

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

BRENTWOOD APARTMENTS TAMPA,
LLC,

Debtor.

Chapter 11

Case No. 8:10-bk-3334-KRM

Emergency Relief Requested

**DEBTOR'S AMENDED EMERGENCY MOTION
FOR AUTHORITY TO USE CASH COLLATERAL**

STATEMENT OF RELIEF REQUESTED

The Debtor seeks authority to use cash collateral to fund its operating expenses and costs of administration in this Chapter 11 case and to provide replacement liens as described below as adequate protection for the interests in its cash collateral. The Debtor believes that BB&T (as defined below) may assert valid and perfected security interests in cash collateral. The Debtor proposes to grant as adequate protection replacement liens on all Cash Collateral acquired by the Debtor or the estate on or after the Petition Date to the same extent, validity, and priority held as of the Petition Date.

Debtor, BRENTWOOD APARTMENTS TAMPA, LLC., by and through its undersigned attorneys, hereby files this Amended Emergency Motion for Authority to Use Cash Collateral (the “**Motion**”) pursuant to 11 U.S.C. §§ 105, 363, and 541 and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**FRBP**”). In support of this Motion, the Debtor would show:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408. The statutory predicates for the relief sought herein are §§ 105, 363, and 541 of the

Bankruptcy Code. No previous application for the relief sought herein has been made by the Debtor to this Court or any other court.

Background

2. On February 17, 2010 (the “**Petition Date**”), the Debtor filed its Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).

3. The Debtor is operating its business and managing its property as debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in this case and no official committees have yet been appointed pursuant to § 1102 of the Bankruptcy Code.

5. The Debtor is the owner of an apartment complex located at 8741 Grove Terrace, Tampa, 33617 (the “**Complex**”). The Complex consists of thirteen (13) two-story structures with 180 units ranging in size from two bedroom, one bath to two bedroom, two bath.

6. On or about May 15, 2007, the Debtor as borrower, entered into that certain Promissory Note, Mortgage and Security Agreement and Assignment of Rents (collectively, the “**Loan Documents**”), in the original principal amount of \$9,368,515 in favor of Colonial Bank.

7. Branch Bank & Trust (“**BB&T**”) asserts that it is the holder of the Loan Documents as successor in interest to Colonial Bank by asset acquisition from the F.D.I.C. as Receiver for Colonial Bank.

8. As of the Petition Date, the Debtor believes that BB& T will contend that it is owed approximately \$9,380,000 under the Loan Documents.

9. Pursuant to the Loan Documents, it appears that the Debtor may have granted to BB&T mortgage and security interests in the Complex, lease and rent payments and proceeds thereof (collectively, the “**Collateral**”).

10. The Debtor believes that BB&T will assert (a) that it has perfected liens on the Collateral, and (b) that its perfected liens generally have priority over all liens against the Collateral, other than property taxes.

Relief Requested and Grounds for Relief

11. As of the Petition Date, the Debtor had certain funds in various bank accounts. Additionally, the Debtor continues to receive lease and rental payments from tenants of individual leases of apartments. The Debtor anticipates that it will receive additional payments from leases entered into following the Petition Date in the ordinary course of its business. The proceeds generated by the lease or rental of units may constitute the cash collateral (the “**Cash Collateral**”) of BB&T.

12. By this Motion, the Debtor seeks the entry of an order authorizing the Debtor’s use of Cash Collateral to pay payroll-related expenses pursuant to a separate motion to approve pre-petition wages and other expenses in accordance with the proposed budget, a copy of which is attached hereto as Exhibit “A”. The Debtor proposes to use the Cash Collateral for purposes which include the following:

- a) Care, maintenance and preservation of the Debtor’s assets;
- b) Payment of necessary payroll and other business expenses;
- c) Continued business operations.

13. Except as specifically authorized by law or court order, the Debtor will not use the Cash Collateral to pay pre-petition obligations.

14. The Debtor requests authority to use the Cash Collateral immediately to fund operating expenses necessary to continue the operation of its business, to maintain the estate, to maximize the return on its assets, and to otherwise avoid irreparable harm and injury to its business and estate.

15. There is insufficient time for a full hearing pursuant to Rule 4001(b)(2) of the FRBP to be held before the Debtor must use the Cash Collateral. If this Motion is not considered on an expedited basis and if the Debtor is denied the ability to immediately use the Cash Collateral, there will be a direct and immediate material and adverse impact on the continuing operations of the Debtor's business and on the value of its assets. In order to continue its business activities in an effort to achieve a successful reorganization, the Debtor must use the Cash Collateral in the ordinary course of business. The inability of the Debtor to meet its ordinary business expenses will require the Debtor to discontinue normal operations, which will result in irreparable injury to the Debtor and its chances for reorganization. Any such discontinuation would also materially and adversely impact upon the value of the Collateral. Indeed, it is in the best interest of BB&T that the Debtor use the Cash Collateral, if such usage will preserve the value of the Collateral.

16. The Debtor proposes a replacement lien on the assets acquired after the Petition Date equal in extent, validity, and priority to the security interest in the Debtor's assets that BB&T held as of the Petition Date. In other words, the Debtor proposes that BB&T's "floating" liens on such assets continue to "float", notwithstanding § 552 of the Bankruptcy Code, to the same extent and level of priority as its pre-petition liens on the

Collateral. The Debtor alleges that BB&T is also adequately protected by virtue of an equity cushion.

17. The Debtor asserts that the interests of BB&T will be adequately protected. Consequently, no further provision for adequate protection is required. The Debtor further alleges that all conditions precedent to the use of Cash Collateral have been performed or have occurred.

18. If allowed to use the Cash Collateral, the Debtor believes that it can operate its business during the Chapter 11 case and successfully reorganize its business.

WHEREFORE, the Debtor respectfully requests that this Court enter an order (a) granting the instant Motion and authorizing the interim use of cash collateral, the proposed form of which is attached as Exhibit "B", (b) scheduling a preliminary hearing on the Motion at the earliest possible time, (c) authorizing the Debtor to use the Cash Collateral in the operation of its business, and (d) granting such other and further relief as the Court may deem appropriate.

DATED: February 24, 2010

/s/ Scott A. Stichter
Scott A. Stichter
Florida Bar No. 710679
STICHTER, RIEDEL, BLAIN
& PROSSER, P.A.
110 Madison Street - Suite 200
Tampa, Florida 33602
(813) 229-0144
(813) 229-1811 FAX
ATTORNEYS FOR DEBTOR
sstichter@srbp.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the DEBTOR'S
AMENDED EMERGENCY MOTION FOR AUTHORITY TO USE CASH
COLLATERAL has been furnished by the Court's CM/ECF system or U.S. MAIL on the
24th day of **February, 2010** to:

Lara Roeske Fernandez, Trenam, Kemker, et al, P.O. Box 1102, Tampa, FL
33601

Local 1007-2 Parties in Interest Matrix

/s/ Scott A. Stichter

Scott A. Stichter

Florida Bar No. 710679

Brentwood
Budget

2/17/10 - 3/18/2010

2/17/10 - 3/18/2010

Rental Income	\$101,850
REVENUE ADJUSTMENTS	
Less: Rent Concession	-\$17,500
Less: One Time Rent Concession	-\$2,200
Less: Lease Renew Rent Concess- One Time	-\$755
Less: Lease Renew Rent Concession- Recurring	-\$800
Less: Model Units	-\$695
Less: One Time misc. concession	-\$100
TOTAL REVENUE ADJUSTMENTS	-\$22,050
NET RENTAL INCOME	\$79,800
TOTAL OTHER REVENUE	\$8,003
TOTAL INCOME- RENTAL & OTHER REVENUE	\$87,803
PAYROLL TOTALS	\$19,212
TOTAL MAINTENANCE EXPENSES	\$5,434
TOTAL CONTRACTED SERVICES & GROUNDS	\$6,532
TOTAL MARKETING & TRAINING	\$1,023
TOTAL ADMINISTRATIVE & GENERAL EXPENSES	\$6,651
TOTAL- UTILITY ACCOUNTS	\$13,362
TAXES	\$0
INSURANCE	
Down Payment for Insurance Premium + Monthly Premium	\$29,357
TOTAL INSURANCE	\$29,357
TOTAL OPERATING EXPENSES	\$81,571
<i>Net Operating Income</i>	\$6,232
TOTAL CAP X	\$3,750
CASH FLOW	\$2,482

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

BRENTWOOD APARTMENTS TAMPA,
LLC,

Debtor.

Chapter 11

Case No. 8:10-bk-3334-KRM

**INTERIM ORDER ON DEBTOR'S EMERGENCY
MOTION FOR AUTHORITY TO USE CASH COLLATERAL**

THIS CASE came on for hearing on [REDACTED] at [REDACTED] upon the Emergency Motion for Authority to Use Cash Collateral (the "**Motion**") (Doc. No. [REDACTED]). By the Motion, the Debtor seeks the entry of a preliminary order authorizing the use of "**Cash Collateral**" (as such term is defined in § 363(a) of the Bankruptcy Code) to pay expenses set forth on the exhibits presented to the Court at the hearing on the Motion, a copy of which is attached as Exhibit "A" to this Order. Branch Bank & Trust, as successor interest to Colonial Bank by asset acquisition from the F.D.I.C. as receiver for Colonial Bank ("BB&T"), asserts liens against the assets of the Debtor (the "**Collateral**"), including Cash Collateral. Accordingly, it is

ORDERED that:

1. The Motion is granted on a preliminary basis.
2. The Debtor is hereby authorized to use Cash Collateral, including, without limitation, inventory and the proceeds thereof, to the extent such collateral constitutes Cash Collateral under § 363 of the Bankruptcy Code, in the ordinary course of business

EXHIBIT "B"

for the purposes of paying the expenses listed in the budget attached as Exhibit “A” hereto (the “**Budget**”).

3. The Debtor is authorized to use Cash Collateral immediately to pay operating expense in conformance with the categories and amounts as set forth in the Budget in order to continue the operation of the Debtor’s business and to maintain its estate. The Debtor may not use Cash Collateral to pay any expense categories not included in the Budget without the consent of BB&T or further order of this Court. The Debtor shall not be authorized to use Cash Collateral in any amounts in excess of 15% of the amounts set forth in any line item, provided, however, the Debtor shall not be authorized to exceed the total expenditures set forth in the Budget without the consent of BB&T or further order of this Court.

4. As adequate protection with respect to the interests of BB&T in the Cash Collateral, BB&T is granted a replacement lien on all Cash Collateral acquired by the Debtor or the estate on or after the Petition Date to the same extent, validity, and priority to the security interest in Cash Collateral that BB&T held as of the Petition Date. The post-petition lien and security interest in the post-petition Cash Collateral granted to BB&T, pursuant to this Order, shall be valid, enforceable, and perfected to the same extent, validity, and priority as their respective pre-petition lien, effective as of the Petition Date.

5. The provisions of this Order shall remain in full force and effect unless modified or vacated by subsequent order of this Court.

6. The Court will conduct a final evidentiary hearing on the Motion on [REDACTED] at [REDACTED]. At that final hearing, the Court may modify some or all of the provisions of this Order.

7. The subject of this Order is a core proceeding within the meaning of 28 U.S.C. § 157. Notice of the hearing on the Motion was adequate and appropriate in the current circumstances in this Chapter 11 case as contemplated by 11 U.S.C. § 102(1) and Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedure.

DONE and ORDERED at Tampa, Florida, on _____.

K. RODNEY MAY
United States Bankruptcy Judge

Copies to:

Local 1007-2 Parties in Interest Matrix

Label Matrix for local noticing
113A-8
Case 8:10-bk-03334-KRM
Middle District of Florida
Tampa
Wed Feb 24 13:47:04 EST 2010

Certified Protective Service
711 South Howard Ave
Suite 200
Tampa, FL 33606-2466

LexisNexis Screening Solutions
P.O. Box 730694
Dallas, TX 75373-0694

Quill
P.O. Box 37600
Philadelphia, PA 19101-0600

Teco Peoples Gas
P.O. Box 31017
Tampa, FL 33631-3017

Vertex
5901 Benjamin Center Driver
Suite 110
Tampa, FL 33634-5241

1st Florida Termite & Pest Control
5271 57th Street North
Kenneth City, FL 33709-3630

City of Temple Terrace
11250 North 56th Street
Temple Terrace, FL 33617-2250

Media General
202 South Parker St.
2nd Floor
Tampa, FL 33606-2308

Suarez Bath Tub & Counter Repair, LLC
7603 Canyon Ct.
Tampa, FL 33615-2562

The Flyer
2830 Orbiter Street
Brea, CA 92821-6224

End of Label Matrix
Mailable recipients 15
Bypassed recipients 0
Total 15

ART Pest Control Services
776 A. East Prospect Road
Oakland Park, FL 33334-3151

Hines Property Tax Consulting
610 South Albany Ave.
Suite 408
Tampa, FL 33606-2406

Pool Care
9021 Baywood Park Drive
Seminole, FL 33777-4630

Tampa Electric
P.O. Box 31318
Tampa, FL 33631-3318

Totally Blu H2O
18182 Canal Pointe St.
Tampa, FL 33647-3311