

BERT L. ROOS, #006960
Bert L. Roos, P.C.
5045 N. 12th Street, Suite B
Phoenix, Arizona 85014
Phone (602) 242-7869
Fax: (602) 242-5975
Email: blrpc85015@msn.com
Attorney for Danny's Scottsdale & Shea, L.L.C.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	In Proceedings Under Chapter 11
)	
DANNY'S SCOTTSDALE & SHEA, L.L.C,)	Case No.: 2:10-bk-02799-SSC
)	
Debtor.)	EMERGENCY MOTION FOR INTERIM
)	ORDER AUTHORIZING COLLATERAL
)	PURSUANT TO 11 U.S.C. § 363
)	
)	EXPEDITED HEARING REQUESTED
)	
)	Hearing Date: TBD
)	Hearing Time: TBD

DANNY'S SCOTTSDALE & SHEA, LLC, the debtor and debtor –in-possession in the above-captioned Chapter 11 case, files this Emergency Motion for Interim Order Authorizing Debtor to Use Cash Collateral Pursuant to 11 U.S.C. § 363 ("Cash Collateral Motion"). Pursuant to 11 U.S.C. §§ 105(a) and 363, the Debtor requests that the Court: (a) authorize the Debtor on an interim basis to pay necessary and essential post-petition operating expenses with certain cash and cash equivalent ("Cash"), in which various entities have claimed or may claim an interest; and (b) deem that prepetition secured creditors are adequately protected. The Cash Collateral Motion is supported by the contemporaneously filed Declaration of Kent Despain in Support of Debtor's Chapter 11 Case ("Despain Declaration"), the following memorandum of points and authorities, and all matters of records, all of which are incorporated herein by this reference.

1
2
3 **MEMORANDUM OF POINTS AND AUTHORITES**

4 **I. JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over this case and this matter pursuant to 28 U.S.C. §§ 157 and
6 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

7 2. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

8 3. The statutory predicates for the relief requested are 11 U.S.C. §§ 105(a) and 363.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND.**

10 **Background on the Debtor**

11 4. The Debtor is an Arizona limited liability company. Danny's Family Companies II, LLC,
12 owns a one hundred percent (100%) membership interest in the Debtor. Danny's Family Companies II,
13 LLC is also the Manager of the Debtor.

14 5. On February 3, 2010 (the "Filing Date"), the Debtor filed a voluntary petition for relief
15 under Chapter 11 of the United States Bankruptcy Code. The Debtor continues in possession of its
16 property and management of its business as debtor-in-possession pursuant to Bankruptcy Code §§ 1107
17 and 1108.

18 **Background on Managing Member Danny's Family Companies II, LLC**

19 6. Danny's Family Companies II, LLC is a fully integrated, private held management
20 company operating in Arizona, United States. From its inception, Danny's Family Companies II, LLC has
21 been a leader in managing mixed use commercial properties, ranging from car washes to anchored
22 shopping centers. Danny's Family Companies II, LLC has over a century of experience in the managing
23 field.

24 7. Based in Phoenix, Arizona, Danny's Family Companies II, LLC currently manages
25 multiple properties in Arizona.

1 **Secured Debt Against Danny's Scottsdale & Shea, LLC**

2 8. Apart from some unpaid real estate taxes, Danny's Scottsdale & Shea, LLC is encumbered
3 by: (i) a first lien in favor of Marshall & Ilsley Bank ("M&I", which claims an indebtedness in the
4 principal amount of approximately \$1,003,602.00 plus accrued and accruing interest.

5 9. Interest on the M&I debt has been paid through December 14, 2009.

6 10. The Debtor believes that M&I ("Secured Creditor") will claim a secured interest in the
7 receivables, cash, and other personal property assets of the Debtor.

8 **Events Leading Up to the Debtor's Chapter 11 Filing**

9 11. Like virtually every car wash and convenience store in the country, the Debtor has suffered
10 significantly as a result of the credit crisis and economic recession that has gripped the nation for at least
11 the past two (2) years. The Debtor's business, ownership and operation of this business, has been
12 particularly hard hit by these difficult economic times. Client losses have impacted negatively the
13 Debtor's cash flow and ability to service debt.

14 11. In February 2010, M&I began receivership proceedings by filing a civil complaint against
15 Danny's Scottsdale & Shea, LLC and other partner companies. In order to preserve the equity, the Debtor
16 filed for Chapter 11 relief before the Order to Show Cause hearing on M&I's Order Appointing
17 Temporary Receiver.

18 **Equity in Danny's Scottsdale & Shea, LLC**

19 13. According to the Debtor, the debtor has an "as is" value of \$1,000,000.00 and a stabilized
20 value of \$1,700,000.00. Based on the Debtor, there is significant equity and reserves for the Debtor.

21 **III. REQUEST FOR RELIEF.**

22 14. The Debtor earns income by managing a convenience store/fuel station located at 10444 N.
23 Scottsdale Road, Scottsdale, Arizona 85260. The Debtor does not have sufficient available resources to
24 operate its business without the use of Cash. To protect and preserve the assets of the estate, the Debtor
25 must be permitted to maintain its business relationships by paying certain essential post-petition operating

1 expenses, such as fees for property maintenance, supplies, landscaping, property management,
2 advertising, utilities, and improvements. If the Debtor cannot pay these expenses, the ability of the Debtor
3 to protect and preserve the estate assets is severely limited, and the viability of the Debtor will be
4 compromised.

5 15. The cash sought by the Debtor may be claimed as cash collateral by the Secured Creditor.
6 M&I may claim a lien on Debtor's assets. As stated below, the interest of the Secured Creditors in this
7 Cash are adequately protected.

8 16. The Debtor requests entry of Interim Order authorizing it to use Cash for the First month
9 on this bankruptcy case in accordance with the post-petition budget for the Debtor ("Budget"), which is
10 attached hereto as Exhibit A. Specifically, the Debtor requests authority to pay its February 2010
11 expenses in the approximate amount of \$97,433.00 ("February 2010 Expenses").

12 17. Notably, the Budget does not provide for payment of security deposit to utilities, as
13 required by Bankruptcy Code § 366. Through the Cash Collateral Motion, the Debtor reserves the right to
14 pay at least one month of security deposits to each of its utilities.

15 18. The Debtor also requests that the Court determine that the interest of the Secured Creditors
16 in the Cash are adequately protected and that the Court hold an emergency hearing on the proposed
17 Interim Order. Through such relief, the Debtor will continue to operate its business in a manner that
18 maximizes value for the benefit of the estate and all parties in interest.

19 **IV. LEGAL ARGUMENT**

20 **A. The Interest of the Secured Creditors are Adequately Protected.**

21 Under the Bankruptcy Code, the Debtor may use the Cash as long as any other entity claiming an
22 interest in the Cash is "adequately protected". See 11 U.S.C. § 363(c) and (e). Short of defining the term
23 "adequate protection," Bankruptcy Code § 361 outlines three non-exclusive ways a debtor might provide
24 adequate protection to a secured creditor; (i) periodic cash payments (or lump sum cash payment); (ii)
25 additional or replacement liens; or (iii) the realization of the "indubitable equivalent" of the creditor's

1 interest in the property. See 11 U.S.C. § 361; see also United Savs. Ass'n of Tex. V. Timbers of Inwood
2 Forest, 484 U.S. 365, 370 (1988).

3 In this case, the Secured Creditors are the only creditors that might claim a lien on or security
4 interest in the Cash. Pursuant to Bankruptcy Code § 552, the Secured Creditors will be granted
5 replacement liens on and security interests in all existing and hereafter acquired property and assets of the
6 Debtor of Every kind and character, to the extend (if any) and in the same validity, priority, and
7 enforceability that the Secured Creditor held a non-avoidable lien on and security interest in such kind and
8 character of property and assets of the Debtor, as of the commencement of its Chapter 11 case. Therefore,
9 to the extent that the Debtor's Cash constitutes cash collateral security of the Secured Creditors, the
10 interests of the Secured Creditors will be adequately protected. The Debtor will use the Cash to protect
11 and preserve the Property, which also protects the Secured Creditors.

12 **B. To Preserve the Estate's Assets, the Debtor Must be Permitted to Use the Cash**

13 As previously stated, the Court must authorize the Debtor to use the Cash to pay certain essential
14 post-petition operating expenses. Absent such authority, the Debtor cannot fund the services necessary to
15 continue operating its business post-petition. If the Debtor must cease operations, valuable estate assets
16 are at risk, and the estate will suffer irreparable harm. Moreover, the Debtor will lose the opportunity to
17 successfully reorganize and to maintain its going concern value.

18
19 **V. CONCLUSION**

20 WHEREFORE, the Debtor respectfully requests that the Court enter an Interim Oder:

21 A. Granting the Cash Collateral Motion on an interim basis;

22 B. Authorizing the Debtor to use the Cash to pay its February 2010 Expenses in accordance
23 with the Budget;

24 C. Setting a hearing on the Cash Collateral Motion as soon as possible and as is convenient
25 for the Court; and

1 D. Granting such other and further relief as this Court may deem just and proper.

2 DATED this 11th day of February 2010.

3
4 /s/Bert L. Roos, #006960

5 Bert L. Roos, Esq.

6 Attorney for Debtor

7 Copy of the foregoing mailed
8 this 11th day of February 2010 to:

9 U.S. Trustee
10 OFFICE OF THE U.S. TRUSTEE
11 230 N. First Avenue, Suite 204
12 Phoenix, AZ 85013

13 ISAAC M. GABRIEL
14 QUARLES & BRADY LLP
15 2 N. CENTRAL AVENUE
16 PHOENIX, AZ 85004-2391
17 Attorney for M&I MARSHALL & ILSLEY BANK

18 Strategic Funding Source, Inc.
19 1501 Broadway, Suite 260
20 New York, NY 10036

21 Danny's Scottsdale & Shea, LLC
22 15509 North Scottsdale Road
23 Scottsdale, AZ 85254
24 Debtor

25 By: /s/Bert L. Roos

EXHIBIT “A”
(Budget)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Danny's Scottsdale & Shea

	Budgeted monthly costs	Weekly estimate	Paid to
Payroll	15,240.63	3,800.00	CW Management
Rent	7,993.35	2,000.00	David Reger
Gas settlement shortfall	8,000.00	2,000.00	Settled with Chevron, can vary (est purchases \$324k/mo)
Cigarettes	15,198.00	4,000.00	Costco - paid out cash
Grocery	4,727.00	1,200.00	Frito - paid out cash; Lively on terms
Fast Food	1,216.00	350.00	Costco, Barro's - paid out cash
Beverage	7,120.67	1,800.00	Coke, Pepsi, Kalil, paid out cash; Red Bull on terms
Fountain	1,851.00	500.00	Coke, Pepsi, Kalil, paid out cash
Donuts	368.13	100.00	Paid cash
Lottery	9,296.67	2,500.00	Drawn from acct
Beer/Wine	3,866.00	1,000.00	Drawn from acct
Tax Grocery	1,134.00	300.00	Costco - paid out cash
Landscape	606.00	150.00	Smart Creations
Insurance	505.11	150.00	Lovitt Touche
Trash	229.45	57.00	Allied Waste
Alarm	74.75	19.00	Safeguard
Mats/linen	129.80	33.00	Aramark
Office Supplies	728.93	200.00	OPACS; paid cash for misc
Phone	538.50	135.00	Integra
Electricity	1,622.87	450.00	APS
Water	271.60	75.00	City of Scottsdale
Courier	153.82	40.00	Elite Delivery
Cell phone	53.24	15.00	Verizon
Management Fees	13,000.00	3,250.00	Danny's Family Companies
Equipment Repairs/Maint	2,800.00	700.00	Danny's Maintenance
Bank fees	848.79	210.00	Drawn from acct
Credit Card Fees	7,852.04	2,000.00	Drawn from acct
Operating costs	105,426.35	27,034.00	