

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:)
)
AUTO SALES & SERVICE, INC.,)
)
Debtor.)

Chapter 11
Case No. 10-14528-JNF

In re:)
)
GENERAL TRADING COMPANY,)
)
Debtor.)

Chapter 11
Case No. 10-14532-JNF

In re:)
)
FRANK SAWYER CORPORATION,)
)
Debtor.)

Chapter 11
Case No. 10-14533-JNF

In re:)
)
100 STUART STREET LLC,)
)
Debtor.)

Chapter 11
Case No. 10-14534-JNF

In re:)
)
SW BOSTON HOTEL VENTURE LLC,)
)
Debtor.)

Chapter 11
Case No. 10-14535-JNF

(Joint Administration Request Pending)

MOTION OF DEBTORS AND DEBTORS-IN-POSSESSION FOR
ORDER AUTHORIZING (A) MAINTENANCE OF CERTAIN OF THE DEBTORS'
EXISTING BANK ACCOUNTS AND BUSINESS FORMS AND (B) RELATED RELIEF
(Emergency Determination Requested)

SW Boston Hotel Venture LLC (“SW Boston”), General Trading Company (“General Trading”), Frank Sawyer Corporation (“Sawyer Corporation”), 100 Stuart Street LLC (“Stuart Street”) and Auto Sales & Service, Inc. (“Auto Sales” and together with SW Boston, General

Trading, Sawyer Corporation and Stuart Street the “Debtors”),¹ the debtors and debtors-in-possession in the above-captioned Chapter 11 case, hereby move the Court for the entry of an order (a) authorizing the maintenance and continued use of certain of the Debtors’ existing bank accounts and business forms and waiving certain United States Trustee operating guidelines relating to bank accounts, and (b) granting an extension of time to comply with Section 345 of the Bankruptcy Code.

The Debtors own and operate a first-class hotel and accompanying parking garage in downtown Boston, Massachusetts. In connection with their businesses, the Debtors utilized several bank accounts for the payment of payroll and expenses. Both of the hotel and the parking garage are managed by third-party contractors pursuant to separate management contracts. In accordance with those contracts, each management company maintains one or more accounts in the name of SW Boston in which amounts earned in the operation of the hotel and the garage are deposited and certain expenses paid. By this motion, the Debtors seek the authority to maintain the prepetition accounts utilized by the respective management companies and one prepetition payroll account. The maintenance of the management accounts is necessary to the continued operations of the hotel and the garage. The maintenance of the payroll account is necessary for General Trading to continue to make payments to the Debtors’ employees. Accordingly, the Debtors aver that the relief requested in this motion is warranted and in the best interests of the Debtors’ estates and creditors.

In further support of this motion, the Debtors respectfully represent as follows:

¹ The Debtors have, simultaneously with this motion, moved for the joint administration of these cases.

JURISDICTION

1. This Court has jurisdiction to consider and determine this application pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On April 28, 2010 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (“Code”) in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

3. The Debtors continue to operate as debtors in possession pursuant to Sections 1107 and 1108 of the Code. As of the date of this Motion, no official committee of creditors has been appointed in any of the Debtors’ cases.

A. The Project.

4. The W Boston Hotel and Residences project (the “Project”) opened on October 29, 2009, and comprises a 350,650 square foot, 26-story building located at 100 Stuart Street in the heart of Boston’s Theatre District. The Project contains the 235-room, four-star Hotel, the 122 condominium units, and a two-level underground parking garage with capacity for 142 vehicles (the “Garage”).

5. The Project was designed by the internationally-known architectural firm of William Rawn and Associates Architects, together with the architect of record TRO/Jung Brannen, Inc.

6. The Hotel is branded as a “W” Hotel – the only W Hotel in New England – and serves Boston’s many national and international business travelers and tourists. The Hotel is operated by Starwood Hotels and Resorts Worldwide, Inc. (“Starwood”) through its affiliate, W

Hotel Management, Inc. (the “Hotel Operator”). The Hotel includes a retail store operated by Wink Retail Group, Inc., an affiliate of Starwood, a signature restaurant operated by Cullinary Concepts (Boston) LLC (the “Restaurant Operator”) at a prominent location along Tremont Street, and will also include a second floor spa with a first floor entrance and related retail space on the Stuart Street side of the Project (the “Spa”). The Hotel is also planned to include a below-grade theme bar/lounge with an entrance adjacent to the spa entrance on Stuart Street (the “Theme Lounge”). The Spa is in the final stages of construction and the Theme Lounge is planned to open in the fall. The Hotel Operator will operate the Spa and the Theme Lounge.

7. The Hotel restaurant, Market by Jean-Georges Vongrichten, is a 6,000 square foot, first-class, full-service restaurant that occupies the entire first floor of the Hotel along Tremont Street. Market is an important amenity for the city’s visitors and theatre-goers.

8. The condominium units consist of 122 studio, one (1), two (2) or three (3) bedroom luxury condominium units. The list prices for the condominium units range from \$600,000 to over \$4,000,000. As of the Petition Date, SW Boston had sold twelve (12) of the condominium units and had entered into binding purchase and sale contracts for eleven (11) units.²

B. The Debtors.

9. SW Boston is a Delaware limited liability company formed by a local family, descendants of the late taxicab/parking businessman Frank Sawyer, to develop and own the Project.

² Details regarding the pending sales are more fully described in the *Debtors’ Motion For Authority to (A) Assume And Consummate Pending Purchase And Sale Agreements For Condominium Units; (B) Make And Consummate New Sales For Condominium Units; And (C) For Related Relief*, which has been filed contemporaneously with this motion.

10. Stuart Street is a Delaware limited liability company that owns 100% of the membership interests in SW Boston. Stuart Street is a single purpose entity formed to own the membership interests in SW Boston.

11. Sawyer Corporation is a Massachusetts corporation that owns approximately sixty-five percent (65%) of Stuart Street. Sawyer Corporation manages Stuart Street.

12. General Trading is a Massachusetts corporation all of whose stock is owned by the Trust. General Trading does business as Sawyer Enterprises, and provides administrative services for the Debtors as well as various non-debtor affiliates of the Debtors. In connection with providing services to the Debtors, General Trading maintains an account in its name from which it makes payroll payments (the "Payroll Account"). The Chief Executive Officer of General Trading is Carol Sawyer Parks, and the Vice President in charge of overseeing the development and operation of the Project is John P. Connolly.

13. Auto Sales is a Massachusetts corporation.

C. Management of The Hotel And Parking Garage.

14. The Hotel is managed and operated by the Hotel Operator pursuant to a management contract with SW Boston dated August 23, 2005, as amended (the "Hotel Contract").

15. Starwood is one of the nation's premier hotel operators. Starwood operates the Westin, St. Regis, and Le Meridian families of hotels, as well as hotel properties operating under the Sheraton and Sherwood banners and 28 first-class hotels carrying the "W" brand. Boston has one of the largest concentrations of Starwood-affiliated hotels in the country, including the Westin Copley Square hotel, Westin Convention Center hotel, and Sheraton hotels, as well as numerous hotels outside of Boston proper.

16. Under the Hotel Contract, the Hotel's revenue (the "Hotel Revenue") is maintained in operating accounts in the name of SW Boston from which the expenses of operating the Hotel, including Starwood's management fee and the Hotel payroll are paid by Starwood (the "Hotel Accounts"). The Hotel Accounts including accounts for operation of the Hotel, credit card deposits, payroll and certain control accounts in connection with the administration of the Debtor's loans. Starwood disburses to SW Boston the Hotel revenue remaining after the payment of the operating expenses of the Hotel. Pursuant to the Hotel Contract, SW Boston and the Hotel Operator agreed to an annual operating plan prior to the Petition Date, and the Hotel is operating in accordance with that plan.

17. The Garage is managed and operated by Ultimate Parking, LLC ("Ultimate") pursuant to a contract with SW Boston dated September 30, 2009, as amended (the "Garage Contract").

18. Under the Garage Contract, the Garage's revenue (the "Garage Revenue") is maintained in an operating account in the name of SW Boston from which the expenses of operating the Garage, including Ultimate's management fee, are paid by Ultimate (the "Garage Account"). The Garage Account is an operating account. The employees of the Garage are employees of Ultimate. Ultimate disburses to SW Boston the Garage revenue remaining after the payment of the operating expenses of the Garage. Pursuant to the Garage Contract, SW Boston and Ultimate agreed to an annual operating plan prior to the Petition Date, and the Garage is operating in accordance with that plan.

D. Events Precipitating The Bankruptcy Filings.

19. The Hotel (including the restaurant) and the Garage opened on October 29, 2009, and have operated at or better than projected. Construction of a portion of the condominium units was completed and closings on those floors commenced immediately. Construction of the remaining floors of the condominium units was completed in January 2010. Sales of the condominium units, however, have been slower than initially projected at the time of the closing of the senior loan on the Project (January 2008) due largely to the nearly unprecedented global economic crisis, the near-collapse of the national capital markets, and the accompanying softening of the residential real estate market.

20. Prior to the Petition Date, SW Boston had extensive discussions with The Prudential Insurance Company of America, on behalf of and solely for the benefit of, and with its liability limited to the assets of, its insurance company separate account, PRISA (“Prudential”) the senior lender on the construction loan for the Project (the “Senior Loan”) regarding the restructuring of the Senior Loan to reflect the dramatic downturn in the global economy, the near collapse of the national and international capital markets for commercial real estate and the dramatic downturn in the local real estate market. Prudential declined to restructure its loan on terms acceptable to the Debtor, thereby exposing the Debtors’ bank accounts and assets to seizure, forcing the Debtors to file these bankruptcy proceedings in order to preserve the value of their assets and their opportunity to reorganize and restructure the Senior Loan.

BASIS FOR REQUESTED RELIEF

21. The relief requested in this Motion will help ensure the Debtors orderly entry into Chapter 11 and will disruption that could unnecessarily distract the Debtors from more important matters during the initial days of these Chapter 11 cases. Moreover, the closing of the Hotel

Accounts or the Garage Accounts would be contrary to the Hotel Contract and the Garage Contract and would likely disrupt the Debtors' businesses, interfering with the Debtors' relationship with guests and patrons.

**REQUEST FOR AUTHORITY TO CONTINUE
UTILIZING EXISTING BANK ACCOUNTS AND BUSINESS FORMS**

22. Prior to the commencement of this case, the Debtors maintained various bank accounts, in addition to the Hotel Accounts and the Garage Account maintained by the Hotel Operator and Ultimate.

23. The Debtor seeks only to allow the Hotel Operator and Ultimate to maintain the existing Hotel Accounts and Garage Account in the name of SW Boston and to utilize the existing Payroll Account to pay its employees. The Hotel Accounts, the Garage Account and the Payroll Account are also collectively referred to in this motion as, the "Bank Accounts."

24. Bankruptcy courts in this jurisdiction have permitted the continued use of pre-petition bank accounts. See, e.g., In re GPX International Tire Corp., Case No. 09-20170 (Bankr. D. Mass. 2009); In re Syratech Corp., Case No. 05-11062 (Bankr. D. Mass. 2005); In re Divine, inc., Case No. 03-11472 (Bankr. D. Mass. 2003); In re Arch Wireless, Inc., Case No. 01-47330 (Bankr. D. Mass. 2001).

25. The Debtors' cash management system includes controls to enable the Debtors to trace funds that pass through the Bank Accounts. The Debtors' personnel will distinguish between prepetition and postpetition checks without closing the Bank Accounts. The Debtors will continue to maintain strict records with respect to all transfers of cash so that it may readily account for all transfers between and among the Bank Accounts.

26. The Debtors would be subject to a substantial administrative burden and expense if they were required to close and reopen the Bank Accounts. Moreover, the postpetition closure

of the Hotel Accounts and the Garage Account will likely impede the Debtors' ability to service customers of the Hotel and Garage.

27. For these reasons, the Debtors request authorization to maintain and continue to use any and all existing stationery, correspondence and business forms associated with the Bank Accounts.

28. The Debtors request that the Court order the banks which administer the Bank Accounts be authorized and directed to maintain, service and administer these accounts.

SECTION 345 INVESTMENT REQUIREMENTS

29. Pursuant to Section 345 of the Bankruptcy Code, any deposit or other investment made by a debtor, except those insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States, must be secured by a bond in favor of the United States Trustee for the relevant district or the deposit of securities of the kind specified in 31 U.S.C. § 9303. Section 345(b) provides, however, that a bankruptcy court may allow alternatives to these approved investment practices "for cause." 11 U.S.C. § 345(b).

30. The Debtors will close all of its accounts except the Bank Accounts.

31. Upon information and belief, each of the Debtors' financial institutions, as well as those at which the Hotel Accounts and Garage Account are maintained, have elected to opt-in to the Transaction Account Guarantee Program and, therefore, one hundred percent (100%) of the balances of the Debtors' accounts shall be guaranteed by the Federal Deposit Insurance Corporation through June 30, 2010. If those circumstances change and the Debtors determine that they are no longer able to comply with the requirements of Section 345, the Debtors will seek such additional relief from the Court as is necessary and appropriate.

32. Notwithstanding the above, due to the number of bank accounts, the state of the Debtors' businesses on the Petition Date, and the present demands upon the Debtors' time, the Debtors request an additional fifteen (15) days from the Petition Date to assure their compliance with Section 345 of the Bankruptcy Code.

NOTICE

33. The Debtors have served this Motion by this Court's ECF System, overnight mail, facsimile or electronic mail, upon (a) all known secured creditors, (b) taxing authorities, (c) the 20 largest unsecured creditors, (d) the Office of the United States Trustee, and (e) all parties who have filed a notice of appearance in this case. In light of the relief requested herein, the Debtors submit that no other or further notice is required.

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WHEREFORE, the Debtors respectfully requests that this Court enter an order: (a) authorizing the Debtors' continued use of the Bank Accounts; and (b) granting the Debtors such other and further relief as this Court deems just and proper.

Respectfully submitted,

AUTO SALES & SERVICE, INC., GENERAL
TRADING COMPANY, FRANK SAWYER
CORPORATION, 100 STUART STREET LLC and
SW BOSTON HOTEL VENTURE LLC

By their proposed counsel,

/s/ Harold B. Murphy

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Dated: May 3, 2010

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EXHIBIT A TO

**MOTION OF DEBTORS AND DEBTORS-IN-POSSESSION FOR
ORDER AUTHORIZING (A) MAINTENANCE OF CERTAIN OF THE DEBTORS'
EXISTING BANK ACCOUNTS AND BUSINESS FORMS AND (B) RELATED RELIEF**

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**ORDER FOR AUTHORITY FOR
(A) MAINTENANCE OF CERTAIN OF THE DEBTORS'
EXISTING BANK ACCOUNTS AND BUSINESS FORMS AND (B) RELATED RELIEF**

This matter having come before the Court on the *Motion by Debtors and Debtors-in-Possession for Authority for (A) Maintenance of Certain of the Debtors' Existing Bank Accounts and Business Forms and (B) an Extension of Debtors' Time to Comply with Section 345 of the Bankruptcy Code* (the "Motion") filed by the above-captioned debtor and debtor-in-possession

(the “Debtor”); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of this Chapter 11 case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that the relief requested is in the best interests of the Debtors’ estate, their creditors and other parties in interest;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED in its entirety.
2. The Debtors are authorized to: (a) designate, maintain, and continue to use the Bank Accounts¹ in the names and with the account numbers existing immediately prior to the Petition Date; provided, however, that the Debtors may close certain such Bank Accounts and open new debtor-in-possession accounts as may be necessary, in the Debtors’ business judgment, to facilitate the Debtors’ Chapter 11 cases; (b) deposit funds in and withdraw funds from such bank accounts by all usual means including, without limitation, checks, wire transfers, automated clearinghouse transfers, and other debits; and (c) treat their prepetition Bank Accounts for all purposes as debtor-in-possession accounts.
3. The Debtors are authorized to utilize their existing checks, and shall arrange for the printing of new checks, when such becomes necessary, with a designation of their debtor-in-possession status.

¹ Capitalized terms not otherwise defined in this Order shall have their meanings given to them in the Motion.

4. The Debtors are directed to maintain records of all transfers within their cash management system so that all transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, its books and records, to the same extent maintained by the Debtors prior to the Petition Date.

5. All banks with which the Debtors maintain bank accounts as of the Petition Date are authorized and directed to maintain, service and administer such Bank Accounts; provided, however, that nothing contained in this Order shall authorize any such bank to honor any check issued or dated prior to the Petition Date, except as otherwise provided by order of this Court.

6. Subject to Section 553 of the Bankruptcy Code, all banks at which the Bank Accounts are maintained are prohibited from offsetting, affecting or otherwise impeding any funds of the Debtor deposited in the Bank Accounts on account of, or by reason of, any claim (as defined in Section 101(5) of the Bankruptcy Code) of any such bank against the Debtor that arose before the Petition Date, absent further order of this Court.

7. The Debtors are granted an additional fifteen (15) days from the Petition Date to come into compliance with Section 345 of the Bankruptcy Code; provided, that if the Debtors determine that they are unable to comply with the requirements of Section 345 within the fifteen (15) day period, the Debtor shall file a motion seeking authority to deviate from such requirements.

8. The Debtors are authorized to take or refrain from taking such actions as are necessary and appropriate to implement and effectuate the relief granted in this Order.

9. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

Dated: _____, 2010

Joan N. Feeney,
United States Bankruptcy Judge

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