

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In Re:)	Case No. 15-51468
)	
531 Tunxis Hill Associates, LLC,)	Chapter 11
)	
Debtor)	
)	RE: ECF No. 133
531 Tunxis Hill Associates, LLC,)	
Debtor/Movant)	
v.)	
)	
Connecticut Community Bank, N.A. d/b/a)	
Westport National Bank and Town of)	
Fairfield,)	
Respondents)	
)	

ORDER PURSUANT TO BANKRUPTCY RULE 4001(b)(2)
AUTHORIZING USE OF CASH COLLATERAL AND
GRANTING ADEQUATE PROTECTION PENDING FINAL HEARING

Upon the Third Motion Seeking Authority to Use Cash Collateral Pursuant to 11 U.S.C. § 363(c) (the “Third Cash Collateral Motion”) filed by the Debtor wherein the Debtor seeks authorization (1) to use, sell or lease cash collateral and (2) to provide adequate protection to entities which have or may have an interest in the cash collateral of the Debtor, and upon the hearing held in respect of the Third Cash Collateral Motion on November 8, 2016, and based upon the Third Cash Collateral Motion and the request by the Debtor, and due notice of the Third Cash Collateral Motion having been given, and

IT BEING REPRESENTED THAT:

A. On October 20, 2015 (hereinafter the “Petition Date”), the Debtor commenced a case under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Section 101 et. seq. (the “Bankruptcy Code”), and has continued in the management and

control of its business and property as a debtor-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108.

B. A committee of unsecured creditors has not yet been appointed in this Chapter 11 case.

C. The Debtor has an immediate need to use Cash Collateral to sustain its business operations and to pay the ordinary and necessary expenses of such operations.

D. Connecticut Community Bank, N.A. d/b/a Westport National Bank (“CCB”) and the Town of Fairfield (“Fairfield”) (collectively the “Secured Creditors”) extended certain financial accommodations to the Debtor with respect to which the Debtor was indebted to them as of the Petition Date in the approximate amounts set forth herein below. Such financial accommodation and indebtedness arose pursuant to the first mortgage (the “Mortgage”) and the tax lien (the “Lien”) on property located at 531 Tunxis Hill Road, Fairfield, Connecticut (the “Property”).

1. As of the Petition Date, the Debtor was indebted to CCB in the approximate amount of \$180,473.42.

2. As of the Petition Date, the Debtor was indebted to Fairfield in the approximate amount of \$63,861.22, with such amount being \$75,525.05 as of July 31, 2016.

3. Pursuant to the Mortgage in favor of CCB the Debtor granted security interests (collectively the “Pre-Petition Liens”) in certain Pre-Petition Collateral. The Pre-Petition Collateral generally may be described as all of the Debtor’s rents whether then owned or thereafter acquired from the Property.

E. The Debtor acknowledges and admits that as of the Petition Date the Debtor is indebted to Secured Creditor on account of the Pre-Petition Liens in the principal amounts set forth above plus accrued interest, costs, expenses, fees and charges to the extent the same are allowable under applicable bankruptcy and/or non-bankruptcy law.

F. Good and sufficient cause exists for the entry of the within Order. Without an Order authorizing the use of Cash Collateral in accordance with the terms and conditions of this Order, it is more probable than not that the Debtor would have no alternative but to close permanently its operations and liquidate its assets, all of which would inure to the substantial detriment of the Debtor's creditors.

G. Authority to use Cash Collateral pursuant to this Order will allow the Debtor an opportunity to reorganize and to preserve its going concern value for the benefit of the Debtor's creditors and employees and is necessary to avoid harm to the Debtor's estate. The entry of this Order is, therefore, in the best interests of the Debtor, its creditors and its estate.

H. On October 28, 2016, notice of the Hearing and generally, the terms and conditions, were provided to all secured creditors or their counsel, the creditors included on the Debtor's list of twenty (20) largest unsecured creditors filed pursuant to Bankruptcy Rule 1007(d), the U.S. Trustee and the United States, with such notice having been given pursuant to Bankruptcy Rule 4001(b). Such notice and opportunity for a hearing is, under the circumstances set forth herein, appropriate and adequate notice, and shall be deemed in all respects to constitute adequate and sufficient "notice and a

hearing" within the purview of Bankruptcy Code Sections 102(1), 363(c), and 363(e) and any other applicable sections of the Bankruptcy Code.

I. The order is without prejudice to Secured Creditors with respect to all rights under their Mortgages.

Accordingly, it is hereby Ordered that:

1. **Limited Authorization To Use Cash Collateral.**

The Debtor is hereby authorized to use Cash Collateral as defined in 11 U.S.C. § 363(a) generated from the use, sale or lease of the Pre-Petition Collateral in the ordinary course and under the proposed budget affixed hereto and made a part hereof of Debtor's business upon the following conditions:

(a) The Cash Collateral generated from the use, sale or lease of the Pre-Petition Collateral shall be deposited and maintained in segregated Debtor-in-Possession accounts.

(b) Debtor is authorized to use only up to the amount designated on Schedule A for its operating expenses in accordance with the attached budget for the period of time from the date of this Order (November 8, 2016) through December 31, 2016.

2. **Adequate Protection Liens.**

In accordance with 11 U.S.C. §§ 362(2), 363(c) and 363(e), the Secured Creditors shall be provided adequate protection in the form of Replacement Liens and security interests, with the same force and effect and in the same priority as existed Pre-Petition, but only to the extent that the automatic stay and/or use of Cash

Collateral in which it asserts an interest results in a decrease in the value of its interest in the Cash Collateral, as follows:

(a) any and all rents and collateral as defined in the Mortgages, whether presently owned or hereafter acquired.

(b)(i) monthly payments on the First Mortgage as provided in the Budget in the amount of \$1,695.00 (including principal and interest).¹

(b)(ii) monthly payments on the Second Mortgage as provided in the Budget in the amount of \$422.00 (including principal and interest).²

3. Evidence of Adequate Protection.

This Order shall not be admissible as proof of adequate protection to the Secured Creditors in any subsequent proceeding which addresses the issue of adequate protection of any party.

4. Validity of Replacement Lien.

The Replacement Liens are, and for all purposes shall be deemed to be, valid, enforceable and duly perfected to the same extent and in the same priority as were the Pre- Petition Liens and no filing or recordation or other act in accordance with any applicable local, state, federal or common law, statute, rule or regulation shall be necessary to create or perfect such Pre-Petition Liens.

5. Filings and Further Assurances.

Notwithstanding anything herein to the contrary, at the request of the Secured Creditors, the Debtor is authorized and directed to join with any of them in

¹ This amount includes a monthly late fee charge of \$79.74. If the payment is made on time the monthly payment shall be reduced accordingly.

² This amount includes a monthly late fee charge of \$20.00. If the payment is made on time the monthly payment shall be reduced accordingly.

executing one or more financing statements or other notices of lien complying with the requirements of applicable law and otherwise in form and substance approved by any of them. At the request of the Secured Creditors, the Debtor shall execute and deliver to any of them, and is hereby authorized and directed to so execute and deliver, such further documents and instruments and agreements, including, without limitation, a security agreement, and will do such further acts as any of them may deem necessary or advisable to assure them of all rights given or intended to be given to them hereby or hereunder.

6. Consent to Superliens.

Notwithstanding anything contained herein to the contrary, the following limited expenses of the Debtor's estate shall be deemed to have a lien upon the right to satisfaction from the Post-Petition Collateral and Post-Petition Cash Collateral, which lien shall be senior to the Replacement Lien:

(a) Fees and expenses of the U.S. Trustee, pursuant to 28 U.S.C. § 1930.

7. Termination Date.

The Debtor's authorization to use Cash Collateral hereunder shall expire after the date that is the earlier of:

- (a) December 31, 2016.
- (b) The date on which the Debtor fails in any material respect to comply with any of the terms, conditions or provision herein.
- (c) The consent hereto on the interim order is without prejudice to all rights of the Secured Creditors with respect to adequate protection and all other rights.

8. **Notice and Hearing.** A hearing on the continued use of Cash Collateral Motion shall be held on December 20, 2016 at 11:00 A.M. at the U. S. Bankruptcy Court, 915 Lafayette Boulevard, Bridgeport, Connecticut to consider authorizing the further use, sale or lease of Cash Collateral, notice of which shall be given to all secured creditors, the creditors on the Debtor's list of twenty (20) largest unsecured claims, the United States Trustee, and the United States, on or before December 7, 2016. On or before December 13, 2016, any party-in-interest having an objection to continued use, sale or lease of Cash Collateral shall file and serve a writing specifying the objection.

On or before, December 16, 2016, the Debtor shall file and serve a response and Memorandum of Law to any Objection raised under this paragraph.

Connecticut Community Bank

531 Tunxis Hill Associates, LLC

By _____/s/_____

By _____/s/_____

Howard Wolfe (ct08090)

James G. Verrillo (ct08819)

DATED: November 16, 2016

Julie A. Manning
Chief United States Bankruptcy Judge
District of Connecticut

SCHEDULE A

BUDGET

531 Tunxis Hill Associates, LLC

Expenses

First Mortgage P&I	\$ 1,695.00
Second Mortgage P&I	\$ 422.00
Current Property Taxes	\$ 721.21
WPCA Tax	\$ 115.00
Building Maintenance	\$ 200.00
Property Tax Arrearage	\$ 1,600.00
WPCA Tax Arrearage	\$ 150.00
Property Insurance	
Chapter 11 Quarterly Fees	\$ 108.33

Total Expenses **\$ 5,011.54**

Income

Rental Income \$ 6,000.00

Total Income **\$ 6,000.00**

Excess/(Deficit) **\$ 988.46**