

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:
SILO NAIL LLC
Debtor(s).

CASE NO.: 3:17-bk-
Chapter 11

_____/

**EMERGENCY MOTION TO ALLOW USE OF CASH COLLATERAL OF U.S. SMALL
BUSINESS ADMINISTRATION AND DETERMINE EXTENT OF LIEN OF ZB,
NATIONAL ASSOCIATION WITH RESPECT TO CASH COLLATERAL**
(Nunc Pro Tunc to Petition Date)
(Request Hearing on or before November 28, 2017)

In accordance with 11 U.S.C. §363(b)(1) and (c)(2), the Debtor moves this Court for entry of an Order allowing the use of cash collateral of U.S. Small Business Administration (“SBA”) and determine that the lien of ZB, National Association (“ZB”) does not encumber cash collateral.

1. Debtor files the instant motion to obtain court permission to use cash collateral.
2. Debtor owns and operates a nail salon. Debtor owns the business premises located at 2219 County Road 220, Suite 314, Middleburg, FL 32068 (the “Property”).
3. ZB holds a first mortgage lien and assignment of rents.
4. On May 2, 2008, U.S. Small Business Administration filed a UCC-1 financing statement asserting a “security position in all equipment including furniture, inventory, fixtures and software, whether now owned or later acquired, wherever located, and all products and proceeds there from including all replacements and substitutions.”
5. SBA filed a continuation statement on April 15, 2013.
6. ZB did not file a UCC-1 financing statement.
7. Debtor does not generate any rental income.

8. The income generated by operation of the nail salon business is not encumbered by the assignment of rents and therefore ZB does not hold a security interest in cash collateral. *See, e.g., In re Ocean Place Dev., LLC*, 447 B.R. 726 (Bankr. D. N.J. 2011).

Relief Requested

9. The Debtor utilizes its pledged cash collateral in order to meet post-petition obligations related to its nail salon business. Debtor employs approximately 5 employees as 1099 independent contractors. Without the ability to use the cash collateral and pay necessary expenses such as payroll, the Debtor's business operations will cease and the Debtor will be prevented from effectively reorganizing debts through the Chapter 11 case.
10. The Debtor is willing to enter into an agreement with the secured creditor(s) to provide a post-petition replacement lien, in the same priority and extent of any pre-petition lien.
11. A copy of the Proposed Cash Collateral Order is attached as Exhibit 1. A proposed budget is attached as Exhibit 2.

Accordingly, the Debtor requests this Court enter an Order allowing the use of the cash collateral with such protections that are necessary in favor of the secured creditor. Debtor requests authority to pay United States Trustee fees, any court filing fees that may arise, adequate protection payments or any other payments ordered or authorized by the Bankruptcy Court, and expenses necessary for continued operation of the nail salon in the ordinary course of business.

Debtor requests a hearing on or before November 28, 2017, to allow Debtor pay the next regular payroll on November 29, 2017.

Respectfully submitted this 15th day of November, 2017.

Law Offices of Mickler & Mickler

By: /s/ Taylor J. King
Taylor J. King
Florida Bar No. 072049
Attorney for Debtor in Possession
5452 Arlington Expressway
Jacksonville, FL 32211
(904) 725-0822
(904) 725-0855 Facsimile
tjking@planlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was furnished to:

Lisa Still, Esq.
Attorney for SBA
7825 Baymeadows Way, Suite 100-B
Jacksonville, FL 32256 (by U.S. Mail, postage pre-paid)

Which is the place it regularly conducts its business; and to

ZB, Association
1 S. Main Street
Salt Lake City, UT 84133 (by Certified Mail postage pre-paid)

Which is the place he regularly conducts his business; and to

Office of United States Trustee
400 W. Washington, Suite 1100
Orlando, FL 32801 (by CM/ECF filing)

Which is the place he regularly conducts his business, and to all creditors on the attached matrix by U.S. Mail postage pre-paid and/or CM/ECF filing this 15th day of November, 2017.

Law Offices of Mickler & Mickler

By: /s/ Taylor J. King
Taylor J. King
Attorney for Debtor in Possession

Label Matrix for local noticing
 113A-3
 Case 3:17-bk-03970
 Middle District of Florida
 Jacksonville
 Wed Nov 15 14:41:14 EST 2017

Silo Nail LLC
 2219 CR 220, #314
 Middleburg, FL 32068-7778

Clay County Tax Collector
 477 Houston Street
 PO Box 218
 Green Cove Springs, FL 32043-0218

Clay County Tax Collector
 Post Office Box 218
 Green Cove Springs FL 32043-0218

D. Randall Briley
 2215 S. Third Street
 Suite 101
 Jacksonville Beach, FL 32250-4054

Florida Dept. of Revenue
 Bankruptcy Unit
 P.O. Box 6668
 Tallahassee, FL 32314-6668

Internal Revenue Service
 PO Box 7346
 Philadelphia, PA 19101-7346

Secretary of the Treasury
 15th & Pennsylvania Ave., NW
 Washington, DC 20220-0001

Silo Business Center COA
 7899 Baymeadows Way
 Ste 100
 Jacksonville, FL 32256-7523

U.S. Securities & Exchange Commission
 Office of Reorganization
 950 East Paces Ferry Road, N.E.
 Suite 900
 Atlanta, GA 30326-1382

U.S. Small Bus. Adm.
 Little Rock Comm'l Loan Svc
 2120 Riverfront Dr., Ste 100
 Little Rock, AR 72202-1794

US Small Bus. Adm
 c/o FL Bus Development Corp
 6801 Lake Worth Road
 Room 209
 Lake Worth, FL 33467-2966

United States Attorney
 300 North Hogan St Suite 700
 Jacksonville, FL 32202-4204

ZB, National Association
 1 S Main Street
 Salt Lake City, UT 84133-1109

ZB, National Association
 c/o Scott H. Silver
 200 S. Biscayne Blvd
 Suite 4100
 Miami, FL 33131-2362

United States Trustee - JAX 11 +
 Office of the United States Trustee
 George C Young Federal Building
 400 West Washington Street, Suite 1100
 Orlando, FL 32801-2210

Taylor J King +
 Law Offices of Mickler & Mickler
 5452 Arlington Expressway
 Jacksonville, FL 32211-6860

Note: Entries with a '+' at the end of the name have an email address on file in CMECF

End of Label Matrix
 Mailable recipients 17
 Bypassed recipients 0
 Total 17

EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

IN RE: SILO NAIL LLC
Debtor(s).

Case No.: 3:17-bk-
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_____ /

INTERIM ORDER AUTHORIZING DEBTOR'S USE OF CASH COLLATERAL
(Nunc Pro Tunc to Petition Date)

This case came on for hearing on _____, 2017 to consider the Debtor's Emergency Motion to Use Cash Collateral (the "Motion") (Doc. No. ___) and Certificate of Necessity re: Request for Emergency Hearing (Doc. No. ____). After a hearing, the Court finds:

1. Debtor owns and operates a nail salon. Debtor owns the business premises located at 2219 County Road 220, Suite 314, Middleburg, FL 32068 (the "Property").
2. ZB holds a first mortgage lien and assignment of rents.
3. On May 2, 2008, U.S. Small Business Administration filed a UCC-1 financing statement asserting a "security position in all equipment including furniture, inventory, fixtures and software, whether now owned or later acquired, wherever located, and all products and proceeds there from including all replacements and substitutions."
4. SBA filed a continuation statement on April 15, 2013.
5. ZB did not file a UCC-1 financing statement.
6. Debtor does not generate any rental income.

7. The income generated by operation of the nail salon business is not encumbered by the assignment of rents and therefore ZB does not hold a security interest in cash collateral. *See, e.g., In re Ocean Place Dev., LLC*, 447 B.R. 726 (Bankr. D. N.J. 2011).
8. The Debtor seeks authorization to use the Cash Collateral to continue to pay secured debts, United States Trustee fees, any court filing fees, and other business expenses associated with Debtor's nail salon business. The Debtor contends that without the use of this Cash Collateral, it would not be able to pay monthly business expenses, which would frustrate any effort to successfully reorganize under Chapter 11 of the Bankruptcy Code.

Based upon the foregoing findings, it is

ORDERED:

1. The Motion by the Debtor to Allow Use of Cash Collateral is granted;
2. Pursuant to 11 U.S.C. § 363(c)(3), The Debtor is authorized to use the Cash Collateral on an interim basis in accordance with the conditions set forth herein;
3. The Debtor shall pay only expenses necessary for the operation of the nail salon business and not any pre-petition expenses, salaries, professional fees, or insiders without further order of the Court. If such order is entered, such necessary pre-petition expenses, salaries, professional fees, or insider payments shall not be paid unless the Debtor is current on its ordinary course of business expenses;
4. Debtor is authorized to pay United States Trustee fees, any court filing fees that may arise and expenses necessary for continued operation of the nail salon business in the ordinary course.
5. To the extent the Debtor uses Cash Collateral, the secured creditor is granted a replacement lien pursuant to 11 U.S.C. § 361(2) on all such cash, rents, and accounts receivable, and the proceeds thereof, acquired after the Petition Date of equal priority to the liens which

creditors had on the Petition Date, if any;

6. The Debtor is Ordered to pay Adequate Protection payments in the following amounts:

LENDER	COLLATERAL	VALUE OF COLLATERAL	PAYMENT AMOUNT WITH START DATE OF DECEMBER 1, 2017
U.S. Small Business Administration	Equipment including furniture, inventory, fixtures, and software, whether now owned or later acquired, wherever located, and all products and proceeds there from	Personal property estimated at \$30,000	\$100 per month (4% interest only based on value of personal property)

The payment must actually be received by the lender on or before the 15th of each month or the payment shall be considered late.

7. In the event that any secured lender alleges a default of any of the above Ordered payments, it shall have the right to file an affidavit of default with the clerk after the due date of the allegedly delinquent payment. The Debtor shall then have five (5) business days within which to cure the delinquent payment or otherwise file a counter affidavit which states that the payment was made within the grace period after the payment initially became due. If the delinquent payment is not cured or no counter affidavit is filed by the Debtor, authority to use cash collateral shall cease. If a counter affidavit has been filed and stated that the payment was timely made by the Debtor, the Court will either schedule a hearing on the default or rule from the written record at its discretion.
8. The Debtor shall provide to the secured lender a monthly accounting tending to show all income and expenses by the Debtor (in spreadsheet format). Such accounting shall be due to the lender by the 21st day of the month following the month being reported to the lender.

9. This Order is without prejudice to any secured lender seeking additional post-petition adequate protection through motion and Order of the Court for payments from the Debtor to cover post-petition insurance and/or property tax advances.
10. This Order shall not be construed to constitute consent or agreement by the secured lenders to the assessment of the property or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code.
11. The Court will hold a final evidentiary hearing on the Debtor's Cash Collateral Motion on _____, 2017 at _____ at the 300 N. Hogan Street, Courtroom 4____, Jacksonville, FL 32202.

Attorney Taylor J. King is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

EXHIBIT 2

Average Monthly Cash Collateral Budget	
	<u>Monthly Average Projection</u>
Total Income	\$15,000.00
<u>Expenses</u>	
SBA	\$100.00
UST	\$216.67
Electric	\$212.00
Utility	\$62.77
Cable & Internet	\$125.69
Credit Card fees	\$497.43
Payroll	\$7,000.00
Advertising	\$150.00
Officer Salary (Dan)	\$3,250.00
Officer Salary (Tan)	\$433.33
Nail Supplies	\$1,100.00
Office Supplies	\$120.00
COA fee	\$214.87
Window cleaning	\$25.00
Drinks/snacks for clients	\$280.00
Property tax escrow	\$113.50
Insurance escrow	\$68.08
Total Expenses	\$13,969.34
Net Income	\$1,030.66