

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division
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IN RE: Chapter 11

NOLES PARTNERS, LLC, Case No.: 8:17-bk-08142-MGW

Debtor.
_____ /

**MOTION FOR AUTHORITY TO USE CASH COLLATERAL
NUNC PRO TUNC AND PROVIDING ADEQUATE PROTECTION**

****Expedited Hearing Request Pursuant to Local Rule 9075-1****

The above-captioned Debtor being the Debtor-in-Possession, respectfully requests an emergency hearing in this matter to prevent immediate and irreparable harm that would occur if the Debtor does not have immediate access to use of cash collateral to fund the continued operation of its business, payroll, and critical expenses in order to preserve the value of the estate. As such, the Debtor respectfully requests that this Motion be set for hearing on an Expedited Basis.

COMES NOW, NOLES PARTNERS, LLC (the “Debtor”), by and through its undersigned counsel, files this its *Motion for Authority to Use Cash Collateral Nunc Pro Tunc and Providing Adequate Protection* pursuant to §§ 105 and §363 (c)(2)(B) of Title 11 of the Bankruptcy Code, 11 U.S.C. §101, et. seq. as amended (the “Bankruptcy Code”) and Rules 4001(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, the Debtor states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and

1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested is 11 U.S.C. §§ 105 and 363 and Rule 4001(d)(1)(D), Federal Rules of Bankruptcy Procedure.

BACKGROUND

3. On September 22, 2017, the Debtor, filed its voluntary petition under Chapter 11 of the Bankruptcy Code (the “Petition Date”) and pursuant to Bankruptcy Code §§1107(a) and 1108, is operating its business and managing its financial affairs as a Debtor-in-possession.

4. As of the date hereof, no trustee, examiner, or statutory committee has been appointed in either of these cases.

5. Upon information and belief, D MCCLAIN ENTERPRISES, LLC (the “Secured Creditor”) is owed \$21,095.82 which is secured by the Debtor’s furnishings and equipment of the restaurant operating as All Star Grill - Haines City at 94 Maxcy Plaxa Circle, Haines City, Florida 33844 (the “Collateral”). The Debtor reserves the right to challenge the validity, priority and extent of the Secured Creditor’s liens against the Collateral.

RELIEF REQUESTED

6. Through this Motion, the Debtor seeks an Order of this Court authorizing the Debtor to use cash, accounts receivable and other income derived from the Debtor’s operations to fund its operating expenses and costs of administration in this Chapter 11 case for the duration of the chapter 11 case (the “Cash Collateral”) pursuant to 11 U.S.C. §§ 105 and 363, Federal Rules of Bankruptcy Procedure 4001(b)(2) and Local Rule 4001-3, since any cash collateral generated by the Debtor may constitute the cash collateral of the Secured Creditor.

Terms and Use of Cash Collateral and Offer of Adequate Protection

7. In order for the Debtor to remain in business, it is imperative that it have the use of its cash collateral.
8. As adequate protection for the use of cash collateral, Debtor offers the following:
 - a. Secured Creditors shall have post-petition liens on the Collateral to the same extent, validity and priority as existed pre-petition;
 - b. The Debtor will maintain insurance on the Collateral to the same amount as required under the underlying loan documents;
 - c. Secured Creditors shall have a right to inspect the Collateral on forty-eight (48) hours, reasonable notice; and
 - d. Upon written request, the Debtor shall provide Secured Creditors with copies of monthly financial documents generated in the ordinary course of business, and other information as the Secured Creditors reasonably request with respect to the Debtor's operations.

Purposes for the Use of Cash Collateral and Cash Flow Budget

9. The Debtor must have access to and authorization to use Cash Collateral in the amounts and for the purposes set forth in the budget, attached as **Exhibit "A"** to this Motion (the "Budget"). The use of such Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtor's estate. The Cash Collateral will be used to maintain business operations and preserve value of the estate. Among other things, the Debtor proposes to use Cash Collateral in accordance with the Budget for payment of employees, supplies, and ordinary business expenses related to its operations. This Motion is filed without prejudice to the Debtor's right to request further authority to use Cash Collateral in excess of the amounts sought herein.¹

¹ The Budget reflects general line items reflecting the projections of the Debtor's normal operating expenses for the period covered by the Budget. The Debtor's expenditures will be in reasonable compliance with Budget.

10. The Debtor requests authority to use Cash Collateral immediately to pay the expenses set forth in the Budget as payment of such expenses is necessary to maintain its business, maximize the return on its assets, and to otherwise avoid irreparable harm and injury to its estate

11. In order to ensure that the Debtor operates effectively throughout this bankruptcy proceeding, the Debtor also requests permission to:

- (a) exceed any line item on the budget by an amount equal to ten percent (10%) of each such line item; or
- (b) to exceed any line item by more than ten percent (10%) so long as the total of all amounts in excess of all line items for the Budget do not exceed ten percent (10%) in the aggregate of the total budget.

WHEREFORE, NOLES PARTNERS, LLC, the Debtor, respectfully requests that this Honorable Court (i) enter an order granting this Motion on an emergency interim basis *nunc pro tunc* to the Petition Date; (ii) authorizes the Debtor's use of Cash Collateral in accordance with the Budget and to provide related adequate protection; (iii) permitting the Debtor to deviate from the Budget in the amount of ten percent (10%) to the extent necessary; (iv) scheduling a Final Hearing in order to authorize the Debtor's use of cash collateral; and (v) granting such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

BUDDY D. FORD, P.A.,

/s/ Jonathan A. Semach
Buddy D. Ford, Esquire (FBN: 0654711)
Email: Buddy@tampaesq.com
Jonathan A. Semach, Esquire (FBN: 0060071)
Email: Jonathan@tampaesq.com
9301 West Hillsborough Avenue
Tampa, Florida 33615-3008
Telephone #: (813) 877-4669
Office Email: All@tampaesq.com
Attorney for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September, 2017, a true and correct copy of the foregoing was sent by ■ CM/ECF Electronic Mail to:

Denise E Barnett denise.barnett@usdoj.gov
United States Trustee - TPA USTPRegion21.TP.ECF@USDOJ.GOV

and by ■ Regular U.S. Mail to:

D McClain Enterprises, LLC, c/o Trena H. McClain, Manager and Registered Agent, 2109
Gary Rd., Auburndale, FL 33823
Noles Partners, LLC, 3580 Prescott Loop, Lakeland, FL 33810

/s/ Jonathan A. Semach
Jonathan A. Semach, Esquire (FBN: 0060071)
Email: *Jonathan@tampaesq.com*