

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In re:

Chapter 11

OCEAN CLUB OF WALTON
COUNTY, INC.,

Case No. 17-31019-JCO

Debtor.

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

OCEAN CLUB OF WALTON COUNTY, INC., as debtor and debtor in possession (the “**Debtor**”), by and through its undersigned attorneys, files its *Emergency Motion for Authority to Use Cash Collateral & Request for Emergency Hearing* (the “**Motion**”). A *Statement of Need for Emergency Hearing* is being filed contemporaneously herewith pursuant to Local Rule 9073-1(B). In support of this emergency Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of 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.

2. The statutory predicates for the relief sought herein are §§ 105(a), 361, 363, 541 and 552 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

Background

3. On November 14, 2017 (the “**Petition Date**”), the Debtor filed a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).

4. The Debtor is a Florida corporation that owns and operates a fine dining restaurant and full service bar. The restaurant is located at 8955 U.S. 98 in Miramar Beach, Florida (the “**Real Property**”), near the Sandestin Golf and Beach Resort. The menu features the freshest seafood and finest steaks and has been a favorite of locals and tourists for over twenty years.

Summary of Prepetition Secured Indebtedness

5. The Debtor’s primary secured lender is Hancock Bank (the “**Lender**”), which is owed approximately \$1 million in connection with a prepetition loan secured by a mortgage on the Real Property.

6. The Lender may also assert liens on and security interests in the Debtor’s accounts, deposit accounts, inventory, and all cash and noncash proceeds of the foregoing. Accordingly, the Lenders may have an interest in the Debtor’s cash collateral within the meaning of 11 U.S.C. § 363(a) (the “**Cash Collateral**”).

Relief Requested and Grounds for Relief

7. The Debtor respectfully requests the entry of an interim order¹ authorizing the use of Cash Collateral, in accordance with a budget to be furnished in advance of the interim hearing, to fund its operating expenses and the costs of administering this Chapter 11 case to avoid immediate and irreparable harm to the estate pending a final hearing and the entry of a final order. Specifically, the Debtor intends to use Cash Collateral for:

- a. Payroll;
- b. Insurance, including worker's compensation, health insurance, and general liability insurance;
- c. Purchase of food and alcohol inventory;
- d. Purchase of supplies;
- e. Payment of utilities;
- f. Other payments necessary to sustain continued business operations;
- g. Care, maintenance, and preservation of the Debtor's assets; and
- h. Costs of administration in this Chapter 11 case.

Except as specifically authorized by law or court order, the Debtor will not use Cash Collateral to pay pre-petition obligations.

¹ The Debtor will file a copy of the proposed interim order authorizing the use of cash collateral prior to the hearing to consider this motion.

8. The Debtor requests authorization to use Cash Collateral immediately to fund operating expenses necessary to continue the operation of its business, 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.

9. There is insufficient time for a full hearing pursuant to Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedure to be held before the Debtor must use Cash Collateral. If this Motion is not considered on an emergency basis and if the Debtor is denied the ability to immediately use Cash Collateral, there will be a direct and immediate material and adverse impact on the continuing operations of the Debtor's business and on the value of its assets. To continue its business activities in an effort to achieve a successful reorganization, the Debtor must use Cash Collateral in the ordinary course of business. 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 and its chances for reorganization. Any such discontinuation would also materially and adversely impact the value of the Collateral. Indeed, it is in the best interest of the Lender that the Debtor use Cash Collateral, if such usage will preserve the value of the Collateral.

10. "Cash Collateral" is defined as "cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents in which the estate and an entity other than the estate have an interest." 11 U.S.C. § 363(a).

Pursuant to section 363(c)(2) of the Bankruptcy Code, the Court may authorize the Debtor to use Cash Collateral as long as the applicable secured creditors consent or are adequately protected. *See, e.g., In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984); *see also In re McCormick*, 354 B.R. 246, 251 (Bankr. C.D. Ill. 2006) (to use the cash collateral of a secured creditor, the debtor must have the consent of the secured creditor or must establish to the court that the secured creditor's interest in the cash collateral is adequately protected).

11. In exchange for the Debtor's ability to use Cash Collateral in the operation of its business, the Debtor proposes to grant to the Lender, as adequate protection, a replacement lien to the same extent, validity, and priority as existed on the Petition Date. In other words, the Debtor proposes that the Lender's "floating" lien on such assets continue to "float" to the same extent, validity, and priority as existed on the Petition Date, notwithstanding Section 552 of the Bankruptcy Code. The Debtor asserts that the interests of the Lender will be adequately protected by the replacement lien.

12. If allowed to use Cash Collateral, the Debtor believes that it can stabilize its business operations and maintain going concern value. Otherwise, the Debtor's business operations will cease and its assets will have only liquidation value.

13. The Motion is without prejudice to the rights of the Debtor or any other party to contest the extent, validity and/or priority of the Lender's asserted liens.

Emergency Nature of the Requested Relief

14. As stated above, if this Motion is not considered on an emergency basis and if the Debtor is denied the ability to immediately use Cash Collateral, there will be a direct, immediate and substantial harm to the continuing operations of the Debtor's business, to the value of the assets in the Debtor's bankruptcy estate, and to the Debtor's ability to reorganize.

15. The Debtor requests an emergency hearing on the Motion to avoid direct, immediate and substantial harm to the Debtor.

WHEREFORE, the Debtor respectfully requests that this Court set the Motion for emergency hearing and enter an order (1) granting the Motion, (2) authorizing the use of Cash Collateral, and (3) providing for such other and further relief as may be just and proper.

/s/ Jodi Daniel Cooke

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Debtor's Emergency Motion for Authority to Use Cash Collateral & Request for Emergency Hearing* has been furnished on this 15th day of November, 2017, by direct electronic mail to:

United States Trustee
USTPRegion21.TL.ECF@udsdoj.gov

Hancock Bank
mhildreth@slk-law.com

and by U.S. Mail to the LBR 1007-2 Mailing Matrix.

/s/ Jodi Daniel Cooke
Jodi Daniel Cooke