



ORDERED in the Southern District of Florida on September 17, 2012.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE
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Raymond B. Ray, Judge
United States Bankruptcy Court

In re:

**FORT LAUDERDALE BOATCLUB, LTD.,

Debtor.**

**Case No. 12-28776-BKC-RBR
Chapter 11**

SECOND AGREED ORDER (A) AUTHORIZING THE DEBTOR (1) TO USE CASH COLLATERAL ON AN INTERIM BASIS PURSUANT TO 11 U.S.C. §363 AND (2) TO PROVIDE ADEQUATE PROTECTION IN CONNECTION THEREWITH PURSUANT TO 11 U.S.C. §361; AND (B) SETTING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001

THIS MATTER came before the Court on August 29, 2012 at 9:30 a.m. upon the (i) continued hearing on Emergency Motion By Debtor, Fort Lauderdale Boatclub, Ltd. For Order (A) Authorizing the Debtor (1) to use Cash Collateral on an Interim Basis Pursuant to 11 U.S.C. §363 and (2) to Provide Adequate Protection in Connection Therewith Pursuant to 11 U.S.C. §361 and (B) Setting a Final Hearing Pursuant to Bankruptcy Rule 4001 (the “Motion”) [D.E. 5] and (ii) First Agreed Order (A) Authorizing The Debtor (1) To Use Cash Collateral On An Interim Basis Pursuant To 11 U.S.C. §363 And (2) To Provide Adequate Protection In Connection Therewith Pursuant To 11 U.S.C. §361; And (B) Setting A Final Hearing Pursuant To Bankruptcy Rule (the “First Interim Order”) [D.E. 41] pursuant to which the Debtor seeks entry of a second interim order as provided herein (the “Second Interim Order”) and final order authorizing the use of Cash Collateral¹ of EverBank, a Federal Savings Bank (the “Lender” or “EverBank”). The Court finds that it has

¹ All capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §157 and §1334; this is a core proceeding pursuant to 28 U.S.C. §157(b)(2); the relief requested in the Motion is in the best of interest of the Debtor, its bankruptcy estate and creditors; the adequate protection proposed to the Lender is reasonable, sufficient and appropriate in connection with the Debtor's proposed use of Cash Collateral pursuant to the Motion, and proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Accordingly, it is,

ORDERED, as follows:

1. The relief requested in the Motion is granted, in part, and denied, in part, as set forth in the First Interim Order and as provided in this Second Interim Order.

2. The Debtor is authorized to use Cash Collateral in accordance with this Second Interim Order, and as defined in 11 U.S.C. §363(a) of the Bankruptcy Code, the Motion and First Interim Order, on an interim basis pending a further interim hearing on the Motion, but only to the extent as provided herein.

3. For purposes of this Second Interim Order, and until further order of the Court, Maggie Smith (the "Receiver") shall pursuant to 11 U.S.C. §543 continue to act as custodian under the Receivership Order limited to the following the duties:

(a) collect and hold pre and post-petition Rents from the Tenant, National Liquidators; and

(b) collect and hold any pre and post-petition insurance refunds that may be due to the Debtor; and

(c) deposit and hold the funds specified in items 3(a) & (b) above in the Revenue Account established and maintained by the Receiver under the Receivership Order; and

(d) hold for the benefit of creditors and equity security holders of the Debtor's estate all other funds and/or property of the Debtor in the possession, custody and control of the Receiver, including such funds held in the Reserve Account under the Receivership Order; and

(e) notwithstanding subsections 3(a)-(d) above, the Debtor shall collect and hold all rents (pre and post-petition) derived and received from the billboard signage at the Marina in the DIP Account; but may not use such funds unless agreed to by the Debtor, Receiver, EverBank and BoatClubsAmerica, LLC ("BCA")(collectively, the "Parties") and/or until

further order of the Court.

4. The Receiver shall only be authorized to disburse from the Revenue Account those amounts necessary for the daily operations, preservation and maintenance of the Marina in accordance with the co-managerial responsibilities and protocols set forth in the Receivership Order as between the Parties in accordance with the Budget attached hereto as **Exhibit "A"** (the "Second Interim Budget") for which the Receiver shall provide and file an accounting with the Bankruptcy Court on a monthly basis consistent with the requirements of the Receivership Order in the Foreclosure Action. The Receiver is further authorized to pay the \$5,000 in monthly receivership fees set forth in the Budget, which amounts are deemed allowed.

5. The Parties further consent and agree to the pre-petition payments to (i) G.W. Bulldozing, Inc. in the amount of \$3,300.00 and (ii) Universal Electrical Services, Inc. in the amount of \$2,000.00 with respect to the continued 40 Year Inspection and Repairs on the Marina identified in the Second Interim Budget; and (iii) unpaid sales tax for the July 2012 rents, as a critical vendor payments; provided however, that no further funds shall be disbursed from the Revenue Account and/or Reserve Accounts established by the Receivership Order, absent the written consent of the Parties and/or upon further order of the Court.

6. The Receiver shall be authorized upon the advice and consent of all Parties hereto to: (i) exceed any line item on the Budget by an amount equal to ten percent (10%) of each such line item; or (ii) 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, unless otherwise ordered by the Court.

7. In addition to the retention of the Receiver as custodian under the First Interim Order and this Second Interim Order, and in order to provide the Lender with additional adequate protection in connection with the Debtor's use of Cash Collateral as provided herein for the aggregate diminution of the Cash Collateral resulting from the Debtor's use thereof (the "Diminution"), the Bank shall continue to have *nunc pro tunc* as of the Petition Date: (i) a replacement lien pursuant to 11 U.S.C. §361(2) on and in all property acquired or generated post petition by the Debtor, but solely to the same extent and priority, and of the same kind and nature, as the property of the Debtor securing the prepetition obligations to the Bank (the "Replacement Lien"), which Replacement Lien shall secure solely the Diminution; and (ii) an administrative

expense claim pursuant to Sections 503(b) and 507(a)(2) of the Bankruptcy Code for the Diminution in the Cash Collateral resulting by and through the Debtor's use thereof during this proceeding. EverBank reserves the right to seek additional forms of adequate protection, subject to any objections by the Debtor, any Unsecured Creditor Committee (the "Committee") that may be appointed in this Chapter 11 case and/or the U.S. Trustee.

8. Notwithstanding the Replacement Lien as provided in paragraph (7) above, this Second Interim Order is without prejudice to and reserves all rights of the Debtor, a Trustee and/or Committee to challenge the validity, priority and extent of such Replacement Liens and any other liens that may be asserted by EverBank against the Debtor with respect to the Cash Collateral, Collateral and Marina.

9. The Replacement Lien and administrative expense claim granted to the Lender pursuant to the terms of this Second Interim Order shall be at all times subject and junior to: (a) all unpaid compensation of the Receiver, as custodian under 11 U.S.C. §543, and reimbursement of expenses of professionals (including any unpaid holdback amounts) employed by the Receiver that have been approved by the Bankruptcy Court (the "Custodian Professionals") accrued or incurred on or before the earlier of the entry of an order terminating the Debtor's use of cash collateral (the "Termination Date") that are allowed and payable under 11 U.S.C. §§330 and 331 and/or any orders of the Court, regardless of whether allowed before such Termination Date; (b) compensation and reimbursement of expenses of Receiver Professionals accrued or incurred after the Termination Date in connection with the wind-down of the Chapter 11 case and conversion to Chapter 7 case, if the case is converted to Chapter 7 case either voluntarily or involuntarily; (c) all unpaid fees due to the Office of the United States Trustee pursuant to 28 U.S.C. §1930; and (d) all unpaid fees required to be paid to the Clerk of the Bankruptcy Court (collectively, the "Custodian Carve Out").

10. In addition to the Custodian Carve Out as set forth in paragraph (9) above, the Debtor and Committee that may be appointed in this Chapter 11 case shall also reserve the right to seek on a priority basis (i) all unpaid compensation and reimbursement of expenses of professionals (including any unpaid holdback amounts) employed by the Debtor and Committee whose engagements have been approved by the Bankruptcy Court (the "Professionals") accrued or incurred on or before the earlier of the Termination Date defined herein that are allowed and payable under

11 U.S.C. §§330 and 331 and/or any orders of the Court, regardless of whether allowed before such Termination Date and (ii) compensation and reimbursement of expenses of Professionals accrued or incurred after the Termination Date in connection with the wind-down of the Chapter 11 case and conversion to Chapter 7 case, if the case is converted to Chapter 7 case either voluntarily or involuntarily (the “Professional Carve Out”).

11. Notwithstanding anything to the contrary herein, EverBank shall not have or be granted a Replacement Lien on or against any claims or causes of action arising under 11 U.S.C. §542 through §550 of the Bankruptcy Code (the “Avoidance Actions”) or on or against the proceeds of the Avoidance Actions.

12. The Replacement Liens granted herein in connection with the use of cash collateral shall be valid and perfected without the need for the execution or filing of any further documents or instruments.

13. Nothing in this Second Interim Order shall constitute an adjudication of the validity, priority or extent of Lender’s liens, or the amount of its claim, and all rights, claims and defenses with respect thereto are expressly preserved for the Debtor and any Committee that may be appointed in this Chapter 11 case.

14. The continued use of Cash Collateral by the Debtor and custodial duties of the Receiver as referenced in this Second Interim Order shall be through **September 28, 2012**. Pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure a further hearing on the relief sought hereunder shall be held **on September 28, 2012 at 9:30 a.m. at 299 East Broward Boulevard, Courtroom #308, Fort Lauderdale, Florida 33301 (the “Hearing”)**. Any party-in-interest objecting to the permanent relief requested in the Motion shall file a written objection or response describing in detail the grounds thereof and serve a copy no later than three (3) calendar days before the Hearing on the following parties (a) the Debtor and its bankruptcy counsel, Barry P. Gruher, Esq., (b) EverBank and its counsel, (c) the Receiver and her counsel, and (d) the Office of the United States Trustee for the Southern District of Florida.

15. This relief granted herein shall be effective immediately upon entry of this Interim Order and this Court retains jurisdiction to enforce all provisions of this Interim Order.

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Submitted by:

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Genovese Joblove & Battista, P.A.
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Copies furnished to:

Barry P. Gruher, Esq.
[Mr. Gruher shall forward a conformed copy of this order to all interested parties.]

EXHIBIT “A”

Ft Lauderdale Boat Club, Ltd
Cash Budget
August 1, 2012 thru 10/8/2012

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11
	8/1/12	8/6/12	8/13/12	8/20/12	8/27/12	9/3/12	9/10/2012	9/17/2012	9/24/2012	10/1/2012	10/8/2012
Beginning Cash Balances	\$ 21,132	\$ 100,632	\$ 100,632	\$ 96,132	\$ 97,832	\$ 145,375	\$ 241,171	\$ 219,963	\$ 214,923	\$ 214,473	\$ 288,673
Projected Income	79,500	-	-	4,500	48,000	100,296	-	-	-	79,606	-
Expenses											
Sales Tax	-	-	4,500	-	-	4,500	-	5,040	-	-	4,500
Licenses & Permits	-	-	-	-	-	-	10,471	-	-	-	-
Repairs & Maintenance	-	-	-	-	-	-	212	-	-	106	-
*PrePetition 40 Year Inspection/Repairs	-	-	-	-	-	-	5,300	-	-	-	-
40 Year Inspection/Repairs	-	-	-	2,800	-	-	-	-	-	-	-
Administrative, Office Supplies	-	-	-	-	-	-	225	-	-	300	-
Receiver Fees	-	-	-	-	-	-	5,000	-	-	5,000	-
Professional/Legal Fees	-	-	-	-	-	-	-	-	-	-	-
Other Miscellaneous Expense	-	-	-	-	457	-	-	-	-	-	-
U.S. Trustee Fees	-	-	-	-	-	-	-	-	450	-	-
Weekly Expense Totals	0	0	4,500	2,800	457	4,500	21,208	5,040	450	5,406	4,500
Ending Cash Balance	\$ 100,632	\$ 100,632	\$ 96,132	\$ 97,832	\$ 145,375	\$ 241,171	\$ 219,963	\$ 214,923	\$ 214,473	\$ 288,673	\$ 284,173
Week Ending	8/3/2012	8/10/12	8/17/12	8/24/12	8/31/12	9/7/12	9/14/2012	9/21/2012	9/28/2012	10/5/2012	10/12/2012

*Critical vendor payments to G.W. Bulldozing, Inc. (\$3,300) and Universal Electric, Inc. (\$2,000) for pre-petition work on 40 year inspection/repairs

Reserve Bank Accounts

Property Taxes - 2012 - Everbank	\$105,082
Repairs and Maintenance - Wells Fargo	\$27,500

Beginning Cash Balances Detail

Everbank Escrow Account	20,159
Wells Fargo Receiver Operating Account Balance as of 7/31/2012	973 Receiver disbursed \$70,000 to EverBank in July 2012
Total Beginning Cash Balance	<u>\$21,132</u>