

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC) Case No. 10-93904-BHL-11
)
Debtor.)

LIMITED OBJECTION TO TRUSTEE'S FINANCING MOTION

Kathryn L. Pry, Chapter 7 Trustee (the "Gibson Trustee") of the Bankruptcy Estate (the "Gibson Estate") of Thomas P. Gibson and Patsy M. Gibson (the "Gibsons"), by counsel, for her *Limited Objection to Trustee's Financing Motion* (this "Objection"), states as follows:

1. On December 1, 2010, the Gibson Trustee was appointed as Chapter 7 Trustee in Case No. 10-93867-BHL-7A pending in this Court. The Gibson Trustee continues to investigate and identify the assets of the Gibsons.

2. The Gibson Estate may have certain claims (the "Gibson Trustee's Claims") against the bankruptcy estate of Eastern Livestock Co., LLC ("ELC"). The Gibson Estate may also have interests in certain assets that are being pursued by James A. Knauer, the Chapter 11 Trustee herein (the "ELC Trustee"), including but not limited to (a) the proceeds from the sale of certain cattle that may have been owned by the Gibsons (the "Cattle Proceeds"), (b) funds that have been interpleaded in Case No. 2:10-cv-00266-J pending in the United States District Court for the Northern District of Texas, Amarillo Division (the "Interpleaded Funds"), and (c) interests in an account maintained in the Gibsons' name at Your Community Bank holding funds in excess of \$4.5 Million, which account was seized on January 19, 2011 by the United States Attorney for the Western District of Kentucky (the "Seized Account Funds").

3. On February 11, 2011, the ELC Trustee filed his *Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing* (Docket No. 271) (the "Financing Motion"), requesting that the Court (a) authorize the ELC Trustee to obtain certain post-petition loans (collectively, the "Trustee Loan") from Fifth Third Bank ("Fifth Third"), (b) authorize the ELC Trustee's use of Fifth Third's cash collateral ("Cash Collateral Use"), (c) authorize adequate protection payments to Fifth Third, (d) modify the automatic stay to the extent required by the other relief requested in the Financing Motion, and (e) enter an protective order with respect to certain information regarding the ELC Trustee's potential claims and litigation strategy.

4. In the Financing Motion, in exchange for the Trustee Loan and the Cash Collateral Use, the ELC Trustee is proposing, among other things, to (a) allow Fifth Third's pre-petition secured claim in full, (b) waive surcharge and disgorgement claims against Fifth Third, (c) immediately pay excess cash collateral to Fifth Third, and (d) grant Fifth Third a super-priority administrative expense claim secured by first-priority liens in and against the bankruptcy estate's causes of action under Chapter 5 of the Bankruptcy Code (the "Chapter 5 Actions").

5. Specifically, the ELC Trustee is requesting an order providing for the "allowance of Fifth Third's pre-petition secured claim with respect to generally all pre-petition assets, including without limitation, all ELC inventory of cattle, equipment, accounts receivable and proceeds." [Financing Motion at ¶ 2(c)(1)]. Further, the requested order would require the ELC Trustee to "make immediate payment to Fifth Third of 'Excess Cash Collateral,' free and clear of any claim or interest by the [ELC Trustee] or any other party or successor in interest . . . including without limitation any asserted right to surcharge or seek disgorgement from Fifth

Third of the Excess Cash Collateral paid to Fifth Third.” [Id. at ¶ 2(a)(3)]. “Excess Cash Collateral” would include funds recovered by the ELC Trustee from certain “Must Do” Actions defined in the Financing Motion, which funds would include the Cattle Proceeds, the Interpleaded Funds and the Seized Account Funds. [Id. at ¶ 1(A)(i)-(vi)]. As explained above, the Gibson Estate may have interests in each of those assets.

6. The Gibson Trustee does not object to (a) Fifth Third providing financing and cash collateral use to the ELC Trustee so that the ELC Trustee can perform his duties in this case or (b) Fifth Third receiving some form of adequate protection for the use of cash collateral. However, the Gibson Trustee respectfully objects to the Financing Motion because it is overly broad with respect to the proposed immediate allowance of Fifth Third’s secured claim, waiver of surcharge and disgorgement claims against Fifth Third, and payment of excess cash collateral to Fifth Third.

7. Due to the infancy of this case and the complexity of the issues and claims herein, it is premature to allow Fifth Third’s prepetition secured claim and to pay the Excess Cash Collateral to Fifth Third. Additional time is needed to review competing claims to determine who would be entitled to any distributions of estate funds, all upon proper applications for such determinations.

WHEREFORE, the Gibson Trustee respectfully objects to the Financing Motion and requests all just and proper relief.

Respectfully submitted,

DALE & EKE, P.C.

By: /s/ Deborah J. Caruso

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2011, a copy of the foregoing *Limited Objection to Trustee's Financing Motion* was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on March 8, 2011, a copy of the foregoing *Limited Objection to Trustee's Financing Motion* was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

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/s/ Deborah J. Caruso
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