

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION**

IN RE: PAR TWO INVESTORS, INC.,	:	BANKRUPTCY CASE
	:	NO. 16-11120-aec
Debtor	:	
	:	CHAPTER: 11
PAR TWO INVESTORS, INC,	:	
	:	
Movant	:	
	:	
v.	:	
	:	CONTESTED MATTER
SYNOVUS BANK,	:	
	:	
Respondent	:	
	:	
	:	
	:	

---

**DEBTOR'S EMERGENCY MOTION FOR (1) ORDER AUTHORIZING USE OF CASH COLLATERAL ON AN INTERIM BASIS AND (2) FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL**

---

COMES NOW Debtor-in-Possession Par Two Investors, Inc. (the “Debtor”) and, pursuant to 11 U.S.C. §363, and Fed. R. Bankr. P. (“Bankruptcy Rule”) 4001, and files this Emergency Motion for (1) Order Authorizing Use of Cash Collateral on an Interim Basis and (2) Final Order Authorizing Use of Cash Collateral (the “Motion”) and respectfully shows the Court as follows:

1. The Debtor filed a voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on September 15, 2016 (the “Petition Date”) and has continued in the management and operation of the Debtor’s business and properties as Debtor-in-Possession pursuant to Bankruptcy Code Sections 1107 and 1108.
2. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Pursuant to Bankruptcy Rule 4001(b)(1), the Motion is a contested matter governed by Bankruptcy Rule 9014.

4. The authority for the relief requested herein is Bankruptcy Code §363(c)(2).

5. The Debtor is in the business of property management relating to numerous parcels of land as well as mobile homes that it offers for rent in Lee County, Georgia. The Debtor is a Georgia corporation in good standing.

6. A significant portion of the Debtor's real and personal property assets are subject to certain promissory notes and commercial security interests (the "Loan Documents") executed by the Debtor in favor of Synovus Bank<sup>1</sup>, which asserts that the amount owed to Synovus Bank as of the petition date is \$1,232,084.50.

7. Additional secured loans are held by The Bank of Terrell.

8. Synovus Bank alleges that each of the Loan Documents executed by the Debtor contains an assignment of rents provision (the "Assignment of Rents") and has asserted that the rents receivables of the Debtor are cash collateral as defined in § 363(a) of the Bankruptcy Code.<sup>2</sup>

9. The Debtor's use of the cash collateral is essential to the continuing operation of its business, to maintain the value of the estate and for an effective reorganization.

10. The Debtor seeks interim authorization to use cash collateral in accordance with the budget attached hereto as Exhibit "A" (the "Budget"), pending a final hearing (hereinafter, the period for which interim relief is sought is referred to as the "Interim Period"). The Debtor proposes to use cash collateral for general and administrative expenses as set forth in the Budget. The expenses incurred by the Debtor and for which cash collateral will be used will all be incurred in the normal and ordinary course of the Debtor's business.

---

<sup>1</sup> Debtor's loan dates back to the year 2000, and was originally with Security Bank & Trust Company, the predecessor in interest to Synovus.

<sup>2</sup> Not all of the rents receivables of the Debtor derive from real property lot rentals subject to the Assignment of Rents provision.

11. Under Bankruptcy Code § 362(c)(2), the Debtor is entitled to use Cash Collateral as long as the holders of the liens therein are adequately protected.

12. Bankruptcy Code Section 363(o) provides that a hearing on the use of cash collateral, the entity asserting an interest in the cash collateral has the burden of proof on the issue of the validity, priority, or extent of such interest, and the debtor-in-possession has the burden of proof on the issue of adequate protection. Bankruptcy rule 4001(b)(2) provides that the Court may not hold a final hearing on a motion to use cash collateral earlier than fifteen (15) days after service of the motion, but may authorize the use of cash collateral prior to a final hearing as necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

13. The Debtor requests authority to use cash collateral for the purpose of avoiding immediate and irreparable harm to the estate.

14. The authority to continue using cash collateral should continue until the Court rules on the Debtor's request following a final hearing.

15. The Debtor is willing to provide adequate protection to Synovus Bank, per Section 361 of the Bankruptcy Code, for the use of cash collateral as follows:

a) The Debtor shall make adequate protection payments to Synovus Bank in the amount \$4,272.22 per month, representing accruing interest (at the contract rate of 4.185%) on the full amount of Synovus Bank's claim.

b) The Debtor shall also grant Synovus Bank a replacement lien in post-petition rents receivable, in the same order of priority as existed pre-petition for Synovus Bank.

The continuing and/or future lien on the Debtor's rents receivable shall be subject to the proposed order allowing the use of cash collateral as described, herein.

16. Adequate protection is meant to assure that the value of the secured creditor's collateral does not suffer a decline by the proposed use of that collateral. *See, e.g., United Savings Ass'n v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365 (1988). When a secured creditor is threatened

with a potential decline in the value of its collateral, the Bankruptcy Code provides that the Debtor must provide the creditor with adequate protection. What constitutes adequate protection must be evaluated on a case-by-case basis. *In re Swedeland Dev. Gropu., Inc.*, 16 F.3d 552, 564 (3<sup>rd</sup> Cir. 1994); *In re Martin*, 761 F.2d 472, 476 (8<sup>th</sup> Cir. 1985). Courts have noted that “the essence of adequate protection is the assurance of the maintenance and continued recoverability of the lien value during the interim between the filing . . . and the confirmation.” *In re Arrieens*, 25 B.R. 79, 81 (Bankr. D. Or. 1982). The focus of the requirement is to protect a secured creditor from diminution in value during the use. *See In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *In re Becker Indus. Corp.*, 58 B.R. 725 (Bankr. S.D. N.Y. 1986).

17. The Debtor’s requested use of cash collateral as set forth in the Budget and the protections proposed to be afforded in this Motion, in light of the circumstances are reasonable, appropriate, and sufficient to satisfy “adequate protection.” The continued operation of the Debtor’s business will preserve its going-concern value.

18. It is well established that a bankruptcy court, where possible, should resolve issues in favor of preserving the business of the debtor as a going concern. *See In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11<sup>th</sup> Cir. 1984) (recognizing a debtor’s “compelling need” to use cash collateral, and the congressional policy “favoring rehabilitation over economic failure.”).

19. The Debtor shows that immediate and irreparable harm will occur to the Estate unless it is authorized to use cash collateral in that it will be unable to meet its ongoing business obligations and would be required to cease business operations.

20. Further, the Debtor has various tenants<sup>3</sup>, who are entitled to repairs and maintenance of the mobile homes they lease. Without the ability to address the repairs and maintenance as needed, the tenants and their families may be harmed. The Debtor is also responsible for certain utilities that are

---

<sup>3</sup> The Debtor owns Springlake Mobile Home Park, which contains lots which are rented out to owners of mobile homes. The Debtor further owns certain additional mobile homes which are rented out to tenants.

provided to the Properties and without use of cash collateral to make post-petition payments, these services may be cut off, putting all tenants in jeopardy.

21. The urgent need to preserve the Debtor's business and avoid immediate and irreparable harm to the estate, as set forth in the Motion, makes it imperative that the Debtor be authorized to use cash collateral pursuant to the terms and conditions offered herein, pending a final hearing.

22. At this stage of the Chapter 11 case, it is critical that the Debtor maintain the confidence of its tenants, subcontractors and post-petition creditors. Continued use of cash collateral is essential to the Debtor's ability to achieve these aims. The denial of interim use of cash collateral for these purposes would result in the termination of the Debtor's operations, irreparably damaging the going-concern value of the Debtor's business and cause substantial prejudice to the Debtor's estate, its creditors and the tenants living in or on the Debtor's Properties.

23. The Debtor further requests that the Court schedule a final hearing on cash collateral use and, following such hearing, enter a final order authorizing cash collateral use.

WHEREFORE, Debtor requests that the Court (i) set an expedited interim hearing on this matter, (ii) enter an order granting this Motion on an interim basis at the conclusion of such hearing; (iii) schedule a final hearing on the Motion; (iv) grant the relief requested in this Motion on a final basis following such hearing; (v) approve the adequate protections measures proposed, herein, including the amount of the adequate protection payments, and (v) for such other relief as is just and proper.

Respectfully submitted this  
17<sup>th</sup> day of October, 2016

ZALKIN REVELL, PLLC

*/s/ Kenneth W. Revell*  
KENNETH W. REVELL  
ZALKIN REVELL, PLLC  
Georgia Bar No. 601333  
2410 Westgate Dr., Suite 100  
Albany, GA 31707  
(229) 435-1611  
(866) 560-7111(Fax)  
[krevell@zalkinrevell.com](mailto:krevell@zalkinrevell.com)  
Counsel for Debtor-in-Possession

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing:

**DEBTOR'S EMERGENCY MOTION FOR (1) ORDER AUTHORIZING USE OF CASH COLLATERAL ON AN INTERIM BASIS AND (2) FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL**

was served on the following parties by either electronic mail through the Courts CM/ECF system or by standard first class mail on the 17<sup>th</sup> day of October, 2016.

Parties who are currently on the list to receive email notice/service for this case:

- Robert J. Fenimore, Esq., U.S. Trustee-MAC, [ustp.region21.mc.ecf@usdoj.gov](mailto:ustp.region21.mc.ecf@usdoj.gov), [robert.g.fenimore@usdoj.gov](mailto:robert.g.fenimore@usdoj.gov)
- David W. Orlowski, [dorlowski@leedurham.com](mailto:dorlowski@leedurham.com), [jturner@leedurham.com](mailto:jturner@leedurham.com)
- Stephen G. Gunby, Esq., [sgg@psstf.com](mailto:sgg@psstf.com)
- And all other parties listed on this Court's ECF Noticing List

Manual Notice List: Debtor's Top 20 Unsecured Creditors

*/s/ Kenneth W. Revell*  
KENNETH W. REVELL  
ZALKIN REVELL, PLLC  
2410 Westgate Blvd., Suite 100  
Albany, GA 31707  
(229) 435-1611  
(866) 560-7111(Fax)  
[krevell@zalkinrevell.com](mailto:krevell@zalkinrevell.com)