

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

In re:  
FISHERMAN'S PIER, INC.  
Tax ID # 59-1001776

Case No.: 17-22819-RBR  
Chapter 11

Debtor

---

**EMERGENCY MOTION FOR INTERIM USE OF CASH COLLATERAL**

(A hearing is requested on or before October 30, 2017)

**Basis for Emergency**

**In order for the Debtor to continue to operate its business, pay its secured creditor, its vendors and its operational expenses, and to continue to operate its business uninterrupted, it is necessary for the Debtor to have use of the Cash Collateral.**

The Debtor-in-Possession, Fisherman's Pier, Inc. ("Debtor"), by and through its undersigned counsel, pursuant to 11 U.S.C. §§ 363(a) and 364, Federal Rules of Bankruptcy Procedure 4001(b), 6003, 9014 and Local Rules 4001-2, 9013-1(F) and 9013-1(G), hereby requests this Court enter an Order Authorizing the Debtor's Use of Cash Collateral on an interim, emergency basis in order to avoid immediate and irreparable harm to Debtor ("Motion"), and states as follows:

**BACKGROUND**

1. On October 23, 2017, the Debtor filed a Voluntary Petition under Chapter 11 of the Bankruptcy Code.
2. The Debtor is operating its business as a debtor-in-possession pursuant to Bankruptcy Code § 1107 and 1108. No trustee, examiner, or official committee of unsecured creditors has been appointed to date.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. §157(b).

4. The Debtor owns, manages and operates commercial real property in Lauderdale-By-The-Sea, Florida, including but not limited to Anglins Fishing Pier on Commercial Boulevard which extends into the Atlantic Ocean. In addition to the pier itself, the Debtor owns the real property located at (i) 2 Commercial Boulevard, and (ii) 400 Ocean Drive, and (iii) Bougainvillea Drive, all in Lauderdale-By-The-Sea, Florida. These commercial properties contain a number of different retail storefronts, and rent said property to commercial tenants including those that operate the following businesses at Commercial Pier: (i) Kilwins, Lauderdale-By-The-Sea, (ii) Mulligan's Beach House Bar & Grill, (iii) Anglins Beach Café, (iv) Athena By The Sea, (v) 4D Gelateria, (vi) Diamonds and Doggies, (vii) Asta Parking, Inc., (viii) Swim and Jog, (ix) GUG Underwater, and (x) Coast Boutique.

#### **BASIS FOR EMERGENCY HEARING**

5. The exigent nature of this Motion is substantiated by the Debtor's need to perform the following to continue its business operations without substantial interruption and irreparable harm:

- a. Pay its secured creditor, Bank of the Ozarks, its monthly debt payment of approximately \$35,000.00;
- b. Pay all necessary utilities;
- c. Obtain quotes and make deposits for necessary repairs to:
  - i. The roof on a large section of one of the buildings, and

ii. The Fishing Pier, which sustained some damage during Hurricane Irma.

d. Pay all applicable taxes and insurances; and

e. Otherwise remain compliant with its monthly operational expenses.

6. The Debtor expects to have sufficient cash flow to enable it to pay its secured creditor and other operational expenses, and requests the Court's authority to make those payments and use the necessary cash by way of this Motion.

### **USE OF CASH COLLATERAL**

**7. The Debtor will be able to continue its operations, and thus preserve its value and be able to pay its ongoing secured debt obligations and monthly expenses.**

**8. The Debtor's proposed use of the Cash Collateral will be for the Debtor's ordinary course of business. The Debtor's proposed use of the Cash Collateral is for the month of November, 2017, to pay the Debtor's estimated monthly expenses and operating costs as set forth on the budget attached hereto as Exhibit "A", and summarized as follows<sup>1</sup>:**

- The Bank of the Ozarks (secured) payment - \$35,000.00;
- Insurance costs - \$3,366.67;
- Regular maintenance and repairs - \$8,169.81;
- Special maintenance and repairs - \$30,000.00;
- Fishing supplies - \$3,435.85;
- Legal and Accounting - \$1,500.00;
- Utilities - \$1,762.62;
- Water - \$727.12; and
- Independent contractor labor - \$7,200.00.

---

<sup>1</sup> The projected budget is based on the Debtor's most recent tax return to which the Debtor currently has access, with a minor adjustment (1%) extrapolated over 12 months.

**In order to ensure the business does not fail, the use of the Cash Collateral is absolutely necessary to maintain these necessary costs.**

**INTEREST OF SECURED CREDITOR  
IMPAIRED WITHOUT USE OF CASH COLLATERAL**

**9. Bank of the Ozarks (“Ozarks”) is the primary secured creditor of the Debtor’s, being owed approximately \$4,000,000.00. Although Ozarks retains a security interest in the Debtor’s properties, the Debtor proposes to provide adequate protection to Ozarks in the form of the regular monthly payment due under the note, or in a lesser amount as agreed upon (if necessary). Continued repayment to Ozarks will be impossible without the use of the Cash Collateral. Therefore, in order to ensure that the interest of Ozarks is adequately protected, use of the Cash Collateral is required.**

**10. Upon information and belief the Debtor is current with its monthly payments to Ozarks, and the Debtor intends to remain current with Ozarks during the pendency of this case.**

**11. Further adequate protection will be provided as the Debtor will also seek an Order granting the secured creditor(s) a post-petition security interest to the same extent and dignity as any security interest(s) the secured creditor(s) had pre-petition, upon its prospective final cash collateral Order. There is no dispute as to Ozark’s security interest in the properties and the Debtor’s use of the Cash Collateral will ensure it is adequately maintained.**

**PROPOSED BUDGET**

12. Pursuant to the *Court's Guidelines for Motions Seeking authority to Use Cash Collateral*, a proposed interim operating budget for the month of November is attached hereto as Exhibit "A".

13. Cash Collateral will be used in strict accordance to the proposed budget, except that the Debtor may use 10-15% of the Cash Collateral for such unforeseen costs that may arise from time to time, but are required for ordinary maintenance of the premises and the continued operation of the business.

**WHEREFORE** the Debtor requests that this Honorable Court enter an Interim Order [1] allowing the use of the cash collateral to pay the ongoing operating expenses as reflected in the interim operating budget attached as Exhibit "A", and [2] for such further and additional relief as the Court deems appropriate under the circumstances.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court of the Southern District of Florida, that I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A) and that a true and correct copy of the **FOREGOING** was filed using CM/ECF and served this 25th day of October, 2017: (i) via CM/ECF upon all parties registered to receive Notice(s) of Electronic Filing (NEF) in this bankruptcy case, and (ii) via First Class U.S. Mail, unless stated otherwise, upon the parties listed on the attached Service List.

Moffa & Breuer, PLLC  
Attorneys for the Debtor  
1776 N Pine Island Rd #102  
Plantation, FL 33322  
Telephone 954-634-4733  
FAX 954-337-0637  
Email Stephen@moffa.law

By: /s/ Stephen C. Breuer  
Stephen C. Breuer  
FBN 99709

**SERVICE LIST**

Bank of the Ozarks  
Attn.: George G. Gleason, CEO  
P.O. Box 8811  
Little Rock, AR 72231

Certified Return Receipt

Bank of the Ozarks  
Attn.: Eric Digsby, Director  
17901 Chenal Parkway  
Little Rock, AR 72223

Certified Return Receipt

Bank of the Ozarks  
c/o NRAI Services, Inc., RA  
1200 S. Pine Island Rd.  
Plantation, FL 33324