

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

SUBRANNI ZAUBER LLC Willow Ridge Executive Office Park 750 Route 73 South, Suite 307B Marlton, NJ 08053 (609) 347-7000; FAX (609) 345-4545 Attorneys for Debtor-in-Possession By: Scott M. Zauber, Esq. SZ6086 Margaret A. Holland, Esq. MH4707	
In Re: Cape Atlantic Dental Associates, PC, Debtor.	Case No.: 18-10844 Judge: Chapter 11

**DEBTOR’S VERIFIED MOTION FOR: (A) INTERIM AND FINAL ORDERS
AUTHORIZING POST-PETITION USE OF CASH COLLATERAL;
(B) GRANTING ADEQUATE PROTECTION TO THE SECURED PARTIES;
(C) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE
4001(b); AND (D) GRANTING RELATED RELIEF**

By this Motion, Cape Atlantic Dental Associates, PC (“**Debtor**”) seeks entry of an interim Order in the form submitted herewith authorizing use of cash collateral (the “**Interim Order**”), pursuant to Bankruptcy Code § 363, Bankruptcy Rule 4001, and D.N.J. LBR 4001-3. The proposed Interim Order authorizes use of cash collateral, grants certain adequate protection to secured creditors, and schedules a final hearing pursuant to Bankruptcy Rule 4001(d) (the “**Final Hearing**”) to consider entry of an Order granting the relief requested in the Motion on a final basis (the “**Final Order**”). In support of this Motion, Debtor respectfully submits as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(M), and the Court may enter a final Order on this motion. Venue of these cases and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are: Bankruptcy Code §§ 105, 361, 362, 363, 506, 507(b), and 552; Bankruptcy Rules 2002, 4001, 6004(h), 7062, and 9014; and D.N.J. LBR 4001-3.

BACKGROUND

A. Procedural Background

3. On January 15, 2018, Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Debtor is a Debtor-in-Possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

4. No request for the appointment of a trustee or examiner has been made in this chapter 11 case.

5. To date, no creditors' committee has been appointed in this chapter 11 case by the Office of the United States Trustee.

B. General Background

6. Debtor owns and operates a dental practice located at 1514 N. Main Street, Pleasantville, New Jersey 08232-1038 (the "**Pleasantville Premises**") and at 204 N. Philadelphia Avenue, Egg Harbor City, New Jersey 08215 (the "**Egg Harbor City Premises**"). The dental practice has been operating since January 1, 1999. Dr. Jones is the President of the Debtor. Initially he possessed a 50% ownership with his partner, Wilfred D. Conn. After his partner died

in February 2011, Dr. Jones purchased his partner's shares from his estate in 2012.

7. The Debtor experienced financial distress as the result of Dr. Jones purchasing real estate in a now defunct limited liability corporation. Those troubles were compounded by the real estate bubble causing Dr. Jones to borrow money from his dental practice to fund the real estate holding company. Dr. Jones on behalf of the Debtor entered into these various loans using the dental practice assets as collateral.

8. Unfortunately, the dental practice has not been profitable enough to generate enough income to meet its debts under these secured loans servicing obligations. Thus, the Debtor is forced to file its Chapter 11 Bankruptcy Petition.

9. The Debtor believes that the commencement of this chapter 11 case is in the best interests of the Debtor's creditors and other interested parties.

10. The Debtors assets consist primarily of dental equipment, furnishing and supplies and dental equipment and supplies, located at the Pleasantville and Egg Harbor City dental practice locations. See Exhibit "A," the "Appraisal").

11. The Debtor is indebted to the Estate of Wilfred D. Conn (the "Conn Estate Loan") on a certain loan in the approximate amount of \$74,000.00.

12. The Conn Estate Loan is secured by a security agreement in certain assets of the dental practice as set forth in that certain financing statement under UCC Filing No. 2012023668.

13 The Conn Estate Loan has a first priority security interest in the assets located at the Pleasantville premises. These assets are valued in the amount of \$8650.00. (See Exhibit "A").

14. The Debtor is also indebted to Funding Circle-Greenfield Bank (the "Greenfield

Loan”) on a certain loan in the approximate amount of \$36,000.00. The Bankers Healthcare Group underwrites this loan.

15. The Greenfield Loan is secured by a security agreement in certain assets of the dental practice as set forth in that certain financing statement under UCC Filing No. 26378817.

16. The Greenfield Loan has a first priority security interest in the assets located at the Egg Harbor City Premises. These assets are valued in the amount of \$16,100.00. (See **Exhibit “A”**). The Estate of Conn Loan and the Greenfield Loan are collectively known as the “First Priority Secured Creditors”).

17. The Debtor is also indebted to Funding Circle-US Bank Corporation (the “US Bank Loan”) on a loan in the approximate amount of \$69,000.00 and to CAN Capital – FC Marketplace LLC – assigned to Route 66 HF Funding (the “CAN Capital Loan”) on a loan in the approximate amount of \$58,000.00. However, these loans are second or third priority secured interests on Debtor’s assets, and thus the total amount of these Loan are subject to cramdown.

18. The Debtor’s projections indicate that the Debtor can continue to operate and pay its ordinary expenses in the ordinary course of business. (See budget projections attached hereto as **Exhibit “B”** (the “**Budget**”). The Debtor is current on all tax payments.

RELIEF REQUESTED

19. Debtor seeks entry of Interim and Final Cash Collateral Orders: (a) authorizing Debtor to use cash collateral; (b) granting certain adequate protection to the Estate of Conn and Greenfield Bank; (c) scheduling the Final Hearing within thirty days of this Motion to consider approval of this Motion on a final basis; and (d) granting related relief.

DEBTOR’S IMMEDIATE NEED TO USE CASH COLLATERAL

20. Debtor requires immediate access to cash collateral to ensure that it is able to

continue the operation of its dental practice. At the outset of this case, the cash collateral is Debtor's sole source of funding for its operations and the costs of administering the chapter 11 process. Absent authority to immediately use cash collateral, Debtor, its creditors, and the estate generally would suffer irreparable harm, because Debtor would immediately cease operations, which in turn would cause a significant immediate deterioration in the value of Debtor's assets and dental practice. In particular the Debtor's patients would be extremely adversely protected. Thus Debtor's access to cash collateral is therefore necessary to preserve and maximize value for the benefit of all of Debtor's stakeholders.

21. As further set forth herein, the Interim Order provides adequate protection in the form of payments to protect the Secured creditors against any decrease in the value of its collateral arising from Debtor's use of Cash Collateral. Debtor proposes to make disbursements pursuant to a Budget attached to the Interim Order as its **Exhibit "A."**

22. Access to existing cash collateral on an interim basis will provide Debtor with the liquidity necessary to ensure that Debtor has sufficient working capital to operate its dental practice and thus preserve and maintain the going concern value of Debtor's estate. Without access to that liquidity, Debtor's ability to navigate through the Chapter 11 process will be jeopardized, to the detriment of all creditors and interested parties.

MATERIAL TERMS OF THE INTERIM ORDER

23. Debtor provides the following material terms of the proposed Orders authorizing use of cash collateral, pursuant to Bankruptcy Rule 4001(b)(1)(B)(iii):

A. **Use of Cash Collateral.** Debtor may use the Secured creditor's cash collateral in its dental practice operations in accordance with the budget submitted herewith.

B. **Adequate Protection Payments.** The Operating Debtor shall pay the

amount of \$259.25 per month, beginning February 1, 2018 to the Estate of Wilford Conn and shall pay the amount of \$602.42 per month, beginning February 1, 2018 to the Funding Circle–Greenfield Bank as adequate protection payments. These payments are based on the Cash Collateral Budget Projection set forth in Exhibit “B” and the Appraisal of the Assets set forth in Exhibit “A.”

BASIS FOR RELIEF

I. Debtor’s Request to Use Cash Collateral and Proposed Adequate Protection Are Consistent with Applicable Law.

24. Debtor’s proposed use of cash collateral¹ is governed by Bankruptcy Code § 363. Pursuant to § 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral as long as “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2).

25. Bankruptcy Code § 363(e) requires a secured party’s interest to be adequately protected as a condition of a debtor using cash collateral; section 362(d)(1) requires adequate protection of interests in property due to the imposition of the automatic stay. See In re Continental Airlines, 91 F.3d 553, 556 (3d Cir. 1996). While § 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. Resolution Trust Corp. v. Swedeland Dev. Group Inc. (In re Swedeland Dev. Group, Inc.), 16 F.3d 552, 564 (3d Cir. 1994) (“[A] determination of whether there is adequate protection is made on a case by case basis.”); In re Satcon Tech. Corp., No. 12-12869, 2012 WL

¹ The Bankruptcy Code defines “cash collateral” as follows: Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title. 11 U.S.C. § 363(a).

6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); In re N.J. Affordable Homes Corp., No. 05-60442, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); In re Columbia Gas System, Inc., Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); see also In re Dynaco Corp., 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01 [1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”); In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (internal citations and quotation marks omitted) (“[T]he determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case . . .”).

26. The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor’s use. See In re Carbone Cos., 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral.”); see also In re Continental Airlines, Inc., 154 B.R. 176, 180–81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 of the Bankruptcy Code is limited to use-based decline in value).

A. The Proposed Adequate Protection Payments are Sufficient.

27. As set forth above, Debtor proposes to provide the First Priority Secured Creditors with adequate protection in the form of replacement liens and adequate protection payments.

28. Debtor respectfully submits that, in light of the circumstances of this chapter 11 case, the proposed adequate protection is sufficient to protect the two priority secured creditors from any diminution in value of the cash collateral during the interim period. The cash collateral

will be used to sustain Debtor's dental practice operations, allowing maximization of the value of the Debtor Estate. If the cash collateral is not available for this purpose, Debtor will be unable to fund payroll obligations, procure goods and services from vendors, or otherwise maintain its dental practice, thereby dissipating value to the detriment of the secured creditors and other stakeholders. The use of cash collateral will therefore protect the secured creditors' security interests by preserving the value of its collateral. See In re Constable Plaza Assocs., L.P., 125 B.R. 98, 105 (Bankr. S.D.N.Y. 1991) (observing that a debtor's use of rents to maintain and operate property "will serve to preserve or enhance the value of the building which, in turn, will protect the collateral covered by [the secured lender's] mortgage"); In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (evaluating "whether the value of the debtor's property will increase as a result of" the use of cash collateral in determining the sufficiency of adequate protection); In re Salem Plaza Assocs., 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that a debtor's use of cash collateral to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor).

29. In light of the foregoing, Debtor submits that the proposed adequate protection to be provided for the priority secured creditors' benefit is appropriate.

II. Failure to Obtain Immediate Interim Use of Cash Collateral Would Cause Immediate and Irreparable Harm.

30. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to §363 of the Bankruptcy Code may not be commenced earlier than fourteen days after the service of such motion. However, the Court is authorized to conduct a preliminary expedited hearing on the motion and authorize a debtor's proposed use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *See Fed. R. Bankr. P. 4001(b)(2).*

31. Debtor has an immediate post-petition need to use cash collateral. Debtor cannot maintain the value of its estate during the pendency of this chapter 11 case without access to cash. Debtor will use the cash to continue operating its dental practice during this chapter 11 case. Debtor will therefore be unable to proceed with operating its dental practice without the ability to use cash collateral, and it will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, Debtor's ability to finance its operations, and the availability of sufficient working capital and liquidity through the use of cash collateral, is vital to preserving and maintaining the value of the Debtor estate.

32. Debtor therefore seeks immediate authority to use cash collateral on an interim basis as set forth in the proposed Interim Cash Collateral Order, to prevent immediate and irreparable harm to its estate pending the Final Hearing, pursuant to Bankruptcy Rule 4001(b).

REQUEST FOR FINAL HEARING

33. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), Debtor requests that the Court set a date for the Final Hearing within thirty days of the Petition Date and fix the date and time prior to the Final Hearing for parties to file objections to the relief requested by this Motion.

NOTICE

34. Debtor is providing notice of this Motion to: (i) the Office of the United States Trustee; (ii) the Office of the United States Attorney; (iii) Attorney General; (iv) the New Jersey Attorney General's Office; (v) the taxing authorities; (vi) the Debtor's twenty largest unsecured creditors; (vii) all known secured creditors; and (viii) known counsel for creditors.

NO PRIOR REQUEST

35. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, for the reasons set forth herein, Debtor respectfully requests that this Court enter the Cash Collateral Orders: (i) authorizing Debtor to use cash collateral on an interim and final basis subject to the terms and conditions set forth therein; (ii) granting adequate protection to the certain creditors as set forth in the proposed Interim and Final Cash Collateral Orders; (iii) scheduling the Final Hearing, pursuant to the Interim Order, within thirty days of the commencement of this chapter 11 case, to consider approval of this Motion on a final basis; and (iv) granting related relief, and grant Debtor such other and further relief as may be just and proper.

SUBRANNI ZAUBER LLC
Attorneys for Debtor-in-Possession

Dated: January 15, 2018

By: /s/ Scott M. Zauber
Scott M. Zauber, Esq.

/s/ Margaret A. Holland
Margaret A. Holland, Esq.

VERIFICATION

John R. Jones, of full age, certifies and states as follows:

1. I am the President of Cape Atlantic Dental Associates, PC, and I am fully authorized to make this Verification on Debtor's behalf.

2. I have read the foregoing Motion and I hereby certify and verify that all of the statements contained therein are true.

I hereby verify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false, I am subject to punishment.

Dated: January 15, 2018

/s/ John R. Jones

John R. Jones, President