


ORDERED.

Dated: October 19, 2016



Jerry A. Funk
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
www.flmb.uscourts.gov

In Re:	Chapter 11
Institute of Cardiovascular Excellence, PLLC,	Case No.: 3:16-bk-01491-JAF Jointly Administered with
ICE Holdings, PLLC,	Case No. 3:16-bk-01492-JAF
ICE Real Estate Holdings, LLC	Case No. 3:16-bk-01493-JAF
Debtors.	

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FINAL ORDER GRANTING DEBTOR'S MOTION TO USE
CASH COLLATERAL OF FIFTH THIRD BANK AND THE U.S. SMALL
BUSINESS ADMINISTRATION *NUNC PRO TUNC* TO THE PETITION DATE

THIS CASE came before the Court on October 6, 2016 at 11:30 a.m. in Jacksonville, Florida upon Debtor in Possession Institute of Cardiovascular Excellence, PLLC's ("ICE"), and affiliated debtors ICE Real Estate Holdings, LLC ("ICE Real Estate") and ICE Holdings, PLLC ("Holdings") (collectively, the "Debtors") *Emergency*

Motion to Use Cash Collateral of Fifth Third Bank and the U.S. Small Business

Administration [Doc. No. 20] (the “Motion”). Adequate notice of the hearing was given under the circumstances. The Court has reviewed the record and has heard the argument of counsel, and has been advised that the Debtors and Fifth Third Bank have agreed to the relief sought as described in the Motion. Accordingly, it is

ORDERED as follows:

1. The Motion is **GRANTED** to the extent set forth herein.
2. The Debtor and Fifth Third (collectively, the “Parties”) are parties to certain loan transactions, including the ones set forth below:

A. ICE

ICE, is an obligor on five loans from Fifth Third. It is a co-borrower on a June 24, 2013 loan (“Loan 18”) and the sole borrower on loans dated October 19, 2010 (“Loan 34”); January 10, 2013 (“Loan 67”); March 21, 2013 (“Loan 75”); and October 30, 2013 (“Loan 83”). ICE is a guarantor on a June 27, 2013 loan (“Loan 59”). The amounts due under the loans as of April 20, 2016, are estimated at:

Loan 18	
Principal	\$259,979.75
Interest	\$44,320.94
Late fees	\$477.31
Per diem	\$180.54149

Loan 83	
Principal	\$180,545.70
Interest	\$7,539.66
Late fees	\$288.76
Per diem	\$45.08628

Loan 26	
Principal	\$3,306,100.00
Interest	\$803,408.07
Late fees	\$969.93
Per diem	\$848.91006

Loan 59	
Principal	\$1,043,619.15
Interest	\$172,681.98
Late fees	\$240.00
Per diem	\$724.73552

Loan 34	
Principal	\$1,957,721.39

Loan 75	
Principal	\$59,505.69

Interest	\$77,175.01
Per diem	\$367.07276

Interest	\$2,020.99
Late fees	\$119.84
Per diem	\$11.55402

Loan 67	
Principal	\$1,875,625.00
Interest	\$64,989.17
Late fees	\$1,960.93
Per diem	\$324.20251

Swap 1	
Termination	\$24,900.00
Legal fees	\$2,000.00
Interest	\$432.29

Swap 3	
Termination	\$263,600.00
Legal fees	\$1,000.00
Interest	\$4,576.39

Swap 2	
Termination	\$76,100.00
Legal fees	\$1,000.00
Interest	\$1,321.18

Advances	
Appraisal	\$5,256.08
Appraisal	\$4,500.00
Appraisal	\$2,500.00

ICE pledged all of its assets, including medical equipment, as collateral.

Additional interest and charges may apply.

Loans 67, 75, 83, and 59 and ICE's guaranty of Loan 59 are cross-collateralized with ICE's collateral pledge under the Security Agreement for Loan 34.

B. ICE Holdings

ICE Holdings is a co-borrower on Loans 18 and 59. It is also a co-borrower on an October 29, 2010 loan ("Loan 26A"). The amounts due under Loan 26A as of April 20, 2016, are estimated at: \$3,327,500.00 principal and \$23,389.95 interest, as well as \$299.82161 per diem interest for each subsequent day. Additional interest and charges may apply. ICE Holdings pledged all of its personal property as collateral for Loan 59.

C. ICE Real Estate

ICE Real Estate is a co-borrower on Loans 26A and 59. ICE Real Estate pledged real and personal property located in Ocala, Florida, and Summerfield, Florida, as collateral for Loans 26A and 59, respectively.

The Fifth Third loans are secured by the collateral described above (the “Pre-Petition Collateral”). As of the Petition Date, the Debtor acknowledges that generally all cash and cash equivalents of the Debtor were part of Fifth Third’s Pre-Petition Collateral or proceeds of said Pre-Petition Collateral. Accordingly, for purposes of this Order, the Debtor acknowledges that Fifth Third’s Cash Collateral shall consist of any and all (i) cash or cash equivalents on hand (whether under the control of the Debtors or any third party) and cash collections of the Debtors, whether obtained prior to, on or after the Petition Date, (ii) cash proceeds arising from the collection, sale, lease or other disposition, use or conversion of any of the Pre-Petition Collateral, whether obtained prior to, on or after the Petition Date and (iii) any other property of the Debtor that constitutes Cash Collateral, as provided in sections 363(a) and 363(c) of the Bankruptcy Code. Nothing in this Order shall extend or modify the prepetition liens as to the various Debtor entities, except as otherwise provided herein. The Debtors are hereby authorized to use the Cash Collateral of Fifth Third Bank and the SBA (the “Lenders”) in the manner provided in this Order until November 26, 2016, or as otherwise agreed to by the Parties.

3. The Debtors are hereby permitted to use Cash Collateral, as defined in 11 U.S.C. § 363 (a), including the cash or noncash proceeds of assets that were not Cash

Collateral on the Petition Date (“Cash Collateral”) up to the amounts shown in the Budget attached hereto.

4. As a condition of permitting the Debtors to use Cash Collateral as provided herein, and with an exception of any line item related to payroll and employee costs, including Employee Leasing and Insurance - Employee Leasing, the Debtors will operate strictly in accordance with the Budget and to spend Cash Collateral, not to exceed ten percent (10%) above the amount shown in the Budget. As to any payroll or employee cost related line items in the Budget, the Debtor may not vary upward as to those line items in any fashion. Dr. Qamar shall not receive any compensation from the Debtor in accordance with the Budget unless all other expense items are current and the Debtor maintains cash on hand in excess of \$50,000.00 after any such payment to Dr. Qamar. The Debtor shall provide Fifth Third with bi-weekly reports which reflect its actual receipts and expenditures for the prior 2 week term, and the percentage variance per line item to the Budget. Nothing in this Order shall authorize the disposition of any Pre-Petition Collateral outside the ordinary course of business or the Debtors’ use of the Cash Collateral resulting there from without the prior written consent of the Fifth Third. The authorization to use Cash Collateral will expire on November 26, 2016 at 5:00 p.m, or as otherwise agreed to by the Parties .

5. As adequate protection for the use of Cash Collateral and for any diminution in value of the Lenders’ Prepetition Collateral and post-petition interest, costs, and fees (“Post-petition Indebtedness”), and as security of the Post-petition Indebtedness, the Lenders are hereby granted a valid, perfected lien upon, and security interest in, to the

extent and in the order of priority of any valid lien pre-petition, all cash or other proceeds generated post-petition by the Pre-Petition Collateral. Fifth Third's liens against Debtor's Cash Collateral shall extend to any account holding such Cash Collateral, regardless of whether Fifth Third has control over such account, and encumbers any Cash Collateral held in debtor-in-possession accounts required by applicable law. Lenders are also entitled to credit bid their full claims at any sale involving their collateral. Additionally, Fifth Third is entitled to an administrative expense claim pursuant to 11 USC 507(b) to the extent the above adequate protection proves insufficient and/or does not offset any diminution of value in the Cash Collateral. The Debtor shall maintain insurance coverage for the Pre-Petition Collateral and name Fifth Third as loss payee.

6. Unless waived by the Lenders in writing, the Debtors shall immediately cease using Cash Collateral upon the occurrence of one of the following events (an "Event of Default"):

- a. If a trustee is appointed in this Chapter 11 Case;
- b. If the Debtors breach any term or condition of this Order or any of the Lenders' loan documents, other than defaults existing as of the Petition Date;
- c. If the Case is converted to a case under Chapter 7 of the Bankruptcy Code;
- d. If the case is dismissed; or
- e. If any violation or breach of any provision of this Order occurs; or
- f. If the Debtors do not conduct an auction on October 21, 2016 (or as otherwise agreed to by the Parties) to sell substantially all of the Debtors' assets;

- g. If the Debtors do not close on a sale of substantially all of their assets on or before December 31, 2016; or
- h. The Debtors contest, in any fashion, Lenders ability to credit bid at the auction.

7. The Debtors shall immediately cease using any Cash Collateral upon receipt of a written notice from the Lenders that an Event of Default has occurred. Upon the filing of an appropriate motion, the party that gave notice shall be entitled to a hearing on not more than two business days' notice (subject to the Court's docket), which notice period commences the day on which actual service of a notice of an Event of Default is made by email, fax or by hand delivery on counsel for the Debtors, at which time the Lenders may seek relief, including, without limitation, the following:

- a. The lifting of the automatic stay under 11 U.S.C. §362 and permitting the Lenders to take possession of all or a part of the Prepetition Collateral and Property;
- b. The abandonment and immediate delivery to the Lenders of all or any part of the Prepetition Collateral and Property, which the Lenders shall be permitted to sell in accordance with applicable law, either piecemeal or as a going concern;
- c. The entry of an order prohibiting or limiting the further use of Cash Collateral;
- d. The appointment of a trustee in either chapter 11 proceeding or the entry of an order converting the case to chapter 7; and/or
- e. Such further or other relief as provided in the Lenders' loan documents, the Bankruptcy Code, or applicable non-bankruptcy law, including, without limitation, accelerating all indebtedness.

8. In addition to the Lenders' right upon the occurrence of an Event of Default, the agreements by the Lenders as set forth herein to allow the use of Cash Collateral may be terminated by the Lenders prior to the occurrence of an Event of

Default, without cause, at any time upon ten business days written notice to the Debtors (with copies to the Debtors' counsel and the U.S. Trustee). Such notice shall be delivered by email, hand delivery, fax, or overnight mail. Upon termination, the Prepetition Indebtedness and Post-petition Indebtedness, including all accrued and accruing interest, costs, and expenses, including reasonable attorney's fees, shall then be immediately due and payable; provided however, that the obligations and rights of the Lenders and the Debtors with respect to all transactions which have occurred prior to such termination, including, without limitation, the Lenders' security interests in and liens on the Prepetition Collateral and Post-petition Collateral shall remain unimpaired and unaffected by any such termination and shall survive such termination; and provided further that upon such termination the Lenders shall be deemed to have retained all its rights and remedies, including, without limitation, those provided pursuant to the Bankruptcy Code and applicable non-bankruptcy law, all of which rights are preserved for all purposes.

9. Upon receipt of a notice of an Event of Default or if the Lenders exercise their rights under the foregoing paragraphs, the Debtors shall be entitled to file an appropriate motion for authority to use Cash Collateral (the "Cash Collateral Motion"), provided, however, that the Lenders shall be given at least two business days written notice of any hearing (subject to the Court's docket), which notice period commences the day on which actual service is made by email, fax or by hand delivery on the respective Counsel for the Lenders, of the Cash Collateral Motion, and the Lenders shall be free to oppose the Cash Collateral Motion and assert any objections available to it under

applicable law. The Debtors agree that it shall not seek to grant a lien that is equal or senior to the Prepetition Collateral.

10. Payment by the Debtors of expenses other than those set forth in the submitted Budget attached hereto shall constitute cause to terminate the automatic stay in accordance with the provisions of this Order unless the Lenders consent to those changes in writing. In consenting to a Budget item in the future or by taking any other actions pursuant to this Order, the Lenders shall not have any liability to any third party and shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” with respect to the operation or management of the Debtors.

11. This Order and any prior cash collateral order shall be binding on a subsequently appointed Chapter 11 or Chapter 7 Trustee in bankruptcy.

12. The Lenders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any Pre-Petition Collateral, Post-petition Collateral, or otherwise.

13. The liens and security interest granted to the Lenders shall be valid and perfected post-petition without the need for execution or filing of any further documents or instruments otherwise required to be filed or be executed or filed under non-bankruptcy law.

14. The Debtors waive any surcharge claims or rights they may have against Lenders.

15. The Debtors shall forthwith serve a copy of this Order and the Motion on

all parties and counsel entitled to notice pursuant to Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.

16. The Debtors has stipulated and the Court has approved, that Lenders have perfected, non-avoidable first and second priority liens on and in the Pre-Petition Collateral and the improvements thereon and all rents and proceeds related thereto. The estate and any interested party are barred from filing an adversary proceeding challenging such validity, enforceability, and perfection.

17. Nothing herein shall limit or prejudice the Lenders from seeking such other or further relief or right available in law, under the Code or otherwise.

Aaron Wernick, Esq. is directed to serve a conformed copy of this Order on all appropriate parties and to file a certificate of service.

Institute of Cardiovascular Excellence PLLC
Weekly Cash Budget through November 19, 2016

Projected Budget for the Week Ending								
CASH RECEIVED	10/8	10/15	10/22	10/29	11/5	11/12	11/19	Total
Beginning Cash Balance	\$53,306	\$98,852	\$80,197	\$106,277	\$75,347	\$111,593	\$81,438	\$53,306
Collections	\$137,500	\$137,500	\$137,500	\$137,500	\$137,500	\$137,500	\$137,500	\$962,500
Other								
Total Cash Available	\$190,806	\$236,352	\$217,697	\$243,777	\$212,847	\$249,093	\$218,938	\$1,015,806
CASH DISBURSED								
Cath Lab Supplies	27,500	27,500	27,500	27,500	27,500	27,500	27,500	\$192,500
Nuclear Med Supplies	4,000	4,000	4,000	4,000	4,000	4,000	4,000	\$28,000
Other Medical Supplies	200	200	200	200	200	200	200	\$1,400
								\$0
Auto Expense		100		100		100		\$300
Bank Charges	50	50	600	50	50	50	600	\$1,450
Biomedical Waste	200		200		200		200	\$800
Computer Expense								\$0
Contract Labor	1,250	5,000	1,250	6,000	1,250	5,000	1,250	\$21,000
Distributions								\$0
Dues & Subscriptions\Education	200	200	200	200	200	200	200	\$1,400
Employee Leasing Expense								\$0
Employee Reimbursements								\$0
Equipment Leases	7,000		3,000		6,000		3,000	\$19,000
Insurance - Auto								\$0
Insurance - Commercial Liability	1,786				1,786			\$3,572
Insurance - ICE RE Property/Liability	1,693				1,693			\$3,386
Insurance - Malpractice						7,000		\$7,000
Insurance - Employee		3,500	20,000			3,500		\$27,000
Interest Expense								\$0
Legal & Professional Fees								\$0
Linen			500				500	\$1,000
Office Expenses	2,500	1,500	2,500	1,500	2,500	1,500	2,500	\$14,500
Office Supplies		750		750		750		\$2,250
Patient Meals and Expenses								\$0
Payroll Expense		75,000		75,000		75,000		\$225,000
Petty Cash (gas, laundry)								\$0
Physician Payroll Expense		21,530		21,530		21,530		\$64,590
Postage and Shipping	75	75	75	350	75	75	75	\$800
Radiation Consulting	1,000				1,000			\$2,000
Records Storage			500				500	\$1,000
Rent Expense			3,270		2,800		3,270	\$9,340
Repair & Maintenance	3,000	1,250		1,250		1,250		\$6,750
Security			1,100				1,100	\$2,200
Taxes & Licenses	500						4,000	\$4,500
Telecommunications					6,000			\$6,000
Telephone	1,000		1,000		500			\$2,500
Transfers to ICE Holdings								\$0
Travel								\$0
Uniform Expense								\$0
Utilities		500		10,000	500			\$11,000
Total Disbursements	\$51,954	\$141,155	\$65,895	\$148,430	\$56,254	\$147,655	\$48,895	\$660,238
CASH POSITION								
Operating Balance	\$138,852	\$95,197	\$151,802	\$95,347	\$156,593	\$101,438	\$170,043	\$355,568
Adequate Protection -Fifth Third	(15,000)	(15,000)	(20,000)	(20,000)	(20,000)	(20,000)	(15,000)	(\$125,000)
U.S. Trustee Fees			(\$5,525)					(\$5,525)
Bankruptcy Professional Fees	(\$25,000)	\$0	(\$20,000)		(\$25,000)		(\$70,000)	(\$140,000)
Other Received (Disbursed)								
End Of Week Balance	\$98,852	\$80,197	\$106,277	\$75,347	\$111,593	\$81,438	\$85,043	\$85,043

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