

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(BALTIMORE DIVISION)**

In re:	*	Chapter 11
<b>ACP-OFFENBACHERS, LLC,</b>	*	Case No. 16-24106 (DER)
<b>t/a OFFENBACHERS,</b>	*	
	*	
Debtor.	*	

\* \* \* \* \*

**DEBTOR'S EMERGENCY MOTION FOR AUTHORITY TO USE CASH  
COLLATERAL AND GRANT ADEQUATE PROTECTION THEREFOR**

ACP-Offenbachers, LLC d/b/a Offenbachers, Debtor and Debtor-in-Possession, moves for authority to use cash collateral and to grant adequate protection therefor and, in support thereof, states:

1. On October 24, 2016, ACP-Offenbachers, LLC (the "Debtor") filed a Voluntary Petition for Relief pursuant to Chapter 11 of the Bankruptcy Code. The Debtor has remained in possession of its property and continues to manage its financial affairs as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the relief sought herein is 11 U.S.C. § 365.

**Background**

3. On October 25, 2016 (the "Petition Date"), the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor has remained in possession of its property

and continues to manage its financial affairs as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. The Debtor is a Maryland limited liability company with its principal place of business at 509 South Exeter Street, Suite 505, Baltimore, Maryland 21202. The current Offenbachers business traces its origins to 1972 with the opening of the first Offenbachers pool and patio store in Rockville, Maryland. Over time, the business grew to seven (7) locations in the Washington D.C./Northern Virginia/Baltimore metropolitan area. In 2014 the Debtor acquired Offenbachers. At present, the Debtor operates eight (8) retail locations: Hunt Valley, Md, Columbia, Md, Rockville, Md, Sterling, Va, Fairfax, Va, Springfield, Va, Falls Church, Va and Fredericksburg, Va. and a distribution center in Lanham, Md.

5. The Debtor is engaged in the highly competitive specialty retail sector specializing in the sale and service of outdoor living and recreation furniture, fireplaces, grills, and accessories. The Debtor competes against major national chains such as Home Depot and Lowes.

6. For the year ending December 31, 2015, the Debtor had approximate retail sales of \$13.8 Million. As of the Petition Date the Debtor employed approximately sixty-five (65) full and part time employees.

7. As of the Petition Date, the Debtor's assets include (i) inventory for retail sale (the "Inventory") and (ii) furniture, fixtures and equipment located at the retail locations, the Debtor's offices and the distribution center (the "FF&E").

**Emergency Request for Use of Cash Collateral**

8. Bankruptcy Rule 4001 provides that the Court may commence a final hearing on a

motion for authorization to use cash collateral no earlier than fifteen (15) days after service of the motion. Bankruptcy Rule 4001 further provides that, upon request, the Court may conduct a preliminary hearing before such fifteen (15) day period expires to authorize the use of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

9. The Debtor must be able to use cash collateral before the fifteen (15) day period expires and, by this Emergency Motion, requests that the Court authorize its preliminary use of cash collateral. At the end of such period, the Debtor must be able to continue to use cash collateral and thus requests a final hearing for such use.

10. The Debtors' assets are subject to the perfected security interests of two entities. In the first priority position is the blanket lien and security interest of M&T Bank ("M&T") securing an Amended and Restated Daily Adjusting Libor Revolving Line Note in the current principal amount of \$1.5 Million. In second priority position and subordinate to the claims of M&T pursuant to a Subordination Agreement between the two secured creditors, is the blanket lien and security interest of Nantucket Enterprises, Inc. f/k/a Offenbachers Aquatics, Inc. ("Nantucket"). Nantucket (the previous owner of the business) is the holder of two secured subordinated Promissory Notes in the current aggregate principal amount of approximately \$1.9 Million, and a Security Agreement. Together, M&T and Nantucket are referred to as the "Lenders."

11. Pursuant to the M&T Security Agreement, the Debtor Granted M&T a security interest in all of the Debtor's: personal property and fixtures, accounts, chattel paper, investment property, deposit accounts, documents, goods, equipment, farm products, general intangibles (including trademarks, service marks, trade names, patents, copyrights, licenses and franchises),

instruments, inventory, money, letter of credit rights, causes of action (including tort claims) and other personal property (including agreements and instruments not constituting chattel paper or a document, general intangible or instrument) and all additions, accessions, substitutions, replacements and supporting obligations of the foregoing and all proceeds and products thereof (collectively, the "M&T Collateral").

12. Pursuant to the Nantucket Security Agreement, the Debtor granted Nantucket a security interest in all of the Debtor's: personal property, now owned and hereafter acquired, including, but not limited to, accounts, chattel paper, deposit accounts, documents, equipment, fixtures, general intangibles, goods, instruments, inventory, investment property, letter of credit rights, and proceeds and products of the foregoing. (collectively, the "Nantucket Collateral").

13. In order for the Debtor to operate its business, meet its obligations and preserve its business as a going concern, it is necessary for the Debtor to be authorized to use the receipts and cash in which the Lenders claim a security interest.

14. The receipts and cash received from the Debtor's daily operations constitute cash collateral as that term is defined under Section 363(a) of the Bankruptcy Code and may be used by the Debtor with the consent of the Lenders or upon an order of the Bankruptcy Court.

15. The Bankruptcy Code requires "adequate protection" of the Lender's interest in cash collateral. Such adequate protection is afforded where operations continue at a break-even level or generate a profit and there is a strong likelihood of reorganization. *See, e.g., In re Xinde International, Inc.*, 13 B.R. 212 (Bankr. D. Mass. 1981); *In re Grant Broadcasting of*

*Philadelphia, Inc.*, 71 B.R. 376 (Bankr. E. D. Pa. 1987).

16. The Debtor proposes to grant to the Lenders a security interest of the same priority and to the same extent as their respective pre-petition security interests in their respective collateral bases, and all profits, offspring and proceeds of the M&T Collateral and Nantucket Collateral hereafter acquired to the extent of such use of cash collateral as additional adequate protection.

17. The Debtor proposes that it be authorized to use M&T's and Nantucket's cash collateral in the ordinary course of its business and to pay those obligations as set forth in the fifteen (15) day budget, attached hereto as *Exhibit A*, or until the final hearing on the use of cash collateral.

18. The Debtor requires the preliminary use of cash collateral in order to avoid immediate and irreparable harm to the bankruptcy estate pending a final hearing on the use of cash collateral.

WHEREFORE, ACP-Offenbachers, LLC, Debtor and Debtor-in-Possession, respectfully requests the following relief:

- A. That the Motion be granted and an order in the form attached hereto be entered;
- B. That, to avoid immediate and irreparable harm to this bankruptcy estate pending a final hearing on the Debtor's Emergency Motion for Authority to Use Cash Collateral and Grant Adequate Protection Therefor, ACP-Offenbachers, LLC be authorized to use cash collateral in the ordinary course of business to pay reasonable and ordinary operating expenses in conformity with the budget attached as *Exhibit A* until a final hearing on the Emergency Motion

for Authority to Use Cash Collateral and Grant Adequate Protection Therefor; That, as adequate protection for the Lenders' interest, if any, in any cash collateral so used, the Lenders shall be granted a security interest of the same priority and to the same extent as their respective pre-petition security interests in the M&T Collateral or Nantucket Collateral, as the case may be, and any profits, offspring and proceeds thereof hereafter acquired, to the extent of the Debtor's use of such cash collateral;

C. That the security interest granted hereby shall become duly perfected without the necessity for filing or execution of documents which might otherwise be required pursuant to applicable non-bankruptcy law for the creation or perfection of such security interest, shall survive the conversion of this case to a case under Chapter 7 of the Bankruptcy Code, and shall be binding upon any subsequently appointed trustee and upon all creditors of the Debtor and its bankruptcy estate;

D. That nothing contained herein shall be intended or construed as a finding by this Court that the Lenders hold a lien or security interest in the M&T Collateral or Nantucket Collateral, or that any such lien or security interest is properly perfected, those issues all being expressly reserved for later determination by this Court;

E. That nothing contained herein shall preclude any party-in-interest from seeking modification of this Order upon appropriate motion to this Court; and

F. That a final hearing on the Debtor's use of cash collateral be set; and That ACP-Offenbachers, LLC, Debtor and Debtor-in- Possession, be granted such other and further relief

as is just and equitable.

Date: October 24, 2016

/s/ Joel I. Sher

Joel I. Sher, Bar No. 00719

Richard M. Goldberg, Bar No. 07994

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*Proposed Counsel to the Debtor and Debtor in Possession*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of October, 2016, a copies of the foregoing  
was sent by first class mail, postage pre-paid, to all those parties listed below:

OFFICE OF THE UNITED STATES TRUSTEE  
101 West Lombard Street  
Suite 2625 Baltimore, MD 21201

M&T Bank  
25 S. Charles Street, 12th Floor  
Baltimore, Maryland 21201  
Attn: Rob Thomas

Christopher Heagy, Esquire  
Tydings & Rosenberg LLP  
100 East Pratt Street, 26th Floor  
Baltimore, Maryland 21201  
*Counsel for M&T Bank*

Nantucket Enterprises, Inc.  
10814 Nantucket Terrace  
Potomac, Maryland 20854

James S. Williford, Esquire  
JAMES S. WILLIFORD, JR., P.C.  
451 Hungerford Drive, Suite 750  
Rockville, Maryland 20850  
*Counsel for Nantucket Enterprises, Inc.*

20 Largest Unsecured Creditors

Tropitone Furniture Co.  
P.O. Box 92717  
Chicago, IL 60693

Minson Corporation  
1 Minson Way  
Montebello, CA 90640



Hanamint  
8010 Thorndike Road  
Greensboro, NC 27409

Fairfax Court Limited Partnership  
4390 Paysphere Circle  
Chicago, IL 60674

Treasure Garden  
13401 Brooks Drive  
Baldwin Park, CA 91706

Summit Construction, Inc.  
5431 Yukon Court, Suite A  
Frederick, MD 21703

Washinton Real Estate  
Investment Trust  
P.O. Box 79555  
Baltimore, MD 21279

Bac Sales  
1871 Route 9H  
Hudson, NY 12534

Aerospace Investors, LLC  
7200 Wisconsin Ave., Suite 700  
Bethesda, MD 20814

Jensen Leisure Furniture  
6601 S. Laburnam Ave.  
Suite B  
Henrico, VA 23231

Gensun Casual Living  
9449 8th Street  
Rancho Cucamong, CA 91730

Legacy Billiards  
521 5th Ave., 11th Floor  
New York, NY 10175

Beka Casting Limited  
259 Bradwick Drive  
Concord, L4K1KS

Rantana International  
8310 Manitoba Street  
Vancouver, BC V5X3A6

Winkal Management LLC  
10 Rye Ridge Plaza, Suite 200  
Rye Brook, NY 10573

Potomac Run LLC  
P.O. Box 6203  
Hicksville, NY 11802

Woodard  
P.O. Box 73014  
Grand Prairie, TX 75050

Master Heat Distributor  
7915 B Philadelphia Road  
Baltimore, MD 21237

Dobbin Center Investor  
1945 Old Gallows Road  
Suite 300  
Vienna, VA 22182

Pinnacle Express  
P.O. Box 859706  
Port St. Lucie, FL 34985

*/s/ Richard M. Goldberg*

Richard M. Goldberg