

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:) CASE NO.: 16-23458-JAD
)
ROYAL FLUSH, INC.,) CHAPTER 11
)
Debtor.)
) Related Docket Nos. 125 and 133
)
) Docket No. 178
)
) Hearing Date: February 14, 2017
) @ 10:00 a.m.
)
) Response Date: February 10, 2017

**STIPULATION AND ORDER CLARIFYING SECOND STIPULATION ALLOWING
USE OF CASH COLLATERAL AND ESTABLISHING ADEQUATE PROTECTION**

AND NOW, come Royal Flush, Inc. (“Debtor” or “Royal”), First National Bank of Pennsylvania (“FNB” or “Bank”), C Swank Enterprises, LLC (“C Swank”), and the Official Committee of Unsecured Creditors of Royal Flush, Inc. (the “Committee”), and stipulate and agree as follows:

RECITALS:

WHEREAS, on December 21, 2016, the Debtor and FNB filed the Second Stipulation Allowing Use of Cash Collateral and Establishing Adequate Protection [Docket No. 125] (the “Second Cash Collateral Stipulation”);

WHEREAS, on December 22, 2016, the Bankruptcy Court entered an Order of Court Approving Second Stipulation Allowing Use of Cash Collateral and Establishing Adequate Protection [Docket No. 133] (the “Order Approving Second Cash Collateral Stipulation”);

WHEREAS, paragraph 10 of the Second Cash Collateral Stipulation provides, among other things, a deadline of January 31, 2017, on or before which creditors, including the Committee or other parties in interest must contest, dispute, and/or object to the liens and claims of FNB, or to assert and/or prosecute claims and/or causes of action against FNB, arising out of or relating to the Loan Documents (as that term is defined in the Second Cash Collateral Stipulation) and/or any transaction by and between the Debtor and C Swank;

WHEREAS, the Debtor, FNB, C Swank, and the Committee have agreed that paragraph 10 was not intended to place a deadline of January 31, 2017 on or before which the Debtor, creditors, and/or the Debtor's bankruptcy estate must contest, dispute, and/or object to the claims of C Swank, or to assert and/or prosecute claims and/or causes of action, or other similar proceedings, against C Swank, arising out of or relating to the Loan Documents and/or any transaction by and between the Debtor and C Swank. The procedures relating to such proceedings, including any limitation periods, were to be governed by applicable law;

WHEREAS, the Debtor, FNB, C Swank, and the Committee desire to clarify the language of paragraph 10 to make clear the intent of the parties as recited above;

NOW THEREFORE, the Debtor, FNB, C Swank, and the Committee stipulate and agree to clarify Paragraph 10 of the Second Cash Collateral Stipulation as follows:

1. Paragraph 10 of the Second Stipulation shall be clarified consistent with the redlines set forth below (said redlines identify the clarifying language compared against the original Paragraph 10):

10. Rights against C Swank. The Debtor and FNB hereby acknowledge and agree that nothing in any order, stipulation and/or similar document executed

and/or entered in the C Swank Bankruptcy Case shall prejudice the Debtor, the Debtor's bankruptcy estate, creditors, and/or parties-in-interest, including the Committee, from contesting, disputing, objecting to, asserting any claims, causes of action and/or defenses, if any, and/or commencing and prosecuting any similar proceedings against C Swank and/or any claims C Swank may possess against the Debtor arising out of and/or relating to the Loan Documents and/or any transaction by and between the Debtor and C Swank. This paragraph shall not be construed to confer standing upon the Committee or any other party-in-interest to commence or prosecute such proceedings. To the extent a party-in-interest, a creditor and/or the Committee desire to contest, dispute, and/or object to the liens and claims of FNB, or to assert and/or prosecute claims and/or causes of action against FNB, arising out of or relating to the Loan Documents and/or any transaction by and between the Debtor and C Swank~~standing is required~~, the Committee or any other party-in-interest seeking standing to commence or prosecute such proceedings, to the extent standing is required, must file with the Court on or before January 31, 2017 a Motion/Application requesting standing, after which deadline they are barred from doing so and all such claims against FNB shall be deemed waived to the extent they existed. For purposes of clarity, a Motion/Application for standing does not need not be decided by the Court on or before January 31, 2017, rather only filed by that date. Should the Court enter an Order conferring standing after January 31, 2017, then such proceeding against FNB may be commenced.

2. All other terms and conditions of the Second Cash Collateral Stipulation remain unaffected by this clarification and remain in full force and affect.

AND NOW, upon consideration of the stipulation and agreement of the Debtor, FNB, C Swank, and the Committee to clarify Paragraph 10 of the Second Cash Collateral Stipulation, it is hereby

ORDERED, ADJUDGED, and DECREED that the stipulation and agreement of the Debtor, FNB, C Swank, and the Committee as set forth above is APPROVED. It is further

ORDERED, ADJUDGED, and DECREED that consistent with the stipulation and agreement of the Debtor, FNB, C Swank, and the Committee, upon entry of this order, Paragraph

10 of the Second Cash Collateral Stipulation shall be stricken in its entirety and replaced with the following:

10. Rights against C Swank. The Debtor and FNB hereby acknowledge and agree that nothing in any order, stipulation and/or similar document executed and/or entered in the C Swank Bankruptcy Case shall prejudice the Debtor, the Debtor's bankruptcy estate, creditors, and/or parties-in-interest, including the Committee, from contesting, disputing, objecting to, asserting any claims, causes of action and/or defenses, if any, and/or commencing and prosecuting any similar proceedings against C Swank and/or any claims C Swank may possess against the Debtor arising out of and/or relating to the Loan Documents and/or any transaction by and between the Debtor and C Swank. This paragraph shall not be construed to confer standing upon the Committee or any other party-in-interest to commence or prosecute such proceedings. To the extent a party-in-interest, a creditor and/or the Committee desire to contest, dispute, and/or object to the liens and claims of FNB, or to assert and/or prosecute claims and/or causes of action against FNB, arising out of or relating to the Loan Documents and/or any transaction by and between the Debtor and C Swank, the Committee or any other party-in-interest seeking standing to commence or prosecute such proceedings, to the extent standing is required, must file with the Court on or before January 31, 2017 a Motion/Application requesting standing, after which deadline they are barred from doing so and all such claims against FNB shall be deemed waived to the extent they existed. For purposes of clarity, a Motion/Application for standing does not need not be decided by the Court on or before January 31, 2017, rather only filed by that date. Should the Court enter an Order conferring standing after January 31, 2017, then such proceeding against FNB may be commenced.

It is further

ORDERED, ADJUDGED, and DECREED that all other terms and conditions of the Second Cash Collateral Stipulation remain unaffected by this Order and remain in full force and affect. It is further

ORDERED, ADJUDGED, and DECREED that a hearing to consider final approval of this stipulation and Order shall be held on **February 14, 2017 at 10:00 a.m.** before Chief Bankruptcy Judge Jeffery A. Deller in Courtroom D, 54th Floor U.S. Steel Tower, 600 Grant Street, Pittsburgh, PA 15219. It is further

ORDERED, ADJUDGED, and DECREED that to the extent any other party-in-interest has an objection to this stipulation and Order, such objections must be filed with the Clerk and served upon the undersigned no later than February 10, 2017, and if no objections are filed, this stipulation and order shall be deemed final. It is further

ORDERED, ADJUDGED, and DECREED that if an objection is timely filed, any deadline/limitation period contained in the original Paragraph 10 of the Second Cash Collateral Stipulation relating only to the time within which the Debtor, the Debtor's bankruptcy estate, creditors, and/or other parties-in-interest, including the Committee, may contest, dispute, and/or object to any claims of C Swank and/or assert any claims and/or causes of action against C Swank arising out of and/or relating to the Loan Documents and/or any transaction by and between the Debtor and C Swank, is tolled pending resolution of said objection. For the purposes of clarity, this tolling does not affect the deadline of January 31, 2017 for a party-in-interest, a creditor and/or the Committee to contest, dispute, and/or object to the liens and claims of FNB, or to assert and/or prosecute claims and/or causes of action against FNB, arising out of or relating to the Loan Documents and/or any transaction by and between the Debtor and C Swank. It is further

ORDERED, ADJUDGED and DECREED that upon entry of this order, counsel for the Committee shall immediately serve this stipulation and order upon the undersigned and the Debtor's creditor matrix and file the appropriate certificate of service.

[SIGNATURE PAGE TO FOLLOW]

BY THE COURT:

January 25, 2017



jsf
Jeffery A. Deller, Chief Judge
United States Bankruptcy Court

Consented to by:

<u>/s/Donald R. Calaiaro</u> Donald R. Calaiaro, Esq. Counsel for the Debtor	<u>/s/John M. Steiner</u> John M. Steiner, Esq. Counsel for the Committee	<u>/s/John B. Joyce</u> John B. Joyce, Esq. Counsel for FNB	<u>/s/Donald R. Calaiaro</u> Donald R. Calaiaro, Esq. Counsel for C Swank
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FILED
1/25/17 11:36 am
CLERK
U.S. BANKRUPTCY
COURT - WDPA