

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

**In re:**

**TELEPRO CARIBE, INC.**

**Debtor**

**CASE NO. 16-03648(ESL)**

**Chapter 11**

**MOTION FOR ENTRY OF ORDER PROHIBITING USE OF PRAPI'S CASH COLLATERAL**

TO THE HONORABLE COURT:

COMES NOW PR ASSET PORTFOLIO 2013-1 INTERNATIONAL, LLC (“**PRAPI**”), through its undersigned counsel, and very respectfully alleges, states and prays:

**Statutory Framework – Cash Collateral**

1. Generally, a debtor in possession, after notice and a hearing, may use, sell or lease property of the estate. 11 U.S.C. §363(b). However, pursuant to section 363 of the Bankruptcy Code, a debtor-in-possession may not use, sell, or lease cash collateral unless each entity that has an interest in such cash collateral consents, or the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of that section. 11 U.S.C. § 363(c)(2).

2. “Cash Collateral” is defined in 11 U.S.C. §363(a) as: [C]ash, 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 and includes the proceeds, products, offspring, rents, or profits of property....

3. A party with an interest in cash collateral is entitled to adequate protection of that interest pursuant to Sections 361 and 363(e) of the Bankruptcy Code, 11 U.S.C. §§361, 363.

4. Pursuant to the security instruments executed prior to the petition date, PRAPI has a first priority security interest over Debtor’s rents from certain real property of the estate, pursuant to certain assignment of rights and terms of mortgage deeds (“the Cash Collateral”).

5. The post-petition effect of PRAPI’s security interest is governed by section

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552(b)(1) of the Bankruptcy Code, 11 U.S.C. § 552(b)(1), which states:

“ (1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring or profits of such property, then such security interest extends to such proceeds, products, offspring, or profits by the estate after the commencement of the case to the extent provided in such security agreement and by applicable non-bankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.”

6. Notwithstanding this, and given that PRAPI’s security interest over the rent proceeds stems from pre-petition security agreements, PRAPI’s lien also extends to the post-petition rent proceeds generated by such real properties pursuant to section 552(b)(2) of the Bankruptcy Code, 11 U.S.C. § 552(b)(2), which states, at its pertinent parts, that:

[I]f the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property...then such security interest extends to such rents...acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

11 U.S.C. § 552(b)(2). See Opinion and Order, In re National Promoters and Services, Inc., 12-01076 (ESL), Docket No. 243.

7. Unlike other provisions of section 552 of the Code, which require some sort of prepetition “perfection” of the security interest under “applicable nonbankruptcy law,” section 552(b)(2) does not contain said express provision for the validity of post-petition security interests over proceeds.

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### **Case History**

8. On August 7, 2003, Debtor and Banco Popular de Puerto Rico (“BPPR”) executed a document titled “CONVENIO SOBRE CESION DE DERECHOS Y CANONES DE ARRENDAMIENTO” in which Debtor, as payment and guarantee for a commercial loan in the amount of \$1,048,457.00, and a line of credit in the amount of \$300,000.00 granted on the same date by BPPR, assigned to the bank all future rents derived from the real properties located at #999, #1001, #1003, #1005, and #1007 General Del Valle Street, Urbanización Delicias, Sabana Grande, Puerto Rico. See, Exhibit A.

9. On April 25, 2008, Debtor and BPPR executed a document titled “CONVENIO SOBRE CESION DE DERECHOS Y CANONES DE ARRENDAMIENTO” in which Debtor, as payment and guarantee for a term loan in the amount of \$950,000.00, and a line of credit in the amount of \$150,000.00 granted on the same date, assigned to BPPR all future rents derived from the real properties located at #999, #1001, #1003, #1005, and #1007 General Del Valle Street, Río Piedras, Puerto Rico, and the real property located at Valcárcel Street Corner Trujillo Alto Express. See, Exhibit B.

10. On April 25, 2008, Debtor and BPPR executed a document titled “CONVENIO SOBRE CESION DE DERECHOS Y CANONES DE ARRENDAMIENTO” in which Debtor, as payment and guarantee for a commercial loan in the amount of \$300,000.00, granted on the same date, assigned to BPPR all future rents derived from the real property located at Guaraguo Street, Montehiedra, San Juan, Puerto Rico. See, Exhibit C.

11. On March 25, 2013, Banco Popular de Puerto Rico (“BPPR”) assigned and

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transferred to PRAPI a portfolio of loans, including notes for loans #3001, #9006, #9009, and #9010, guaranteed by real estate, and other collateral guarantees including the Cash Collateral (rents derived from the Real Estate Collateral).

12. On May 5, 2016 (Docket No. 1), Debtor filed a second voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.

13. On June 2, 2016 (Docket No. 14), Debtor filed its Schedule A, reporting ownership of six (6) real properties, described as follows:

*“(55.1) Commercial property #34362, located at Bo. Sabana Llanas, Río Piedras;*

*(55.2) Commercial property #17637, located at Bo. Sabana Llanas, 29 Urb. Las Delicias, Río Piedras;*

*(55.3) Commercial property #30591A, located at Bo. Sabana Llanas, 26 Urb. Las Delicias, Río Piedras;*

*(55.4) Commercial property #2547, located at Bo. Sabana Llanas, 26 Urb. Las Delicias, Río Piedras;*

*(55.5) Commercial property #7997, located at Bo. Sabana Llanas, 21 Urb. Las Delicias, Río Piedras;*

*(55.6) Commercial property #4962, located at Bo. Sabana Llanas, 21 Urb. Las Delicias, Río Piedras.”*

14. On September 1, 2016 (Docket No. 28), Debtor filed an Amended Schedule G: Executory Contracts and Unexpired Leases, declaring five (5) unexpired lease agreements, which information is incomplete and fails to match with the real property descriptions appearing in

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Schedule A filed by Debtor in this bankruptcy case.

15. On September 2, 2016 (Claim No. 30), Debtor filed a Motion to Assume Executory Contracts (or Unexpired Leases), for the five (5) unexpired lease agreements, with lack of sufficient, irreconcilable information.

16. On September 12, 2016 (Claim No. 12), PRAPI filed an amended claim in the amount of \$238,231.26 for loan #3001, secured by mortgages over property #17637, #30591A, #2547, #7997, and #4962, and assignment of rents from said properties.

17. On September 12, 2016 (Claim No. 13), PRAPI filed an amended claim in the amount of \$740,287.68 for loan #9009, secured by mortgages over property #17637, #30591A, #2547, #7997, and #4962, and assignment of rents.

18. On September 12, 2016 (Claim No. 14), PRAPI filed an amended claim in the amount of \$133,471.19 for loan #9010, secured by mortgages over property #17637, #30591A, #2547, #7997, and #4962, and assignment of rents from said properties.

19. On September 12, 2016 (Claim No. 15), PRAPI filed an amended claim in the amount of \$1,339,713.17 for loan #9006, secured by mortgages over property #17637, #30591A, #2547, #7997, and #4962, and assignment of rents from said properties.

20. To this date, Debtor is managing and operating its financial affairs as debtor-in-possession.

21. To this date, Debtor has not requested authority to use the Cash Collateral from PRAPI or this Honorable Court.

22. To this date, Debtor has failed to propose or provide adequate protection to

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PRAPI for its use of the Cash Collateral.

**Relief Requested**

23. In light of the foregoing, PRAPI moves this Honorable Court for an order directing Debtor to immediately cease and desist from using, selling, or leasing PRAPI's Cash Collateral, and to account for its unauthorized use of the Cash Collateral since the filing of the petition, regarding the following real properties:

*“(55.2) Commercial property #17637, located at Bo. Sabana Llanas, 29 Urb. Las Delicias, Río Piedras;*

*(55.3) Commercial property #30591A, located at Bo. Sabana Llanas, 26 Urb. Las Delicias, Río Piedras;*

*(55.4) Commercial property #2547, located at Bo. Sabana Llanas, 26 Urb. Las Delicias, Río Piedras;*

*(55.5) Commercial property #7997, located at Bo. Sabana Llanas, 21 Urb. Las Delicias, Río Piedras;*

*(55.6) Commercial property #4962, located at Bo. Sabana Llanas, 21 Urb. Las Delicias, Río Piedras.”*

**WHEREFORE**, it is respectfully requested that this Honorable Court enter an order directing Debtor to immediately cease and desist from using, selling, or leasing PRAPI's Cash Collateral, and to account for its unauthorized use of the Cash Collateral since the filing of the petition.

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**NOTICE**

**WITHIN FOURTEEN (14) DAYS AFTER SERVICE AS EVIDENCED BY THE CERTIFICATION, AND AN ADDITIONAL THREE (3) DAYS PURSUANT TO FED. R. BANK. P. 9006(f) IF YOU WERE SERVED BY MAIL, ANY PARTY AGAINST WHOM THIS PAPER HAS BEEN SERVED, OR ANY OTHER PARTY TO THE ACTION WHO OBJECTS TO THE RELIEF SOUGHT HEREIN, SHALL SERVE AND FILE AN OBJECTION OR OTHER APPROPRIATE RESPONSE TO THIS PAPER WITH THE CLERK'S OFFICE OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO. IF NO OBJECTION OR OTHER RESPONSE IS FILED WITHIN THE TIME ALLOWED HEREIN, THE PAPER WILL BE DEEMED UNOPPOSED AND MAY BE GRANTED UNLESS: (i) THE REQUESTED RELIEF IS FORBIDDEN BY LAW; (ii) THE REQUEST RELIEF IS AGAINST PUBLIC POLICY; OR (iii) IN THE OPINION OF THE COURT, THE INTEREST OF JUSTICE REQUIRES OTHERWISE.**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been filed electronically on this day with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to **Nelson Robles Díaz, Esq., [nroblesdiaz@gmail.com](mailto:nroblesdiaz@gmail.com)**; **Ubaldo M. Fernández Barrera, Esq., [ubaldo.fernandez@oneillborges.com](mailto:ubaldo.fernandez@oneillborges.com)**; **Monsita Lecaroz Arribas, Assistant U.S. Trustee, [monsita.lecaroz@usdoj.gov](mailto:monsita.lecaroz@usdoj.gov)**, and to other parties appearing in this case's electronic mailing matrix.

San Juan, Puerto Rico, this 28th day of September, 2016.

s/SERGIO A. RAMIREZ DE ARELLANO  
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