

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re:

Case No.: 17-10506-RAM
Chapter 11

SUPREME CEILING & INTERIORS, INC.,

Debtor(s).

_____ /

**EMERGENCY MOTION FOR AUTHORITY TO USE CASH COLLATERAL
PURSUANT TO 11 U.S.C. § 363 AND FOR FINAL HEARING**

****Emergency Hearing Requested Pursuant to Local Rule 9075-1. The Debtor will suffer immediate and irreparable harm if it is not authorized to use cash collateral to operate its business. ****

COME(S) NOW the Debtor, SUPREME CEILING & INTERIORS, INC., by and through the undersigned proposed attorney, files this *Emergency Motion for Authority to Use Cash Collateral Pursuant to 11 U.S.C. § 363 and for Final Hearing* (the "Motion"), and states as follows:

1. On January 17, 2017, the Debtor filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101 *et seq.*
2. The Debtor is operating its business and managing its assets as a debtor in possession pursuant to §§ 1107(a) of 1108 of the Code. No trustee, examiner, or statutory committee has been appointed in the case.
3. The Debtor owns and operates real property (the "Real Property") that is a warehouse for its business at 5941 NW 176 Street, Unit 4, Miami, Florida 33015.

4. Suntrust Bank (“Suntrust”) has asserted a claim in this case for approximately \$465,670.17, which is secured by a blanket lien on the Debtor’s assets and cash.

5. The Debtor’s proposed income and expenses for a thirty day period are set forth in the monthly budget (the “Budget”) attached hereto as “Exhibit A.” The categories of expenses in the Budget include utilities, wages & salaries, critical vendors, insurances, sales taxes, and an proposed adequate protection payment for the secured mortgage creditor, Suntrust. Based on the Budget, the Debtor believes it will be cash flow positive.

6. The Debtor requires the use of cash collateral to fund necessary operating expenses of its business. As set forth below, the Debtor requests that the Court approve its use of cash collateral pursuant to the terms of the Budget, and further authorize the Debtor to (a) exceed a line item of the Budget by an amount equal to ten (10%) percent of each such line item; or (b) to exceed any line item by more than ten (10%) percent so long as the total of all amounts in excess of all line items for the Budget do not exceed ten (10%) percent in the aggregate of the total Budget.

ARGUMENT

7. The Debtor’s use of property of its estate is governed by Code section 363, which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section...1108... of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing,

and may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c)(1).

8. A debtor in possession has all of the rights and powers of a trustee with respect to property of the estate including the right to use property of the estate in compliance with § 363. See 11 U.S.C. § 1107(a).

9. When a chapter 11 debtor in possession is authorized to operate its business, it may use property of the estate in the ordinary course of business, but is prohibited from using cash collateral absent consent of the secured creditor or court authorization. 11 U.S.C. § 363(c). The Code defines “cash collateral” as “cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest...” 11 U.S.C. § 363(a).

10. It is appropriate for the Court to authorize the Debtor to use cash collateral because (a) Suntrust will be adequately protected, (b) such use will preserve the ongoing concern of value of the estate, and (c) without such order the Debtor cannot pay its employees or vendors and will be forced to cease operations.

11. The Bankruptcy Code does not define “adequate protection” but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including “other relief” resulting in the “indubitable equivalent” of the secured creditor’s interest in its collateral. See 11 U.S.C. § 361. Adequate protection is to be determined on a case-by-case factual analysis. See *Mbank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); see also S. Rep. No. 95-989, 95th Cong., 2d Sess. 54 (1978). For example, *O’Connor* states that

“[i]n order to encourage the Debtor’s efforts in the formative period prior to the proposal of a reorganization, the court must be flexible in applying the adequate protection standard.” 808 F.2d at 1396. (citations omitted).

12. Adequate protection is meant to ensure that a secured creditor receives the value for which it originally bargained pre-bankruptcy. *Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (citations omitted). The essence of adequate protection is to ensure the maintenance and continued responsibility of lien values during the interim between filing and confirmation in a case. *In re Arriens*, 25 B.R. 79, 81 (Bankr. D. Or. 1982).

13. The adequate protection provided to Suntrust includes the anticipated cash flow positive position and the escrowing of the taxes and insurances payments.

14. The Debtor’s requested use of cash collateral and the protections afforded to Suntrust herein are reasonable, appropriate, and sufficient to satisfy the legal standard of “adequate protection” and will serve to maintain the value of Suntrust’s collateral.

15. The continued operation of the Debtor’s business will preserve its going concern value, enable the Debtor to capitalize on that value through a reorganization strategy, and ultimately facilitate the Debtor’s ability to confirm a chapter 11 plan. However, if the Debtor is not allowed to use cash collateral, it will be unable to operate.

16. 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:

“A debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use “cash collateral” in its efforts to rebuild. Without the availability of cash to meet daily operating expenses such as rent, payroll,

utilities, etc., the congressional policy favoring rehabilitation over economic failure would be frustrated.”

In re George Ruggiere Chrysler-Plymouth, Inc. 727 F.2d 1017, 1019 (11th Cir. 1984); see *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (debtor permitted to use cash collateral when creditor was undersecured because such use was necessary to its continued operations and the creditor’s secured position can only be enhanced by the continued operation of the debtor’s business).

17. If the Debtor cannot use cash collateral, it will be forced to cease operations. By contrast, permitting cash collateral use will allow the Debtor to maintain operations and preserve the going concern value of its business which will inure to the benefit of all creditors.

WHEREFORE, the Debtor requests that this Court enter an order substantially in the form of the proposed order attached as Exhibit “B” (1) granting the Motion; (2) authorizing the Debtor’s use of cash collateral in accordance with the proposed Budget and the terms set forth herein for a period of thirty (30) days from the date of the Court granted Motion; (3) scheduling a final hearing; (4) granting the Debtor such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Notice of Hearing was served in the manner described below, on February 1, 2017, upon:

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1.

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