



FILED & JUDGMENT ENTERED
Steven T. Salata

Feb 16 2012

Clerk, U.S. Bankruptcy Court
Western District of North Carolina

Laura T. Beyer

Laura T. Beyer
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
(Charlotte Division)

In re:) Chapter 11
)
MW GROUP, LLC) Case No. 11-32674
)
Debtor.)

**FINAL ORDER AUTHORIZING THE USE OF CASH COLLATERAL,
PURSUANT TO SECTIONS 361 AND 363 OF THE BANKRUPTCY CODE**

THIS MATTER came before the court on January 5, 2012, for a final hearing upon the *Emergency Motion for Order Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Noticing a Final Hearing* (the “Motion”)(ECF No. 22).¹ Counsel for the Debtor, counsel for the Bankruptcy Administrator, and counsel for Bank of America, N.A. (the “Lender”) appeared at the hearing. The court has reviewed the Motion and Lender’s objections thereto, heard and considered the statements of counsel, the testimony of Donald James, the record in this case, the evidence before it, and by entry of this Order the court makes the following:

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meaning assigned to them in the Motion.

FINDINGS OF FACT

1. On October 21, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this court. The Debtor continues in possession of its properties and the management of its business as a debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

2. The Debtor is a North Carolina limited liability company, which owns certain real property and improvements located in Charlotte, Mecklenburg County, North Carolina. Specifically, the Debtor owns certain vacant land, 48 condominium units, and 200 apartment units for rent known as Weyland and Weyland II (the "Property").

3. Laurance Realty Associates, LLC ("Laurance Realty") operates and manages the Property. Laurance Realty charges a 5% management fee to the Debtor, and is reimbursed for all actual and necessary costs and expenses incurred in operating the Property (the "Management Fee").

4. Prior to the Petition Date the Debtor borrowed certain funds from the Lender (the "Loan").

5. The Loan is evidenced by, among other documents, the following: (i) that certain Loan Agreement, dated as of June 1, 2003 (as the same may have been amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"); (ii) that certain Note, dated as of June 1, 2003 (as the same may have been amended, restated, supplemented or otherwise modified from time to time, the "Note"), in the original principal amount of \$6,250,000.00; (iii) a Deed of Trust dated as of June 1, 2003 and recorded on June 6, 2003, in Book 15473, Page 573, in the Mecklenburg County Public Registry (the "Deed of Trust"); (iv)

an assignment of Rents and Leases dated as of June 1, 2003 and recorded in Book 15473, Page 608 of the Mecklenburg County Register of Deeds (the "Assignment of Rents"); (v) an Assignment of Plans, Permits and Contracts dated as of June 1, 2003 from the Debtor to LaSalle ("Assignment of Plans"); (vi) that certain Indemnity Agreement dated as of June 1, 2003 ("Indemnity Agreement"), from the Debtor and Laurance H. Freed (the "Guarantor") to LaSalle; and (vii) the Guaranty of Payment and Performance dated as of June 1, 2003 from the Guarantor to LaSalle ("Guaranty"). The Note, Loan Agreement, Deed of Trust, Assignment of Rents, Assignment of Plans, Indemnity Agreement, Guaranty and all modifications thereto are sometimes collectively referred to hereinafter as the "Loan Documents."

6. Under the terms of the Assignment of Rents, the Debtor assigned to Lender, all the rents, incomes, profits, and revenues due under or by virtue of any lease or sublease, either oral or written, or any letting of or any agreement for the use or occupancy of any part of the Property. These rents, incomes, profits, and revenue constitute cash collateral as that term is defined in § 363 of the Bankruptcy Code (the "Cash Collateral").

7. For purposes of this Motion, the court has proceeded with the presumption that there is a valid debt owed to Lender and that the leases, rents, profits and proceeds generated by the Property are subject to a valid, first-priority and properly perfected security interest securing that debt. The Debtor has reserved its right, as well as the right of any other party with standing, to challenge the validity, priority or extent of any asserted lien in a later proceeding.

8. Debtor defaulted under the Note and Deed of Trust by failing to pay the entire outstanding balance due under the Note upon maturity of the Note. As of the Petition Date, the Lender contends that it is owed approximately \$5,600,000.00 together with such fees, costs, and expenses as may be due and owing pursuant to the Loan Documents.

9. The Debtor's Schedules that were filed in this case and the testimony of Donald James illustrate that the Property may be worth in excess of \$9,000,000.00, provided however, that all parties have reserved the right to submit appraisal and/or other testimony as to the valuation of the Property in connection with a valuation hearing or any other matter in this chapter 11 case.

10. Based on the post-petition performance of the property, it appears the stream of post-petition rents generated by the Property is not declining.

11. Based on the testimony before the court, it appears that there may be a substantial equity cushion with respect to the Property, provided however, that this finding is without prejudice to the rights of the Lender to contest this finding at a later hearing.

12. Based on the testimony before the court, there does not appear to be any diminution in the value of Lender's collateral as a result of the Debtor's use of Cash Collateral; provided however, that this finding is without prejudice to the rights of the Lender to contest this finding at a later hearing.

CONCLUSIONS OF LAW

13. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(M), among other provisions, and this court has the authority to enter this Order under 11 U.S.C. §§ 105, 361, and 363, among other sections.

14. Lender's interest in Cash Collateral is adequately protected as that term is defined in section 361 of the Bankruptcy Code.

15. Due and appropriate notice of the Motion was given to all parties in interest.

16. Entry of this Order is in the best interest of the Debtor, its estate, its creditors and other parties in interest in this case.

In view of the foregoing, it THEREFORE IS ORDERED, ADJUDGED AND DECREED as follows:

(a) Authority to Use Cash Collateral. By entry of this Order, the Debtor is authorized to use Cash Collateral consisting of the rents generated by the Property in the ordinary course of business provided such use is: (1) consistent with the approved expenses in that the amounts spent do not exceed, on a line-item basis, the expense budget which is attached hereto as **Exhibit A** (the "Budget"), subject, however, to the following: (i) Debtor may exceed the amounts set forth in any Budget line-item by not more than ten percent (10%) of such line item, provided that the Debtor maintains positive cash flow for such month in the Budget; and (ii) any expenditure in excess of those Budget line-item amounts shall require the prior written consent of Lender before being paid; and (2) Debtor complies with all other terms of this Order.

(b) Grant of Liens and Super-Priority Claim. In addition to the security interest in the pre-petition collateral and its security interests and rights in the Cash Collateral generated upon sale of any pre-petition collateral and as additional protection for such interests and rights and all obligations of Debtor arising from and after the date of entry of this Order under any of the Loan Documents, Lender is hereby further granted a valid, perfected, and enforceable security interest in the rents and proceeds of the Property equivalent in extent and priority to that which it held as of the Petition Date on like collateral, to the extent of Cash Collateral actually expended (the "Replacement Lien"). Such Replacement Lien is equivalent to a lien granted under 11 U.S.C. § 364(c)(2) in and upon post-petition collateral. In addition to the Replacement Lien granted to the Lender pursuant to this Order, the Lender is hereby granted a super-priority administrative claim under Sections 503(b)(1), 507(a), and 507(b) of the Bankruptcy Code (the "507(b) Claims") for the amount by which adequate protection afforded herein for the amount by which the Debtor's

use of Cash Collateral proves to be inadequate. Such 507(b) Claims shall have priority over all other costs and expenses of the kind specified in or ordered pursuant to Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), or 726 of the Bankruptcy Code provided, however, that any “super-priority” claim asserted by the Lender pursuant to this Order shall be subordinate in priority to any quarterly fee owed to the Bankruptcy Administrator for the Western District of North Carolina pursuant to 28 U.S.C. § 1930.

(c) Lien Attachment and Perfection. This Order shall be sufficient and conclusive evidence of the priority and validity of Lender’s security interest in and liens in the post-petition collateral without the necessity of filing, recording, or serving any financing statements or other documents which may otherwise be required under federal or state law in any jurisdiction or the taking of any action to validate or perfect the security interests and liens granted to Lender hereunder.

(d) Unauthorized Use. In addition to constituting a default hereunder, and without any limitation upon other remedies available to Lender for such unauthorized use, if Debtor uses Cash Collateral for a purpose not authorized herein, Lender’s liens and other security interests shall automatically attach to any assets acquired with such Cash Collateral to the same extent and with the same priority as the pre-petition liens and security interests would have attached thereto.

(e) Interest Payments. Beginning in January, 2012, the Debtor shall commence making monthly interest payments to Lender at the nondefault contract rate of interest under the Loan Documents. The monthly interest payments shall be due and payable on the 25th day of each month pending further Order of the court. In addition, the Debtor shall provide all information, documentation, and reports to the Lender as to the Debtor’s cash and rent rolls as

shall be reasonably requested by the Lender on a monthly basis. The Debtor also shall continue to comply with the reporting requirements, if any, contained in the Loan Documents.

(f) Management Fee. Laurance Realty is hereby authorized to operate and manage the Property, and Laurance Realty may charge a 5% management fee, together with all actual and reasonable costs incurred managing the Property as reflected on the Budget and as otherwise provided under the Management Agreement between Laurance Realty and the Debtor. Nothing contained herein should be construed as a limitation on the power of this court to reconsider the issues of the management of the Property or the payment of the Management Fee.

(g) Challenges. Nothing contained herein shall prevent the Debtor, a creditor, subsequently appointed trustee, or official creditors' committee from contesting the validity, perfection and enforceability, or priority of the liens on the pre-petition collateral, or from raising any defenses, offsets, deductions or counterclaims thereto. The entry of this Order is without prejudice to the Lender's right to object to any other motions filed by the Debtor or any other relief sought by the Debtor or to seek affirmative relief in this Bankruptcy Case, including (i) seeking relief from stay or the conversion or dismissal of this Bankruptcy Case or (ii) if, after the initiation of this Chapter 11 case, the Debtor seeks authority from this court to obtain credit advances with a priority senior or equal to that afforded Lender as provided herein.

(h) No Waiver. Nothing contained herein shall be deemed or construed as a waiver of any substantive or procedural rights of any party in interest in this chapter 11 case.

(i) Binding on Trustee. The Replacement Lien granted pursuant to this Order shall be binding upon any trustee subsequently appointed in this case.

(j) No Prejudice. The entry of this Order shall be without prejudice to the rights of the parties or the court upon its own motion to modify the terms of this Order.

(k) Service of Order. Counsel for Debtor shall ensure that a copy of this Order is served electronically or by first class mail (which, pursuant to the Bankruptcy Rules, will be deemed sufficient) upon (i) the Bankruptcy Administrator; (ii) Lender; and (iii) any person who has filed with this court on or before the date of this Order and served upon Debtor's counsel a request to be served with copies of all pleadings, notices, and other papers filed in this bankruptcy case.

This Order has been signed electronically. The Judge's signature and Court's seal appear at the top of this Order.	United States Bankruptcy Court
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EXHIBIT A

CASH BUDGET

January 1, 2012 to May 31, 2012

	2012				
	Jan. 1-31	Feb. 1-29	March 1-31	April 1-30	May 1-31
CASH BALANCE - BEGINNING OF PERIOD *	162,406.81	153,960.75	168,519.69	181,861.63	198,330.57
RECEIPTS					
RENTAL INCOME					
Fixed Rent	123,500.00	124,000.00	124,500.00	125,000.00	125,500.00
RENTAL INCOME	123,500.00	124,000.00	124,500.00	125,000.00	125,500.00
INTEREST INCOME					
Interest Income	136.00	136.00	136.00	136.00	136.00
INTEREST INCOME	136.00	136.00	136.00	136.00	136.00
OTHER INCOME					
HOA Reimbursement	3,690.49	3,690.49	3,690.49	3,690.49	3,690.49
Application Fee	330.00	330.00	330.00	330.00	330.00
Damage Fee	200.00	200.00	200.00	200.00	200.00
NSF Fee	20.00	20.00	20.00	20.00	20.00
Eviction Court Fees	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00
Late Charges	1,750.00	1,750.00	1,750.00	1,750.00	1,750.00
Collections	250.00	250.00	250.00	250.00	250.00
Forfeited Sec Deposits	-	600.00	-	-	-
Administrative Fee	320.00	320.00	320.00	320.00	320.00
Miscellaneous Inc	25.00	25.00	25.00	25.00	25.00
OTHER INCOME	8,185.49	8,785.49	8,185.49	8,185.49	8,185.49
TOTAL RECEIPTS	131,821.49	132,921.49	132,821.49	133,321.49	133,821.49
DISBURSEMENTS					
REPAIRS & MAINTENANCE	16,508.00	13,868.00	18,288.00	14,608.00	14,138.00
MAKE READY	14,180.00	11,550.00	11,200.00	11,800.00	11,550.00
UTILITIES	14,440.00	13,620.00	13,270.00	13,130.00	12,780.00
INSURANCE	389.00	1,989.00	5,146.00	389.00	389.00
REAL ESTATE TAXES	9,200.00	9,200.00	9,200.00	9,200.00	9,200.00
COMMUNICATION SYSTEMS	762.00	762.00	762.00	762.00	762.00
PAYROLL EXPENSE	20,424.00	20,424.00	20,424.00	20,424.00	30,636.00
PAYROLL TAXES	1,719.00	1,719.00	1,719.00	1,719.00	2,578.50
EMPLOYEE INSURANCE	1,837.00	1,837.00	1,837.00	1,837.00	1,837.00
MANAGEMENT FEES	6,406.55	6,461.55	6,456.55	6,481.55	6,506.55
CONDOMINIUM ASSESSMENTS	7,652.00	7,652.00	7,652.00	7,652.00	7,652.00
MARKETING & ADVERTISING	1,035.00	985.00	860.00	1,010.00	1,235.00
# PROFESSIONAL FEES	# 32,500.00	17,500.00	12,500.00	12,500.00	14,700.00
BANKRUPTCY ADMINISTRATOR FEES	1,950.00	-	-	4,875.00	-
OFFICE EXPENSE	710.00	710.00	710.00	710.00	710.00
DUES, LICENSES & SEMINARS	1,000.00	530.00	-	300.00	-
TRAVEL & VEHICLE EXPENSES	70.00	70.00	70.00	70.00	70.00
OTHER EXPENSES	3,485.00	3,485.00	3,385.00	3,385.00	3,460.00
BAD DEBTS EXPENSE	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00
TOTAL DISBURSEMENTS	140,267.55	118,362.55	119,479.55	116,852.55	124,204.05
NET CASH FLOW FOR PERIOD	(8,446.06)	14,558.94	13,341.94	16,468.94	9,817.44
CASH BALANCE - END OF PERIOD	153,960.75	168,519.69	181,861.63	198,330.57	207,948.01

* Balance of MW Group DIP Operating Account + retainer held by Moon, Wright, Houston Attorneys

Includes payments originally anticipated to be made in December.