IT IS ORDERED as set forth below:

Date: November 3, 2014

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

In re:	:	CASE NUMBER:
LARRY C. MARTIN,	:	**12-43528-MGD**
Debtor.	:	CHAPTER 11
LARRY C. MARTIN, as debtor in possession,	:	
Movant**,**	:	
v.	:	CONTESTED MATTER
KEYSTONE BANK,	:	
Respondent.	:	

ORDER GRANTING DEBTOR'S MOTION TO INTERPRET SETTLEMENT AGREEMENT

A hearing on Debtor's Motion to Interpret Settlement Agreement with Keystone Bank and to Release Some Cash Collateral (Doc. 760) (the "Motion") was held on October 17, 2014. William L. Rothschild appeared for the Debtor and Ashley Thompson appeared for Keystone

Bank. The parties dispute the meaning of certain provisions in the Keystone Bank Settlement Agreement (the "Agreement") approved by the Court on September 9, 2014 (Doc. 624 at 5; approved Doc. 744). At the hearing, the Court ruled in favor of the Debtor's interpretation of the Agreement, and this Order memorializes that that ruling.

I. BACKGROUND

To permit Debtor to continue to operate his businesses post-petition, the Court entered several orders regarding the use of cash collateral in this case. (Order of January 23, 2013, Doc. 78; Order of February 14, 2013, Doc. 104; Order of May 31, 2013, Doc. 223 (collectively, the "Cash Collateral Orders")). Pursuant to the Court's Cash Collateral orders, Debtor asserts he set up two accounts for the operation of a Keystone property. (Motion ¶ 1). The "Red Account" contained all collected rents and represented Keystone's cash collateral. The "Green Account" contained unencumbered funds from which Debtor paid electrical bills and property insurance. (*Id.*)

The portion at issue of the Agreement involves a "Dirt for Debt" surrender of collateral. Section II.A. of the Agreement provides that "[Debtor] Mr. Martin shall surrender the Polk County Property, the Floyd County Property, and the Cash Collateral in full satisfaction of Claim 41 and 42." (Agreement § II.A., Doc. 624 at 8). That provision also allows Keystone to use "all or part of the Cash Collateral to satisfy any past-due or currently due property taxes on the Collateral" prior to "applying the Cash Collateral to the outstanding balance of Keystone's Claims." (*Id.*) The provision does not refer to any other expenses. "Cash Collateral" is defined in Section I.D. as "all net Cash Collateral in the 'Keystone Red Account' arising from any Collateral until its transfer from Mr. Martin." (*Id.* § I.D., Doc. 624 at 7 (emphasis added)).

Debtor filed the instant Motion October 2, 2014, seeking an interpretation of the Agreement that would permit him to retain $15,927.84 for electricity expenses plus $6,132 for insurance expenses from the funds he is required to surrender under the Section II of the Agreement. (Motion, Doc 760). Debtor asserts that "net Cash Collateral" refers to Cash Collateral generated by the Keystone property, net of legitimate expenses spent maintaining the Keystone property. (*Id* at 4).

Keystone filed a response on October 6, 2014 (Doc. 766). Debtor filed a reply on October 14, 2014 (Doc 769).

I. LEGAL STANDARD

This is a question of contract construction governed by Georgia law. (Agreement § III.B, Doc. 624 at 7 (specifying Georgia choice of law)). Under Georgia law, construction of a contract is a pure question of law. O.C.G.A. § 13-2-1. When construing a contract, "[t]he cardinal rule . . . is to ascertain the intention of the parties." O.C.G.A. § 13-2-3. In this case, it appears from presentation at the hearing that the two parties had different expectations of their rights under the contract. Therefore, it is for the Court to determine the intent of the parties in drafting the term at issue.

III. DISCUSSION

The Court begins its analysis by emphasizing that the word "net" must have some meaning. *Young v. Stump*, 353, 669 S.E.2d 148, 150 (Ga. App. 2008) ("[A] court should, if possible, construe a contract so as not to render any of its provisions meaningless." (quoting *VATACS Group v. HomeSide Lending*, 623 S.E.2d 534 (Ga. App. 2005))). For the following reasons, the Court holds that "net" means net of expenses necessary to preserve the property.

First, such an interpretation best fits the overall purpose of the "Dirt for Debt" Agreement. At the hearing, the parties agreed that Keystone is presently oversecured. Therefore, an interpretation of "net" disfavoring Keystone would not subvert the fundamental deal—return of the property and payment in full of the secured claim. However, an interpretation requiring the Debtor to incur out of pocket costs to preserve collateral which he is ultimately surrendering in satisfaction of debt seems to oppose the intent of the parties—surrender of the property for Keystone and a clean break for Debtor.

Second, even if Debtor did not pay for these expenses, Keystone would have likely acted on its own to preserve its collateral and remain oversecured. If Debtor did not pay for insurance, Keystone would likely have force-placed it. If Debtor did not pay the electricity bill, tenants would likely have withheld rent, reducing the gross Cash Collateral receipts available to Keystone.

Finally, if Debtor had come to court and ask to use the Cash Collateral for such purposes without the consent of Keystone, the answer would have been yes anyway. The Court will not interpret the Agreement to require meaningless gestures by Debtor to the further detriment of the Estate.

IV. CONCLUSION

For the foregoing reasons, it is

ORDERED that Debtor's Motion to Interpret Settlement Agreement With Keystone Bank and to Release Some Cash Collateral (Doc. 760) is **GRANTED**.

It is **FURTHER ORDERED** that Debtor may deduct $15,927.84 for electricity plus $6,132 for insurance from the remaining funds in the "Keystone Red Account" prior to

surrendering the remaining funds in that account pursuant to the terms of the Settlement Agreement approved by the Court on September 9, 2014 (Doc. 744).

The Clerk is directed to serve a copy of this Order upon Movant, Debtor, and their respective Counsel.

END OF DOCUMENT