

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF CONNECTICUT

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In re

Eternal Enterprise, Inc.,

Case No. 14-20292

Debtor.

Chapter 11

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AMENDED MOTION TO USE CASH COLLATERAL

Eternal Enterprise, Inc. (the “Debtor”) through its undersigned counsel files this Amended Motion for Authority to Use \$291,911.06 from insurance proceeds from the property located at 270 Laurel Street, Hartford, Connecticut, pursuant to 11 U.S.C. § 363(c)(2) and Fed. R. Bankr. P. 4001(b), and in support thereof, respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a “Core Proceeding” as defined by 28 U.S.C. § 157(b). Venue is proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicate for the relief requested herein is 11 U.S.C § 363 and Fed. R. Bankr. P. 4001.

BACKGROUND

1. The Debtor filed a petition for relief pursuant to chapter 11 of the Bankruptcy Code on February 19, 2014.
2. On June 6, 2016, a fire occurred at 270 Laurel Street, Hartford, Connecticut (the “Property”). The fire at the Property caused significant damage. The damage has rendered the Property uninhabitable and there are currently no tenants living there.

3. The Debtor holds an insurance policy through USI backed by Lloyd's of London to protect the Property.
4. The Debtor has also employed Vin Vizzo Adjusters, LLC as its private insurance adjuster. (See ECF No. 574.)
5. The Debtor had previously requested Court approval for an advance of \$750,000 from the anticipated insurance proceeds following the fire at the Property. (See ECF No. 630.)
6. Following the Debtor's initial motion for authority to use the insurance proceeds following the fire at the Property, Vin Vizzo Adjusters, LLC has provided the Debtor with a more detailed list of expenses, attached hereto as Exhibit A.
7. To Date the checks received from the insurance advance total \$830,000.00. This sum has been deposited into the insurance account in accordance with the Court's Order.
8. Out of the \$830,000.00 total, a check in the amount of \$80,000.00, constitutes reimbursement for business interruption loss of income. The remaining \$750,000.00 is the requested advance for repairs.
9. As detailed in Exhibit A, the Debtor seeks authority to use \$291,911.06 in proceeds from the insurance policy on the Property.
10. The Debtor seeks to pay Kone, Inc. \$1,303.16 for elevator inspection, United C & R \$18,019.45 for its work on the Property's electricity infrastructure and \$35,603.95 for its water mitigation invoice, Cianci Engineering \$902.50, Hubbard & Rosa Architects \$11,900.00 for their proposal, A.D. Property \$69,182.00 for security, and Vin Vizzo \$75,000.00 for the insurance adjuster services provided for the Property.

11. The Debtor is also seeking to get caught up on adequate protection payments to Hartford Holdings in the amount of \$68,000.00 and a payment for insurance escrow of \$12,000.00 from the business interruption advance.
12. The Debtor has attempted to resolve this request with Hartford Holding's counsel. More detailed explanation of the invoices was requested and has been provided herein.
13. The Debtor got some clarification from Vin Vizzo. He explained the different United C& R invoices as follows: "the [United C & R] invoices are generated on an insurance industry estimating program. This is how the insurance company requires the estimates and invoices. Secondly, the pricing is insurance industry standard rates. Each of the two invoices address separate issues. Again, required by the insurance company. The \$19,163.69 invoice deals with any contracting work which includes overhead and profit. The \$37,864.80 invoice deals only with remediation, in this case, specifically drying machines. Overhead and profit are NOT allowed on this work."
14. The Debtor also understands that Hartford Holdings, LLC is concerned about whether the insurance proceeds designated for United C & R will eat into the "brick and mortar" portion of the Debtor's insurance policy.
15. According to Vin Vizzo, "the costs are over and above the actual bricks and mortar part of the claim. We do not have a final settlement for the bricks and mortar. The United C&R, the Kone Elevator, the Cianci Engineering, etc. are costs added to the overall claim, not deducted from it."
16. The Debtor is currently waiting for an engineer's report to allow Mr. Vizzo to generate a schedule of work to be completed at the Property.

17. The Property is subject to a consensual lien as the result of a mortgage on the Property, initially held by Astoria Federal Mortgage Corp., and currently held by Hartford Holdings, Inc.
18. Because the Property is the subject of a lien, insurance proceeds from that building constitute the cash collateral of the lienholder.
19. Counsel for Hartford Holdings indicated Hartford Holdings was not satisfied with the explanations provided and still finds the expenses requested objectionable.
20. The requested expenses for repairs have been negotiated and approved through the insurance company.
21. There are no grounds to dispute these invoices and Hartford Holdings is acting in bad faith and causing harm to the property of the estate by delaying the payment of invoices.

RELIEF REQUESTED

22. By this motion, the Debtor seeks the entry of an Order authorizing its use of the insurance proceeds pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 4001(b)(2).
23. As set forth in the invoices attached hereto as Exhibit A, the Debtor requires the use of this cash collateral to fund necessary expenses of the estate.
24. The Debtor will suffer immediate and irreparable harm if it is not authorized to use the insurance proceeds to fund the expenses set forth in Exhibit A. Absent such authorization, the Debtor will not be able to rebuild or maintain the Property.
25. The Debtor acknowledges that Hartford Holdings, LLC. Has a lien on the cash collateral in accordance with 11 U.S.C. §§ 361 and 363.

CASH COLLATERAL AND THE RELIEF SOUGHT BY THE DEBTOR

26. The Debtor's use of property of the estate is governed by 11 U.S.C. § 363, which provides:

If the business of the debtor is authorized to be operated under section ... 1108 ... of this title and unless the court orders otherwise, the [debtor in possession] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). A Debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).

27. When a Chapter 11 debtor in possession is authorized to operate its business, it may use property of the estate in the ordinary course of business, but is prohibited from using cash collateral absent consent of the secured creditor or court authorization.

28. Cash Collateral is defined by the Bankruptcy Code as, "cash, negotiable instruments, documents of title securities, deposit accounts or other cash equivalents whenever acquired in which the estate and an entity and includes the proceeds, products, offspring, rents, or profits of property..." 11 U.S.C. 363(a).

29. The Debtor proposes to use the Cash Collateral in accordance with the terms of Exhibit A. The Debtor also requests that it be authorized: (i) to exceed any line item amount in the budget by an amount of up to 10% of each such line item; or (ii) to exceed any line item by more than ten percent, so long as the total of all amounts in excess of all line items for the budget do not exceed ten percent of the aggregate of the total budget.

A. The Court Should Enter an Order Authorizing the Continued Use of Cash Collateral Because the Debtor is Providing the Secured Creditor with Adequate Protection.

30. The Bankruptcy Code does not define “adequate protection” but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including “other relief” resulting in the “indubitable equivalent” of the secured creditors’ interest in such property. *See* 11 U.S.C. § 361.
31. Adequate protection is to be determined on a case by case factual analysis.
32. Adequate protection is meant to insure that the secured creditors receive the value for which they originally bargained for prior to the bankruptcy.
33. In the instant case, adequate protection is being provided to Hartford Holdings in compliance with the orders of this Court.
34. Hartford Holdings is receiving further adequate protection in the form of the bank account the Debtor opened to hold the insurance proceeds.
35. This bank account, established in accordance with the Court’s order, requires a signature from an authorized representative of Hartford Holdings to disburse funds, as well as electronic approval for the use of any such funds from Hartford Holdings’ attorneys.
- B. The Use of Cash Collateral will Preserve the Debtor’s Interest in the Property which will Benefit All Creditors.
36. The repair of the Property will preserve and potentially increase the value of the Property. Protecting the value of the Property will allow the Debtor to propose a confirmable chapter 11 plan. If the Debtor is not able to use the insurance proceeds it will be unable to repair the Property, which will hinder the Debtor’s sale efforts.
37. The Debtor will use the cash collateral in the manner set forth in the annexed exhibit.
38. The Debtor believes that the use of cash collateral pursuant to the terms and conditions set forth above is fair and reasonable and adequately protects Hartford

Holdings in this case. The combination of (i) the Debtor's ability to preserve the value of the Property; and (ii) providing Hartford Holdings with the other protections set forth herein, adequately protects its secured position under 11 U.S.C. § 361.

39. The Debtor believes that the approval of this motion is in the best interest of the Debtor, its creditors and its estate because it will enable the Debtor to (i) preserve and protect the value of the Property and (ii) to propose a plan centered on the sale of the Property and the Debtor's other properties.

WHEREFORE, the Debtor respectfully requests that this Court enter an order authorizing the Debtor's use of cash collateral in accordance with the attached exhibit and related adequate protection and granting such other relief as the Court deems just and proper.

Date: November 28, 2016

By: /s/ Irene Costello
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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF CONNECTICUT

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In re

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PROPOSED ORDER

WHEREAS, Eternal Enterprise Inc. (the “Debtor”) owns property located at 270 Laurel Street, Hartford Connecticut (the “Property”); and

WHEREAS, a fire occurred at the Property, resulting in severe damage; and

WHEREAS, the Debtor has an advance on insurance proceeds, which constitute the cash collateral of Hartford Holdings, LLC; and

WHEREAS, the Debtor requires the use of cash collateral of Hartford Holdings, LLC to pay for repairs to the Property;

NOW, THEREFORE, IT IS

ORDEREED, that the Debtor may use cash collateral of up to \$291,911.06 to pay for the items and repairs discussed in the Debtor’s motion.

