Orders") authorizing Debtor to, among other things: (i) obtain post-petition financing pursuant to Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 507 of Title 11 of the United States Code 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Rule 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") on an interim basis and on a final basis, for the sole purpose of obtaining post-petition financing in the amount up to \$500,000.00 from 6801 West 107th, LLC ("6801 West") (in its capacity as the DIP Lender, the "DIP Lender") (the "6801 West DIP Facility"). This Motion further seeks authority for the Debtor to grant non-priming liens to 6801 West as DIP Lender to secure the 6801 West DIP Facility. Pending a final hearing on this Motion (the "Final Hearing"), the 6801 West DIP Facility will be issued on an interim basis pursuant to the terms of that certain Application and Agreement for DIP Borrowing, by and between the Debtor and 6801 West as

the DIP Lender, in substantially the same form as used by People's Bank for its DIP Facility¹ (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "6801 West DIP Credit Agreement").

Jurisdictional Statement

2. The Court has jurisdiction over the Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (D). Venue of this Chapter 11 case in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory and rule based predicates for the relief requested herein are Sections 105(a), 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 507 of the Bankruptcy Code and Rule 2002 and 4001 of the Bankruptcy Rules.

Background

4. On September 21, 2012 (the "Petition Date"), the Debtor filed its voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code, commencing the Debtor's Chapter 11 case (the "Chapter 11 Case"). The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

5. With its voluntary petition, the Debtor contemporaneously filed this Motion and an Emergency Motion for Expedited Hearings on Certain Motions and Applications (the "Hearing Motion"), wherein the Debtor requests an expedited hearing on, *inter alia*, this Motion.

¹ Along with this Motion, the Debtor filed contemporaneously its *Motion for Entry of Interim and Final Orders: (A) Authorizing Debtor to Obtain Post-petition Financing From People's Bank; (B) Granting Liens and Superpriority Claims in Favor of People's Bank; (C) Authorizing Use of People's Bank's Cash Collateral; (D) Granting Adequate Protection to People's Bank; and (E) Scheduling a Final Hearing* (the "People's Bank DIP Financing Motion").

6. The Debtor operates 18 movie theatres with 210 screens in seven states (the "Business"). All theatres are operated from leased facilities with the Debtor not operating any theatres from owned locations. The Business employs approximately 36 full-time employees, and approximately 650 part-time employees (collectively, the "Employees"), at the various theatres.

7. Contemporaneously with the filing of its Chapter 11 petition, the Debtor filed a plan of reorganization (the "Plan") and disclosure statement ("Disclosure Statement") and requested the Court to schedule hearings on the adequacy of the Disclosure Statement and confirmation of the Plan. The proposed Plan provides for payment of all allowed claims in full with interest over five years.

8. Upon emergence and consummation of the Plan, Debtor will be significantly stronger and better able to compete and thrive in the highly competitive theatre/entertainment market.

Relief Requested

9. The Debtor requests that the Court authorize it to obtain secured post-petition financing consisting of the 6801 West DIP Facility. The Debtor's obligations under the 6801 West DIP Facility will be secured by a junior lien on all assets presently subject to pre-petition liens in favor of lenders other than 6801 West, and junior liens on assets subject to any post-petition liens in favor of People's Bank.

10. The proposed financing will be provided by 6801 West as DIP Lender. The Debtor's obligations thereunder, including obligations to reimburse the DIP Lender for any costs under the 6801 West DIP Facility, will be junior to all liens and obligations under any Pre-petition Credit Agreements (as defined below). As such, the liens created under the 6801 West

DIP Facility are not priming liens with respect to liens currently held by any of the Debtor's pre-petition lenders, as well as any consensual or nonconsensual liens that are junior in priority to the liens securing the Debtor's obligations under the Pre-petition Credit Agreements.

11. Pending entry of the final order authorizing the 6801 West DIP Credit Agreement (the "Final DIP Order"), the Debtor requests that the Court authorize the Debtor, on an interim basis (the "Interim DIP Order"), to: (a) obtain issuance of the 6801 West DIP Credit Agreement; (b) grant to 6801 West as the DIP Lender the liens and superpriority claims described herein; (c) provide adequate protection to any pre-petition lender, as described herein and in the Interim DIP Order; (d) approve the proposed notice of the Final Hearing; and (e) schedule the Final Hearing.

Funding of the Debtor's Operations

12. Prior to the commencement of the Chapter 11 Case, People's Bank, as the Debtor's pre-petition lender ("People's"), made certain loans and other financial accommodations (the "Pre-petition Loan") to Debtor pursuant to (i) those certain Loan Agreements dated as of February 19, 2012 and May 20, 2012 (as amended, supplemented or otherwise modified prior to the date hereof, the "Pre-petition Credit Agreement"), by and between Debtor as the borrower and People's as the lender. In connection with the Pre-petition Credit Agreement, Debtor entered into certain collateral and ancillary documentation with People's (such collateral and ancillary documentation, along with the Pre-petition Credit Agreement are, collectively, the "Pre-petition Credit Documents").

13. As of the Petition Date, the Debtor was indebted under the People's Pre-petition Credit Agreement in the approximate principal amount of approximately \$20,000.00 plus interest accrued and accruing, costs, expenses, fees (including attorneys' fees and legal expenses) other

charges and other obligations, including, without limitation, on account of cash management, credit card, depository, investment, hedging and other banking or financial services.

14. Debtor's obligations under the Pre-petition Credit Documents are secured by (i) first priority security interests in and continuing liens on all inventory, chattel paper, accounts, equipment and general intangibles of the Debtor. All collateral granted or pledged by Debtor to People's pursuant to the Pre-petition Credit Documents shall collectively be referred to herein as the "Pre-petition Collateral."

Proposed DIP Facility

A. Background

15. The Debtor's principal, Ron Horton, was able to procure financing through 6801 West, as 6801 West is wholly owned by JunAnn Horton, as Trustee of the JunAnn R. Horton Revocable Trust dated May 26, 2005. JunAnn R. Horton is Ron Horton's wife.

16. In view of these circumstances, 6801 West as the DIP Lender is willing to issue the 6801 West DIP Facility on the terms and conditions described herein. The Debtor concludes that the 6801 West DIP Facility proposal was desirable because, among other things, it permits Debtor to secure the necessary post-petition financing to continue its operations, and avoid the loss of significant revenues.

B. Negotiations

17. The Debtor and 6801 West engaged in arms'-length negotiations with respect to the terms and conditions of the 6801 West DIP Facility and Interim DIP Order. Importantly, the 6801 West DIP Credit Agreement and Interim DIP Order provide that Debtor may immediately obtain issuance of the 6801 West DIP Facility and any interruption of its Business operations pending entry of the Final DIP Order.

C. Material Terms of the DIP Credit Agreement and the Interim DIP Order²

Borrower: Dickinson Theatres, Inc., a Kansas corporation.
Lender: 6801 West 107th, LLC, a Kansas limited liability company.
Commitment: \$500,000
Borrowing Availability: \$500,000

Restrictions on Use of Credit Facility: General business operations
Maturity Date: Same as People's DIP Facility
Priority and Liens: See paragraph 9 of this Motion
Fees: Same as People's DIP Facility
Interest Rate: Same as People's DIP Facility
Events of Default: Same as People's DIP Facility
Remedies Upon Default: Same as People's DIP Facility
Other Items: Same as People's DIP Facility

The Proposed DIP Facility Should Be Authorized

18. Approval of the 6801 West DIP Facility will provide Debtor with additional operating cash such that it will be able to avoid: (a) irreparable harm to the Debtor's Business; (b) deplete going concern value; and (c) jeopardize its ability to reorganize and maximize value. Accordingly, the timely approval of the relief requested herein on an interim basis is imperative.

19. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or incur debt: (a) with priority over any and all administrative expenses, as specified in Section 503(b) or

² In case of any discrepancy between the terms of this summary of the DIP Facility and the terms of the Interim DIP Order, the Interim DIP Order shall control.

507(b) of the Bankruptcy Code; (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien. *See* 11 U.S.C. § 364. The Debtor proposes to obtain the 6801 West DIP Facility by providing, *inter alia*, superpriority claims, security interests and liens pursuant to Section 364(c)(1), (2), (3) and Section 364(d) of the Bankruptcy Code.

20. With the exception of the People's Bank motion for post-petition financing and use of cash collateral, the Debtor has further been unable to procure acceptable financing other than the 6801 West DIP Facility offered by the DIP Lender, let alone on more favorable terms and conditions than those for which approval is sought herein.

21. Bankruptcy courts grant a debtor considerable deference in acting in accordance with its business judgment. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest"); *see also In re Funding Sys. Asset Mgmt. Corp.*, 72 B.R. 87 (Bankr. W.D. Pa. 1987); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444,449 (D. Colo. 1985).

22. Furthermore, Section 364(d) does not require that a debtor seek alternative financing from every possible lender; rather, the debtor simply must demonstrate sufficient efforts to obtain financing without the need to grant a senior lien. *Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of

unsuccessful contact with other financial institutions in the geographic area); *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (debtor testified to numerous failed attempts to procure financing from various sources, explaining that "most lend money only in return for a senior secured position"); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) (debtor adequately established that some degree of priming of loan was necessary if debtor were to obtain funding).

23. Substantially all of Debtor's assets are encumbered by the People's liens, and Debtor has been unable to procure DIP financing absent granting the proposed superpriority claims and liens. Debtor submits that the circumstances of this case require Debtor to obtain the required 6801 West DIP Facility pursuant to Section 364(c) and Section 364(d) of the Bankruptcy Code and, accordingly, the 6801 West DIP Facility reflects the exercise of its sound business judgment.

24. The terms and conditions of the 6801 West DIP Facility are fair and reasonable and were negotiated extensively by well-represented, independent parties in good faith and at arms' length. Accordingly, 6801 West as the DIP Lender, and all obligations incurred under the 6801 West DIP Credit Agreement, should be accorded the benefits of Section 364(e) of the Bankruptcy Code.

The Automatic Stay Should Be Modified On A Limited Basis

25. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtor to: (i) grant the security interests, liens and superpriority claims described above with respect to 6801 West as the DIP Lender and as to any of the Debtor's pre-petition lenders, as the case may be, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) permit 6801 West as DIP Lender to exercise, upon the occurrence of and during the continuance of an event of default (upon five (5) days' notice of such occurrence and subject to the jurisdiction of this Court), all rights and remedies under the 6801 West DIP Facility, and the DIP Orders; and (iii) implement the terms of the proposed DIP Orders.

26. Stay modifications of this kind are ordinary and standard features of post-petition debtor financing facilities and, in the Debtor's business judgment, are reasonable and fair under the present circumstances.

Interim Approval Should Be Granted

27. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a Debtor's estate pending a final hearing.

28. Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtor requests that the Court conduct an expedited preliminary hearing on this Motion and: (a) authorize the Debtor to borrow under the 6801 West DIP Facility on an interim basis, pending entry of a final order, in

order to (i) obtain the 6801 West DIP Facility, (ii) maintain and finance the ongoing operations of Debtor pending entry of the Final DIP Order, and (iii) avoid immediate and irreparable harm and prejudice to the Debtor's estate and all parties-in-interest; and (b) schedule a hearing to consider entry of a final order.

29. Debtor has an urgent and immediate need for cash to continue to operate. Currently, Debtor does not have sufficient unencumbered funds with which to operate its Business on an ongoing basis. Absent authorization from the Court to obtain secured credit, as requested, on an interim basis pending a final hearing on the Motion, the Debtor will be immediately and irreparably harmed. The availability of use of post-petition secured credit will provide necessary assurance to the Debtor's vendors, employees and customers of its ability to meet its near-term obligations. Failure to meet these obligations and to provide these assurances likely would have a long-term negative impact on the value of Debtor's Business, to the detriment of all parties-in-interest. Accordingly, the interim relief requested is critical to preserving and maintaining the going concern value of the Debtor.

30. To successfully implement the foregoing, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay under Bankruptcy Rule 6004(h).

Notice

31. The Debtor has provided notice of this Motion to: (a) the Office of the United States Trustee (the "U.S. Trustee"); (b) the creditors on the Debtor's lists of twenty (20) largest unsecured creditors; (c) counsel to all pre-petition secured lenders; (d) all known parties with liens of record on assets of the Debtor as of the Petition Date; (e) all financial institutions at which the Debtor maintains deposit accounts; (f) the Internal Revenue Service; (g) the Kansas

Department of Revenue; and (h) all other parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor respectfully submits that no further notice is necessary.

WHEREFORE, the Debtor respectfully requests the court enter an Interim DIP Order substantially in the form outlined in this Motion; and grant Debtor such other and further relief as the court may deem proper.

Dated: September 21, 2012

STINSON MORRISON HECKER LLP

By: s/ Sharon L. Stolte
Sharon L. Stolte, KS #14302
Paul M. Hoffmann, KS Fed. Bar No. 70170
Timothy M. Swanson, KS #24516
1201 Walnut, Ste. 2900
Kansas City, MO 64106
Tel: (816) 691-2456
Fax: (816) 412-9325
sstolte@stinson.com
phoffmann@stinson.com
tswanson@stinson.com

*Proposed Reorganization Counsel for
the Debtor and Debtor-in-Possession*

- and -

ROBERT J. RAYBURN, III,
ATTORNEY AT LAW

Robert J. Rayburn, III, KS #17102
7400 W. 110th Street, Ste. 600
Overland Park, KS 66210
Tel: (816) 215-5567
Fax: (888) 685-2224
robert@rayburngrp.com

*Proposed General Corporate and
Conflicts Counsel for the Debtor and
Debtor-in-Possession*