

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

IN RE:)	
)	
BARTLETT MANAGEMENT SERVICES, INC., an Illinois corporation,)	Chapter 11 Case No. 17-71890
)	
Debtor.)	

IN RE:)	
)	
BARTLETT MANAGEMENT INDIANAPOLIS, INC., an Illinois corporation,)	Chapter 11 Case No. 17-17-71892
)	
Debtor.)	

IN RE:)	
)	
BARTLETT MANAGEMENT PEORIA, INC., an Illinois corporation,)	Chapter 11 Case No. 17-17-71890
)	
Debtor.)	

**DEBTORS' EMERGENCY MOTION FOR THE ENTRY OF AN INTERIM
AND FINAL ORDER (I) AUTHORIZING DEBTORS TO OBTAIN
POSTPETITION FINANCING PURSUANT TO SECTION 364(c)(3) OF THE
BANKRUPTCY CODE, (II) AUTHORIZING DEBTORS' USE OF THE CASH
COLLATERAL OF THEIR PRE-PETITION SECURED LENDER
PURSUANT TO SECTION 363(c)(2) OF BANKRUPTCY CODE, AND (III)
PROVIDING ADEQUATE PROTECTION TO SUCH LENDER PURSUANT
TO SECTIONS 361(2) AND 363(C) OF THE BANKRUPTCY CODE**

Bartlett Management Services, Inc. ("BMSI"), Bartlett Management Indianapolis, Inc. ("BMII"), and Bartlett Management Peoria, Inc. ("BMPI," and collectively with BMSI and BMII, the "Debtors"), debtors and debtors-in-possession in the above-captioned Chapter 11 cases (the "Cases"), respectfully move this Court

pursuant to Rules 4001(c) and 9014 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules” or the “Rules”) for an emergency interim and then final hearing, and the entry of an interim and final order, a proposed form of the former which is attached hereto as Exhibit A (the “Proposed Order”), as follows:

(I) Authorizing the Debtors to obtain postpetition financing from Stephen M. Nesbitt (“Mr. Nesbitt” or the “DIP Lender”), secured by a junior lien on certain of the Debtors’ real property, pursuant to section 363(c)(3) of the Bankruptcy Code, 11 U.S.C. 101 et seq. (the “Bankruptcy Code”), in substance of the loan documents attached hereto as Exhibit B (collectively, the “Loan Agreement”);

(iii) Authorizing the Debtors’ use of the cash collateral of the Debtors’ pre-petition secured lender, Heartland Bank & Trust Co. (“HBT”), pursuant to section 363(c)(2) of the Bankruptcy Code; and

(iii) Granting HBT adequate protection for the use of cash collateral by the granting of a replacement lien on the Debtors’ post-petition inventory and cash pursuant to section 361(2) of the Bankruptcy Code.

In support of this Motion, the Debtors respectfully state as follows:

Summary of Proposed Terms of Post-Petition Financing

Item	Provision	Location
Interest Rate	Six Percent (6%)	Loan Agreement ¹ (Promissory Note) at 1
Default Interest Rate	Eight Percent (8%)	Loan Agreement (Promissory Note) at 2
Events of Default	Failure to Pay When Due; ² Deviation from Budget; Other Standard Defaults	Loan Agreement at 6 ¶ 7; Loan Agreement (Promissory Note) at 1
Liens	Junior Lien on Real Property (As Hereinafter Defined)	Loan Agreement (Junior Mortgage)
Borrowing Limits	\$300,000 plus Backstop Letter of Credit ³	Incorporated by Proposed Order (Standby Letter of Credit)
Borrowing Conditions	Entry of Interim or Final Order	Proposed Order

¹ The Loan Agreement as defined (and attached as Exhibit D) consists of four documents: (i) the Loan Agreement; (ii) the Promissory Note; (iii) the Junior Mortgage of four of the Debtor's properties; and (iv) the Irrevocable Standby Letter of Credit.

² The due date will be the earliest of (i) the date on which the Court enters an Order denying the Debtor's motion to retain Valenti Florida Management, Inc. as its post-petition accountants, (ii) the effective date of any Chapter 11 plan for the reorganization of the Borrower; (iii) the consummation of any sale or other disposition of all or substantially all of the assets of the Debtors pursuant to Section 363 of the Bankruptcy Code; or (iv) the date of the acceleration of the note due to standard event of default provisions at set forth in the Loan Agreement at 6 ¶ 7.

³ As set forth more fully herein, the Backstop Letter of Credit (the "Backstop LOC") shall be in a maximum amount of \$120,000 and shall include a one percent (1%) Facility Fee for undrawn amounts once posted.

Status of the Case

1. On December 5, 2017 (the "Petition Date"), the Debtors commenced these Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors have continued in possession of their properties and are operating and managing their businesses as debtors-in-possession pursuant sections 1107(a) and 1108 of the Bankruptcy Code.

3. Concurrent with the filing of the Petitions, the Debtors have filed a motion seeking joint administration of these Cases pursuant to Rule 1015(b).

4. No request has been made for the appointment of a trustee or examiner, and a creditors' committee has not yet been appointed in these Cases.

Jurisdiction, Venue and Statutory Predicates

5. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

6. The statutory predicates for the relief sought herein are sections 361, 363, and 364 of the Bankruptcy Code.

Background

7. The Debtors consist of 39 current and former franchises of KFC Corporation ("KFC Corporate" or the "Franchisor"), the franchisor of the Kentucky

Fried Chicken (“KFC”) quick-service restaurant chain that provides a diverse menu of chicken and related side dishes and desserts.

8. Mr. Robert Clawson is the sole shareholder and president of all three Debtor companies.

9. Each of the Debtors is a distinct franchisee of the Franchisor, with each restaurant subject to its own, substantially similar, franchise agreement.

10. The Debtors lease thirty-five (35) of their thirty-nine (39) locations.

11. As a result of the closing of certain of the restaurants, the Debtors actually operate slightly less than 39 KFCs — in Wisconsin, Illinois and Indiana. More specifically, BMSI has 23 operating locations in Illinois, Wisconsin and Indiana. BMPI has 9 operating locations in Illinois. And BMII has 5 operating locations in Indianapolis, Indiana. Of the 37 operating locations, the Debtors lease 33. The Debtors also have leases for two non-operating locations.

12. A detailed explanation of the Debtors’ structure and operations as well as a recitation of the events leading up to the commencement of these Cases, is provided in the **Declaration of Robert E. Clawson in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief** (the “Clawson Declaration”), being filed contemporaneously herewith and which is incorporated herein by reference.

Existing HBT Claims and Liens

13. As set forth more fully in the Clawson Declaration, the Debtors currently owe approximately \$5,000,000 to HBT under two term notes (the “HBT Notes”), and an additional approximately \$400,000 under a line of credit (the “HBT LC”).

14. The HBT Notes are secured by substantially all the Debtors’ real and personal property, and the HBT LC is secured by substantially all of the real and personal property of BMSI.

15. Prior to the commencement of these Cases, the Debtors sought loans from HBT and Mr. Nesbitt, secured by senior liens on the Debtors’ real property (among other things) and super-priority administrative claims.

16. After several weeks of careful consideration, HBT declined to provide such financing.

17. Mr. Nesbitt, after initially declining the request, subsequently agreed to provide the financing — requiring only an administrative claim, but also requiring junior liens on four of the Debtors’ restaurant locations — specifically, the KFC locations (the “Real Property”) at:

- a. 1706 W. Market St., Bloomington, IL 61701 (KFC #18);
- b. 1321 N. Dunlap Ave., Savoy, IL 61874 (KFC #27);
- c. 80 Clinton Plaza, Clinton, IL 61727 (KFC # 41); and
- d. 8905 N. Allen Rd., Peoria, IL 61615 (KFC #42).

18. In view of the unwillingness of both HBT and Mr. Nesbitt — the parties with the most detailed knowledge of the Debtors' financial condition — to provide loans to the Debtors without, at a minimum, junior liens on real property, Mr. Steve Nerger, the Debtors' Chief Restructuring Officer, together with Debtors' counsel, determined that seeking post-petition loans with only administrative claims status would not only be futile but would divert the Debtors' attention to what — given the delays involved in seeking post-petition financing — has become an emergency need for the Debtors to seek the protections of the Bankruptcy Court. *See* Projected 13-Week Cash Flow Budget (attached hereto as Exhibit C).

19. Mr. Nerger would further opine that the financing to which Mr. Nesbitt has agreed represents not only extraordinarily reasonable terms under the circumstances, but terms far superior to what any other lender would provide in these circumstances.

20. What's more, inasmuch as HBT's prepetition secured loans substantially exceed the Debtors' liquidation value, no unsecured lender will be harmed by the terms of Mr. Nesbitt's proposed post-petition loan (the "PPL") because, absent such loan, HBT would receive all of the proceeds of the sale of the real property on which Mr. Nesbitt is accepting a junior lien (even in an orderly liquidation of the Debtors' properties). *See* Liquidation Analysis (attached as Exhibit D).

Proposed PPL Loan and Lien

21. The terms of the PPL are relatively straightforward. That is, Mr. Nesbitt will lend the Debtors \$300,000 for the following purposes:

- a. The posting of approximately \$102,000 to provide the Debtors' numerous utility companies adequate assurance of payment⁴ and to assure the Debtors' credit card processor (Bank of America Merchant Services ("BOAMS")) with assurance that it will receive payment of its monthly fees without the need for it to place an administrative freeze on the funds it collects on a daily basis;⁵
- b. A total of \$50,000 for post-petition retainers for the Debtors' counsel and Mr. Nerger; and
- c. The balance for liquidity to make payments during the periods of time that, as reflected in the Budget, the Debtor will need funds in

⁴ The Debtors' total average monthly utility charges generally fall in the range of \$120,000 to \$130,000 (with seasonal difference, of course). And consistent with section 366's provisions as applied in other cases of the Debtors' size and nature (i.e., a franchisor with multiple location), the Debtors are proposing by a separate motion to escrow approximately \$65,000 to \$70,000 from which utility companies may draw in the event that they fail to receive timely payment of their post-petition invoices.

⁵ The Debtors receive roughly 55% of their income through credit and debit card payments (i.e., approximately \$350,000 per week), and any interruption in the receipt of these payments would prove devastating to the Debtors' reorganization efforts. The Debtors estimate that BOAMS' monthly fees for their services approximates \$30,000 to \$35,000.

excess of their cash on hand to pay the prepetition claims of their critical vendors as well as their post-petition administrative expenses.

22. In addition, Mr. Nesbitt would be required to post up a \$120,000 Backstop LOC (the “Backstop LOC” or “Fee LOC”) to ensure the Debtors’ ability to pay their United States Trustee Fees, as well as the allowed fees of the Debtors’ and of any Official Committee of Unsecured Creditors’ professionals that may be formed in this case.⁶

23. The PPL would receive interest on the amounts funded (or drawn on the Backstop LOC) at the rate of 6% per annum, and a facility fee of 1% for the undrawn amount of the LOC starting with the posting thereof.

24. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See, e.g., Trans World Airlines, Inc. v. Travelers Intl AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (noting that financing decisions under section 364 of the Bankruptcy

⁶ The amounts available after the payment of the United States Trustee’s fees, if insufficient to fund the fees of the Creditors Committee, would be divided pro rata among the allowed fees of the other professionals (after reducing the professional fees of the Debtors’ professionals by the amounts that have received from their pre- and/or post-petition retainers).

Code must reflect a debtor's business judgment); *Bray v. Shenandoah Fed Sav & Loan Ass'n (In re Snowshoe Co., Inc.)*, 789 F.2d 1085, 1088 (4th Cir, 1986).

25. As referenced above, the Debtors' Chief Restructuring Officer would opine that the Debtors' decision to enter into the proposed PPL easily satisfies this standard. In short, the Debtors (a) are suffering losses monthly, (b) are unable to generate sufficient cash flow to pay their debts as they become due, (c) will only have sufficient funds in the near term to pay such ongoing debts with the cash provided by the PPL, and (d) will be able to reverse this situation — i.e., earn profits and accumulate cash — only if they are successful (as they expect to be) in renegotiating a majority of their leases.

26. Thus, the Debtors do not have the ability to survive operating on cash collateral alone. If the Debtors do not obtain postpetition financing, they would not be able to continue operating their businesses, resulting in hundreds of lost jobs and a destruction of their significant going concern business value.

27. What's more, the Debtors need the entire PPL (with the exception of the Backstop LOC) on an emergency basis. That is, although the possibility exists that, depending on the outcome of certain other motions that the Debtors will be filing seeking to reject certain leases and delay their performance under others, the Debtors might be able to defer the need for a portion of the PPL, (a) the outcome of those motions is uncertain, (b) in any event, at least approximately \$150,000 of the \$300,000 will be needed immediately to fund the deposit accounts and the proposed post-petition professional retainers, and to

ensure that the Debtors may make their first post-petition payroll on or about December 11-12, 2017.

28. Moreover, the Debtors believe that immediate access to the full PPL will provide comfort and confidence to all parties in interest at this critical juncture.

Specific Provisions Pertaining to Rule 4001(c)((2)

29. The proposed order and loan agreement shall provide the following provisions referenced in Rule 4001(c)(1)(B):

a. grant of priority or a lien on property of the estate under § 364(c) or (d): **Junior lien on Real Property (Loan Agreement (Second Mortgage); Proposed Order at 5 ¶ 7).**

b. the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim; **Not applicable;**

c. (iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim: **Not applicable;**

d. a waiver or modification of Code provisions or applicable rules relating to the automatic stay: **Proposed Order at 5 ¶ 7;**

e. a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364: **Not applicable;**

f. the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order; **Not applicable;**

g. a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien; **Liens deemed perfected as of date of entry of Order (Proposed Order at 5 ¶ 4);** and

h. a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action; (ix) the indemnification of any entity; (x) a release, waiver, or limitation of any right under § 506(c); or (xi) the granting of a lien on any claim or cause of action: **Not Applicable.**

HBT's Cash Collateral

30. With a single exception not pertinent here (because the Debtors do not seek to use it),⁷ HBT's cash collateral in these Cases is limited, for two reasons:

- a. Under the Debtors' cash management arrangement with HBT, the bank sweeps substantially all of the Debtor' cash within 24 to 48 hours of the Debtors' receipt of it; and

⁷ In March 2017, the BMSI's leased restaurant at 1586 W. Lane Rd. Machesney Park, IL 61115-1903 (KFC #44) suffered a major fire (the "Machesney Park Fire"). In late June/early July 2016, BMSI received (i) \$250,000 for "Partial Building Loss," and (ii) \$10,000 for "Partial Property Loss." On or about October 6, 2017, BMSI received (i) \$443,547.90 for "Partial Building Loss," and (ii) \$282,514.36 for "Partial Property Loss."

Thus, most of the insurance proceeds that the Debtors have received to date are for the building, and under the Debtors' insurance policies (as required by the terms of its lease of the premises) belong to the Debtors' landlord as "loss payee." The Debtors, however, also received \$292,514.36 for "Property Loss," a portion of which is attributable to the personal property at the restaurant that is the subject of HBT's blanket security interest. From the property loss proceeds, the Debtors unwittingly deposited the first \$10,000 (as well as the initial \$250,000 they received for the building) into the HBT cash concentration account, which was swept by HBT and applied against the HBT LC. The Debtors deposited the subsequent \$282,514.36 (together with the additional \$443,547.90 they received for the building) in a separate, segregated account at Dewitt Saving Bank. As indicated in the text above, however, the Debtors do not intend to use any of the "Property Loss" proceeds absent further discussions with HBT and this Court's authorization. The balance in the Dewitt account is only \$575,881.54 — i.e., less than the total of the "Building Loss" and "Property Loss" insurance proceeds to date — because the landlord opted to use roughly \$400,000 of the "Building Loss" proceeds (i.e., the initial \$250,000, and then approximately \$150,000 of the subsequent \$443,547.90) to make payments for the benefit of the Debtors.

b. The Debtors have essentially no accounts receivable, other than the funds they receive from credit and debit card sales; and

c. The case law firmly establishes that the portion of the foregoing accounts receivable (i.e., the proceeds of the Debtors' sale of their inventory) is (at most) the value of the inventory used to generate these receivables. *See In re Cafeteria Operators, L.P.*, 299 B.R. 400, 409 (Bankr. N.D. Tex. 2003) ("only that portion of the revenues, then, constitutes the Bank Group's cash collateral"); *In Matter of Strick Chex Columbus Two, LLC*, 542 B.R. 914 (Bankr. N.D. Ga. 2015) (following *Cafeteria Operators* and other cases holding that "[t]he cash collateral generated by [the debtor's] sale of [the creditor's] secured inventory ... equals the cost of the inventory used in each sale") (quoting *In re Cafeteria Operators, L.P.*, 299 B.R. at 440); *but see In re Inman*, 95 B.R. 479, 480–81 (Bankr. W.D. Ky. 1988) (holding that, in context of QSR, none of the revenues of the sale of food constituted the proceeds of the pre-petition lender's inventory).

31. Here, the Debtors' costs of goods sold represents approximately 33% of their food-sale revenues. Accordingly, even under the more moderate approaches of *Cafeteria Operators* and *Strick Chex*, HBT possesses a lien as of the Petition Date on (a) the Debtors' cash and equivalents on hand as of the Petition Date, (b) the value of the Debtors' inventory on the Petition Date, and (c) one-third

of the Debtors' sales revenues (i.e., receivables as of the Petition Date) (collectively, the "Cash Collateral").⁸

32. To protect HBT's interest in the Cash Collateral, the Debtors propose granting HBT (a) a replacement lien on their post-petition inventory, plus (b) a replacement lien on their post-petition cash and receivables, as more fully set forth in the Proposed Order.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court schedule an interim hearing on this Motion on an emergency basis, enter the Proposed Order attached hereto as Exhibit A granting the interim relief requested herein and grant the Debtors such other and further relief as the Court may deem necessary or appropriate.

Dated: December 5, 2017

Respectfully submitted,

By: /s/ Jonathan A. Backman

⁸ For the sake of clarity, the defined term Cash Collateral does not include any of the "Property Loss" insurance proceeds of the Machesney Park Fire.

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