

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

In re:)	
)	Case No. 17-00513
MAYFAIR-CORCORAN LLC,)	
)	Chapter 11
Debtor.)	
_____)	

**EMERGENCY MOTION FOR INTERIM AND FINAL
ORDERS AUTHORIZING: (1) POST-PETITION SECURED
FINANCING, AND (2) THE CONTINUED USE OF CASH COLLATERAL**

Paula Forshee, the receiver appointed by the District of Columbia Superior Court (the “Receiver”), through undersigned counsel, hereby moves, on an emergency basis, for interim and final orders authorizing: (1) Post-Petition Financing from Federal National Mortgage Association (“Fannie Mae”), and (2) the Continued Use of Cash Collateral (the “Motion”). In support of this request, the Receiver states as follows:

BACKGROUND

1. Mayfair-Corcoran LLC (the “Debtor”) is a Delaware limited liability company. Sanford Capital LLC (“Sanford Capital”) owns 70% of the Debtor. A. Carter Nowell is the Debtor’s manager and signed the petition on behalf of the Debtor. The Debtor identified this case as a single asset real estate case as defined by 11 U.S.C. § 101(27A).

2. The Debtor is the owner of a certain multifamily property known as Corcoran House Apartments located at 1720-1721 Corcoran Street Northeast in the District of Columbia (the “Property”). The Property includes two (2) three-story plus basement apartment buildings providing a total of 19 units, consisting of one (1) studio, ten (10) one bedroom, and eight (8) two bedroom units. Until the appointment of the Receiver, the Property was managed by

Oakmont Management Group LLC (“Oakmont”). Upon information and belief, Oakmont is owned by Mr. Nowell.

3. The Debtor is indebted to Fannie Mae pursuant to two promissory notes (the “Promissory Notes”) in the original principal amounts of \$1,175,000.00 and \$316,000.00, respectively. Each of the loans is secured, inter alia, by a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (together, the “Security Instruments”) that are recorded against the Property in the District of Columbia Recorder of Deeds. The Security Instruments are recorded as Document Number 2013092856 and Document Number 2015112213, respectively (the Promissory Notes, Security Instruments and other related documents are collectively referred to as the “Loan Documents”).

4. The Debtor defaulted under the Loan Documents, which have been accelerated. On May 17, 2017, Fannie Mae filed a complaint against the Debtor and A. Carter Nowell in the District of Columbia Superior Court (the “Superior Court”), identified as Case No. 2017 CA 003403 R (RP), seeking a money judgment, the appointment of a receiver, and other relief. As of the Petition Date, the Debtor’s total indebtedness to Fannie Mae exceeds \$1.95 million.

5. On May 26, 2017, the Superior Court entered a Consent Order Appointing Receiver and Granting Injunctive Relief (the “Receiver Order”). The Receiver, though Catalyst Property Solutions (“Catalyst”), has managed the Property since approximately June 1, 2017.

6. On or about September 13, 2017 (the “Petition Date”), the Debtor filed a bankruptcy petition with this Court.

7. Shortly after the Petition Date, on or about September 26, 2017, this Court entered an Order Authorizing the Receiver to Continue to Manage the Property (“Section 543

Order”), which authorized the Receiver to, among other things, continue operating and managing the Property and to otherwise fulfill the Receiver’s duties under the Receiver Order.

8. On October 25, 2017, the Receiver filed a motion for authority to obtain post-petition financing and use of cash collateral to cover expenses up through November 30, 2017. That motion was granted by this Court pursuant to a consent order on November 14, 2017. Pursuant to the consent order, Fannie Mae has funded the Receiver’s first request for post-petition financing and has permitted the use of cash collateral.

9. On December 14, 2017, the Court entered an order conditionally approving the sale of substantially all of the Debtor’s assets (the “Sale Order”). Upon information and belief, the sale is expected to close on January 18, 2018 (the “Closing Date”). Consequently, the Receiver requires funding to pay expenses related to property operations through the Closing Date.

RELIEF REQUESTED

10. The Section 543 Order requires the Receiver to file a motion seeking authority to secure post-petition financing pursuant to Section 364 of the Bankruptcy Code to the extent that post-petition funding becomes necessary. In that regard, the Receiver has made her second request to Fannie Mae in the approximate amount of \$75,980.00 to cover certain post-petition expenses incurred up through February 28, 2018 (the “Post-Petition Financing”). *See* Post-Petition Funding Request attached hereto and incorporated herein as **Exhibit A**. The Post-Petition Funding Request includes a budget for the period of January 2018 through June 2018.

11. In the ordinary course of business, the Receiver requires cash on hand in addition to the cash flow from the Property’s operations to fund the Property’s liquidity needs. In addition, the Receiver requires access to sufficient liquidity to fund the Property’s operations

until such time as a plan is confirmed or the Property is sold. Post-petition financing, in addition to the use of cash collateral, is necessary in order for the Receiver to have access to sufficient liquidity to maintain the Property's ongoing day-to-day operations and fund its working capital needs, including without limitation, paying and retaining employees, maintaining insurance, paying utilities and generally maintaining the condition of the Property for the benefit of its residents. Absent post-petition financing and the continued use of cash collateral, the Receiver will not be able to manage and operate the Property due to a lack of funds. It is therefore imperative that the Receiver have immediate access to sufficient liquidity to avoid irreparable harm to the Debtor's estate. The Receiver only intends to use funds, as needed, to pay for necessary expenditures for the Property through the Closing Date.

12. By this Motion, and pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 507 of the Bankruptcy Code, Rules 2002, 4001, 6004 and 9014 of the Bankruptcy Rules, the Receiver seeks entry of an order granting the following relief (the "DIP Order"):

a. authorizing the Receiver to continue receiving advances of funds from Fannie Mae in accordance with the Loan Documents and to include the advances in the secured indebtedness under the Loan Documents;

b. authorizing the Receiver, and/or requiring the Debtor, to execute and enter into any additional documents required by Fannie Mae related to the Post-Petition Financing and to perform all such other and further acts as may be required in connection with the Post-Petition Financing, the Section 543 Order and the DIP Order;

c. authorizing the Receiver (and/or the Debtor) to request additional funds from Fannie Mae pursuant to the Loan Documents;

d. authorizing the Receiver to use proceeds of Post-Petition Financing as permitted in the Loan Documents and in accordance with the Section 543 Order and the DIP Order;

e. upon entry of the DIP Order, granting automatically perfected first priority security interests in, and liens on, all of Fannie Mae's collateral (as defined in the Loan Documents) and other property of the Debtor, if any, on which a lien is granted pursuant

to the Loan Documents (collectively, the “Collateral”) and granting super-priority administrative expense status to the obligations under the Loan Documents as they relate to the Post-Petition Financing;

f. authorizing the Debtor to provide adequate protection to Fannie Mae as set forth in the DIP Order;

g. authorizing the Receiver to continue using “cash collateral,” as that term is defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”) and all other Collateral, subject to the terms of the Loan Documents, the Section 543 Order and the DIP Order; and

h. modifying the automatic stay set forth in section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Order and the Loan Documents as they relate to the Post-Petition Financing and the use of Cash Collateral.

I. The Receiver Should Be Authorized to Obtain Post-Petition Financing Under Section 364 of the Bankruptcy Code.

13. Section 364 of the Bankruptcy Code “provides bankruptcy courts with the power to authorize post-petition financing for a Chapter 11 debtor-in-possession.” *In re Defender Drug Stores, Inc.*, 126 B.R. 76, 81 (Bankr. D. Ariz. 1991). “Having recognized the natural reluctance of lenders to extend credit to a company in bankruptcy, Congress designed [section] 364 to provide ‘incentives to the creditor to extend post-petition credit.’” *Id.* In particular, section 364(c) of the Bankruptcy Code establishes the conditions under which a debtor may obtain certain types of secured credit and provides, in pertinent part, as follows:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt –

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien[.]

11 U.S.C. § 364(c).

14. Further, section 364(d) of the Bankruptcy Code provides:

- (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:
 - (A) the trustee is unable to obtain such credit otherwise; and
 - (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.
- (2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364(d).

15. As long as a debtor's (or in this case, the Receiver's) business judgment does not run afoul of the letter and spirit of the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g., In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of post-petition financing requires, inter alia, an exercise of "sound and reasonable business judgment").

16. Here, given all the facts and circumstances present in this case, the Receiver has amply satisfied the necessary conditions under sections 364(c) and (d) of the Bankruptcy Code for authority to secure the Post-Petition Financing. Since the appointment of the Receiver, the

Property has been operating with a shortfall as a result of the numerous problems associated with the buildings and surrounding grounds that require attention. Prior to the Petition Date, Fannie Mae has been funding the shortfall. The prospect of a third-party lender providing funds on an unsecured, administrative expense, or consensual priming basis, is remote at best. Fannie Mae has agreed to continue providing funds to the Receiver on a post-petition basis on the same terms as identified in the Loan Documents.

17. Further, Fannie Mae will be granted adequate protection through the provision of replacement liens and super-priority administrative claims. Specifically, Fannie Mae should receive, pursuant to section 361 of the Bankruptcy Code, automatically-perfected replacement liens on the Debtor's post-petition assets to the same extent and priority as Fannie Mae's prepetition liens. In addition, pursuant to section 507(b) of the Bankruptcy Code, Fannie Mae should receive a super-priority administrative claim against the Debtor to the extent of the Post-Petition Financing. The adequate protection proposed herein is consistent with the Loan Documents. Accordingly, the adequate protection provided to Fannie Mae is fair and reasonable, and satisfies the requirements of section 364 of the Bankruptcy Code. All funds due Fannie Mae, including, without limitation, any amounts owed pursuant to the Post-Petition Financing, shall be paid by the Debtor at the closing of the sale contemplated by the Sale Motion.

18. The Post-Petition Financing, along with the continued use of Cash Collateral, will enable the Receiver to continue managing and operating the Property as required by the Receiver Order. Without access to the Post-Petition Financing and Cash Collateral, the Receiver will not have access to any unencumbered or available liquidity to be able to pay expenses necessary to sustain ongoing operations of the Property, which would significantly impair the value of the Debtor's estate as well as cause harm to the residents residing at the Property. Accordingly, the

Receiver believes that the receipt of the Post-Petition Financing, and use of Cash Collateral, on the same terms as referenced in Loan Documents, is in the best interests of the Debtor, its estate, its creditors and the residents residing at the Property. Accordingly, the Receiver's decision to request the proposed Post-Petition Financing, and the use of Cash Collateral, is necessary and appropriate under the circumstances of this case, and should be approved by this Court.

II. The Receiver Should be Authorized to Use Cash Collateral.

19. Section 363(c)(2) of the Bankruptcy Code governs a debtor's use of a secured creditor's cash collateral. Specifically, that provision provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2).

20. Further, section 363(e) provides that “on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

21. The Receiver has satisfied the requirements of sections 363(c)(2) and 363(e) of the Bankruptcy Code, and should be authorized to use the Cash Collateral. First, as discussed above, Fannie Mae consents to the use of the Cash Collateral. Second, Fannie Mae will be provided with adequate protection in the form of replacement liens on its Collateral, including Cash Collateral, in accordance with the priorities set forth in, and subject to, the Loan Documents.

22. As further described above, the Receiver has an urgent need for the immediate use of the Cash Collateral, to honor obligations critical to the Property's ongoing operations, including to employees, vendors, and suppliers. Absent access to the Cash Collateral, the Receiver cannot continue to operate and manage the Property post-petition, diminishing the value of the Debtor's estate to the detriment of all creditors, including Fannie Mae. It is imperative that the Receiver have access to Cash Collateral to operate the Property through the closing of the sale.

WHEREFORE, the Receiver requests (1) approval of the relief requested in the Motion; (2) entry of an order substantially in the form of the proposed order annexed hereto; (3) schedule a final hearing, and (4) such other and further relief as is just.

PAULA FORSHEE,
COURT APPOINTED RECEIVER

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January, 2018, a true and correct copy of the *Motion for An Order Authorizing: (1) Post-Petition Financing from Federal National Mortgage Association, and (2) the Continued Use of Cash Collateral (with attachments) and Notice of Hearing and Opportunity to Object* were served (1) by operation of the Court's CM/ECF electronic case filing system upon all parties entitled to receive notice thereby, and (2) by first class mail, postage prepaid, on those persons and entities listed on Exhibit 1 attached hereto and on the following:

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