

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

In re: *
THE SAILING EMPORIUM, INC. * Case No: 16-24498-TJC
Debtor * (Chapter 11)
* * * * *

MOTION FOR AN ORDER (I) AUTHORIZING USE OF CASH COLLATERAL
THROUGH JANUARY 31, 2017 AND (II) GRANTING ADEQUATE PROTECTION

The Sailing Emporium, Inc., the debtor and debtor in possession herein (the “Debtor”), by counsel, pursuant to 11 U.S.C. § 363 (the “Bankruptcy Code”) and Fed.R.Bankr.P. 4001(b) and 9014, files this Motion for an Order (I) Authorizing Use of Cash Collateral through January 31, 2017 and (II) Granting Adequate Protection (the “Motion”), and states:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).
3. The statutory basis for relief is § 363 of the Bankruptcy Code, and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background

4. On November 1, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues in possession of its property and manages its financial affairs as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.
5. The Debtor’s principal secured creditor is The Peoples Bank (“Peoples Bank”).
6. The Debtor owns and operates a full service marina located on the picturesque Eastern Shore of Maryland on eight acres on Rock Hall Harbor (the “Property”) in Rock Hall, Maryland. Services include boat sales, boat repair and restoration, electronics sales and service and sailboat charters. The Property also includes a marine store and nautical gift

shop. The Property has 155 deep water slips and 20 transient slips, and the landscaped grounds and other amenities have made this marina a point of interest in Rock Hall.

7. On November 8, 2012, the Debtor, along with William Arthur Willis and Mary Sue Willis, and Peoples Bank (collectively, the “Parties”) entered into a Real Estate Deed of Trust (the “Deed of Trust”) relating to real property owned by the Debtor. Thereafter, the Parties entered into a Confirmatory Real Estate Deed of Trust dated May 3, 2013 and a Modification and Amendment to Deed of Trust dated December 19, 2013.

8. Pursuant to the Deed of Trust, Peoples Bank asserts an interest on the Debtor’s assets, including certain rents that become due or owing under the leases on account of the use and/or occupancy of the real property referenced in the Deed of Trust, known as the “Premises”. It is unclear what portion, if any, of the Debtor’s income is liened by the Deed of Trust and this Motion is filed in an abundance of caution.

9. Certain of the proceeds and cash may constitute “cash collateral” within the meaning of 11 U.S.C. § 363(a) (“Cash Collateral”).

Summary of Relief Requested Pursuant to Bankruptcy Rule 4001(b)

10. During this case, the Debtor requires the use of Cash Collateral to meet its ordinary and necessary expenses, including but not limited to insurance, utilities and payroll so that it may maintain and preserve the value of its assets for the benefit of its estate and creditors.

11. The Debtor seeks the use of Cash Collateral for the period commencing November 1, 2016 through January 31, 2017 (the “Interim Period”).

12. During the Interim Period, the Debtor may use Peoples Bank’s Cash Collateral to pay the monthly operating expenses.

13. As adequate protection for Peoples Bank, the Debtor (a) shall file its monthly operating reports in a timely manner setting forth its income, expenditures and use of Cash Collateral; (b) will keep the property in good working order, maintenance and repair, and (c) requests that the Court grant Peoples Bank replacement liens on the same assets on which it held prepetition liens and all products and proceeds thereof in the Interim Period. The Debtor

submits that the foregoing adequately protects Peoples Bank for the use of Cash Collateral during this time period.

Relief Requested and Grounds Therefor

14. The standards governing a debtor's use of cash collateral are set forth in Section 363(c)(2) of the Bankruptcy Code, which provides:

The trustee [or debtor-in-possession] may not use, sell, or lease cash collateral under paragraph 1 of this subsection, unless -

- (A) each entity that has an interest in such cash collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2).

15. The "provisions of this section" referenced in Section 363(c)(2) include Section 363(e), which provides:

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e).

16. The Debtor respectfully submits that the proposed use of Cash Collateral is necessary to preserve its assets during the case and will avoid immediate and irreparable harm to the Debtor's estate and creditors, including Peoples Bank. Specifically, the Debtor requires the use of the Cash Collateral to pay the Debtor's necessary expenses while it reorganizes under the supervision of this Court.

17. As set forth below, Peoples Bank's alleged interests are adequately protected through, among other things: (a) budgetary constraints which allow spending on day-to-day operations to preserve or enhance the value of the collateral, (b) financial reporting, and (c) a replacement lien on the same assets on which it held prepetition liens and all products and

proceeds thereof in the Interim Period. Accordingly, the use of Cash Collateral directly benefits the estate and creditors by enhancing the prospects of a successful outcome of this case.

18. If the Debtor is not permitted to use the Cash Collateral, the Debtor will not be able to meet its postpetition expenses, and the assets of the estate will dramatically decrease in value.

Notice

19. Notice of this Motion has been given to the following parties or to their counsel, if known: (i) the Office of the United States Trustee; (ii) Peoples Bank; (iii) all of the Debtor's creditors; and (iv) all parties that have requested service of pleadings pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

Waiver of Memorandum of Law

20. Pursuant to Local Rule 9013-2 of the Local Rules, the Debtor states that, in lieu of submitting a memorandum in support of this Motion, it will rely solely upon the grounds and authorities set forth herein.

No Prior Request

21. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, the Debtor requests that the Court enter an order authorizing the Debtor to use its cash collateral for the purpose of paying operating expenses and granting such other and further relief as is appropriate.

/s/ James A. Vidmar
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of November 2016, notice of filing the Motion for an Order (I) Authorizing Use of Cash Collateral through January 31, 2017 and (II) Granting Adequate Protection was sent electronically to those parties listed on the docket as being entitled to such electronic notices.

/s/ James A. Vidmar
James A. Vidmar

The following parties received
CM/ECF notice of the filing:

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