

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)	CASE NO.	14-11829
)	CHAPTER	11
RIVER TERRACE ESTATES, INC.)	REG/jd	
)		
Debtor)		

DECISION AND ORDER ON MOTION TO RECONSIDER

On July 24, 2014.

When the debtor filed this Chapter 11 case, it also filed a number of first day motions, and a single motion asking that all of them be heard on an emergency or expedited basis. That motion effectively treated all of the first day motions as being of equal urgency and equal priority. That was not the case, as the court noted its order addressing the motion. That order also noted that if a movant is facing a genuine emergency it should be able to allege particular facts – not conclusory allegations – identifying the emergency, the deadline by which action must be taken and the consequences of not meeting it. Debtor’s motion did none of that. Despite its shortcomings, the court did not deny it completely. Rather it combed through the various first day motions in an effort to determine which of them presented a genuine need for expedited treatment. It found three. A motion to use cash collateral, a motion to pay pre-petition employee wages and a motion to waive certain requirements of the U.S. Trustee. It then set those for a hearing on the morning of July 30.

The July 30 date was not chosen at random. In scheduling matters for expedited treatment the court strives to do two things: schedule the matter so creditors and parties in interest can receive as much notice as possible and yet still have the matter heard within any time constraints identified in the motion. Where things like cash collateral are concerned, the court needs to know things such

as what obligations will the debtor have to pay between the date of the motion and the final hearing, what they are for, how much they are anticipated to be and when they will need to be paid. This tells the court how quickly it needs to try to act and why. The rules of procedure specify the amount of notice time otherwise required. The court should then strive to deprive creditors of as little notice as possible and yet still satisfy the genuine needs of the debtor. Debtor's motion for expedited treatment did not identify any particular time constraints nor did the motion to use cash collateral. (The budget accompanying the motion indicated only that its expenses will be \$36,000 during the week of July 26.) The only particular time constraint the court was able to identify was buried in the motion to pay pre-petition wages, almost as an aside, indicating that debtor had payroll due on August 1. Consequently, the court selected July 30, as a hearing date. In the absence of any other information, it seemed that ruling on the motion on that date should give the debtor plenty of time to make payroll two days later.

Debtor has now filed a motion to reconsider that order. July 30 is too far away for the cash collateral hearing. Instead, it wants a hearing on Friday, the 25th or Monday the 28th. (If that was the case, why didn't it say so in its original motion, instead of leaving the court to rummage through its filings and take its best guess at what might meet the debtor's unspecified needs?) This motion to reconsider also points out that the court's original order did not address a motion for post-petition financing and wants that set for a preliminary hearing on the 30th.¹ The motion to reconsider does only a slightly better job of providing the information the court expects, but still lacks the necessary

¹In that, the debtor is correct. The request to consider the motion for post-petition financing on an expedited basis was not made separately as this court requires, nor was it mentioned in the original motion for expedited hearings filed on the morning of the 22nd. It was not mentioned until it was buried in the bowels of an amended motion filed 7 hours later at 6:30 that evening.

particularity. It contains generic references to obligations that must be met, and bills that must be paid, but without providing any detail such as to whom, for what, how much and when. When, of course, is one of the most important criteria for knowing how to address emergency matters. Those are the types of things that the debtor will have to prove at any emergency hearing, see, Fed. R. Bankr. P. Rule 4001(b)(2); (c)(2), and so expecting it to make those allegations in its motion should not be surprising, to say nothing of the requirements of Rule 9013.

As for holding a hearing on Friday the 25th, that is out of the question. There is not sufficient time to give creditors and parties in interest adequate notice of any such proceedings. As for moving the motion to use cash collateral, since that matter has already been scheduled and the debtor should have already served the required notices (it was to be done forthwith) changing that date would generate too much confusion. Furthermore, the debtor has yet to meaningfully identify specific obligations that must be met before the scheduled hearing date. Debtor does, however, represent that while its cash collateral lender cannot consent to the use of cash collateral, it does not object to it either. If that is so, the court would approve a stipulation allowing debtor to use cash collateral to pay particular expenses, between now and the 30th, that states the lienholder has no objection to that use although not consenting to it.

As for holding a preliminary hearing on the 30th on the requested post-petition financing, that request is well-taken and such a hearing will be set by separate order.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court