

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

MELBOURNE BEACH, LLC

Chapter 11

Debtor.

Case No. 6:17-bk-07975-KSJ

**MOTION FOR AUTHORITY TO USE CASH
COLLATERAL *NUNC PRO TUNC* TO THE PETITION DATE**

Melbourne Beach, LLC., a Florida limited liability company, debtor and debtor-in-possession (“Debtor”), by and through its undersigned counsel, hereby files its Motion for Authority to Use Cash Collateral *Nunc Pro Tunc* to the Petition Date (the “Motion”) pursuant to 11 U.S.C. §363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure. In support of this Motion, the Debtor would Show:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 157 and 1334. The subject matter for this Motion is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this district pursuant to 28 U.S.C. §1408. The statutory predicates for the relief sought herein are §105, 363, and 541 of the Bankruptcy Code. No previous application for the relief sought herein has been made by the Debtor to this Court or any other court.

Background

2. On December 29, 2017 (the “Petition Date”), the Debtor filed a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

3. The Debtor is operating its business and managing its property as debtor-in-possession pursuant to §1107(a) and §1108 of the Bankruptcy Code.

Relief Requested and Grounds for Relief

4. By this Motion, the Debtor respectfully requests a preliminary hearing to consider the immediate entry of an Interim Order Authorizing the Debtors' limited use of cash collateral *nunc pro tunc* to the Petition Date to the extent needed to avoid immediate and irreparable harm to the Debtor's estate until a subsequent Final Hearing can be conducted to consider the relief requested in this Motion.

5. The Debtor believes that U.S. Bank, National Association, as Trustee for the registered holders of Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates, Series 2003-PWR2 (the "Secured Creditor"), the current owner and hold of that certain Renewal, Amended and Restated Mortgage and Security Agreement (the "Mortgage"), that certain Assignment of Leases and Rents (the "ALR") currently owed by Secured Creditor, claims perfected and enforceable security interest and lien on, among other assets, the Debtor's proceeds and rents which constitute the Secured Creditor's cash collateral (the "Cash Collateral") pursuant to the Mortgage, ALR, a promissory note, related loan documents, and UCC-1 Financing Statement #200305313035 filed with the Florida Department of State's Secured Transaction Registry.

6. A projected six (6) month operational budget with respect to the Secured Creditor's Collateral is attached hereto as **Exhibit "A"** (the "Budget").

7. The Debtor intends to provide Secured Creditors with replacement liens to the same extent and validity as held by Secured Creditors Pre-Petition and other terms as set forth in

the proposed Interim Order Authorizing Use of Cash Collateral attached hereto as **Exhibit “B”** (the “Interim Order”).

8. The Debtor proposes to use Cash Collateral for the continued operation of the business and for the care, maintenance and preservation of the Debtor’s assets. Except as specifically authorized by law, court order, or an agreement by and between the Secured Creditors and the Debtor, the Debtor will not use cash collateral to pay pre-petition obligations.

9. The Debtor requests authority to use Cash Collateral immediately to fund the operating expenses necessary to continue the operation of the business and to maintain the estate, to maximize the return on its assets, and to otherwise avoid irreparable harm and injury to its business and the estate.

10. If the Debtor is denied the ability to immediately use the Cash Collateral, there will be a direct and immediate material and adverse impact on the continuing operation of the Debtor’s business and on the value of its assets. In order to continue its business activity the Debtor must use the Cash Collateral in its ordinary business operations. The inability of the Debtor to meet its ordinary business expenses will require the Debtor to discontinue normal operations which will result in irreparable injury to the Debtor. Any such discontinuation would also materially and adversely impact upon the value of the Estate. Indeed, it is in the best interest of the Secured Creditors that the Debtor uses the Cash Collateral, if such usage will preserve the value of the Estate and the Cash Collateral.

11. The interest of the Secured Creditor will be adequately protected by the Debtor’s continued operation. The Debtor further alleges that all conditions precedent to the use of the Cash Collateral have been performed or have occurred. The Debtor has conferred with Secured Creditor with respect to the use of cash collateral, and Secured Creditor has consented to the use

of cash collateral as set forth in the Budget through March 16, 2018. The Debtor and Creditor have not yet agreed to the form of an interim order but are continuing to discuss the terms of an agreed order.

WHEREFORE, the Debtor respectfully requests that this Court enter an order permitting the Debtor to use the Secured Creditor's Cash Collateral on an interim basis pursuant to the terms set forth herein, scheduling a preliminary hearing on the Motion and scheduling a final cash collateral hearing in accordance with Bankruptcy Rule 4001(b)(2), and granting such other and further relief as may be just and proper.

Dated: February 1, 2018

Respectfully submitted,

/s/James W. Elliott

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Authority to Use Cash Collateral *Nunc Pro Tunc* to the Petition Date has been furnished on this 1st day of January 2018, via the Court's CM/ECF system or U.S. Mail to:

Office of the US Trustee, 400 West Washington Street, Suite 1100, Orlando, FL 32801

Debtor, Melbourne Beach, LLC, Attn: Brian West, Managing Member, 1151 SW 30th Street, Suite D, Palm City, FL 34990

Attorney for Debtor, McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews, P.A., 500 E. Kennedy Blvd., Ste. 200, Tampa, FL 33602

Secured Creditor, U.S. Bank, National Association, as Trustee for the registered holders of Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates, Series 2003-PWR2 (the "Secured Creditor"), the current owner and hold of that certain Renewal, Amended and Restated Mortgage and Security Agreement, c/o Zachary J. Bancroft, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, SunTrust Center, 200 South Orange Avenue, Suite 2900, Orlando, FL 32802-1549

LBR 1007-2 Parties in Interest List

/s/James W. Elliott

Attorney