

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In re:	:	
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CARIBBEAN NEEDLE POINT, INC.,	:	Case No. 96-00077 (GAC)
	:	
Debtor	:	Chapter 11
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	:	
EDWIN QUILES CASIMIRO,	:	
RUTH NOEMI COLON LABOY,	:	Case No. 96-01829 (GAC)
	:	
Debtor	:	Chapter 11
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DECISION AND ORDER

As a preliminary matter, James G. Wiles, Esquire, has filed a motion requesting admission pro hac vice as counsel for H. Landau & Company (Dkt. #80). The attorneys for the debtors have objected to his request. Attorney Wiles has previously been admitted pro hac vice before Judge Fuste and Chief Judge Cerezo, of the United States District Court for the District of Puerto Rico. All matters relate to representation of H. Landau & Company. Attorney Wiles has associated with local counsel, who is a member of the bar of this Court and who has an office for the practice of law in Puerto Rico. Local counsel has consented to the association. The Court concludes that Attorney Wiles has experience in federal litigation and more specifically, federal litigation in this jurisdiction. The Court concludes that Attorney Wiles otherwise meets the standards for practice in this Court. Accordingly, the Court will grant his request for

admission pro hac vice, in both related cases.

Before the Court are the motion of debtor, Caribbean Needle Point, Inc., for expedited consideration of a request for super priority (Dkt. #57) and the objection and request for discovery filed by creditor, H. Landau & Company (Dkt. #75). In the case of Edwin Quiles Casimiro and Ruth Noemi Colon Laboy, the Court is considering debtors' motion requesting expedited approval of financing pursuant to 11 U.S.C. § 364(d)(1) (Dkt. #20) and the objections and request for discovery filed by creditor, H. Landau & Company (Dkt. #30).

The motion for expedited consideration of the request for super priority, filed by debtor, Caribbean Needle Point, Inc., indicates that the debtor was awarded a contract with the United States Department of Defense to manufacture military clothing that may provide up to \$11M in revenue in a seventeen month period, which may be twice renewable. Performance of the contract will provide at least 250 garment industry jobs in Southwestern and Western Puerto Rico. The debtor is seeking financing to pay for raw materials needed to perform under the contract. The first payment of approximately \$255,000.00 is due on or before October 12, 1996. The debtor indicated that it negotiated a revolving line of credit of \$500,000.00 with the Economic Development Bank, which could increase to \$1M, subject to performance and approval of shipments by the Department of

Defense. The debtor enclosed a copy of the signed contract with the Department of Defense and the commitment letter with the Economic Development Bank.

The request for approval of financing by debtors, Edwin Quiles Casimiro and Ruth Noemi Colon Laboy, indicates that the debtors have two mortgage notes, each in the amount of \$130,000.00 on a property located in Cabo Rojo. The debtors indicate that the mortgage notes are held in pledge by Danicol Assoc., Inc. and that they secure revolving credit for the operation of Caribbean Needle Point, Inc. The debtors seek to either substitute the Economic Development Bank as the holder of the mortgage notes or to grant the Economic Development Bank a \$260,000.00 mortgage and subordinate Danicol Assoc., Inc. to the mortgage of the Economic Development Bank. The debtors indicate that Danicol Assoc., Inc. consents to either treatment.

The objection filed by H. Landau & Company, indicates that the individual debtors owe a debt to Landau in the amount of \$809,189.00, plus interest. Of this amount, Landau claims that \$210,000.00 is secured by a pledge of stock owned by Edwin Quiles Casimiro in Caribbean Needle Point, Inc. Landau argues that the debtors are not able to protect the secured interest in the stock and that they have not presented evidence that they are unable to obtain unsecured financing.

Landau also claims that the debtors are prohibited from

encumbering the Cabo Rojo property. As a result of litigation that was pending in the United States District Court for the Eastern District of Pennsylvania, Landau produced a copy of an injunction issued by the Honorable William H. Yohn, Jr. The injunction appears to enjoin Edwin Quiles and Ruth Noemi Quiles from selling, pledging, transferring, donating, encumbering or taking further advances from any lender upon the real estate and premises located in Boqueron (the Cabo Rojo property). The injunction originally issued as a temporary restraining order on June 9, 1995. It was continued indefinitely by order entered on June 27, 1995.

The motion requesting expedited consideration was filed on September 27, 1996 by Caribbean Needle Point, Inc. The motion by Edwin Quiles Casimiro and Ruth Noemi Colon Laboy was filed on October 1, 1996. In the case of Caribbean Needle Point, Inc., the Court entered an order indicating that the motion would be granted unless an objection was filed prior to the 8th of October. Landau's objections to both motions were filed on October 7, 1996. Based on the debtors' allegations that the credit was necessary by October 12, 1996, the Court scheduled a hearing for October 11, 1996, at 11:00 a.m. Landau's counsel indicated that he could be available in Puerto Rico for a hearing in the afternoon. He thereafter requested that the hearing be held at 11:30 a.m. and that he be allowed to appear by telephone.

The Court accommodated both requests.

At the hearing held on October 11, 1996, the Court heard arguments by Francisco Moya Huff, on behalf of Caribbean Needlepoint, Inc.; Antonio Fiol Matta on behalf of debtors Edwin Quiles Casimiro and Ruth Noemi Colon Laboy; James Wiles and Nilda M. Navarro on behalf of H. Landau & Company; and Ramona Elliot on behalf of the United States Trustee.

At the hearing the Court concluded that the debtor, Caribbean Needle Point, Inc., has an immediate need for financing to pay for raw materials necessary for the performance of the Department of Defense contract. The hearing was held earlier than 15 days after service of the motions requesting the obtaining of credit, but the Court concluded that there would be an immediate and irreparable harm to the estate, if the financing was not approved on an expedited basis.

The debtors made an offer of proof as to the necessity of financing and their inability to obtain unsecured financing. The officers of Caribbean Needle Point, Inc. were present in Court, as well as the accountant for the corporation. The offer of proof was that the debtors approached two other lenders prior to the Economic Development Bank and that unsecured financing was denied by all three institutions. Landau, relying on In re Reading Tube Industries, 72 B.R. 329 (Bankr. E.D. Pa 1987), argued that even if the debtors testified as to this, it would be

insufficient evidence for the Court to conclude that unsecured financing is unavailable.

This Court concludes that In re Reading Tube Industries is sufficiently distinguishable in that the case involved the priming of liens under 11 U.S.C. § 364(d)(1), rather than the granting of a lien on unencumbered property. Moreover, in In re Reading Tube Industries, the debtor was not prepared to present evidence that it had approached even one lending institution. The debtor relied on the opinion of its Chairman that financing was unavailable.

At the hearing this Court concluded that at the present time it was unprepared to allow the debtors to grant a lien on the Cabo Rojo property. Currently, there appears to be at least \$50,000.00 in equity in the property, with an unknown amount owed to Danicol Assoc., Inc. on the two mortgage notes. There is a significant question as to whether the injunction issued in Pennsylvania precludes the debtors from encumbering this property or even substituting the liens, which would still technically violate the injunction in that the debtors would be obtaining further advances from a lender on the real estate. The United States Supreme Court in Celotex Corp. v. Edwards, 115 S.Ct. 1493, 1501 (1995), suggested that it is up to the court of first instance or a higher court to dissolve or modify an injunction. Unless the debtors' bankruptcy filing allows the estate to evade

the injunction, an issue upon which the debtors presented no legal authority, it would appear that the Cabo Rojo property may not be encumbered.

The U.S. Trustee suggested that the Court create an interim remedy. The U.S. Trustee also argued that at the present time in a liquidation there would only be money for the taxing authorities and based on evidence available, the Department of Defense contract will generate significant money for the estate.

The Court concluded that the only possibility for a reorganization of the debtors would require performance by Caribbean Needlepoint, Inc. under the Department of Defense Contract. The Court indicated that it would approve the debtors' request to incur debt, secured by the machinery and equipment of Caribbean Needle Point, Inc., but that it would not approve a lien on the Cabo Rojo property at this time. The Court indicated that the matter would be revisited, after Landau is granted the opportunity for discovery, on October 23. The Court stated that a separate order would issue.

ORDER

Wherefore, IT IS ORDERED that the motion of attorney, James G. Wiles, for pro hac vice appointment (Dkt. #80) is GRANTED.

Based upon the motions filed, the arguments of the parties and the debtors' offer of proof, IT IS FURTHER ORDERED that the Court approves the request of the corporate debtor, Caribbean Needlepoint, Inc., to incur secured debt. Caribbean Needlepoint, Inc. may borrow up to the sum of \$500,000.00, granting the lender as collateral, a lien over the inventory and equipment of the corporation, subject to any existing liens, and an assignment of the corporation's accounts receivable from the U.S. Department of

Defense contract. This approval is an interim remedy. To the extent that the debtors have also requested that the loan be given an administrative super priority pursuant to 11 U.S.C. § 364(c)(1), this request is DENIED. The request of the debtors to give the lender a first mortgage on real property located in Cabo Rojo, Puerto Rico, is also DENIED. The Court will revisit these issues at the hearing scheduled for October 23, 1996. H. Landau & Company's request for discovery prior to the hearing of October 23, 1996, is GRANTED.

SO ORDERED.

San Juan, Puerto Rico this day of October, 1996.

Gerardo A. Carlo
U.S. Bankruptcy Judge