

Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
March 08, 2012

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

<p>In re</p> <p>AMERICAN WEST DEVELOPMENT, INC., a Nevada corporation,</p> <p style="text-align: right;">Debtor.</p>	<p>Case No. BK-S-12-12349-MKN</p> <p>Chapter 11</p> <p>ORDER PURSUANT TO 11 U.S.C. §§ 363, 1107 AND 1108 (I) AUTHORIZING CONTINUED USE OF CASH MANAGEMENT SYSTEM, BANK ACCOUNTS AND BUSINESS FORMS; AND (II) GRANTING RELATED RELIEF</p> <p>Hearing Date: March 6, 2012 Hearing Time: 2:00 p.m.</p>
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This Court having reviewed and considered American West Development, Inc.’s (“AWDI” or “Debtor”) motion [Docket No. 17] (the “Motion”)¹ for entry of an order: (a) authorizing AWDI to maintain and continue use of AWDI’s existing Cash Management System, bank accounts and business

¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

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1 forms, (b) authorizing AWDI to treat the existing bank accounts as debtor-in-possession accounts, (c)
2 authorizing and directing depository banks to use their commercially reasonable best efforts to continue
3 to service and administer AWDI's bank accounts without interruption and to honor checks drawn on
4 and transfers made from AWDI's current bank accounts in the ordinary course of business, (d) to the
5 extent permitted by an order of this Court, authorizing and directing depository banks to use their
6 commercially reasonable best efforts to honor any debits made, drawn or issued in payment of
7 prepetition claims, (e) authorizing AWDI to pay post-petition ordinary course bank fees, expenses and
8 charges in connection with AWDI's current bank accounts and other cash management functions, (f)
9 authorizing AWDI to pay outstanding pre-petition fees, expenses and charges arising from AWDI's
10 Cash Management System and bank accounts so long as said amounts were incurred in the ordinary
11 course and would otherwise have been paid in the ordinary course but for AWDI's bankruptcy filing,
12 (g) authorizing AWDI and depository banks to continue to perform pursuant to the terms of any
13 prepetition documents and agreements governing the Cash Management System and AWDI's current
14 bank accounts, (h) reimbursing U.S. Bank for any claims arising before or after the Petition Date in
15 connection with any customer checks deposited with U.S. Bank that have been dishonored or returned
16 as a result of insufficient funds in AWDI's bank accounts (if any), (i) authorizing U.S. Bank to charge
17 back to the Bank Accounts any amounts incurred by U.S. Bank resulting from returned checks or other
18 returned items, regardless of whether such amounts were deposited prepetition or post-petition and
19 regardless of whether the returned items related to prepetition or post-petition items, and (j) granting
20 such other and further relief as is just and proper under the circumstances, the Omnibus Declaration of
21 Robert M. Evans in Support of First Day Motions [Docket Nos. 56 and 57] (the "Omnibus
22 Declaration"), and other papers filed in connection with the Motion; and it appearing that the relief
23 requested in the Motion is in the best interests of Debtor's estate, its creditors and other parties in
24 interest; and the Court having jurisdiction to consider the Motion and the relief requested therein
25 pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein
26 being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court
27 pursuant to 28 U.S.C. §§ 1408 and 1409, and due and proper notice of the Motion having been provided
28 under the circumstances, and it appearing that no other or further notice need be provided; with the

1 Court's findings of fact and conclusions of law stated on the record at the hearing, which are
2 incorporated herein pursuant to Fed. R. Bankr. P. 7052, made applicable to this matter pursuant to Fed.
3 R. Bankr. P. ("Bankruptcy Rule") 9014(c); and after due deliberation and sufficient cause appearing
4 therefore, it is ORDERED that:

5 1. The Motion is GRANTED.

6 2. Debtor is authorized to continue using its integrated Cash Management System as
7 described in the Motion.

8 3. Debtor is authorized to: (a) continue to use, with the same account numbers, all of the
9 bank accounts in existence as of the date of entry of the order for relief (the "Petition Date"), including,
10 without limitation, the Bank Accounts, (b) use, in their present form, all correspondence and business
11 forms (including, but not limited to, letterhead, contracts, purchase orders and invoices), as well as
12 checks and other documents related to the Bank Accounts existing immediately before the Petition
13 Date, without reference to its status as debtor in possession, and (c) treat the Bank Accounts for all
14 purposes as accounts of the Debtor as debtor in possession.

15 4. Except as otherwise expressly provided in this Order and only to the extent funds are
16 available in each applicable Bank Account, U.S. Bank is authorized and directed to continue to use its
17 commercially reasonable best efforts to service and administer the Bank Accounts as accounts of
18 Debtor as debtor in possession, without interruption and in the ordinary course, and to receive, process,
19 honor and pay any and all checks, drafts, wires and automated clearing house transfers issued and
20 drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may
21 be.

22 5. To the extent permitted by an order of this Court other than this Order, U.S. Bank is
23 authorized and directed to continue to use its commercially reasonable best efforts to honor any debits
24 made, drawn or issued in payment of prepetition claims.

25 6. Debtor is authorized to pay to U.S. Bank all post-petition ordinary course bank fees,
26 expenses and charges in connection with the Bank Accounts and the Cash Management System.

27 7. Debtor is authorized to pay any outstanding pre-petition fees, expenses and charges
28 arising from AWDI's Cash Management System and the Bank Accounts so long as said amounts were

1 incurred in the ordinary course and would otherwise have been paid in the ordinary course but for
2 AWDI's bankruptcy.

3 8. Debtor and U.S. Bank are authorized to continue to perform pursuant to the terms of any
4 prepetition documents and agreements governing the Bank Accounts.

5 9. Debtor is authorized to open any new Bank Accounts or close any existing Bank
6 Accounts as it deems necessary and appropriate in its sole discretion.

7 10. Debtor is authorized to reimburse U.S. Bank for any claims arising before or after the
8 Petition Date in connection with any customer checks deposited with U.S. Bank that have been
9 dishonored or returned as a result of insufficient funds in Debtor's Bank Accounts (if any).

10 11. U.S. Bank is authorized to charge back to the Bank Accounts any amounts incurred by
11 U.S. Bank resulting from returned checks or other returned items, regardless of whether such amounts
12 were deposited prepetition or post-petition and regardless of whether the returned items related to
13 prepetition or post-petition items.

14 12. In the event U.S. Bank honors a prepetition check or other item drawn on any Bank
15 Account that is the subject of the Motion either: (a) at the direction of Debtor to honor such prepetition
16 check or item, (b) in a good faith belief that the Court has authorized such prepetition check or item to
17 the honored, or (c) as the result of an innocent mistake made despite implementation of reasonable item
18 handling procedures, U.S. Bank shall not be deemed to be liable to Debtor or to its estate.

19 13. U.S. Bank is permitted to terminate the Cash Management System provided to Debtor
20 upon not less than sixty (60) days prior written notice to Debtor and upon terms reasonably satisfactory
21 to Debtor and U.S. Bank.

22 14. All Cash Management Claims of U.S. Bank shall be accorded the same superpriority
23 status held by Debtor's pre-petition secured creditors, including, without limitation, the same
24 superpriority status held by such secured creditors vis-à-vis Debtor's post-petition debtor-in-possession
25 financing lender.

26 15. Debtor and U.S. Bank are authorized to take all actions necessary to effectuate the relief
27 granted pursuant to this Order in accordance with the Motion. Notwithstanding the possible
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1 applicability of Bankruptcy Rule 6003(b), the terms and conditions of this Order shall be immediately
2 effective and enforceable upon its entry.

3 16. The Court retains jurisdiction with respect to all matters arising from or related to the
4 implementation of this Order.

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6 Prepared and Respectfully Submitted by:

7 **FOX ROTHSCHILD LLP**

8 By /s/Micaela Rustia Moore

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14 APPROVED/DISAPPROVED:

15 **OFFICE OF THE UNITED STATES TRUSTEE**

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17 BY: Athanasios Agelakopoulos

Athanasios Agelakopoulos

18 Trial Attorney for Acting U.S. Trustee,

19 August B. Landis

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

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In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- The Court has waived the requirement of approval in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

ATHANASIOS
AGELAKOPOULOS, OFFICE OF
THE UNITED STATES TRUSTEE

Approved

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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