

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

IN RE:

SAAD, INC.

Debtor

CHAPTER 11
CASE NO. 16-13691-JNF

EXPEDITED MOTION BY DEBTOR TO EXTEND TIME
FOR USE OF CASH COLLATERAL

Pursuant to Sections 105 and 363 of Title 11 of the United States Code, Federal Rules of Bankruptcy Procedure 2002, 4001, and 9014, and MLBR 4001-2, SAAD, INC. (“Debtor”), the above-captioned debtor and debtor-in-possession, hereby moves this Court for entry of an order authorizing the use of cash collateral from January 31, 2017 through and including March 31, 2017 under the terms set forth in this motion. The Debtor respectfully seeks:

- (i) Entry of an order authorizing the interim use of cash collateral to maintain and operate its real property and avoid irreparable harm;
- (ii) Entry of an order authorizing the use of cash collateral from January 31, 2017 through March 31, 2017 to maintain and operate its business;
- (iii) Authority to grant replacement liens to any lienholders who hold an interest in cash collateral to the extent described in this motion; and
- (iv) Entry of a scheduling order regarding the continued use of cash collateral following the period authorized by this motion.

The Debtor owns and operates a gas station located at 899 Belmont Street, Brockton, Massachusetts, which has a value of \$1,200,000.00 with a first mortgage to TD Bank in the amount of \$503,638.00. The gas station is further encumbered by the City of Brockton in the amount of \$24,000.00 and an execution by Cape Cod Gas Co., Inc. in the amount of \$187,000.00. The Debtor seeks authority to use its cash on hand and income generated by the operation of the Debtor, which may constitute the cash collateral of lienholders (the “Cash Collateral”) in order to maintain and operate the properties. The relief requested in this motion is necessary to permit the Debtor to continue its usual operations and to preserve the value of the buildings and its bankruptcy estate.

Attached as Exhibit A is a budget showing the Debtor’s estimated monthly income and expenses (the “Budget”). The Budget lists the ordinary costs and expenses necessary to maintain the property. As the

Budget evidences, the Debtor generates sufficient cash flow to pay the expenses necessary to maintain and preserve the property. Absent the use of the Cash Collateral to pay the expenses set forth in the Budget, the value of the property will diminish.

As is more fully described below, TD Bank., Inc. (hereinafter referred to as “Lender”) asserts a lien on the buildings and Debtor’s other assets to secure amounts loaned to the Debtor. The payment of the types of expenses in the Budget will benefit the holder of lien on the business by preserving its value during the pendency of this case. The lienholder’s respective interests will continue to be adequately protected by the replacement liens described in this motion.

In further support of this motion, the Debtor states as follows:

I. FACTUAL BACKGROUND

1. On September 27, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

2. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No official committee of creditors has been appointed in this case.

A. The Debtor’s Business Operations

3. The Debtor is a Massachusetts corporation with its primary place of business located at 899 Belmont Street, Brockton, Massachusetts.

4. The Debtor’s primary asset is the building at 899 Belmont Street, Brockton, Massachusetts, by the operation of the gas station.

5. The Debtor entered into a real estate loan agreement with Lender, TD Bank, dated June 27, 2008, with the rental income assigned as additional collateral.

B. Claims Against the Debtor

6. On or about June 27, 2008, the Debtor entered into a loan arrangement with TD Bank evidenced by a promissory note in the original principal amount of \$660,000.00. In connection with Lender, the Debtor executed, among other things, a Loan Mortgage and Security Agreement. TD Bank has asserted that it is presently owed approximately \$530,638.00 on account of the Loan. The Debtor has not determined the extent, priority or validity of the lien and claim asserted by Lender and reserves all of its rights, claims and defenses in this respect.

C. The Bankruptcy Case

7. The Debtor made multiple attempts to resolve its issues with Lenders. Lender made demand upon the Debtor for the amounts it claimed to be due under the Lender Loans. Lender subsequently scheduled a foreclosure sale of the property. The Debtor's petition for relief was necessary to preserve the value of the real estate, continue operation of the business and reorganize the Debtor's affairs.

8. The Debtor intends to restructure its debts in order to reorganize and provide payments to creditors.

II. REQUESTED USE OF CASH COLLATERAL AND OFFERS OF ADEQUATE PROTECTION

A. Use of Cash Collateral

9. On October 6, 2016, Debtor filed an Expedited Motion for Use of Cash Collateral (Docket #17). This Court granted said Motion on November 17, 2016 (Docket #47) granting Debtor's Expedited Motion for Use of Cash Collateral from the petition date through January 31, 2017.

10. Attached as Exhibit A is the Budget setting forth the Debtor's estimated receipts and disbursements for the period from January 31, 2017 through March 31, 2017 (the "Budget Period").

11. The Debtor requests the authority to utilize the income generated from its operations to continue to fund its operations during the Budget Period.

12. Approval of the use of the Cash Collateral on the terms identified in this motion is in the best interests of the Debtor, its estate and its creditors. The use of the Cash Collateral will enable the Debtor to pay post-petition obligations, maintain the continuity of management and preserve the integrity of the Property while the Debtor reorganizes.

13. The Debtor requests the approval of the use of Cash Collateral described in this motion without prejudice to its rights to seek the further use of Cash Collateral at the conclusion of the Budget Period.

B. Adequate Protection

14. Section 363(e) of the Bankruptcy Code provides that a party with an interest in property proposed to be used, sold or leased by the debtor may receive adequate protection of such interest before the

debtor may use, sell or lease property, 11 U.S.C. § 363(e).

15. What constitutes adequate protection varies with the facts and circumstances of each particular case. The entitlement to and measure of the protection required is always determined by the extent of the anticipated or actual decrease, if any, in the value of the secured creditor's collateral during course of the bankruptcy case. See *In re First South Savings Assoc.*, 820 F.2d 700, 710 (5th Cir.1987).

16. Adequate protection requires only that the value of the creditor's interest in the cash collateral be protected from diminution while the Debtor is using the cash collateral. *United Savings Association of Texas v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365 (1988). Said another way, it is "intended by the Bankruptcy Code only to assure that a secured creditor, during the pendency of a bankruptcy case, does not suffer a loss in the value of its interest in property of the bankruptcy estate." *In re Markos Gurnee Partnership*, 252 B.R. 712, 716 (Bankr.N.D.Ill.1997).

17. The Debtor proposes to grant the lienholder's replacement liens (the "Replacement Liens") on the same types of post-petition property of the estate (the "Post-Petition Collateral") against which the lienholders held liens as of the Petition Date (the "Prepetition Collateral"). The Replacement Liens shall maintain the same priority, validity and enforceability as the lienholder's respective pre-petition liens and shall be recognized only to the extent of the diminution in value of the Lienholder's Prepetition Collateral after the Petition Date resulting from the Debtor's use of the Cash Collateral during its bankruptcy case.

18. Section 361 of the Bankruptcy Code provides that when adequate protection is required under Section 363 of the Code, such adequate protection may be provided by, *inter alia*, "providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(2).

19. The Debtor's income continues to accrue at a constant or increasing rate, granting the Replacement Liens suffices as adequate protection entitling the Debtor to use cash on hand as authorized by the Court. "This is because the lien on each month's income replaces the lien on the prior month's income, so there is a replacement lien of equal value under Section 361 of the Bankruptcy Code. As long as the Debtor generates a continuous income stream, the Debtor's use of the income does not diminish the value of the collateral. The rationale is that the protected cash proceeds are being used to generate new collateral which will be of at least equivalent value of those replaced." *In re Wrecclesham Grange, Inc.*, 221 B.R. 978, 981 (Bankr.M.D. Fla. 1997) (citations omitted); see also, e.g., *In re Mullen*, 172 B.R. 473, 477-78 (Bankr. D. Mass. 1994) ("Assuming the Debtor is operating at no less than a break even, the new collateral and proceeds will be of at least equivalent value of those they replace. The same is true of each month's income received by the Debtor.")

20. Because the Budget demonstrates that the Debtor will have a positive cash flow, the lienholder's interests in the income will, in fact, be enhanced through the use of the Cash Collateral and the continued operations of the business. The Cash Collateral will be used by the Debtor to operate and maintain the property consistent with the Debtor's prior practices. The Debtor's use of the income to operate and maintain the property constitutes additional adequate protection. *In re McCann*, 140 B.R. 926, 929 (Bankr.D.Mass. 1992) citing *In re Prichard Plaza, L.P.*, 84 B.R. 298 (Bankr.D.Mass. 1988).

21. The expense categories listed in the Budget are the ordinary course of business expenses necessary to maintain the operation of the buildings and, therefore, to preserve the value of the Debtor's assets.

22. Based upon the payments from Debtor and the granting of the Replacement Liens to each of the lienholders, the lienholders are more than adequately protected for the Debtor's proposed use of the Cash Collateral during the Budget Period. Payments will not be applied until further order of the court.

23. The Debtor requests that the Court schedule a hearing on the Motion, as the use of Cash Collateral is required on a continuing basis in order to avoid irreparable harm to the Debtor.

24. The Debtor has received a second offer to purchase the property for One Million ("1,000,000.00"). See Exhibit "B". Sale is subject to a clean 21E. The Expedited request is necessary for the Debtor to proceed with a second testing of the ground water in order to obtain a sufficient finding to satisfy a lender. The testing and results will take a minimum of 45 days.

III. NOTICE

The Debtor has served both this motion on all creditors and parties who have filed a request for notice in this proceeding.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order:

- A. Approving the notice of this motion as described above;
- B. Entry of an interim order authorizing the Debtor to use Cash Collateral in an amount necessary to avoid irreparable harm in accordance with the terms of this motion;
- C. Authorizing the Debtor to use Cash Collateral in an amount necessary to conduct ordinary business operations through December 31, 2016 substantially in accordance with the terms of this motion;
- D. Schedule an expedited hearing on the Motion to Use Cash Collateral;
- E. Granting the lienholders replacement liens in accordance with the terms of this motion;

- F. Authorize the Debtor to make adequate protection payments in the amount of \$ 5,107.00 to TD Bank.
- G. Scheduling additional consideration of the use of Cash Collateral following the expiration of the authorization in this motion; and
- H. Granting such other relief as is just and proper.

Respectfully submitted,

SAAD, INC.
BY ITS ATTORNEY,

/s/ Norman Novinsky
Norman Novinsky (BBO 374760)
1350 Belmont Street, Suite 104
Brockton, MA 02301
(508) 559-1616
Email: nnovinsky@msn.com

DATED: February 6, 2017

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

_____)		
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SAAD, INC.)	CHAPTER	11
)	CASE NO.	16-13691-JNF
Debtor)		
_____)		

CERTIFICATE OF SERVICE RE
EXPEDITED MOTION BY DEBTOR FOR USE OF CASH COLLATERAL

I, the undersigned, do hereby certify that on the 6th day of February, 2017, I did serve the EXPEDITED MOTION BY DEBTOR FOR USE OF CASH COLLATERAL, by mailing copies of same by first-class mail, postage prepaid, or by electronic notice, to the parties indicated on the attached Notice List.

/s/ Norman Novinsky
Norman Novinsky (BBO 374760)
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NOTICE LIST

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