

Hooters casino wins victories in legal battle against creditor

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Wednesday
5 October 2011
4:02 p.m.

Updated
5 Oct. 2011 9:10 p.m.

Depending on who's doing the talking, the bankrupt Hooters Las Vegas hotel-casino is either a financial basket case headed toward foreclosure or it's a business worth saving that investors have already expressed interest in.

Those views were aired Wednesday in U.S. Bankruptcy Court in Las Vegas in the latest showdown between Hooters and its main creditor, Canpartners Realty Holding Company IV LLC.

Hooters was the victor in Wednesday's round of legal wrangling when Bankruptcy Judge Bruce Markell, in successive rulings from the bench, rejected Canpartners' efforts to handcuff Hooters and to speed up the foreclosure process.

The 696-room property on Tropicana Avenue, just east of the Las Vegas Strip, filed for Chapter 11 bankruptcy reorganization and protection on Aug. 1 to block a foreclosure threatened by Canpartners, holder of \$178 million of Hooters' \$181 million face value in debt.

In one ruling, Markell allowed Hooters to hire financial adviser Innovation Capital LLC of El Segundo, Calif., to market the property to debt and/or equity investors. It's to be paid up to \$35,000 per month and a success fee of \$500,000 if it contributes to a deal.

Canpartners complained this plan amounts to a waste of time and money — its cash collateral — as Hooters is worth no more than \$80 million and needs \$40 million to \$50 million in renovations, making it unattractive to investors and foreclosure inevitable in Canpartners' view.

John Knott, who specializes in selling casinos as an executive vice president of brokerage CB Richard Ellis in Las Vegas, testified that attempting to bring in new capital to Hooters Las Vegas doesn't make much sense, given the value of the property and amount of money needed to satisfy creditors.

"The reality is if someone's going to put in the capital here without new equity by existing owners — and my understanding is they are reluctant to do that — why would they not own it?" he said. "It's a stretch to expect a recapitalization to be successful."

But Matthew Sosl, president and a managing director of Innovation Capital, testified Wednesday that even before his firm was formally engaged to work on a recapitalization effort, it had received inquiries about Hooters from potential investors.

Markell approved the hiring of Innovation Capital, ruling Hooters still has lots of leeway as it's protected by the bankruptcy code giving it a 120-day period from the bankruptcy filing to exclusively file a reorganization plan.

The hiring of Innovation Capital is allowed during this period under bankruptcy law giving Hooters the

authority to exercise its business judgment, and Innovation's fees are reasonable, the judge ruled.

Markell also rejected an unusual request by Canpartners that Hooters be required to immediately pay in full some 300 small creditors and vendors. Initially it was thought \$2 million was needed to cover these payments, but Canpartners' attorney Lance Jurich on Wednesday said just \$1.2 million to \$1.4 million is needed.

The request was unusual because in bankruptcy cases, such creditors typically have to wait months or years to get paid — and their payment is usually less than what is owed.

The point of the motion was to narrow the bankruptcy case to a Hooters-Canpartners dispute, which would put Canpartners in a position to speed up its foreclosure attempt.

"The debtor has a fiduciary duty to creditors," Jurich told Markell on Wednesday.

Jurich, who's with the firm Loeb & Loeb LLP in Los Angeles, added this was a "wonderful and unique opportunity" to put a few hundred dollars in the hands of many of the small creditors.

Canpartners has complained Hooters has plenty of cash on hand to make these payments and instead of doing so, it's hoarding the \$9.9 million to pay professionals to fight Canpartners in court and to seek investors to block a foreclosure.

But Gerald Gordon, attorney for Hooters, argued there was more at stake than creditors: Hooters the company and its investors.

"The rehabilitation of the debtor is the purpose of Chapter 11," Gordon said.

Gordon said minority bondholders holding \$3 million of Hooters' debt could be prejudiced by Canpartners' plan, though an attorney for the minority bondholders said they were not taking a position on the matter.

Markell, in denying Canpartners' motion, said the Bankruptcy Code doesn't appear to allow for a debtor to make these types of payments to unsecured creditors before a bankruptcy plan is approved.

"I don't think this motion, procedure or consequence is contemplated in the code," Markell said.

But he noted Canpartners has other options to continue its efforts, such as asking that a trustee be appointed to supervise Hooters or asking the court to permit it to proceed with its foreclosure.

Separately, testimony in court Wednesday indicated the Hooters casino investors — some of whom founded

<http://www.lasvegassun.com/news/2004/aug/17/san-remo-converting-to-hooters-brand/>

the Hooters restaurant chain — are working to recapitalize the property as opposed to selling it, because a sale would have negative tax consequences for them.

But Gordon, of the Las Vegas law firm Gordon Silver, noted there are always tax consequences in such cases and that this is no reason Hooters should be barred from seeking partners or capital.

In what is shaping up to be one of the more acrimonious casino bankruptcy cases, Canpartners has complained the Hooters casino brand has failed, while Hooters calls Canpartners — part of the \$20 billion Canyon Capital Realty Advisors of Los Angeles — an opportunistic investor that picked up most of its Hooters debt for just 22 cents on the dollar.

Hooters lost about \$40,000 in August on net revenue of \$3.6 million and says it's been hurt by the global recession that reduced visitation to Las Vegas — a recession that coincided with additions to the Las Vegas room supply by the likes of CityCenter and the Cosmopolitan.

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