

Banks ask judge to protect Cooker assets

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Concerns over keeping the power on and thieves out at more than 20 closed Cooker restaurants yesterday prompted two banks to ask a Nashville federal judge to appoint a receiver to protect their interests.

Nashville's Cooker Restaurant Corp. went out of business one week ago, taking employees and customers by surprise. The chain had four restaurants in the Nashville area among 20 that were still operating when the end came.

About 20 months ago, the company had emerged from an earlier Chapter 11 bankruptcy filing, but high debt and a tough restaurant market continued to hold the chain back, company officials said.

The Cooker chain owes the lenders — Banc of America Strategic Solutions Inc. and Beal Bank — \$31.1 million in principal and interest, the banks said in a complaint filed yesterday in U.S. District Court in Nashville. The banks secured their loans through mortgages or liens on the chain's real estate, equipment and other property.

"We've asked for an early hearing," said one of the bank's attorneys, Marc McNamee. "We're trying to preserve these assets for the benefit of those who hold the collateral." Without a receiver, the collateral's value could erode, he said.

Cooker corporate attorney Davis Carr said the chain may not object to the banks' request.

"Somebody needs to protect" the property, he said. The banks' action was neither a surprise nor "particularly controversial," Carr added. The real estate includes 27 Cooker restaurants in Tennessee, Michigan and Ohio, including some units closed earlier as Cooker struggled to make a go of it financially.

The banks' court filing sheds more light on Cooker's last days, as well as on what's happened since the closures.

The banks say unnamed Cooker officers told a Banc of America official on April 28 that the restaurants would cease operations at the end of that business day.

"The reason given was that the Cooker had run out of cash and thus could not continue its operations," the complaint said.

The next day, executive Roger Gore of Banc of America learned that "all of the members of the board of directors of Cooker had resigned, as had the president."

In the days to follow, the Banc of America unit learned that Cooker's insurance was being canceled and that checks for utility bills were bouncing. In addition, at least one break-in occurred at a Cooker site, court documents say.

"The premises are not secured at this time," the complaint reads. "The inability to secure the premises continues the risk of loss due to theft or vandalism."

A court-appointed receiver handles business for a company that's unable to do so, much as a conservator or guardian acts on behalf of a person who is ill or otherwise cannot manage their own affairs, said Nashville attorney David Raybin, who isn't involved in the Cooker matter.

The federal court complaint follows a Bankruptcy Court filing last week in Columbus, Ohio. In that case, other creditors have alleged there's a \$2.4 million shortfall in a bank escrow account that should have contained Cooker tax re-funds to pay their claims. Cooker representatives have declined to comment on that case.