

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re:

Avenue Shoppes, LLC

Taxpayer ID No.: 04-3815633

Debtor.

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Case No. 6:17-bk-07663-KSJ

Chapter 11

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

**DEBTOR'S EMERGENCY MOTION FOR  
AUTHORITY TO USE CASH COLLATERAL**

Debtor, Avenue Shoppes, 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 utilities, 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 December 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 December 8, 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. Debtor’s managing member is ANAA Holdings IV, LLC. Debtor owns a shopping plaza located at 8204 Crystal Clear Lane, Orlando, Florida (the “Plaza”). The Plaza consists of approximately 42,196 square feet of rental space and is configured for 14 tenants. Debtor currently has 12 tenants. The Plaza was managed by BlackMINE Property Management, LLC, an affiliate of Debtor. Debtor had approximate gross revenue: (i) \$476,630.32 in 2016; and (ii) \$286,756, for the period January 1, 2017 through the Petition Date.

3. Secured Creditor. Subject to defenses, counterclaims and offsets, if any, the following creditor (the “Secured Creditor”) may assert claims secured by a lien against property of the estate, including cash collateral: Arena Limited SPV, LLC, in the approximate amount of \$5.35 million, secured by (i) mortgage, security agreement, assignment of leases and rents and fixture filing recorded June 23, 2017, as document #20170351300, in the public records of Orange County, Florida; and (ii) UCC-1 Financing Statement #201701588445 recorded June 20, 2017, with the Florida Secured Transaction Registry.

4. Amounts/Types of Cash Collateral. As of the Petition Date, Debtor had cash in the amount of \$0.00. Average monthly revenue is approximately \$38,000.

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 Creditor, 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 Debtor's business 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 Debtor's business. The interests of Secured Creditor 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 Creditor prior to the Petition Date; (iii) maintenance of the Debtor's business; and (iv) increased value of the Debtor's business 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 has been served on December 12, 2017: (i) on all "filing users" through the CM/ECF filing system; and (ii) by first class United States mail, postage prepaid, to: Arena Limited SPV, LLC, 405 Lexington Avenue, 59<sup>th</sup> Floor, New York, NY 10174; 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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