

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Restaurant, Debtor and Debtor-in-Possession*

In re:

JUROMA PROPERTIES, LLC, *et al.*,

Debtors.

Case No. 16-17985 (VFP)  
(Jointly Administered)

Chapter 11

Honorable Vincent F. Papalia

**VERIFIED APPLICATION IN SUPPORT OF MOTION FOR AN ORDER  
(i) AUTHORIZING JULIO MALDONADO AND ROSA CHACON TO  
OBTAIN POST-PETITION REPLACEMENT FINANCING, *NUNC PRO  
TUNC*, PURSUANT TO 11 U.S.C. § 364(c) AND (d) AND FED. R. BANKR.  
P. 4001; AND (ii) GRANTING RELATED RELIEF**

**TO: HONORABLE VINCENT F. PAPALIA  
UNITED STATES BANKRUPTCY JUDGE**

Toz-Bel, LLC, d/b/a Rossy's Garden Restaurant, Chapter 11 debtor and debtor-in-possession ("Toz-Bel" or "Debtor"), by and through its undersigned counsel, and in support of the Debtor's Application for an Order (i) Authorizing Julio Maldonado and Rosa Chacon to Obtain Post-Petition Replacement Financing, *Nunc Pro Tunc*, Pursuant to 11 U.S.C. § 364(c) and (d) and Fed. R. Bankr. P. 4001; and (ii) Granting Related Relief (the "Application"), hereby respectfully seeks the following forms of relief:

- (i) Authorization to obtain a post-petition replacement loan, *nunc pro tunc*, from the following lenders (collectively referred to as "Lenders"):

| <b>Name and Address of Lender</b>   | <b>Amount of Loan</b> |
|---|-----------------------|
| Luis Andrade<br>511 Madison Street<br>Orange, NJ 07050                                  | \$8,000.00            |
| Fany J. Chacon<br>81 Manchester Place<br>Newark, NJ 07104                               | 8,000.00              |
| Hugo B. Bravo<br>611 North Seventh Street<br>Newark, NJ 07107                           | 8,500.00              |
| Moca Transport Corp.<br>48 Crittenden Street<br>Newark, NJ 07104                        | 8,500.00              |
| Jaime R. Chacon<br>81 Manchester Place<br>Newark, NJ 07104                              | 8,500.00              |
| Juan L. Maldonado<br>585 North Eleventh Street<br>Newark, NJ 07107                      | 9,000.00              |
| Olga Maldonado<br>62 Llewellyn Avenue<br>Bloomfield, NJ 07003                           | 9,500.00              |
| Pacheco Construction Company<br>Inc.<br>39 South Highland Avenue<br>Baltimore, MD 21224 | 10,000.00             |
| Maria L. Torres<br>600 North Eighth Street<br>Newark, NJ 07107                          | 10,000.00             |
| Julio Torres<br>600 North Eighth Street<br>Newark, NJ 07107                             | 10,000.00             |
| Luis G. Chacon Molina<br>479 Parker Street<br>Newark, NJ                                | 10,000.00             |

in accordance with all of the terms and conditions set forth below (the “DIP Financing”); and (ii) the proposed order approving the Application (the “Financing Order”); and

(ii) granting Lenders, collectively, a second mortgage and security interest in and on real property owned by Juroma Properties (defined herein) located at 14 Belmont Avenue, Belleville, New Jersey (“the Property”), pursuant to 11 U.S.C. § 364(c), (d).

### **PRELIMINARY STATEMENT**

1. On December 13, 2016, the Court approved post-petition DIP Financing (defined herein) between Julio Maldonado/Rosa Chacon and Inez Jacqueline Vazquez Estrella (the “Inez Loan”) for \$100,000 (“DIP Financing”). The \$100,000 was to be utilized to fund the first tranche of a certain settlement between the Debtors and secured creditor, Tozzo Belmont, Inc. (“Tozzo-Belmont”) (see Docket No. 127).

2. Unfortunately, through no fault of the Debtor, the Inez Loan could not be consummated. The settlement with Tozzo-Belmont required payment of \$100,000 by December 17, 2016. Since Debtor’s principals, Julio Maldonado and Rosa Chacon (the “Principals”) and the Debtor were unable to obtain the Inez Loan, they hastily obtained \$100,000 in certified funds from the Lenders (the “Replacement Loan”). The Lenders are friends and family of the Principals.

3. By this Motion, Debtor seeks an order authorizing *nunc pro tunc* approval of the Replacement Loan on the same terms and conditions as the Inez Loan. The relief shall also include a provision that none of the funds can be clawed back once paid to Tozzo-Belmont.

### **TERMS OF REPLACEMENT LOAN**

4. Pursuant to Fed. R. Bankr. P. 4001(c)(1)(B), the Replacement Loan, in the amount of \$100,000, will be repaid through the Plan of Reorganization and in accordance with the terms set below:

(i) The \$100,000 was used by the Principals as a contribution and loan to Toz-Bel, LLC, and Juroma Properties, LLC (“Juroma Properties”), for payment to Tozzo-Belmont;

(ii) the \$100,000 payment to Tozzo-Belmont was made pursuant to a certain settlement among the debtors (Toz-Bel, Juroma Properties, and the Principals Julio Maldonado and Rosa Chacon, collectively referred to as “Debtors”) and Tozzo-Belmont;<sup>1</sup>

(iii) any and all claims against Lenders or assets that secure the Replacement Loan pursuant to 11 U.S.C. § 506(c) shall be waived by the Debtor and the estate; and

(iv) Lenders shall be paid at zero percent (0%) interest through operations or upon refinancing of the Property.

5. The Lenders are friends and family of the Principals.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(D). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **DESCRIPTION OF DEBTOR’S OPERATIONS**

7. Toz-Bel is a restaurant that serves Ecuadorian and Italian cuisine since April 2010. Toz-Bel also holds a liquor license. Mr. Maldonado is the managing member of Toz-Bel, and Ms. Chacon is a member of Toz-Bel. Toz-Bel is located at 14 Belmont Avenue, Belleville, New Jersey 07109. Toz-Bel has four (4) employees including Ms. Chacon.

### **REAL PROPERTY**

8. Debtor leases the Property from related debtor Juroma Properties. Debtor has been paying the Mortgage<sup>2</sup> (defined herein) on the Property.

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<sup>1</sup> The settlement was memorialized in a consent order entered on December 9, 2016, at Doc. No. 127.

<sup>2</sup> Tozzo-Belmont holds a mortgage (“Mortgage”) on the Property.

**REASONS FOR FILING**

9. On or about August 17, 2009, Tozzo-Belmont granted a commercial mortgage loan to Juroma Properties for the Property. Juroma Properties executed a promissory note in favor of Tozzo-Belmont (the “Note”). To secure the Note, Juroma Properties delivered a certain mortgage in favor of Tozzo-Belmont on the Property. To further secure the Note, Mr. Maldonado and Ms. Chacon delivered a commercial loan guaranty.

10. Juroma Properties, Julio Maldonado, and Toz-Bel defaulted on the Note and mortgage encumbering the Property.

11. An ownership interest pledge agreement provides that the Principals shall pledge their respective ownership rights in Toz-Bel as security for the payment obligations of Juroma Properties. As a result, Tozzo-Belmont was granted a security interest in Toz-Bel.

12. Mr. Maldonado and Ms. Chacon own and operate Juroma Properties.

13. On or about April 15, 2015, Tozzo-Belmont filed a foreclosure complaint against Juroma Properties, Julio Maldonado, Rosa Chacon, Ramona Hinson, Toz-Bel, and United States of America.

14. On or about November 16, 2015, Tozzo-Belmont filed a motion to appoint a rent receiver for the Debtor.

15. On or about January 21, 2016, Honorable Walter Koprowski, Jr., J.S.C., appointed Charles Rabolli, Jr., Esq., as the court-appointed rent receiver.

16. On February 18, 2016, Charles Rabolli, Jr., Esq., filed a Verified Complaint in the landlord/tenant court to evict the Debtor.

17. As a result, Toz-Bel filed a bankruptcy petition to stop the eviction and restructure its debts through operations.

18. Tozzo-Belmont and the Debtor resolved their dispute and entered into a consent order entered on December 9, 2016 (the “Consent Order”) (see Doc. No. 127). The Consent Order required a \$100,000 payment by the Debtor to Tozzo-Belmont by December 17, 2016.

**Establishment of Lien**

19. After the Inez Loan could not be realized, the Principals obtained the Replacement Loan on or about December 16, 2016. The Replacement Loan will be memorialized by a second mortgage on the Property. The Replacement Loan will be subordinate to a first mortgage to be obtained from Antos Lending Associates Corporation (“Antos”) in the amount of \$375,000.<sup>3</sup>

20. Pursuant to the terms of the Consent Order, after secured creditor Tozzo-Belmont is paid \$475,000, it shall hold an allowed secured claim (“Secured Claim”) in the amount of \$25,000, less all adequate protection payments Debtor tenders to Tozzo-Belmont between December 1, 2016, and January 31, 2017. Debtor shall repay the balance of the \$25,000 Secured Claim by making monthly payments to Tozzo-Belmont of \$1,000 until the balance is satisfied.

21. Tozzo-Belmont shall also hold an allowed general unsecured claim in the amount of Tozzo-Belmont’s filed proof of claim, less five hundred thousand dollars (\$500,000).

22. Tozzo-Belmont agrees to vote in favor of and support the Debtors’ plan of reorganization.

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<sup>3</sup> The Antos first mortgage shall replace the Tozzo-Belmont mortgage. The \$375,000 loan shall be the second tranche payment under the settlement.

**Efforts to Obtain Financing**

23. Prior to bringing this Application, the Debtor made diligent, but unsuccessful, efforts to obtain unsecured credit from lenders pursuant to 11 U.S.C. § 364(a) and/or unsecured ordinary administrative-expense priority credit pursuant to 11 U.S.C. § 364(b).

24. The Debtor negotiated with numerous other potential lenders, including the Inez Loan.

25. The Replacement Loan is feasible and fair and allows the Debtor to reorganize.

26. The Debtor originally had an arrangement to obtain financing through the Inez Loan. On December 13, 2016, the Court approved DIP financing by way of the Inez Loan. Unfortunately, there were complications with the Inez Loan. As a result of and because \$100,000 had to be paid to Tozzo-Belmont by December 17, 2016, the Principals sought replacement financing and obtained the Replacement Loan from the Lenders. Copies of the eleven (11) certified checks from Lenders are annexed as **Exhibit A**. The Replacement Loan was utilized to make timely payment to Tozzo-Belmont. The Debtor now seeks *nunc pro tunc* approval of the Replacement Loan.

**RELIEF REQUESTED AND GROUNDS THEREFOR**

27. The Debtor seeks approval, *nunc pro tunc*, of the Replacement Loan. Mr. Maldonado and Ms. Chacon contributed and loaned the \$100,000 to Toz-Bel and Juroma Properties to satisfy the terms and conditions of the Consent Order (see Doc. No. 127). The Replacement Loan shall be secured by a second mortgage on the Property. As such, Mr. Maldonado and Ms. Chacon seek authority approving the Replacement Loan, *nunc pro tunc*, on the terms set forth herein pursuant to 11 U.S.C. § 364(c)(3) and (d)(1), and in turn loan the

funds to Juroma Properties to satisfy, in part, the Tozzo-Belmont Mortgage to comply with the settlement terms.

28. The Bankruptcy Code authorizes [a debtor] to obtain credit and incur debt “secured by a junior lien on property of the estate that is subject to a lien” and provides that a court may authorize a debtor to incur post-petition debt on a senior or “priming” basis if (a) the debtor is unable to obtain credit otherwise and (b) there is “adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” See 11 U.S.C. § 364(c)(3) and (d)(1).

29. In order to obtain a court’s authorization for post-petition credit pursuant to Section 364(c) and (d), a debtor has the burden of establishing that: (1) it was unable to obtain unsecured credit; (2) the proposed credit transaction is necessary to preserve assets of the estate; and (3) the terms of the proposed credit agreement are fair, reasonable, and adequate in light of the circumstances of the debtor and the proposed lender. *See, e.g., In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

**The Debtor Has Made Efforts to Obtain Unsecured Credit**

30. In considering whether to approve proposed financing, a court must first examine the debtor’s efforts to obtain financing on an unsecured basis. *See, e.g., In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990). While a debtor is not required to show that it sought credit from every possible source, a debtor must demonstrate that it made a reasonable effort to seek credit from other sources available under Bankruptcy Code Sections 364(a) and (b). *Id.*

31. In *Crouse*, for example, the debtor approached only one lending institution and never attempted to obtain financing from its existing lenders; the court held that the debtor had



failed to make the requisite showing of unsuccessful efforts to obtain credit. *See Crouse Group*, 71 B.R. at 550. Conversely, in *In re Mid-State Raceway, Inc.*, the court found that the debtor's efforts, including conducting negotiations and discussions with various financial entities, constituted reasonable efforts under the circumstances. 323 B.R. 40, 59 (Bankr. N.D.N.Y. 2005).

32. The Debtor has contacted and negotiated with potential lenders for financing on an unsecured basis to no avail. Accordingly, the Debtor has made sufficient efforts to obtain unsecured credit. The Debtor is not seeking to prime Tozzo-Belmont but simply replace Tozzo-Belmont with new financing.

33. Furthermore, Section 364(d)(1) of the Bankruptcy Code provides that a court may authorize a debtor to incur post-petition debt on a senior or "priming" basis if (a) the debtor is unable to obtain credit otherwise and (b) there is "adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." See 11 U.S.C. § 364(d)(1); *In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010).

34. As explained before, the Debtor contacted a series of potential lenders, and none of the potential lenders was willing to commit to post-petition financing on an unsecured or fully junior secured basis.

35. The Replacement Loan will be subordinate to Tozzo-Belmont's Mortgage on the Property, as was the Inez Loan. Once Mr. Maldonado and Ms. Chacon receive the \$375,000 loan from Antos, Tozzo-Belmont will no longer have a mortgage on the Property. Thus, the Antos loan will be secured by a first mortgage, and the Replacement Loan will be secured by a second mortgage on the Property.

**Approval of the Replacement Loan Will Facilitate Preservation of the Debtor's Assets**

36. The Replacement Loan was absolutely necessary to preserve the value of the Debtors' assets and allows the Debtors to reorganize. If the Replacement Loan was not procedure, the Debtor would have defaulted on the Consent Order with Tozzo-Belmont. The rationale behind the requirement that post-petition financing must facilitate preservation of the Debtors' assets is predicated upon courts' recognition that lenders often exact terms that "may or may not have the effect of causing harm to the estate and its creditors." *Mid-State*, 323 B.R. at 59; *see also In re Defender Dep't Stores*, 145 B.R. 312, 317 (9th Cir. BAP 1992). Indeed, "bankruptcy courts do not allow terms in financing agreements [to] convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the post-petition lender." *Defender*, 145 B.R. at 317. Thus, a court must focus upon whether the terms of the proposal prejudice the rights of creditors or grant the lender excessive control. *Id.* Moreover, a bankruptcy court cannot "approve financing arrangements that amount to a plan of reorganization but evade confirmation requirements." *Id.*

37. Nonetheless, a court's discretion must be constrained to allow reasonable business judgment to be exercised. *See, e.g., Ames*, 115 B.R. at 40. To that end, debtors-in-possession must enjoy the right to "exercise their basic business judgment consistent with their fiduciary duties." *Id.* at 38. In determining whether the proposed financing arrangement is within the realm of sound business judgment, a court will typically examine all of the facts and circumstances. *Id.* at 39. Critically, one of the main inquiries is "whether the credit transaction is necessary to preserve the assets of the estate, and is necessary, essential, and appropriate for the continued operation of the Debtor's business." *In re Farmland Indus. Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003).

38. In the instant matter, the receipt of the funds in connection with the Replacement Loan will in turn ensure that the Debtor continue its operations, which is essential to its business. The proposed financing will also increase the likelihood of the Debtors consummating a plan of reorganization. Thus, the Debtor does not intend to liquidate its assets. This will undoubtedly result in a benefit to all of the stakeholders in this case. In connection with the fiduciary duty the Debtor owes to its creditors, it is imperative that the Principals receive approval of the Replacement Loan to assist with Debtor's continued operation and reorganization.

39. The replacement DIP Financing was required to insure the continued viability of Debtor's business and maintenance of its ordinary course of operations without interruption.

40. Accordingly, the proposed financing is necessary and beneficial for the estate and its creditors, and the exercise of business judgment by the Debtor withstands scrutiny.

**The Terms of the Lending Facility Are Fair, Reasonable, and Adequate**

41. Finally, the terms of the Loan are fair, reasonable, and adequate. This requirement is closely connected to the one discussed above. Indeed, the analysis of the terms of the financing arrangement is guided by the same concerns, *i.e.*, whether the terms of the proposed agreement will benefit all parties in interest and will not circumvent pertinent procedures and requirements of the Bankruptcy Code.

42. In fact, there are no reasonable financing alternatives available to the Debtor. All of the lenders that the Debtor contacted required interest significantly higher than the interest rate charged by the Lender. Here, the Lenders offered the Replacement Loan with a zero percent (0%) interest rate, to be repaid upon refinancing of the Property or through operations.

43. Some of the terms rejected by courts include those that leverage the Chapter 11 process, *Ames Dep't Stores, Inc.*, 115 B.R. at 37; cross-collateralization provisions, *In re*

*Monarch Circuit Indust. Inc.*, 41 B.R. 859, 861 (Bankr. E.D. Pa. 1984); arrangements benefiting only the creditor/lender rather than the estate, *Crouse*, 71 B.R. 544, and agreements between the debtor and its parent-lender pursuant to which the parent completely dominates the debtor, *In re St. Mary Hosp.*, 86 B.R. 393, 401 (Bankr. E.D. Pa. 1988). Courts have authorized credit agreements in which terms such as those cited above were not present. *See, e.g., Ames*, 115 B.R. at 39.

44. Moreover, Section 364 was enacted in recognition of the difficulties faced by a company in reorganization seeking to obtain credit. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984) (“The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.”). In other words, Section 364 provides a means for a bankrupt company to continue operating under the supervision of the bankruptcy court.

45. Here, all of the terms and conditions of the Replacement Loan are fair and equitable, and there are no extraordinary provisions that were cited in the cases above. Lenders have agreed to be paid when the Debtor ultimately refinances or through Debtor’s operation when, and if, funds are available.

**CONCLUSION**

**WHEREFORE**, the Debtor respectfully requests that the Court enter the proposed Financing Order granting the Debtor's Application and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

**TRENK, DiPASQUALE,  
DELLA FERA & SODONO, P.C.**  
*Counsel to Toz-Bel, LLC, d/b/a Rossy's Garden  
Restaurant, Debtor and Debtor-in-Possession*

By: /s/ Anthony Sodono, III  
Anthony Sodono, III

Dated: December 22, 2016

**VERIFICATION**

I, Julio Maldonado, Managing Member of Toz-Bel, LLC, verify pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the factual statements contained in the foregoing Verified Application are true and correct to the best of my knowledge, information, and belief.

**TOZ BEL, LLC**

By: /s/ Julio Maldonado  
Julio Maldonado, Managing Member

Dated: December 22, 2016