

Oren Haker (OSB 130162) (*admitted pro hac vice*)

oren.haker@stoel.com

Mark E. Hindley (7222)

mark.hindley@stoel.com

STOEL RIVES LLP

Suite 1100, One Utah Center

201 South Main Street

Salt Lake City, Utah 84111

Telephone: (801) 328-3131

Facsimile: (801) 578-6999

Attorneys for Evergreen Aviation and Space Museum and
The Captain Michael King Smith Educational Institute

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re: The Falls at McMinnville LLC, Debtor.	Case No. 18-25492 Chapter 11 Honorable Chief Judge R. Kimball Mosier
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**OBJECTION TO CREDITOR MEILIN LIU’S MOTION FOR RELIEF FROM STAY
OR IN THE ALTERNATIVE TO PROHIBIT USE OF CASH COLLATERAL**

Pursuant to Local Rule 4001-1(b), Evergreen Aviation and Space Museum and The Captain Michael King Smith Educational Institute (the “*Museum*”) by and through its undersigned counsel, hereby submits this objection (“*Objection*”) to the Motion of creditor Meilin Liu (“*Ms. Liu*”) for Relief from Stay, or in the Alternative, to Prohibit Use of Cash Collateral (“*Liu Motion*”) in the chapter 11 bankruptcy case of The Falls at McMinnville, LLC (“*TFM*” or “*Debtor*”). Dkt. #35.

The Museum’s objection to the Liu Motion is straightforward: to the extent the Liu Motion seeks leave to foreclose on revenues generated from TFM’s interest in real and personal

property in Yamhill County, Oregon, including the Waterpark (“*Property*”), the Motion should be denied because Ms. Liu’s alleged interest in the Property is subordinate to the Museum’s first-priority lien on revenues generated from TFM’s (or alternatively from The Falls Event Center’s (“*TFEC*”) use of such Property. Specifically, the Museum has a first-priority, properly-perfected security interest in all revenues from the Waterpark and from events hosted on the Museum campus by TFM or TFEC, effective as of August 16, 2016, which was properly perfected pursuant to a UCC financing statement filed on November 2, 2017. In support of the foregoing, the Museum filed proofs of claim in the TFM chapter 11 case and the TFEC chapter 11 case.¹

In contrast, Ms. Liu has not shown that she has a security interest in those revenues, let alone a perfected, first-in-time interest in them. Indeed, Ms. Liu has not filed a proof of claim² and has submitted incomplete and contradictory evidence, allegedly showing eleven promissory notes between herself and TFEC.³

¹ The Museum will be filing its own motion for relief from the automatic stay and for adequate protection by January 11, 2019, and in connection with, intends to file declarations in support of its motion that will provide the evidentiary support for the Museum’s assertion that it has a first-priority security interest in the Property’s income.

² Although AmeriAsian Funding LLC is listed as a creditor on TFM’s Schedule D, the claim is listed as “disputed.” Dkt. 18, pg. 20.

³ Exhibit B to the Deed of Trust attached to the Liu Motion lists twelve promissory notes, but only ten of the listed notes appear to be attached as exhibits to the Liu Motion. *See* Liu Motion at 68 (listing notes dated 7/16/15 and 10/3/15 which do not appear to be included with the Motion). Additionally, Ms. Liu’s claim appears to be at least partially unsecured, as one note attached to the Liu Motion is not listed in Exhibit B and therefore presumably not secured by the Deed of Trust. *See* Liu Motion Ex. K (note dated 12/1/217). Additionally, some of the notes attached to the motion are made out to different holders/beneficiaries and the Liu Motion does not explain how these entities are related, if at all. Finally, the note attached as Exhibit H appears to actually be two different incomplete notes. *See* Liu Motion at 40-45. In sum, the documentary support for the Liu Motion is questionable at best. Accordingly, the Museum reserves the right to ask for discovery on Ms. Liu’s claim.

Moreover, even assuming all evidence submitted by Ms. Liu as true, none of the notes submitted with the Liu Motion were secured until a Deed of Trust was recorded on December 15, 2017, allegedly covering certain TFM-owned property in Yamhill County, Oregon. *See* Liu Motion ¶12, Ex. L. First, the Deed of Trust was recorded after the Museum filed its UCC financing statement, and thus even if Ms. Liu has a properly-perfected security interest in the revenue from the Property, her interest is junior and subordinate to the Museum’s interest. Second, Ms. Liu does not have a properly-perfected security interest in the revenue from the Property because she did not file a UCC financing statement. “State law controls the issue of whether a property interest has been perfected.” *Virginia Beach Fed. Sav. & Loan Ass’n v. Wood*, 901 F.2d 849, 852 (10th Cir. 1990); Utah Code 70A-9a-301 (2)-(3) (local law where collateral is located controls). Under Oregon law, an interest in revenue from real property is not perfected until recorded with the Oregon Secretary of State, consistent with Article 9 of the Uniform Commercial Code. *See In re Nendels–Medford Joint Venture*, 127 B.R. 658, 663–64 (Bankr.D.Or. 1991) (denying creditor’s motion to prohibit use of cash collateral because deed of trust was insufficient to perfect security interest in revenue flowing from operations of the business operated on the subject real property); *see also Virginia Beach*, 901 F.2d at 853 (holding mortgage was insufficient to perfect interest in rental income from encumbered real property).

In addition, TFM did not “pledge[] all income proceeds” from the property secured by the Deed of Trust to Ms. Liu. *See* Liu Motion at 9-10 (seeking “an order prohibiting the debtor from using income derived from the property pledged by the debtor”). The Deed of Trust at issue here does not grant Ms. Liu any interest in Debtor’s deposit accounts or income generated from Debtor’s operation of the Waterpark. *See In re Nendels–Medford*, 127 B.R. at 667 (holding a security interest in hotel revenues did not attach by virtue of deed of trust because that document did “not contain a description of collateral which reasonably identifies what this court

believes to be accounts and inventory and the proceeds therefrom”). Thus, Ms. Liu does not have a security interest that has attached to the revenues at issue.

In sum, the Museum has a first-priority, perfected lien on the revenues from the Property that is senior to Ms. Liu’s alleged interest. Accordingly, the Liu Motion should be denied to the extent that it seeks to foreclose upon those revenues.

DATED: January 7, 2019

STOEL RIVES LLP

/s/ Mark E. Hindley

Oren Haker (admitted pro hac vice)

Mark Hindley

Suite 1100, One Utah Center
201 South Main Street
Salt Lake City, Utah 84111
Telephone: (801) 328-3131
Facsimile: (801) 578-6999

Attorneys for Evergreen Aviation and Space
Museum and The Captain Michael King
Smith Educational Institute

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2019 I filed a true and correct copy of the foregoing **OBJECTION TO CREDITOR MEILIN LIU'S MOTION FOR RELIEF FROM STAY OR IN THE ALTERNATIVE TO PROHIBIT USE OF CASH COLLATERAL** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF Users.

- Laurie A. Cayton tr laurie.cayton@usdoj.gov, James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov; Suzanne.Verhaal@usdoj.gov
- Oren Buchanan Haker oren.haker@stoel.com, jennifer.lowes@stoel.com; daniel.kubitz@stoel.com; alyssa.petroff@stoel.com; docketclerk@stoel.com; rene.alvin@stoel.com
- Chad Rasmussen chad@alpinalegal.com, contact@alpinalegal.com
- Richard C. Terry richard@tjblawyers.com, cbcecf@yahoo.com
- Michael F. Thomson thomson.michael@dorsey.com, montoya.michelle@dorsey.com; ventrello.ashley@dorsey.com
- Peggy Hunt hunt.peggy@dorsey.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

I further certify the below parties who are not on the list to receive email notice/service for this case were served by via email the 7th day of January, 2019.

Meilin Liu lumeilin@gmail.com

I further certify the below parties who are not on the list to receive email notice/service for this case were served via U.S. first class mail on the 8th day of January, 2019.

Meilin Liu
2601 Blanding Ave C307
Alameda, CA 94501
lumeilin@gmail.com

Walter Stikel
1211 43rd Ave.
Sacramento, CA 95822

Brent Davies Pulley
2148 E. Caroline Ln.
Tempe, AZ 85284

I further certify that the Notice was mailed by certified United States mail to the Debtors Mailing Matrix in this Bankruptcy case as of this date on the 8th day of January, 2019.

Dated: January 7, 2019

/s/ Robin Noss