

Michael R. Johnson (7070)
David H. Leigh (9433)
Elaine A. Monson (5523)
Brent D. Wride (5163)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, 14th Floor
Salt Lake City, UT 84111
(801) 532-1500
Email: mjohnson@rqn.com
Email: dleigh@rqn.com
Email: emonson@rqn.com
Email: bwride@rqn.com

Counsel for the Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:

THE FALLS EVENT CENTER LLC, a
Utah limited liability company,

Address: 9067 S 1300 W, #301
West Jordan, UT 84088,

Tax I.D. No. 90-1023989,

Debtor-in-Possession.

Bankruptcy Case No. 18-25116

Chapter 11

Chief Judge R. Kimball Mosier

[Filed Electronically]

**DEBTOR'S MOTION FOR ENTRY OF ORDER AUTHORIZING PAYMENT OF
CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS**

The Debtor-in-Possession, The Falls Event Center, LLC (the “**Debtor**”), by and through counsel of record in the above-captioned chapter 11 case and pursuant to 11 U.S.C. §§ 105 and 363(b), hereby respectfully files this motion (the “**Motion**”) seeking entry of an order authorizing the Debtor to pay the prepetition claims of two vendors, “Dr. HVAC” and “Knorr Systems” (together, the “**Critical Vendors**”), which are critical to the operation of the Debtor’s business. In support of this Motion, the Debtor relies upon the *Declaration of Neal Bergstrom in Support of Motion to Pay Prepetition Claims of Certain Critical Vendors*, dated November 9, 2018 (the “**Bergstrom Declaration**”), filed contemporaneously herewith, and respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

STATEMENT OF FACTS

3. The Debtor is a Utah limited liability company with its principal place of business in Salt Lake County, State of Utah.
4. The Debtor is operating its business and managing its financial affairs as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been appointed in this case.

5. Part of the Debtor's business consists of an indoor water slide facility located in McMinnville, Oregon, known as Water & Wings Water Park (the "**Water Park**").

6. Two maintenance issues at the Water Park require immediate attention.

Repair of the HVAC System

7. Prior to the Petition Date in this case, the Debtor discovered that the Water Park's HVAC system had deteriorated due, in large part, to improper maintenance of the HVAC system prior to the Debtor's acquisition of the Water Park.

8. The Debtor solicited several bids by various companies to repair the damaged HVAC system and ultimately engaged Dr. HVAC, a repair company located in McMinnville, Oregon, to complete repairs.

9. Dr. HVAC was able to complete a good portion of the repair work to the Water Park's HVAC system prior to the start of the Water Park's busy season, and the Debtor elected to delay the remainder of the repair work because it was unnecessary during the summer.

10. The deterioration of the HVAC system is now to a point where the Debtor can no longer delay the remaining repairs. In addition, the Debtor needs to complete the work before temperatures drop further.

11. However, Dr. HVAC has informed the Debtor that it will not complete the remaining work unless and until its pre-petition invoice in the amount of \$8,578.59 is paid in full.

12. Dr. HVAC's bid was far below other bids provided, and engaging a different contract to complete the work at this stage would cost the Debtor far more in additional costs than the \$8,578.59 Dr. HVAC is seeking.

Filters

13. Health and safety regulations that govern the operation of the Water Park require regular maintenance and replacement of certain filters in the pool and tub areas. Prepetition, the Debtor engaged Knorr Systems to assist with the maintenance work and provide replacement filters. Knorr Systems has a working knowledge of the Debtor's water systems and of the filters required in order for the Debtor to remain in compliance with health and safety standards and requirements. In addition, Knorr Systems is the only source in the nation for the specific filters required by the Debtor's unique filter system.

14. Proper filtration is essential to the Debtor's business and poor or damaged filters cost the Debtor considerable and unnecessary additional expense in the work needed to keep the pool and tub water clean.

15. Knorr Systems has informed the Debtor that it will not continue any additional work or provide any additional filters unless and until its outstanding pre-petition invoice in the amount of \$2,385.83 is paid in full.

Payment of Critical Vendors

16. If the Critical Vendors do not receive payment in full of their prepetition invoice amounts (the “**Critical Vendor Claims**”), they will not continue to provide maintenance services and parts to the Debtor. The termination or disruption of these services will result in material harm to the Debtor and its business and the Debtor’s chapter 11 estate (the “**Estate**”).

17. Payment of the Critical Vendor Claims will allow the Debtor to continue to maintain the safety and comfort of its customers and continue its business and will preserve the value of the Debtor’s business and enterprise for all its stakeholders.

18. The pre-petition amounts sought by the Critical Vendors are relatively small—less than \$11,000. The Debtor (and its creditors) will lose far more than this amount if the Water Park is not able to continue to operate.

Legal Basis for Motion

19. It is well established that a bankruptcy court has the equitable power to authorize the payment of prepetition claims where such payments are necessary to preserve the going-concern value of a debtor’s business, thereby facilitating reorganization. For example, the United States Supreme Court has noted that courts have approved critical vendor orders “that allow payment of essential suppliers’ prepetition invoices.” *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017). The Court stated, “These courts have usually found that the distributions at issue would ““enable a

successful reorganization and make even the disfavored creditors better off.” *Id.* (citation omitted). *See also Miltenberger v. Logansport, Crawfordsville and Southwestern Ry. Co.*, 106 U.S. 286, 311 (1882); *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 (3d Cir. 1972); *In re Just For Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (“The Supreme Court . . . recognize[s] a bankruptcy court’s power to authorize payment of prepetition claims when such payment is necessary for the survival during Chapter 11”).¹

20. Claims are generally allowed critical vendor status if: (a) the payments are necessary to the reorganization process; (b) a sound business justification exists in that the critical vendors refuse to continue to do business with the debtor absent being afforded critical vendor status; and (c) the disfavored creditors are at least as well off as they would have been had the critical vendor order not been entered. *See, e.g. Tropical Sportswear*, 320 B.R. at 17.

21. The Debtor has articulated a sound business justification for paying the Critical Vendor Claims. The Critical Vendors provide essential services to the Debtor in the maintenance and upkeep of the Water Park and in ensuring that the Water Park satisfies health and safety requirements and regulations. If the Debtor is unable to repair its HVAC system and maintain its filtration system, the Debtor will lose business and revenue which will reduce the Debtor’s estate.

¹¹ The “doctrine of necessity” is sometimes referred to as the “necessity of payment” doctrine or “necessity of payment” rule, and falls within a bankruptcy court’s equitable powers under section 105(a) of the Bankruptcy Code. *See Just for Feet*, 242 B.R. at 824.

22. The estate and its creditors will be better off if the Debtor is able to keep the Water Park open by completing the repairs on the HVAC system and by replacing the filters at the Water Park. Furthermore, failure by the Debtor to pay the Critical Vendor Claims will likely result in significant unnecessary cost and expense, thereby causing harm to the Debtor and its estate.

CONCLUSION

For the foregoing reasons, this Court should grant this Motion and authorize the payment of the Critical Vendor Claims and grant the Debtor such addition and further relief as is just and proper.

DATED this 9th day of November, 2018.

RAY QUINNEY & NEBEKER P.C.

/s/ Brent D. Wride _____
Brent D. Wride
Counsel for the Debtor in Possession

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2018, the foregoing Motion was electronically filed and therefore served via ECF on all parties that have entered an electronic appearance in this case.

I further certify that on November 9, 2018, I caused the foregoing Motion to be mailed to the parties requesting notice that are not on the list to receive email notice as follows:

Richard N. Bauer
1789 Bella Lago Drive
Clermont, FL 34711-4634

Albert B Clark
696 East 1220 North
Orem, UT 84097

Alan C. Hochheiser
Maurice Wutscher LLP
2000 Auburn Drive, Suite 200
One Chagrin Highlands
Beachwood, OH 44122

Richard W. Johnston
6855 S. Havana St. #275
Centennial, CO 80112-3813

Gil Miller
Rocky Mountain Advisory
215 South State Street Ste 550
Salt Lake City, UT 84111

State of Oregon
Department of Revenue
955 Center St NE
Salem, OR 97301-2555

/s/ Carrie Hurst
