

**UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

IN RE: VILLAGE PUB & GRUB INC
EIN # 47-4023646

CASE NO. 17-13316-EPK
CHAPTER 11 (Small Business)

**EMERGENCY MOTION TO DETERMINE EXTENT OF CASH COLLATERAL INTEREST
AND TO APPROVE USE CASH COLLATERAL**
Expedited Hearing Requested

Exigency

Debtor requests an emergency hearing, at least on a preliminary basis, as Debtor requires use of cash and is unable to operate in the absence of Court Order if a secured interest exists. (Debtor's counsel request a hearing of 15 minutes by May 15th 2017 (or As Soon As Possible) _____

COMES NOW, Debtor Village Pub & Grub Inc., by and through its undersigned Counsel, and files this Emergency Motion to Determine Extent of Collateral Interest and to Approve Use of Cash Collateral and as grounds therefore states as follows:

BACKGROUND

1. The Debtor filed a voluntary petition on March 20th 2017
At the time the case was filed, the Debtor had no accounts receivable, \$500.00 cash on hand, and \$2000 in an account at Chase Bank
2. Despite the creditors listed below having filed UCC-1 statement claiming security interest in the Debtor's cash and accounts, no creditor has perfected lien interest in the Debtor's cash or bank account under Article 9 of the Uniform Commercial Code, as adopted by the Florida Statutes:
3. Florida Statute § 679.3121(2)(a) provides that "[a] security interest in a deposit account may be perfected only by control under s. 679.3141" (emphasis added). A security interest in a deposit account may not be perfected by filing a UCC-1 under Florida law.
4. Florida Statute § 679.3121(2)(c) provides that "[a] security interest in money may be perfected only by the secured party's taking possession under s. 679.3131" (emphasis added). A security interest in cash may not be perfected by filing a UCC-1 under Florida law.
5. The only form of cash collateral that can be perfected by filing is a security interest in accounts receivable, and the Debtor had no accounts receivable at the time of filing.
6. Rewards Network Inc., may claim a secured lien interest in inter alia the Debtor's deposit accounts and cash by virtue of the filing of a UCC-1 Financing Statement Rewards Network Inc., and is approximately \$34,000. Rewards Network Inc. has taken no steps to perfect a lien interest in the Debtor's cash or deposit accounts.

8. However, the Debtor contends that neither Rewards Network Inc., nor any other creditor has a valid security interest in the Debtor's cash or deposit accounts and that no creditor has perfected an interest in the Debtor cash or deposit account.

9. The use of and access to the funds is essential to the Debtor's on-going business operations.

RELIEF REQUESTED

10. At hearing on this motion, Debtor will seek, at a minimum, interim relief:

Proposing the free and unencumbered use of its cash collateral until such Rewards Network Inc., demonstrates the existent of perfected secured lien interest in cash collateral.

Thereafter, to the extent this Court is inclined to constrain the use of cash collateral, approving the proposed budget attached hereto as Exhibit "A" on an interim basis for ninety (90) days following the hearing on this motion.

Granting the proposed order attached to hereto as Exhibit "B"

PURSUANT TO BANKRUPTCY RULE 4001 AND LOCAL GUIDELINES, THIS MOTION DOES NOT SEEK TO BIND THE ESTATE WITH RESPECT TO THE VALIDITY, PERFECTION OR AMOUNT OF REWARD NETWORK INC., PRE-PETITION LIENS, CLAIMS OR DEBTS OR THE WAIVER OF CLAIMS WITHOUT FIRST GIVING PARTIES IN INTEREST AT LEAST 75 DAYS FROM THE ENTRY OF THE ORDER AND THE CREDITORS' COMMITTEE, IF FORMED, AT LEAST 60 DAYS FROM THE DATE OF ITS FORMATION TO THE PERIOD OF TIME AFTER WHICH ANY CHALLENGE IS BARRED.

11. NO STIPULATION OR AGREED ORDER WILL BE BINDING ON ANY INTERESTED PARTY EXCEPT UPON NOTICE UNDER THE LOCAL RULE AND GUIDELINES FOR MOTION SEEKING AUTHORITY TO USE CASH COLLATERAL.

WHEREFORE, Debtor respectfully requests an Order from this Court authorizing the Debtor's use of and access to its cash collateral, and granting such other and further relief as the Court deems just and proper.

I CERTIFY that a true copy of the foregoing was forwarded on May 1st 2017 to the parties listed on the attached Service List.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local rule 2090-1(A).

Respectfully Submitted by:
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CME/ECF

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ATTORNEY ADAM D. FARBER, ESQ., SHALL MAIL A COPY OF THIS MOTION IMMEDIATELY UPON RECEIPT OF THE NOTICE OF EMERGENCY HEARING TO ALL CREDITORS AND INTERESTED PARTIES AND FILE A CERTIFICATE OF SERVICE

