

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

Cocoa Expo Sports Center, LLC,

Taxpayer ID No. 27-4509245,

Debtor.

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Chapter 11

Case No.: 6:17-bk-00441-RAC

**Expedited Hearing Requested  
on or before February 15, 2017**

**DEBTOR'S EMERGENCY MOTION FOR AUTHORITY  
TO USE CASH COLLATERAL, EXPEDITED HEARING REQUESTED**

Debtor, Cocoa Expo Sports Center, LLC, requests authorization for use of cash collateral as follows:

A. Certificate of Necessity. I certify, as a member of the Bar of the Court, that:

1. I have carefully examined the matter under consideration and to the best of my knowledge, information and belief formed after reasonable inquiry, all allegations are well grounded in fact and all contentions are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law can be made, that the matter under consideration is not interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation, and there is just cause to request a consideration of this motion on an emergency basis. The necessity of this emergency hearing has not been caused by a lack of due diligence on my part, but has been brought about only by circumstances beyond my control or that of my client. This motion is filed with full understanding of and the consequences of noncompliance with F.R.B.P. 9011. There is true necessity for an emergency hearing.

2. If Debtor does not receive immediate relief, then Debtor will not have funds to operate or pay expenses, including non-insider payroll, thereby resulting in immediate and

irreparable harm to the value of Debtor's business. Debtor is attempting to obtain the consent of creditors with an interest in cash collateral; however, Debtor is uncertain if such consent can be obtained on an expedited basis. Debtor requests a hearing on or before February 15, 2017, the date debts arising after the Petition Date will come due. Debtor estimates that a preliminary hearing of this motion will require approximately fifteen (15) minutes.

B. Background.

1. Chapter 11 Case. On January 23, 2017 (the "Petition Date"), Debtor filed the above referenced Chapter 11 case. Debtor continues to manage its financial affairs as debtor-in-possession.

2. Description of Debtor and Debtor's business. Debtor is a Florida limited liability company formed in 2011. Debtor owns a sports complex located at 500 Friday Road, Cocoa, FL 32926 (the "Sports Complex"). The Sports Complex consists of over 50 acres. Prior to the Petition Date, the Sports Complex was operated by Cocoa Expo Sports Center Tenant, LLC, an affiliate of Debtor. Debtor's gross revenue for 2016 was \$637,652.

3. Secured Creditors. Subject to defenses, counterclaims and offsets, if any, the following creditors (the "Secured Creditors") may assert claims secured by a lien against property of the estate, including cash collateral:

a. Armitage Plumbing, LLC may assert a claim against real property, in the approximate amount of \$4,389.88, secured by claim of lien recorded March 10, 2015, in Official Records Book 7318, Page 1285, in the public records of Brevard County, Florida.

b. Bank of Washington may assert a claim against real and personal property, in the approximate amount of \$11,113,905.28, secured by: (i) mortgage recorded December 5, 2011, in Official Records Book 6498, Page 941, in the public records of Brevard County, Florida;

(ii) UCC-1 Financing Statement recorded December 5, 2011, in Official Records Book 6498, Page 984, in the public records of Brevard County, Florida; (iii) UCC-1 Financing Statement #201105768722 recorded December 2, 2011 with the Florida Secured Transaction Registry, continued by UCC-3 Financing Statement #20160935509X recorded November 7, 2016 with the Florida Secured Transaction Registry; (iv) UCC-1 Financing Statement #201206396553 recorded March 21, 2012 with the Florida Secured Transaction Registry; and (v) UCC-1 Financing Statement #20120791146X recorded November 19, 2012 with the Florida Secured Transaction Registry, amended by UCC-3 Financing Statement #201400728051 recorded February 10, 2014 with the Florida Secured Transaction Registry.

c. Board of County Commissioner may assert a claim against real property, in the approximate amount of \$38,250.00, secured by copy of amended order recorded November 20, 2014, in Official Records Book 7250, Page 2471, in the public records of Brevard County, Florida.

d. City Electric Supply Company may assert a claim against real property, in the approximate amount of \$337,596.37, secured by: (i) copy of amended final judgment recorded December 15, 2016, in Official Records Book 7777, Page 1342, in the public records of Brevard County, Florida; and (ii) Judgment Lien Certificate #J17000033102, recorded January 18, 2017, with the Secretary of State of Florida.

e. Fortiline Waterworks may assert a claim against real property, in the approximate amount of \$16,812.93, secured by claim of lien recorded May 1, 2015, in Official Records Book 7357, Page 291, in the public records of Brevard County, Florida.

f. M&M Electric of Central Florida, Inc. may assert a claim against real property, in the approximate amount of \$21,274.21, secured by claim of lien recorded July 21, 2015, in Official Records Book 7413, Page 2628, in the public records of Brevard County, Florida.

g. Middlesex Paving, LLC may assert a claim against real property, in the approximate amount of \$275,372.01, secured by: (i) copy of final judgment recorded December 28, 2016, in Official Records Book 7786, Page 519, in the public records of Brevard County, Florida; (ii) copy of final judgment recorded December 28, 2016, in Official Records Book 7786, Page 573, in the public records of Brevard County, Florida; and (iii) claim of lien recorded June 12, 2015, in Official Records Book 7387, Page 1334, in the public records of Brevard County, Florida.

h. Southern Fire Protection of Orlando, Inc. may assert a claim against real property, in the approximate amount of \$27,723.70, secured by claim of lien recorded September 10, 2015, in Official Records Book 7448, Page 462, in the public records of Brevard County, Florida.

i. UDF XIV SPE B, LLC may assert a claim against real and personal property, in the approximate amount of \$3,098,280.00, secured by: (i) mortgage recorded December 5, 2011, in Official Records Book 6498, Page 993, in the public records of Brevard County, Florida; and (ii) UCC-1 Financing Statement recorded December 5, 2011, in Official Records Book 6498, Page 1009, in the public records of Brevard County, Florida.

j. Urban Development Fund XXIII may assert a claim against real and personal property, in the approximate amount of \$7,229,320.00, secured by: (i) mortgage recorded December 5, 2011, in Official Records Book 6498, Page 1015, in the public records of Brevard County, Florida; and (ii) UCC-1 Financing Statement recorded December 5, 2011, in Official Records Book 6498, Page 1031, in the public records of Brevard County, Florida.

4. Amounts/Types of Cash Collateral. As of the Petition Date, Debtor had cash in the amount of \$0.00. Average monthly revenue in 2016 was approximately \$53,137.67.

5. Monthly Cash Requirements. Debtor seeks authority to use cash collateral to pay ordinary and necessary expenses based on the budget attached hereto as **Exhibit A**.

6. Reporting Requirements. Within 21 days following the end of each calendar month, Debtor will prepare and serve on Secured Creditors, the US Trustee, and any committee of creditors appointed by the US Trustee, the monthly operating reports required by the US Trustee.

7. Adequate Protection. Debtor projects that the Sports Complex can be operated on a profitable basis such that in the ordinary course of business more cash collateral will be generated. Use of the cash collateral provides Debtor with a reasonable opportunity for reorganization under Chapter 11 which will maximize the value of the Sports Complex. The interests of Secured Creditors will be adequately protected by: (i) the reporting requirements; (ii) lien on cash collateral after the Petition Date to the same extent and with the same validity and priority as the lien held by Secured Creditors prior to the Petition Date; (iii) maintenance of the Sports Complex; and (iv) increased value of the Sports Complex as a result of reorganization.

8. Proposed Order. Attached as **Exhibit B** is a proposed preliminary order authorizing use of cash collateral.

**C. Legal Authority.**

Bankruptcy Code § 363 provides in relevant part:

(a) In this section, “cash collateral” means cash, . . . 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 . . . whether existing before or after the commencement of a case under this title.

(b) . . .

(c) (1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions,

including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph one of this subsection 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.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

In *In re Wrecclesham*, 221 BR 978 (Bankr. M.D. Fla. 1997), a mortgage holder requested stay relief or adequate protection for debtor's proposed post-petition use of cash collateral in the form of rental income generated by debtor's encumbered RV Park. The court began the analysis with a discussion of the shifting burden of proof:

The moving party must carry the initial burden of showing that it is entitled to relief before the debtor is obligated to go forward with its proof. Here, the moving party must prove that the value of its collateral is declining as a result of the stay. Failure to prove the collateral is declining as a result of the stay requires a court to deny the requested relief.

The court then applied the foregoing analysis to cash collateral:

. . . as long as the debtor generates a continuous stream of cash collateral, the debtor's use of the rental income does not diminish the value of the collateral. The rationale is that protected cash proceeds are being used to generate new collateral which will be of at least equivalent value of those replaced.

Finally, the creditor argued that because the post-petition rents are cash collateral, the debtor could only use the cash collateral to maintain the property and must pay the balance to the creditor. The court rejected the argument as having "no merit." *Id.*, 982

THEREFORE, Debtor requests authority to use cash collateral upon the terms set forth in this motion.

D. Certificate of Service. I certify that a copy of this motion to use cash collateral, with attachments, has been served on February 10, 2017: (i) on all "filing users" through the CM/ECF filing system; and (ii) by first class United States mail, postage prepaid, to: Armitage Plumbing, LLC, 1502 Industrial Street, Unit A-1&2, Edgewater, FL 32132; Bank of Washington, c/o Phil A. D'Aniello, Esquire, Fassett, Anthony & Taylor, P.A., 1325 West Colonial Drive, Orlando, FL 32804; Board of County Commissioner, Code Enforcement, 2725 Judge Fran Jamieson Way, Building A, Room 103, Viera, FL 32940; City Electric Supply Company, 6827 N. Orange Blossom Trail, Suite 2, Orlando, FL 32810; Fortiline Waterworks, PO Box 538388, Atlanta, GA 30353-8388; M&M Electric of Central Florida, Inc., 6923 Narcoossee Road, Suite 611, Orlando, FL 32822; Middlesex Paving, LLC, 10801 Cosmonaut Blvd., Orlando, FL 32824; Southern Fire Protection of Orlando, Inc., 3801 E. SR 46, Sanford, FL 32771; UDF XIV SPE B, LLC, 216 W. Ohio Street, 5<sup>th</sup> Floor, Chicago, IL 60654; Urban Development Fund XXIII, 216 W. Ohio Street, 5<sup>th</sup> Floor, Chicago, IL 60654; and all non-filers of the Local Rule 1007-2 Parties in Interest List as listed on the mailing matrix attached to the original of this document filed with the Court.

/s/ David R. McFarlin

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