

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

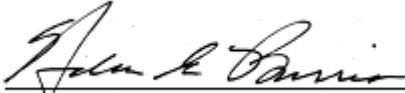
CASE NO.: 13-2354-HB

**FINAL CONSENT ORDER (A) AUTHORIZING DEBTOR'S USE OF CASH
COLLATERL AND (B) GRANTING REPLACEMENT LIENS**

The relief set forth on the following pages, for a total of 10 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT
03/28/2014**




US Bankruptcy Judge
District of South Carolina

Entered: 03/28/2014

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In Re:)
)
Kahn Family, LLC,)
)
Debtor.)
)
)

**FINAL CONSENT ORDER (A) AUTHORIZING DEBTOR'S
USE OF CASH COLLATERAL AND (B) GRANTING REPLACEMENT LIENS**

This matter originally came before the Court on Wells Fargo Bank, N.A.'s ("Wells Fargo"), *Motion to Prohibit Debtor's Use of Cash Collateral* ("Motion to Prohibit") [Dkt. No. 84, filed Jan. 8, 2014] and the Debtor's *Response* thereto [Dkt. No. 88, filed Jan. 22, 2014]. Wells Fargo and the Debtor resolved the Motion to Prohibit pursuant to an *Interim Consent Order (A) Authorizing Debtor's Use of Cash Collateral and (B) Granting Replacement Liens* ("Interim Order"), which was entered by the Court on March 13, 2014 [Dkt No. 102]. In the Interim Order, the Court set a final hearing on the use of cash collateral for March 28, 2014. Prior to the final hearing, the parties received comments to the Interim Order from counsel to the United States Trustee, which have been incorporated into this Final Order. The Debtor and Wells Fargo did not receive any other objections or responses to the Interim Order.

Therefore, having considered Well's Fargo's Motion to Prohibit and the Debtor's Response, along with the parties' consent to the terms contained herein, the Court finds that it is in the best interest of the Debtor and all creditors of the Debtor to permit the Debtor to use Well's Fargo's cash collateral on a final basis as set forth in this Order. Accordingly, the Court hereby finds and concludes as follows:

STATEMENT OF FACTS

1. On April 22, 2013 ("Petition Date"), Kahn Family, LLC ("Kahn Family" or "Debtor"), along with Kahn Properties South ("Kahn Properties South") and Alan B. Kahn filed their petitions for relief under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code"). Each of these debtors has remained in possession of their property and continued to operate their businesses pursuant to Bankruptcy Code Sections 1107(a) and 1108(a).

2. Wells Fargo asserts it is the holder (and/or administrative agent) of six loans to Kahn-related entities, which are guaranteed by Mr. Kahn and secured by various collateral pledged by non-debtor and debtor entities. The Wells Fargo loans are summarized in the Motion to Prohibit. Collectively, Wells Fargo asserts the loans have a balance due of \$61,802,838.98 as of January 3, 2014 and it asserts each of the Wells Fargo loans is cross-collateralized and cross defaulted with all of the other loans. With respect to the property of the Debtor Khan Family, LLC, Wells Fargo asserts a first priority mortgage and assignment of rents on 6.430 acres in Richland County South Carolina known as "Dutch Plaza" (the "Dutch Plaza Property") pursuant to a Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing Financing Statement by debtor Kahn Family which was recorded in the Office of the Register of Deeds for Richland County on June 25, 2010, in Mortgage Book 1614 at Page 341.

3. The rents from the Dutch Plaza Property constitute Wells Fargo's cash collateral ("Cash Collateral") pursuant to the Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing Financing Statement described above.

4. The Debtor does not have sufficient unencumbered cash or other assets to continuing to operate its business in Chapter 11 pending the Debtor's Chapter 11 plan of reorganization. As a result, an immediate and ongoing need exists for Debtor to use the Cash Collateral in order to continue the operation of its business as debtor-in-possession under Chapter 11 of the Bankruptcy Code, to minimize the disruption of Debtor as a going concern, and to maximize the value of Debtor's estate and the value of the Cash Collateral.

5. Good cause has been shown for the entry of this Final Order and authorization for Debtor to use the Cash Collateral in accordance with the budget attached hereto as **Exhibit A** (the "Budget"). The Debtor's need for use of Cash Collateral afforded herein is immediate and critical.

6. Entry of this Final Order will minimize disruption of Debtor's business and operations.

7. Moreover, it will preserve the assets of the Debtor's estate and appears to be in the best interest of Debtor, its creditors, and the Bankruptcy Estate. The terms of the use of the Cash Collateral are fair and reasonable, reflect Debtor's exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

8. The Debtor has consented to Wells Fargo being granted a replacement lien on Cash Collateral and proceeds thereof, with such replacement liens to have the same rank and priority as Wells Fargo's pre-petition liens.

9. The Debtor may use the Cash Collateral only in the ordinary course of its business and in accordance with the Budget.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

A. All findings of fact that are or may be deemed conclusions of law are hereby incorporated as conclusions of law.

B. Debtor does not have sufficient unencumbered cash or other assets with which to continue to operate its business in Chapter 11 without use of the Cash Collateral.

C. The Debtor's use of the Cash Collateral appears necessary, appropriate, and essential to the reorganization efforts of Debtor. The entry of this Final Order appears to be in the best interests of Debtor, its creditors, and the bankruptcy estate.

D. The Debtor shall be authorized to use the Cash Collateral solely for the purpose of funding the ordinary and necessary costs of operating and maintaining its business limited in kind and amount to the total expenses set forth in the Budget attached hereto. All disbursements by Debtor shall be made in strict compliance with the terms of this Final Order and the attached Budget, except that the Debtor may exceed any line item in the Budget that contains a dollar amount as long as (i) Debtor's total expenses for a particular month do not exceed the total monthly amount set forth in the Budget, and (ii) the Debtor does not exceed any line item in the Budget by 10% or \$1,000, whichever is greater, without Wells Fargo's prior consent, and (iii) any payments provided herein are otherwise timely made in full. Improper use of Cash Collateral or an unapproved deviation from the Budget shall constitute an event of default under the terms of this Final Order.

E. Upon request by Wells Fargo, Debtor shall segregate any and all Cash Collateral from the Dutch Plaza Property in a separate DIP bank account at Wells Fargo which is designated as Wells Fargo Cash Collateral Account. Further, all Cash Collateral received in excess of expenses contained in the Budget shall remain in the Wells Fargo Cash Collateral Account (or

the DIP account, in the event Wells Fargo has not requested the Debtor to create the Wells Fargo Cash Collateral Account) and may not be used without further order of this Court.

F. As adequate protection for any diminution of the Cash Collateral, Wells Fargo is **GRANTED** a post-petition replacement lien and security interest in the post-petition Cash Collateral and the proceeds thereof to the extent of any diminution of the Cash Collateral post-petition, with such replacement liens to have the same rank and priority as Wells Fargo's pre-petition liens.

G. Wells Fargo shall not be required to file any UCC Financing Statements, nor any other document or take any other action (including possession of any of the Cash Collateral) in order to validate or perfect the security interests and liens granted to it hereunder, as all such liens and security interests shall be deemed automatically perfected by and upon entry of this Final Order.

H. The Debtor expressly waives its right to assert any claims against Wells Fargo under 11 U.S.C. § 506(c) for any costs and expenses paid during the period in which it has authority to use cash collateral under the Interim Order or this Final Order and reserves its rights under Section 506(c) as to any other period.

I. To the extent the provisions of this Final Order do not adequately protect Wells Fargo's interest in the Cash Collateral, Wells Fargo may be entitled to a super-priority claim senior to all other claims for the amount pursuant to 11 U.S.C. § 507(b).

J. In addition, as further conditions to the Debtor's use of Cash Collateral, the Debtor has agreed to the following terms with Wells Fargo:

- a. The Debtor will provide reasonable internal financial documents showing actual income and expenditures on a monthly basis to Wells Fargo.

- b. The Debtor agrees to grant representatives of Wells Fargo reasonable access to its collateral during all reasonable business hours for purposes of inspection and appraisal or such other time as conveniently arranged with the Debtor. In addition, the Debtor shall make its books and records reasonably available to representatives of Wells Fargo for purposes of inspection during regular business hours or such other time as conveniently arranged with the Debtor.
- c. The Debtor shall maintain insurance with respect to Wells Fargo's collateral in accordance with the parties' loan documents.
- d. The authority provided in this Final Order shall be superseded upon entry of a further order regarding use of cash collateral or upon confirmation of a plan. Notwithstanding the foregoing, the authority provided by this Final Order shall terminate immediately and automatically upon the occurrence of the following:
 - (a) entry of an order dismissing or converting the Debtor's chapter 11 case to a chapter 7 case; (b) entry of an order appointing a chapter 11 trustee; (c) written agreement of the Debtor and Wells Fargo; or (d) the occurrence of any default under the terms of this Final Order. Any such termination shall not affect or in any way impair any right, interest, or lien granted to Wells Fargo under this Order.
- e. Upon the Debtor's failure to comply with any requirements of this Order, counsel for Wells Fargo shall notify Debtor's counsel of the Debtor's default and Debtor shall be given twenty (20) days from the date of the notice to cure its default. In the event the Debtor fails to cure its default, Wells Fargo shall be entitled to an immediate modification of the automatic stay **without further**

court notice or hearing upon the presentation and filing of an Affidavit detailing the notice, failure to cure, and proposed order to the Court. The Debtor agrees that if it makes a payment after the 20-day period, it will not cure the default and Wells Fargo remains entitled to relief from the automatic stay. Although Wells Fargo is not receiving an adequate protection payment under this Final Order, it reserves the right to seek an adequate protection payment in the event the property has positive cash flow.

- f. Nothing herein constitutes a finding regarding the value of Wells Fargo's collateral or proposed treatment of Wells Fargo's claim under a plan of reorganization. The parties' right to assert and/or dispute valuation and treatment of Wells Fargo's claims under a plan of reorganization is hereby preserved. Wells Fargo and the Debtor agree that this Order is not intended nor shall it be construed as a waiver or limitation in any way by Wells Fargo or the Debtor of any rights or remedies under the Bankruptcy Code or other applicable law which they may have, including without limitation Wells Fargo's right to file a Motion for Relief from the Automatic Stay under 11 U.S.C. § 362.
- g. Unless the Court orders otherwise or Wells Fargo consents, in no event shall Cash Collateral be used to fund professional fees of any kind, expenses, costs, or other disbursements to challenge the validity of Wells Fargo's liens, or any counter-claims or cross-claims or any other claims of recovery of any kind against Wells Fargo.
- h. Debtor shall timely pay all post-petition taxes and shall timely file all documents necessary for the calculation of post-petition taxes.

- i. Wells Fargo does not waive its right to file a Motion for Relief from the Automatic Stay and reserves all rights and remedies under 11 U.S.C. § 362. Except as specifically set forth in this Order, neither the Debtor nor Wells Fargo waive any rights provided to them under the Bankruptcy Code or other applicable law.
- j. Further, the entry of this Order shall not constitute a waiver of any pre-Petition default or of any right or remedy of Wells Fargo under applicable non-bankruptcy law to include pursuit of any guarantors, other non-debtor obligors, or collateral securing the Wells Fargo's loans which is not property of the estate. Notwithstanding anything in this Agreement, Wells Fargo shall be entitled to exercise all rights and remedies in connection with any debts and collateral of non-Debtor parties.

AND IT IS SO ORDERED.

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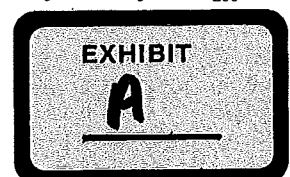
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Dutch Plaza
(Post Petition and Pre Petition)
Includes Principal Payments closed to Balance Sheet

Cash
Report Includes an open period. Entries are not final.

Current Period Thru:	NOTE REF	Year-To-Date Dec-11	Year-To-Date Dec-12	Year-To-Date Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	SIX MONTH TOTAL
INCOME											
RENTAL INCOME											
Base Rent	1	460,129	457,280	434,701	36,423	36,423	36,423	36,423	34,622	34,622	214,936
TOTAL RENTAL INCOME		460,129	457,280	434,701	36,423	36,423	36,423	36,423	34,622	34,622	214,936
RECOVERY INCOME											
CAM	2	875	(4,067)	2,173							-
Signage	2	-	-	196							-
Water											-
Sewer											-
Misc. Repairs											-
Property Taxes											-
Insurance											-
TOTAL RECOVERY INCOME		875	(4,067)	2,369	-	-	-	-	-	-	-
FEE INCOME											
Late Charges		-	-	13							-
TOTAL FEE INCOME		-	-	13	-	-	-	-	-	-	-
TOTAL INCOME		461,004	453,213	437,083	36,423	36,423	36,423	36,423	34,622	34,622	214,936
COMMON AREA MAINTENANCE (RECOVERABLE)											
SITE MAINTENANCE											
Electrical Labor	7	1,597	-	1,366	680	680	680	680	680	680	4,080
Electrical Maintenance	7	-	-	1,770	300	300	300	300	300	300	1,800
Elevator	3	6,812	6,606	6,837	0	1,600	0	0	1,600	0	3,200
Elevator Phone	3	3,551	3,385	3,297	300	300	300	300	300	300	1,800
Exterminating		1,620	875	-							-
Garbage Removal	3	10,696	11,526	12,936	1,150	1,150	1,150	1,150	1,150	1,150	6,900
Janitorial Contract	3	41,446	44,759	30,631	3,390	3,390	3,390	3,390	3,390	3,390	20,340
Landscaping Maintenance	3	11,351	12,294	10,043	680	680	2,050	1,200	680	2,050	7,340
Parking Lot	3	3,150	2,040	1,815	165	165	165	165	165	165	990
Plumbing Labor	6	-	350	549							-
Plumbing Maintenance	6	-	-	3,740						300	300
Plumbing Repairs	6	125	-	177							-
Tool And Supplies	7	14	378	-	0	200	0	0	0	0	200
Miscellaneous Common Area	6	1,161	1,949	984	0	0	165	0	0	165	330
TOTAL CAM SITE MAINTENANCE		81,523	83,962	74,145	6,665	8,465	8,200	7,185	8,265	8,500	47,280
EXTERIOR MAINTENANCE											
Doors	6	95	119	90							-
Electrical Labor	6	-	-	2,751		250				250	500
HVAC Labor	6	13,263	4,710	6,439	0	0	1,265	0	0	1,265	2,530
HVAC Repairs	6	-	10,818	1,860			300				300
Keys/Locks	6	107	1,533	292							-
Lighting Fixture Maintenance	6	-	293	10							-
Lighting Fixture Repairs	6	549	-	426		426				426	852
Plumbing Maintenance	7	5,559	4,193	130	350	350	350	350	350	350	2,100
TOTAL CAM EXTERIOR MAINTENANCE		19,573	21,666	11,998	350	1,026	1,915	350	350	2,291	6,282
INTERIOR MAINTENANCE											
Electrical Labor	6	-	2,944	628							-
Electrical Repairs	6	3,211	675	959	0	0	350	0	0	0	350
Exterminating	3	-	-	1,350	135	0	0	135	0	0	270
HVAC Repairs	6	-	970	145							-
Keys/Locks	6	-	-	173							-
Painting-Materials Interior	6	356	1,452	442							-
Plumbing Repairs	6	1,555	1,700	859	0	0	200	0	0	0	200
Tools and Supplies	6	-	-	106							-



TOTAL ADMINISTRATIVE AND GENERAL	893	822	789	-	-	-	-	-	-	-	
FEES											
Management Fees	4	9,220	22,661	20,276	1,821	1,821	1,821	1,821	1,731	1,731	10,747
TOTAL FEES		9,220	22,661	20,276	1,821	1,821	1,821	1,821	1,731	1,731	10,747
LEGAL AND PROFESSIONAL											
Legal	5	270			2,474	2,472	2,472	2,472	2,472	2,472	14,834
TOTAL LEGAL AND PROFESSIONAL		270	-	-	2,474	2,472	2,472	2,472	2,472	2,472	14,834
DEVELOPMENT EXPENSE											
OTHER DEVELOPMENT EXPENSE											
Exterior Painting	9				0	0	0	0	17,000	0	17,000
Ceiling	9				0	0	0	0	15,000	0	15,000
HVAC Labor	6	-	-	1,484							
HVAC Materials	6	-	-	9,116							
TOTAL OTHER DEVELOPMENT EXP		-	-	10,600	-	-	-	-	32,000	-	32,000
TOTAL DEVELOPMENT EXPENSE		-	-	10,600	-	-	-	-	32,000	-	32,000
TOTAL OPERATING EXPENSES		392,731	420,202	489,876	35,189	37,876	38,538	35,818	69,042	38,574	255,038
OP INC PRIOR TO FINANCING, DEPR, TAXES		68,273	33,011	(52,793)	1,234	(1,452)	(2,116)	605	(34,420)	(3,952)	(40,102)
FINANCING											
Interest, Mortgage #1											
Principal, Mtg #1, Current Year											
TOTAL FINANCING		-	-	-	-	-	-	-	-	-	-
OPERATING INCOME PRIOR TO DEPRECIATION AI		68,273	33,011	(52,793)	1,234	(1,452)	(2,116)	605	(34,420)	(3,952)	(40,102)
BEGINNING OF PERIOD CASH BALANCE					(41,705)	(40,471)	(41,924)	(44,039)	(43,434)	(77,855)	(\$41,705)
CUMULATIVE CASH BALANCE				(31,760)	(40,471)	(41,924)	(44,039)	(43,434)	(77,855)	(81,807)	(81,807)
LESS RESERVE FOR INSURANCE - EIGHT MONTHS				(9,945)	-						
CUMULATIVE CASH AVAILABLE				(41,705)	(40,471)	(41,924)	(44,039)	(43,434)	(77,855)	(81,807)	(81,807)
RESERVE FOR TAXES AND INSURANCE				9,945	17,810	25,676	33,541	26,588	34,453	42,318	

NOTES TO ESTIMATES

GENERAL NOTE - MANAGER CONTINUES TO ENDEAVOR TO LEASE TO NEW TENANTS - NO NEW TENANTS ARE INCLUDED IN THIS CASH COLLATERAL BUDGET - IT IS ANTICIPATED THAT MANAGER WILL REQUEST APPROVAL TO AMEND CASH COLLATERAL BUDGET WITH EACH NEW TENANT WITH A PROPOSED CHANGE THAT SHOWS ALL CASH FLOWS FROM RENT AND RELATED EXPENSES WITH EACH NEW LEASE

1) RENT HAS BEEN BUDGETED BASES UPON CURRENT RENT ROLL WITH AN ADJUSTMENT FOR A TENANT ANTICIPATED TO BE LEAVING

2) CURRENT YEAR CAM INCOME WILL BE BILLED IN JULY

3) CURRENT YEAR EXPENSE HAS BEEN BUDGETED BASED UPON PRIOR YEAR

4) MANAGEMENT FEE EXPENSES ARE BUDGETED AT 5% OF REVENUE

5) LEGAL EXPENSES ARE BUDGETED BASED UPON MANagements AS FOLLOWS:

PROPERTY SPECIFIC	JAN	FEB	MARCH	APRIL	MAY	JUNE
LEGAL BILLS RELATED TO EVICTIONS			2,000	-	-	2,000
LEGAL BILLS RELATED TO NEW LEASES			2,000	-	-	2,000
PRO-RATA PORTION OF TOTAL BILLS						
LEGAL - BEYOND RETAINER						3,571
ACCOUNTING - OUZTS			1,643			
TAX PREP - ELIOT DAVIS			549			
TOTAL			5,643			7,571

6) THESE OPERATING EXPENSES ARE ESTIMATED TO BE LESS THAN PRIOR YEAR BECAUSE OF SOME SPECIFIC REPAIRS THAT WERE DONE IN 2013 WHICH SHOULD NOT RECUR IN 2014

7) THESE OPERATING EXPENSES ARE ESTIMATED TO BE MORE THAN PRIOR YEAR BECAUSE OF CHANGE FROM IN HOUSE MAINTENANCE MAN

8) THESE OPERATING EXPENSES ARE ESTIMATED TO BE MORE THAN PRIOR YEAR BECAUSE OF SPECIFIC REPAIRS NEEDED THIS YEAR

9) PAINTING OF METAL AND CEILING TILES REPLACEMENT HAS BEEN DEFERRED AND IS NECESSARY TO BE DONE