

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**
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In re:

Case No. 13-11401-PGH
Chapter 11

STEVE'S FROZEN CHILLERS, INC.

Debtor /

**EMERGENCY MOTION FOR ENTRY OF AN INTERIM ORDER AUTHORIZING (A)
THE USE OF CASH COLLATERAL PURSUANT TO 11 USC §363, AND (B)
GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDER
PURSUANT TO 11 U.S.C. §361,
NUNC PRO TUNC TO PETITION DATE**

Steve's Frozen Chillers, Inc., debtor-in-possession (or "debtor"), by and through its undersigned proposed counsel, files this Emergency Motion for Entry of an Interim Order Authorizing (A) the Use of Cash Collateral pursuant to 11 USC §363, and (B) Granting adequate protection to prepetition secured lender pursuant to 11 U.S.C. §363 and in support thereof states:

Jurisdiction

1. This Court has jurisdiction over this motion pursuant to 28 USC §157 and §1334. This is a core proceeding pursuant to 28 USC §157(b).
2. Venue is proper before this Court pursuant to 28 USC §1408 and §1409.
3. Relief is requested pursuant to 11 USC §105 and §361, §363 and Rule 4001(d)(1)(D).
4. The Debtor in Possession filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code on March 27, 2016 ("Petition Date").
5. Debtor operates a frozen beverage company in Boynton Beach, FL that distributes products and machines to restaurants and convenience stores.
6. Debtor is not a small business debtor as defined in 11 USC §105(51D).
7. Debtor is operating its business and managing its assets as a Debtor-in-Possession pursuant to 11 USC §1107(a).

Relief Requested

8. Debtor seeks an Order authorizing Debtor to use cash collateral pursuant to 11 USC §363 Nunc Pro Tunc to the date of filing.
9. Debtor is authorized to operate its business using property of the estate in the ordinary course of business but is restricted from utilizing cash collateral without the consent of secured creditor BFG Investments Inc. and court authorization. Debtor seeks this motion to authorize cash collateral without waiving its rights to challenge the validity, priority and extent of any lien held by BFG.
10. In this instance, the cash collateral comes from the operation of the Debtor-in-Possession's frozen beverage distribution business. Debtor has an immediate need to use cash collateral, in order to permit, among other things, the orderly continuation of the operation of the Debtor's business, to pay employees, to maintain business relationships with vendors and suppliers and to satisfy other working capital needs. Use of cash collateral is necessary to prevent the immediate and irreparable harm to the debtor and the estate that would otherwise result if the debtor were prevented from obtaining the use of cash collateral for the foregoing purposes.
11. Therefore, costs incurred by Debtor are properly chargeable against Debtor's cash collateral as reasonable, necessary costs and expenses of preserving the estate. 11 USC §506(c) and 11 USC §552(c).
12. ***Adequate Protection - Lease.*** Debtor is current with its landlord, and requests permission to continue to pay approximately \$10,000 on a monthly basis for office and warehouse space.
13. ***Adequate Protection – Ascentium/ProdoPak Equipment Vendor.*** Debtor is current with this vendor for a secured lease/purchase arrangement on specialty packaging equipment necessary to produce the Debtor's product line. The monthly cost of this item is approximately \$3,500.
14. ***Adequate Protection – BFG Investments, Inc.*** Debtor is in default on a note payable to BFG Investments. BFG Investments has filed a UCC-1 in the state of Florida securing all assets of the Debtor as collateral. The total amount of the default will be liquidated within a final judgment, pending relief by the Court and application by the Creditor of approximately \$1.35 M. The Debtor has not made any payments upon this note in several

years, and proposes an initial amount of \$1,000 per month sourced from ongoing operations as adequate protection.

15. ***Adequate Protection – Vehicle Lease Payments.*** The Debtor maintains leases on two automobiles used by officers with sales responsibility for the business. The total amount of the leases, paid through the Debtor is approximately \$770 per month.
16. ***Payroll, Employee Commissions and Contractor Payments.*** Debtor maintains a staff of approximately 10 employees, as well as various contractors that carry out the ongoing operations of the business. Payroll, commission and contractor expenses are approximately \$33,000 per month paid through payroll service and check.
17. ***Professional Fees.*** In addition to Debtor's Counsel, the Debtor anticipates seeking permission of two additional professionals, including litigation counsel on a products liability matter, listed as a Chose in Action on the Debtor's schedules, as well as an Accountant/CPA. These amounts are accommodated on the Debtor's Cash Flow budget.
18. ***Suppliers and Logistics Providers (Cost of Goods Sold).*** The Debtor receives multiple materials which are mixed and/or packaged into its product line. Many of these products require specialized equipment to be deployed at retail locations for selling and promoting the product. This equipment is routinely installed, repaired and replaced to meet the needs of retail customers. Cost of goods sold varies between 42% and 50% of total sales figures. The Debtor seeks permission to continue to pay vendors including vendors seen as critical to the business including Tone Equipment, National Fruit Flavors, Hamilton Beach, Federal Express, Gold Coast Trucking, United Food Group and Fusion Logistics on a Cash-on-Delivery (COD) basis.
19. The Debtor believes that the use of cash collateral is fair, reasonable and necessary under the circumstances, and reflects the Debtor's exercise of prudent business judgment consistent with its fiduciary duties regarding the ongoing management of the business and the bankruptcy estate.
20. The Debtor in Possession has prepared a preliminary projected budget for the enterprise for the next three quarters. This budget is included as Exhibit A. This budget may be amended to provide the Court with additional insight into the cash management situation at the Debtor at this time.

WHEREFORE, the debtor respectfully requests an Order *nunc pro tunc* of this Court authorizing the use of cash collateral, authorizing the payment of adequate protection, scheduling a hearing on the same, and granting such other relief as this Court deems just and proper.

Dated: March 30th, 2017

Attorney Certification

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).

Submitted by:

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EXHIBIT A: DEBTOR IN POSSESSION'S
PROJECTED BUDGET FOR NEXT THREE QUARTERS

	PROJECTED 2ND	PROJECTED 3RD	PROJECTED 4TH
	<u>QUARTER 2017</u>	<u>QUARTER 2017</u>	<u>QUARTER 2017</u>
Sales	558,662.00	565,905.00	440,291.00
Cost Of Goods	(232,962.00)	(279,680.00)	(184,291.00)
Shipping	(30,000.00)	(30,000.00)	(25,000.00)
Gross Income	295,700.00	256,225.00	231,000.00
Adequate Protection/Lease	(30,000.00)	(30,000.00)	(30,000.00)
Adequate Protection/Ascentium	(10,500.00)	(10,500.00)	(10,500.00)
Adequate Protection/BFG	(3,000.00)	(3,000.00)	(3,000.00)
Adequate Protection/Vehicles	(2,310.00)	(2,310.00)	(2,310.00)
Payroll/Contractors/Commissions	(99,224.00)	(99,224.00)	(97,824.00)
Insurance	(23,000.00)	(23,000.00)	(23,000.00)
Postage & Printing	(1,260.00)	(1,260.00)	(1,260.00)
Professional Fees	(10,000.00)	(10,000.00)	(10,000.00)
T&E	(2,000.00)	(2,000.00)	(2,000.00)
Utilities	(6,000.00)	(6,000.00)	(6,000.00)
General Administrative Expenses	(19,700.00)	(14,212.00)	(9,855.00)
Misc	(13,000.00)	(13,000.00)	(9,800.00)
Profit (EBITDA)	75,706.00	41,719.00	25,451.00