

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:)	Bk. No. 16-11598-BAH
Walter H. Booth Clause 4 Trust)	Chapter 11
Debtor)	Hearing Date: 02/22/17
)	Hearing Time: 2:00 p.m.

SECOND MOTION OF DEBTOR AND DEBTOR-IN-POSSESSION
FOR FURTHER AND CONTINUED USE OF CASH COLLATERAL

NOW COMES Walter H. Booth Clause 4 Trust, the Debtor and Debtor-in-Possession (hereinafter “the Debtor”), in this bankruptcy proceeding, pursuant to 11 U.S.C. Section 363, Federal Rule of Bankruptcy Procedure 4001(b) and Local Bankruptcy Rule 4001-2(b), and submits this Second Motion for Entry of Orders Authorizing the Further and Continued Use of Cash Collateral in the ordinary course of the Debtor’s business and granting a replacement lien to Ocwen Loan Servicing, LLC (“Ocwen”) to the extent described herein as adequate protection for the use of cash collateral. In support of this motion, the Debtor states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a “core” proceeding pursuant to, inter alia, 28 U.S.C. § 157(b)(2)(A), (M), and (O). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are Sections 363(c) of Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

Factual Background

A. The Debtor's Business:

3. The Walter H. Booth Clause 4 Trust is a business trust with a mailing address of P.O. Box 1077, Concord, New Hampshire 03302-1077.

4. The Walter H. Booth Clause 4 Trust has two (2) Co-Trustees of the Trust, Stephen W. Booth and David H. Booth. The Trust has been in place since November 7, 1985.

5. The Debtor does not have any employees. The Tenant on the land is a business called Transformer Service, Inc.

6. The Debtor owns a three and one half (3½) acre parcel of land with three buildings on the property. There is an additional parcel of land which is an unbuildable parcel of land, “a gully”, which abuts the larger property. The Debtor also owns this parcel.

7. The secured lender Ocwen has a mortgage on both parcels.

8. The Debtor is in possession of its property and is actively and effectively operating and managing its business asset as Debtor in Possession pursuant to sections 1107 and 1108 of the Code.

9. “Cash collateral” means and includes for the purposes of this Motion “cash, deposit accounts and other cash equivalents.... In which the estate and an entity other than the estate have an interest, and includes the proceedsof property” of the estate, including rents. Under Code Section 363(c)(2), a debtor may not use cash collateral without the consent of each “entity that has an interest in such cash collateral” or the “court.....authorizes such use”.

10. At this time, Debtor believes that Ocwen holds a first priority lien on the pre-petition cash collateral.

B. The Debtor's Debt Financing

11. On the Petition date, the cash collateral consisted of approximately \$0.00 in cash, and the real estate valued at \$1,381,600.00.

12. The Debtor does not have accounts receivables; however, the Debtor is owed back rent in the approximate amount of \$315,000.00.

13. The Debtor is behind on its monthly mortgage payments to Ocwen.

C. Events Precipitating the Bankruptcy Filing

14. The Debtor was behind on its mortgage payments and was unable to resolve a payment plan or agreement with the mortgage holder Ocwen Loan Servicing, LLC.

15. As a result, the Debtor's Secured lender Ocwen Loan Servicing, LLC initiated Foreclosure proceedings.

16. The Debtor attempted to work with Ocwen to continue to operate; however, the Bank refused to allow the Debtor to enter into a forbearance agreement or continue the scheduled foreclosure sale to allow Debtor an opportunity to seek alternative financing.

17. As a result, the Debtor was compelled to seek relief under the Bankruptcy Code because the secured lender Ocwen served notice on the Debtor that it was planning to foreclose on the real estate and assets secured by its mortgages. The foreclosure sale was scheduled for November 18, 2016.

18. Unable to work out a plan with Ocwen, the Debtor had to file Chapter 11 bankruptcy on November 16, 2016 to stop further threat of foreclosure on the Debtor's real estate and to allow the Debtor the necessary time to either refinance the debt or confirm a reorganization plan. These are the factors that led to the Debtor's filing a Chapter 11 Bankruptcy.

Relief Requested

19. Attached hereto as Exhibit A is a 60 day operating budget which sets forth, among other things, the Debtor's estimated cash receipts and cash disbursements for the period March 1, 2017 through April 30, 2017 (the "Budget Period") for the Debtor. This budget was prepared by the Debtor. As shown in its budget, the Debtor projects that during the Budget Period it will generate approximately \$10,200.00 in income from rent from March, 2017 and \$10,200.00 in income from rent from April, 2017. The Debtor's cash flow will be comprised of revenue from rent receipts, as listed on the attached Exhibit A.

21. The Debtor needs the use of the cash collateral from the rent received to pay its post-petition obligations and mortgage.

22. After payment of post-petition obligations necessary to the operation of the properties, including estimated Chapter 11 expenses, the Debtor projects that it will have approximately \$156.95 in March, 2017 and \$156.95 in April, 2017 surplus cash-on-hand at the end of the Budget Period.

23. Ocwen has liens on all of the Debtor's assets and real estate. Thus, the Debtor has no cash with which to operate other than cash collateral. Such cash is necessary to pay operating expenses and payments, and monthly mortgage payments.

24. In order to provide adequate protection of the security interest of Ocwen in cash collateral and to protect the interest of other creditors, Debtor needs to use the cash collateral.

25. The Court, after notice and a hearing, may authorize a Debtor-in-Possession to use, sell, or lease cash collateral. See 11 U.S.C. § 363(c)(2)(B). The Debtor requests authority to utilize the cash generated by its post-petition operations in order to fund its operations during the Budget Period. Approving the use of cash collateral on the terms set forth herein is in the best interests of

the Debtor, its estate, and its creditors, including Ocwen, because it will permit the Debtor to continue as a going concern, thereby maximizing the value of its assets, a result which will inure to the benefit of all of the Debtor's creditors and other constituencies.

26. Absent the use of cash collateral, the Debtor will be forced to cease operations immediately, resulting in the forced liquidation or foreclosure of its assets. The Debtor needs the use of the cash collateral to satisfy necessary monthly mortgage payments, utility, taxes and expenses.

27. The Debtor requests authorization to use the income generated from its rent of \$10,200.00 for March, 2017 and \$10,200.00 for April, 2017 as cash collateral for monthly mortgages and expenses through April 30, 2017.

28. The Debtor has an Order dated December 22, 2016 granting use of Cash Collateral through February 28, 2017.

29. The Debtor believes that only Ocwen has a security interest in cash collateral. The Debtor proposes granting Ocwen, a replacement lien on the estate's post-petition accounts receivable and the cash proceeds thereof (the "Post-Petition Cash Collateral"). The proposed replacement lien shall have the same priority, validity, and enforceability as such existing lien on the Pre-Petition Cash Collateral, but shall only be recognized to the extent of the diminution in value, if any, of the Pre-Petition Cash Collateral resulting from the Debtor's use of cash collateral during the Budget Period.

30. The above lien will be granted by the Debtor without prejudice to the future rights of the Debtor, creditors and any creditors committee or other party in interest to challenge the validity, priority and enforceability of any such lien. This post-petition lien will also be subject to Debtor's future right to seek Debtor-in-Possession financing pursuant to 11 U.S.C. Section 364.

31. This Order shall apply to the quarterly fees owed to the Office of the United States Trustee and the Debtor shall be allowed to pay out of the cash collateral any quarterly fees due and outstanding to the Office of the United States Trustee and said fees shall be added to and made a part hereof of the Debtor's budget attached to the Order.

WHEREFORE, the Debtor respectfully requests that the Honorable Court:

1. Enter an Order authorizing the continued use of cash collateral in the ordinary course of the Debtor's business for the period March 1, 2017 to April 30, 2017;
2. Grant a replacement lien to Ocwen Loan Servicing, LLC to the extent described herein;
3. Grant such other and further relief as is deemed just and equitable.

Respectfully submitted,
Walter H. Booth Clause 4 Trust
Chapter 11 Debtor-in-Possession
By its Attorneys,

VICTOR W. DAHAR, P.A.

Dated: February 8, 2017

By: /s/ Eleanor Wm. Dahar
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