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7 C.B.S.A. FAMILY PARTNERSHIP

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SANTA ANA DIVISION**

12 In re) CASE NO. 8:17-bk-12377-ES
13 C.B.S.A. FAMILY PARTNERSHIP,) Chapter 11
14 Debtor in Possession)
15) **MOTION PURSUANT TO 11 U.S.C. §363**
16) **FOR AUTHORITY TO USE RENTAL**
17) **REVENUE; MEMORANDUM OF POINTS**
18) **AND AUTHORITIES**
19) Date: [TBD]
20) Time: [TBD]
21) Place: Ctrm 5A
22) 411 West Fourth Street
23) Santa Ana, CA 92701
24)
25)
26)
27)
28)

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **INTRODUCTION**

4 Debtor commenced this case by filing a voluntary petition under Chapter 11 of
5 title 11, United States Code, on June 12, 2017.¹ Debtor continues to manage and remains in
6 possession of its assets pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee
7 and no creditors' committee have been appointed in this Case.

8 By way of the instant Motion, and for the reasons amplified below, Debtor respectfully
9 requests that this Court enter an order, effective November 30, 2017, approving the *Stipulation*
10 *for Use of Cash Collateral and for Adequate Protection* ("Cash Collateral Stipulation"), filed
11 concurrently herewith.

12 **II**

13 **STATEMENT OF FACTS**

14 **A. The Income Producing Property**

15 Debtor is a Texas limited partnership which owns a 10,000 square foot metal industrial
16 building located in Corona, California (the "Property"). Debtor acquired the Property in or about
17 December, 2002. In or about May, 2007, Debtor refinanced the Property with the use of funds
18 from a "hard money" lender, Lone Oak Fund, LLC ("Lone Oak").

19 Since 2007, the Debtor became unable to make the regular monthly mortgage payments.
20 However, over time, the loan matured and, due to the Great Recession, the Property lost
21 significant value and was incapable of refinance. Consequently, a number of loan modifications
22 and extensions were granted by Lone Oak over the last 10 years. Lone Oak ultimately decided it
23 no longer wanted to extend the maturity date of the loan to the Debtor and, instead, moved for a
24 non-judicial foreclosure of the Property and filed an action in the Riverside Superior Court for
25 the appointment of a receiver to manage the Property. The Debtor filed the instant case to protect
26 the Property and the equity that had accumulated therein. Fortunately, the Property has
27

28 ¹ Unless otherwise indicated, all references herein are to the Bankruptcy Code set forth at 11 U.S.C. Section 101 et seq. (the "Code").

1 appreciated significantly. As a result, the Debtor has been able to successfully locate a lender
2 who is willing to pay off Lone Oak in exchange for Lone Oak's lien position on the Property.
3 Preferred Business Credit, Inc. ("PBC") has agreed to loan sufficient funds to the Debtor to take
4 out Lone Oak. The terms of the take-out financing are the subject of a motion filed by the Debtor
5 which will be heard on November 30, 2017 at 10:00 a.m. (the "Financing Motion"). By way of
6 the Financing Motion, the Debtor seeks approval of the new financing from PBC to pay off Lone
7 Oak. Additionally, the Financing Motion seeks approval of the discounted payoff and settlement
8 agreement that the Debtor and Lone Oak have entered into. One of the conditions of the
9 financing arrangement with PBC is to have an Order approving a Cash Collateral Stipulation
10 between the Debtor and PBC entered concurrently with the entry of the Order approving the
11 Financing Motion. Debtor seeks to have the instant motion heard on November 30, 2017 so that
12 it is heard concurrently with the other motion.

13 The Property generates cash in the form of rental income ("Rental Revenue") in the
14 amount of \$5,381.25 per month from the Debtor's tenant, Wholesale Distribution, Inc.
15 ("Tenant"). In addition Tenant pays all utilities and property taxes directly, pursuant to the triple
16 net lease entered into with the Debtor. Because of the tenant's continuous payments of rent, the
17 Debtor should have no difficulty maintaining post-petition obligations to PBC.

18 **B. The Lone Oak Take-Out Loan**

19 On November 9, 2017, Debtor filed with this Court a *Motion for Order Authorizing Post*
20 *Petition Financing etc. 11 U.S.C. § 364(d)* [dkt. no. 45] ("Financing Motion"). Pursuant to an
21 agreement between the Debtor and Lone Oak, Lone Oak has agreed to accept a discounted payoff
22 amount in the sum of \$925,000 (the "DPO Amount") to fully and finally resolve its entire claim
23 against the Debtor in this Chapter 11 case. PBC will loan the Debtor the DPO Amount in
24 exchange for which the Debtor will execute a Reaffirmation and Forbearance Agreement
25 ("Forbearance Agreement") and PBC will acquire the first trust deed secured position of Lone
26 Oak. The Debtor will use the loan proceeds from PBC to pay off Lone Oak at a discounted
27 amount, and also obtain a new Forbearance Agreement from PBC. The statutory predicates for
28 the relief requested here are subsections 364(d), 364(e) of the Bankruptcy Code and Federal Rule

1 of Bankruptcy Procedure 9019.

2 Through this Motion, the Debtor seeks this Court's authority to use the Rental Revenue
3 generated by the Property to pay the monthly loan payments in the amount of \$5,381.25 to PBC
4 under the Forbearance Agreement, and otherwise permit the payments by the Tenant directly of
5 the ordinary and necessary expenses for the operation of the Property, including the utilities and
6 property taxes directly, pursuant to the triple net lease entered into with the Debtor.

7 As is set forth more fully below, the Lender, PBC, is adequately protected by the Debtor's
8 use of the Rental Revenue to maintain the Property, and continue making its regular payments,
9 thereby protecting the value of all of PBC's collateral.

10 **C. The Cash Collateral Stipulation**

11 Immediately upon filing the Financing Motion, counsel for the Debtor and PBC entered
12 into negotiations regarding a Cash Collateral Stipulation. Through the parties' diligent work,
13 Debtor and PBC have successfully negotiated a Stipulation that both parties consent to. Attached
14 as Exhibit A to the Declaration on Kimberly M. Ord is a true and correct copy of the Cash
15 Collateral Stipulation.

16 **III**

17 **DISCUSSION**

18 **A. Intended Use of Rental Revenue**

19 The Rental Revenue constitutes the Property's primary source of revenue and, therefore,
20 is critical to Debtor's operation and preservation of the Property. Absent the use of the Rental
21 Revenue, Debtor would be unable to maintain its post-petition obligations to PBC, or provide
22 necessary services to its Tenant.

23 Debtor requests authority to use the rent collected from the Property during the pendency
24 of this Chapter 11 case, or until otherwise ordered by the Court, to pay its regular monthly
25 obligations to PBC. All other ordinary costs necessary to maintain and preserve the Property,
26 including, without limitation, insurance, real estate taxes, and tenant improvements, are paid
27 directly by Tenant.

28 ///

1 The Court should allow the Debtor's use of the Rental Revenue because PBC's interest in
2 the Debtor's funds is adequately protected by the Debtor's continued operations and the related
3 preservation of the Property.

4 **B. C.B.S.A. Family Partnership Should be Authorized to Use Rental Revenue Pursuant**
5 **to Section 363 of the Bankruptcy Code.**

6 The Debtor's use of property of the estate is governed by Section 363 of the Bankruptcy
7 Code. Section 363(c)(1) provides in pertinent part:

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

12 11 U.S. C. §363(c)(1)²

13 "Cash Collateral" is defined as "cash, negotiable instruments, documents of title,
14 securities, deposit accounts or other cash equivalents in which the estate and an entity other than
15 the estate have an interest . . ." 11 U.S.C. §363(a). Section 363(c)(2) establishes a special
16 requirement with respect to "Cash Collateral," providing that the trustee or debtor in possession
17 may use "Cash Collateral" under subsection (c)(1) if:

- 17 (A) each entity that has an interest in such Cash Collateral consents; or
18 (B) the court, after notice and a hearing, authorizes such use, sale or lease in
19 accordance with the provision of this section.

19 See 11 U.S.C. §363(c)(2) and (B).

20 Further, upon the request of an entity that has an interest in property proposed to be used
21 by Debtor, the Court shall prohibit or condition such use "as is necessary to provide adequate
22 protection of such interest." 11 U.S.C. §363(e).

23 Debtor has determined that it would be in the best interests of this estate and its creditors
24 to maintain and operate the Property and provide the necessary services to its Tenant, and it was
25 for that specific purpose that a voluntary petition under Chapter 11 was filed. The Court should
26

27 ²A debtor in possession has all of the rights and powers of a trustee with respect to property of the
28 estate, including the right to use property of the estate in compliance with Section 363. See 11
U.S.C. §1107(a).

1 authorize the Debtor to use Rental Revenue to continue its operations, because PBC's security
2 interest, as described above, will be adequately protected, and such use is in the best interest of
3 this estate and its creditors as further set forth herein.

4 C. **PBC is Adequately Protected and Therefore the Court Should Authorize The**
5 **Debtor To Use The Rental Revenue Pursuant To Section 363 of the Bankruptcy**
6 **Code**

7 To the extent that PBC has a valid security interests in the revenues generated by the
8 Debtor, those revenues constitute "cash collateral" under Section 363(a) of the Bankruptcy Code.
9 Pursuant to Section 363(c)(2), the Court may authorize the Debtor to use a secured creditor's
10 cash collateral if the secured creditor is adequately protected. In re Mellor, 734 F.2d 1936, 1400
11 (9th Cir. 1984). See also In re O'Connor, 808 F.2d 1393, 1398 (10th Cir. 1987); In re McCombs
12 Properties VI, Ltd., 88 B.R. 261, 265 (Bankr. C.D. Cal. 1988). ("McCombs").

13 1. **In Determining Adequate Protection, The Court Should Promote**
14 **Reorganization**

15 In determining adequate protection, Courts have stressed the importance of promoting a
16 debtor's reorganization. In In re O'Connor, the Tenth Circuit stated:

17 In this case, Debtors, in the midst of a Chapter 11 proceeding, have proposed to deal
18 with cash collateral for the purpose of enhancing the prospects of reorganization.
19 This quest is the ultimate goal of Chapter 11. Hence, the Debtor's efforts are not only
20 to be encouraged, but also their efforts during the administration of the proceeding
21 are to be measured in light of that quest. Because the ultimate benefit to be achieved
22 by a successful reorganization inures to all the creditors of the estate, a fair
23 opportunity must be given to the Debtors to achieve that end. Thus, while interests of
24 the secured creditor whose property rights are of concern to the court, the interests of
25 all other creditors also have bearing upon the question of whether use of cash
26 collateral shall be permitted during the early states of administration.

27 808 F.2d at 1937.

28 In order to promote Debtor's reorganization, the Court should grant the relief requested
herein. As the Debtor will demonstrate more fully below, the imposition of a cash flow
mortgage will preserve the Property to the benefit of this estate and the creditors, specifically
including PBC. A successful reorganization depends upon the use of Rental Revenue as

1 proposed herein.

2 2. **PBC's Interests in the Rental Revenue will be Adequately Protected by the**
3 **Debtor's Continued Operations.**

4 A debtor may use cash collateral where such use would enhance or preserve the value of
5 the collateral. In re Stein, 19 B.R. 458 (Bankr. E.D. Pa. 1982). In Stein, the Court allowed a
6 debtor to use cash collateral where the secured party had no equity cushion for protection. The
7 Court found that the use of cash collateral was necessary to the continued operations of the
8 debtor, and that the creditor's secured position could only be enhanced by the continued operation
9 of the debtor's business.

10 Additionally, in McCombs, the Court specifically stated that "[e]ven if there was no
11 equity cushion, I am not convinced that gross rents will diminish over the foreseeable future." 88
12 B.R. at 267. The Court stated that the debtor's use of cash collateral for needed repairs,
13 renovations and operating expenses eliminated the risk of diminution in the creditor's interest in
14 the cash collateral and such use would more likely increase cash collateral. Id.

15 In the present case, the Debtor intends to use Rental Revenue to operate and preserve the
16 Property. The use of Rental Revenue is essential to continue the ordinary maintenance and
17 operations of the Property and to provide necessary services to its Tenant. Without the use of the
18 Rental Revenue, the Debtor will be unable to maintain, repair, and operate the Property. The
19 Debtor's ability to use the Rental Revenue will give the Debtor the ability to maintain the
20 Property, and to continue making its regular monthly installments to PBC. This, in turn, not only
21 preserves the value of the Property, but simultaneously enhances the value.

22 Every dollar that is generated from the Rental Revenue is being used to continue
23 maintaining the Property, not only to keep the status quo for the benefit of the Creditors,
24 including PBC, but also to enhance the value of the Property for potential buyers. By using the
25 Rental Revenue to maintain the Property, the Debtors are inherently protecting the creditors, and
26 no additional protections are necessary.

27 Based on the foregoing, it is clear that the filing of the voluntary petition has not, and will
28 not cause a diminution in value of the Property, as long as the Debtor continues to maintain the

1 Property. As such, Debtor respectfully requests that the Court find that PBC is adequately
2 protected by the Debtors use of Rental Revenue to maintain the Property, such that the Debtor,
3 need not make any cash payments to PBC as enumerated in 11 U.S.C. §361.

4 Debtor has established that the rents will be used to maintain and operate the Property and
5 to provide necessary services for its Tenant; all amounts not needed for such operation and
6 maintenance, will be promptly turned over to PBC with respect to the Property, in order of their
7 respective priority and according to the Debtor's underlying obligations to the extent of the
8 monthly mortgage payments. The use to which the rents will be put during the pendency of the
9 case will not in any way harm PBC or erode the value of PBC's collateral.

10 Allowing Debtor to operate on a cash flow mortgage basis will be beneficial to all parties
11 involved. Debtor will be able to continue ordinary operations of the Property, and the value of
12 the PBC's collateral will not be diminished, but in fact, preserved.

13 **D. PBC Consents to the Use of the Rental Revenue**

14 As seen in Exhibit "A" to the Ord Declaration, the Stipulation for Use of Cash Collateral
15 has been approved by both the Debtor and PBC. As a result, there should be no opposition or
16 objection to the Motion or the proposed use of the Rental Revenue.

17 **E. Preliminary Authorization for Use of Cash Collateral is Appropriate**

18 The Debtor has an emergent need for use of the Rental Revenue. First, an Order
19 approving this Motion is a condition precedent to the financing being provided by PBC to take
20 out Lone Oak in the Financing Motion. Secondly, if the Debtor is not permitted to use the Rental
21 Revenue, the Debtor will be forced to cease operations of the Property because it will be unable
22 to its monthly mortgage payments to PBC. Accordingly, the Debtor seeks this Court's
23 authorization to use Cash Collateral and requests that the Court conduct a preliminary hearing on
24 this motion as authorized by Rule 4001(d)(3)³ of the Federal Rules of Bankruptcy Procedure.

25 ³Bankruptcy Rule 4001(d)(3) provides:

26 If no objection is filed, the court may enter an order approving or disapproving the agreement without
27 conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the
28 court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on
whom service is required by paragraph (1) of this subdivision and such other entities as the court may
direct.

1 In accordance with Bankruptcy Rule 4001(d)(1)(C)⁴, [the footnote says "(d)(1)(C)"] the
2 Debtor has served a copy of the Motion and this Memorandum upon the Office of the United
3 States Trustee, the creditors holding the 20 largest unsecured claims against the Debtor's estate, if
4 any, and PBC by hand delivery or overnight mail.

5 IV

6 CONCLUSION

7 Based upon the foregoing, PBC, is adequately protected by Debtor's continued operations,
8 maintenance and preservation of the Property as well as the cash payments. PBC also consents
9 to the instant Motion. Accordingly, Debtor respectfully requests that this Court grant the
10 Debtor's Motion to use the Rental Revenue.

11
12 Dated: November 27, 2017

FRIEDMAN LAW GROUP, P.C.

13
14
15 By: 

J. BENNETT FRIEDMAN
Attorneys for Debtor in Possession
C.B.S.A. FAMILY PARTNERSHIP

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23
24
25 _____
26 ⁴Bankruptcy Rule 4001(d)(1)(C) provides:

27 The motion shall be served on: (1) any committee elected under §705 or appointed under §1102 of the
28 Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11
reorganization case and no committee of unsecured creditors has been appointed under §1102, on the
creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1900 Avenue of the Stars, 11th Fl., Los Angeles, CA 90067

True and correct copies of the foregoing documents entitled (*specify*): **MOTION PURSUANT TO 11 U.S.C. §363 FOR AUTHORITY TO USE RENTAL REVENUE; MEMORANDUM OF POINTS AND AUTHORITIES** will be served or were served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing documents will be served by the court via NEF and hyperlink to the document. On (*date*) 11/27/2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Simon Aron** saron@wrslawyers.com
- **Keith Patrick Banner** kbanner@greenbergglusker.com, sharper@greenbergglusker.com
- **Brian L Davidoff** bdavidoff@greenbergglusker.com, calendar@greenbergglusker.com; jking@greenbergglusker.com
- **Jerome Bennett Friedman** jfriedman@flg-law.com, msobkowiak@flg-law.com; jmartinez@flg-law.com
- **Michael J Hauser** michael.hauser@usdoj.gov
- **United States Trustee (SA)** ustpregion16.sa.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 11/27/2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing true and correct copies thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Erithe A. Smith
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040
Santa Ana, CA 92701-4593

Office of the United States Trustee
411 West Fourth Street
Suite 7160
Santa Ana, CA 92701

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/27/2017

Elisabeth Walters

Date

Printed Name

/s/Elisabeth Walters

Signature

Via US Mail

C.B.S.A. Family Partnership
1835 Newport Blvd., # A109-158
Costa Mesa, CA 92627

Lundval Family Trust, Inc.
PO Box 8093
Newport Beach, CA 92658

Kimberly M. Ord
PO Box 8093
Newport Beach, CA 92658

Assessor-County Clerk-Recorder
2724 Gateway Drive
Riverside, CA 92507

Elsa Horowitz
c/o Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
11400 West Olympic Blvd., 9th Floor
Los Angeles, CA 90064

Internal Revenue Service c/o Centralized
P.O. Box 7346
Philadelphia, Pennsylvania 19101-7346

Lone Oak Fund, LLC
11611 San Vicente Blvd., Suite 640
Los Angeles, CA 90049

Lone Oak Fund, LLC
P.O. Box 491457
Los Angeles, CA 90049
(Undeliverable_Unable to forward)

Peak Foreclosure Service, Inc.
5900 Canoga Avenue, Ste 220
Woodland Hills, CA 91367

Wholesale Distribution, Inc.
340 N. Grant Avenue
Corona, CA 92882