

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)
) Case No. 17-16031 EEB
IBEX, LLC,)
) Chapter 11
Debtor.)

**MOTION FOR APPROVAL OF STIPULATED ORDER AUTHORIZING DEBTOR'S
CONTINUED USE OF CASH COLLATERAL FOR THE PERIOD OF JUNE 1, 2018
THROUGH JULY 31, 2018**

IBEX, LLC, debtor-in-possession herein ("Debtor"), by and through its undersigned counsel, and for its Motion for Approval of Stipulated Order Authorizing Debtor's Continued Use of Cash Collateral for the Period of June 1, 2018 through July 31, 2018, hereby states as follows:

INTRODUCTION

1. The Debtor filed for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on June 29, 2017 (the "Petition Date"), and is operating as a debtor-in-possession.

2. The Debtor's use of cash collateral under Section 363 of the Bankruptcy Code has been approved through May 31, 2018 (Docket No. 218).

3. By this Motion, the Debtor seeks entry of a stipulated order authorizing Debtor's use of cash collateral from June 1, 2018 through July 31, 2018.

4. The Debtor operates a *Right at Home* franchise in Colorado Springs. The Debtor's business provides in-home care services for elderly individuals such as companionship care and homemaking, physical assistance, skilled nursing, hygiene, wellness, Alzheimer's and dementia care, respite care, non-medical home care, health reminders, and home health aides.

5. The Debtor purchased its Right at Home franchise on January 1, 2017. Litigation against the seller, franchisor, and others is pending. After purchasing the franchise, the Debtor discovered that (a) the previous owner of the business had made material misrepresentations to Debtor's management in connection with the purchase of the business and (b) the franchisor, Right at Home, Inc., knew and failed to disclose material information regarding the seller and the state of the franchise the Debtor was purchasing. The instant Chapter 11 bankruptcy was filed to allow the Debtor to continue operations and reorganize its affairs despite the problems caused by the former owner and management.

6. The Debtor's claims against Total Healthcare Staffing, Inc. (the seller) and Mark

Terry (the principal of the seller) is proceeding in Division 12 of the Colorado State District Court for the County of El Paso, case number 2017CV31412. The Debtor's claims against Right at Home, Inc. (the franchisor) are proceeding with the American Arbitration Association under the Commercial Arbitration Rules and Mediation Procedures. The five-day arbitration is scheduled to commence on October 1, 2018 in Omaha, Nebraska. Pursuant to the Uniform Arbitration Act, the grounds for an appeal in arbitration are extremely limited and it is very likely that the Debtor's claims against Right at Home, LLC will be conclusively decided within 14 days after the arbitration hearing ends. *See* Neb. Rev. Stat. Ann. § 25-2620 and Colo. Rev. Stat. Ann. § 13-22-228.

ARGUMENT

7. First National Bank of Pennsylvania (the "Bank" or "First National") asserts a claim in the approximate amount of \$2,357,569.38 (as of the Petition Date) against the Debtor. First National asserts that it has a valid, perfected pre-petition lien and security interest in "all equipment and machinery, including power driven machinery and equipment, furniture and trade fixtures now owned or hereafter acquired, and wherever located together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith and proceeds therefrom [...], [and] [a]ll general intangibles now in force or hereafter acquired and proceeds therefrom." The Bank also asserts that it has a valid, perfected pre-petition lien and security interest in "all accounts receivable and inventory now owned or hereafter acquired, and wherever located together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith and proceeds therefrom."

8. The Bank asserts that its liens were perfected through the filing of UCC Financing Statements with the Colorado Secretary of State on December 9, 2016. With respect to the Bank's claim, the general prohibition contained in 11 U.S.C. § 522(a) is applicable and the Bank's pre-petition liens against "property acquired by the estate or the debtor after commencement of the case" are not "subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case." Nevertheless, "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 acquired by the estate after commencement of the case" under 11 U.S.C. § 552(b)(1). Thus, the Debtor's accounts receivable that were earned pre-petition and will be collected post-petition are "cash collateral" as that term is defined in Section 363(a) of the Bankruptcy Code.

9. No other creditor has filed a UCC Financing Statement against the Debtor or its assets.

10. The Debtor desires to use the post-petition proceeds from the pre-petition accounts receivable (the "Cash Collateral") to preserve and maintain its business as a going concern. All of the Debtor's creditors, not just the Bank, will benefit from the Debtor's continued operations and that any return to creditors will be greater through continued operations and a reorganization under Chapter 11 of the Bankruptcy Code than immediately ceasing operations and winding up the Debtor's business under applicable law. If this Court were to decline to allow the Debtor to use the Cash Collateral, the Debtor and its creditors would suffer immediate and irreparable harm.

11. No other creditor has a secured interest in the Cash Collateral.

12. The Debtor and the Bank have agreed to a stipulated order authorizing the Debtor's use of Cash Collateral from June 1, 2018 through July 31, 2018 in accordance with the projections and budget attached hereto as **Exhibit 1** (the "Budget"). The Budget includes a potential lump sum payment of franchise and royalty fees the Debtor may be ordered to pay that were previously approved by the Court but not paid by the Debtor.

13. Under the proposed stipulated order (the "Cash Collateral Stipulation"):

a. The Debtor will be authorized to use Cash Collateral for the period from June 1, 2018 through July 31, 2018 pursuant to Exhibit 1;

b. The Bank will be granted a replacement lien and security interest upon the Debtor's post-petition assets with the same priority and validity as Lender's pre-petition liens to the extent of the Debtor's post-petition use of the proceeds of Lender's pre-petition collateral (the "Adequate Protection Liens").

c. To the extent the Adequate Protection Liens prove to be insufficient, Lender shall be granted superpriority administrative expense claims under section 507(b) of the Bankruptcy Code.

d. The Debtor shall pay Lender \$15,500.00 each month (by the 7th of June and 7th of July) as additional adequate protection.

e. Debtor shall provide Lender by the 20th of each month: (a) a report disclosing the payments made to third parties by Debtor and/or on behalf of Debtor for the previous month; (b) a budget variance report, reporting actual expenditures and identifying any variances from the Budget for the previous month; (c) balance sheet; (d) profit and loss statement; and (e) an accounts receivable aging report.

f. Any fees and expenses which are incurred or become due and owing to Jensen Dulaney or Wadsworth Warner Conrardy shall not be paid until Bankruptcy Court approval.

14. The Cash Collateral Stipulation does not contain any provisions set forth in Section (a) of L.B.R. 4001-3APP.

WHEREFORE, the Debtor respectfully requests that this Court enter order in the form submitted herewith allowing the Debtor to use the Cash Collateral as set forth herein, and for such other and further relief as the Court deems just.

Dated: May 8, 2018

Respectfully submitted,

WADSWORTH WARNER CONRARDY, P.C.

/s/David J. Warner

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