

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:

7215 N OAKLEY, LLC

Debtor.

Chapter 11

Case No. 18-07309

Hon. Deborah L. Thorne

NOTICE OF MOTION

TO: See Attached Service List

PLEASE TAKE NOTICE that on **October 4, 2018 at 9:30 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Deborah T. Thorne**, in Courtroom 613 of the United States Bankruptcy Court for the Northern District of Illinois, or in her absence, before such other Judge who may be sitting in her place and stead and hearing bankruptcy motions, and shall then and there present the **DEBTOR'S SECOND MOTION FOR AUTHORITY TO (1) USE CASH COLLATERAL AND (2) PROVIDE ADEQUATE PROTECTION, AND FOR RELATED RELIEF**, a copy of which is attached and herewith served upon you, and shall pray for the entry of an order in conformity with the prayer of said pleading.

AT WHICH TIME AND PLACE you may appear if you so see fit.

Dated: October 2, 2018

Respectfully submitted,

7215 N. Oakley, LLC

By: /s/ Robert R. Glantz

One of its attorneys

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CERTIFICATE OF SERVICE

Robert R. Glantz, an attorney, certifies that he caused to be served a true copy of the above and foregoing notice and attached pleading upon the Electronic Mail Notice List through the ECF System which sent notification of such filing via electronic means mail, as indicated, on October 2, 2018.

/s/ Robert R. Glantz

Mailing Information for Case 18-07309

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- Abraham Brustein abrustein@dimonteandlizak.com, jjarke@dimontelaw.com
- David R Doyle ddoyle@foxrothschild.com, kjanecki@foxrothschild.com
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IN RE:

7215 N. OAKLEY, LLC

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Chapter 11

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**DEBTOR’S MOTION FOR AUTHORITY TO (1) USE CASH COLLATERAL
AND (2) PROVIDE ADEQUATE PROTECTION, AND FOR RELATED RELIEF**

7215 N. Oakley, LLC, the above-captioned debtor and debtor in possession (the “*Debtor*”), pursuant to §§ 361, 363(c)(2), 363(e) of title 11 of the United States Code (the “*Bankruptcy Code*”), Fed. R. Bankr. P. 4001(b), and Local Rule 4001-2, hereby requests that the Court enter interim and final orders substantially in the form attached hereto as Exhibit A (the “*Cash Collateral Order*”) authorizing the Debtor to (i) use the cash collateral of MRR 7215 Oakley LLC (“*MRR*”) from September 1, 2018 through October 31, 2018, and (ii) provide adequate protection to MRR on accounts of its prepetition liens, all of the foregoing in accordance with the Cash Collateral Order and the budget attached hereto as Exhibit B (the “*Budget*”). In support of its Motion, the Debtor respectfully states as follows:

FED. R. BANKR. P. 4001(b)(B) and L.R. 4001-2 DISCLOSURES

1. The following disclosures are made pursuant to Fed. R. Bankr. P. 4001(b)(B):
 - a. The only entity with an asserted interest in the subject cash collateral is MRR.
 - b. The Debtor requires the use of MRR’s cash collateral in order to maintain the value of the Real Estate and to continue its related business operations pending the confirmation of a chapter 11 plan. Accordingly, and pursuant to 11 U.S.C. § 363(c)(2), the Debtor requests authority to use cash collateral in accordance with the provisions of the Cash Collateral Order and Budget to pay ongoing expenses incurred in the ordinary course of its business and associated with the maintenance and preservation of the Real Estate, including, without limitation, maintenance costs, taxes, and insurance.

- c. The Debtor's authority to use cash collateral is subject to substantial compliance with the Budget. The duration of the approved cash collateral use will consequently coincide with the term of the Budget, which extends through October 31, 2018 and may be thereafter extended by (i) agreement with MRR, or (ii) Court approval.
- d. The proposed use of cash collateral shall not result in a decline in the value of MRR's collateral, and as such, MRR is adequately protected. Nevertheless, pursuant to 11 U.S.C. §§ 361 and 363(e), the Debtor requests authority to grant certain adequate protection to MRR on account of its prepetition liens. As more specifically set forth in paragraph 3 of the Cash Collateral Order, MRR shall receive valid and perfected replacement liens on all of the Debtor's currently-owned or hereafter-acquired property including, without limitation, any rents, profits and cash generated by the Debtor's prepetition and postpetition operations, but excluding any avoidance actions under chapter 5 of the Bankruptcy Code. The replacement liens shall (i) attach to the same extent and with the same validity and priority as MRR's existing interests in the Debtor's prepetition assets ("Prepetition Collateral"), (ii) be limited to the extent of the aggregate diminution subsequent to the petition date in the value of MRR's existing interests in the Prepetition Collateral (including the cash collateral subject to the Motion), whether by depreciation, use, sale, loss, or otherwise, and (iii) be subject only to prior perfected and unavoidable liens in property of MRR's estate as of the petition date.

2. The following disclosures of certain terms contained in the Cash Collateral Order are made pursuant to Local Bankruptcy Rule 4001-2(A)(2):

- a. **Cross Collateralization Other Than As Adequate Protection:** No.
- b. **Findings Regarding Validity, Perfection Or Amount Of Secured Creditor's Lien Or Debt And Waiver Of Claims Against Secured Creditor:** No.
- c. **Waiver Of Rights Under Section 506(c):** No.
- d. **Liens On Chapter 5 Causes Of Action:** No.
- e. **Immediate Roll-Up Of Prepetition Debt Or Use Of Postpetition Loans To Pay Prepetition Debt (Other Than Under § 552(b)):** No.
- f. **Different Treatment Of Professionals And Limit On Committee's Use Of Carve-Out:** No.
- g. **Priming Of Secured Liens Without Consent:** No.

- h. **Declaration Against Imposition Of Lender Liability:** No.
- i. **Relief From The Automatic Stay On An Expedited Basis And/Or Without Further Order Of The Court:** No.
- j. **In Jointly Administered Cases, Provisions For Joint And Several Liability On Loans:** Not applicable.

3. Pursuant to Local Rule 4001-2(A)(3)-(4), and to the extent not otherwise described herein, the following is a summary of other essential provisions of the Debtor's proposed use of cash collateral pursuant to the Cash Collateral Order:

The Maximum Borrowing On An Interim And Final Basis

- a. This is not applicable to the Cash Collateral Order.

Borrowing Conditions

- b. This is not applicable to the Cash Collateral Order.

The Interest Rate

- c. This is not applicable to the Cash Collateral Order.

Maturity

- d. This is not applicable to the Cash Collateral Order.

Events of Default

- e. This is not applicable to the Cash Collateral Order.

Use of Funds Limitations

- f. Pursuant to paragraph 2 of the Cash Collateral Order, the Debtor is authorized to use cash collateral to fund expenses and amounts set forth in the Budget (with a 15% variance permitted) or as otherwise approved by this Court. The Budget may be modified and extended by (i) agreement with MRR, or (ii) Court approval.

§§ 363 and 364 Protections

- g. See ¶ 1(d) above.

The Budget

- h. The Budget is attached hereto as Exhibit B.

FACTUAL BACKGROUND

A. Overview

4. On March 14, 2018 (the “*Petition Date*”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Shortly after the Petition Date, the Debtor obtained possession and has since remained in possession of its assets and has continued to operate its business as a debtor in possession in accordance with 11 U.S.C. §§ 1107 and 1108. The Debtor has all of the rights and powers of a trustee in bankruptcy pursuant to 11 U.S.C. § 1107(a).

5. No committee of unsecured creditors has been appointed.

6. This Court has jurisdiction to hear this matter and enter a final order granting the relief requested herein pursuant to 28 U.S.C. §§ 1334 and 157(b)(2) and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois.

B. The Debtor and the Real Estate

7. The Debtor is an Illinois limited liability company that owns and operates the Real Estate. The Real Estate consists of a four-story brick building with nine (9) townhome residential units (“*Units*,” or individually a “*Unit*”) built in 2008 and located at 7201-7217 North Oakley, Chicago, Illinois (the “*Real Estate*”). Each Unit has three bedrooms and two and one-half bathrooms as well as a private two car garage at the rear of the Unit on the ground floor.

8. As of the date of this Motion, seven of the nine Units are occupied and rented. The Real Estate should generate \$235,000 in rental income over the next year once all of the Units are rented.

9. Based on an appraisal obtained by the Debtor, the Debtor asserts that the Real Estate is worth approximately \$1.9 million.

C. MRR's Interest in the Property

10. To finance its purchase and construction of the Real Estate, the Debtor obtained financing from Northside Community Bank (the “**Bank**”), pursuant to the following documents, as amended (the “**Loan Documents**”):

- a. Promissory Note, dated September 16, 2005, by 7215 N. Oakley, LLC in favor of Northside Community Bank, in the original principal amount of \$1,300,000;
- b. Construction Loan Agreement, dated September 16, 2005, between 7215 N. Oakley, LLC and Northside Community Bank;
- c. Construction Mortgage, dated September 16, 2005, granted by 7215 N. Oakley LLC in favor of the Bank, and recorded on or about October 13, 2005 (the “**Mortgage**”).

11. Upon information and belief, the Bank assigned its interest in the Loan Documents to MRR.

12. As of April 10, 2018, MRR asserted that the total amount due and owing under the Loan Documents is \$2,538,101.79.

D. First Cash Collateral Motion and Order

13. Prior to the Petition Date, MRR commenced an action to foreclose the Mortgage in the Chancery Court for the Circuit Court of Cook County (the “**State Court**”), Case No. 2014-CH-12130 (the “**State Court Action**”).

14. On October 23, 2014, the State Court appointed a receiver (the “**First Receiver**”) to take possession of and manage the Real Estate. Upon information and belief, MRR learned that the First Receiver had committed various breaches of fiduciary duty and failed to account for rents in his possession. As such, MRR moved to appoint a “supplemental and primary” receiver of the Property (the “**Second Receiver**”), which the State Court granted on March 1, 2017.

15. Shortly after the Petition Date, pursuant to 11 U.S.C. § 542, the Second Receiver tendered possession of the Real Estate to the Debtor, and the First Receiver turned over the rents (the “**Rents**”) and security deposits (the “**Security Deposits**”) in his possession. The amount of Rents totaled \$56,541.08, and Security Deposits totaled \$18,150.00.

16. On July 11, 2018, the Debtor filed the Debtor’s Motion for Authority to (1) Use Cash Collateral and (2) Provide Adequate Protection, and for Related Relief [Dkt. No. 54] (the “**Cash Collateral Motion**”), which sought authority to use cash collateral of MRR 7215 pursuant to 11 U.S.C. § 363.

17. On August 2, 2018, the Court entered an order granting the Cash Collateral Motion and permitting the Debtor to use cash collateral through August 31, 2018 (the “**Cash Collateral Order**”).

18. In addition, the Cash Collateral Order required MRR 7215 and its affiliate, MRC 1955 Halsted Loan, LLC (“**MRC**”) to file proofs of claim by August 15, 2018, and for the Debtor to object to the claims, if necessary, by September 17, 2018.

19. On August 15, 2018, MRR 7215 and MRC both filed proofs of claim in the bankruptcy case (the “Secured Claims”).

20. On September 17, 2018, the Debtor filed objections to the Secured Claims and noticed the objections for a hearing date on October 18, 2018.

RELIEF REQUESTED

21. Subject to the terms of a proposed Cash Collateral Order and the Budget attached thereto, the Debtor seeks authority to use MRR’s cash collateral through October 31, 2018, subject to further extensions thereafter by means of modified Budget. The Debtor intends to use the cash

collateral to maintain and operate the Real Estate in the ordinary course of business pending a reorganization of the Debtor through a chapter 11 plan.

REQUESTED AUTHORITY TO USE CASH COLLATERAL

22. By virtue of the Loan Documents described above, the Debtor believes that MRR will assert that its claims are secured by perfected, valid and enforceable liens on the Real Estate and the rents and other income that it generates. Therefore, the Debtor also believes that MRR will consequently assert that it holds perfected and enforceable liens on the Debtor's "cash collateral" as that term is defined within the meaning of 11 U.S.C. § 363(a).

23. Although MRR has not yet consented to the Debtor's use of its cash collateral, the Debtor asserts that this Court should nevertheless authorize such use in accordance with 11 U.S.C. § 363(c)(2)(B), (e), because MRR is adequately protected.

24. It is now long established that a secured creditor is adequately protected if the value of its collateral, measured as of the Petition Date, does not decline as a result of the debtor's use of cash collateral. *See In re Addison Properties Ltd. P'ship*, 185 B.R. 766, 783 (Bankr. N.D. Ill. 1995) ("'[A]dequate protection' is meant only to assure that a secured creditor does not suffer a decline in the value of its interest in the estate's property, rather than to compensate the creditor for the bankruptcy-imposed delay in enforcing its rights in that property."); *In re Markos Gurnee P'ship*, 252 B.R. 712, 717 (Bankr. N.D. Ill. 1997) ("The value of the secured creditor's interest in estate property, for purposes of adequate protection, is measured as of the filing of the bankruptcy case.").

25. As Judge Wedoff explained in *Addison Properties*, "if the underlying collateral is not declining in value . . . the additional cash collateral [in the form of rents] may be used by the

debtor to pay administrative expenses, as well as to maintain or improve the underlying collateral.”
185 B.R. at 784.

26. In this case, the Debtor intends to use cash collateral solely for the purpose of preserving MRR’s collateral, the Real Estate—not to pay professionals or other expenses unrelated to the Real Estate. As described in the budget, the Debtor intends to use the cash collateral to, among other things, (i) make repairs and partial replacement of the Real Estate’s roofing; (ii) make interior repairs to certain units, including insulation and drywall removal and replacement; (iii) paint certain of the Units to ready them for rental; (iv) repair kitchen piping and other plumbing; (v) pay real estate taxes; (vi) pay brokerage fees to @properties; and (vii) pay water and sewer utilities.

27. As additional adequate protection, the Debtor also requests that MRR be granted, retroactive to the Petition Date and without the necessity of any additional documentation or filings, valid, enforceable, non-avoidable, and fully perfected replacement liens of the highest available priority upon (a) any property that the Debtor acquires after the Petition Date including, without limitation, any rents, profits and cash generated by the Debtor’s prepetition and postpetition operations, but excluding any avoidance actions under chapter 5 of the Bankruptcy Code, and (b) any proceeds generated from such property. The Debtor requests that such liens (i) attach to the same extent and with the same validity and priority as the MRR’s existing interests in its Prepetition Collateral, (ii) be limited to the extent of the aggregate diminution subsequent to the Petition Date in the value of the MRR’s existing interests in the Prepetition Collateral (including the cash collateral subject to the Motion), whether by depreciation, use, sale, loss, or otherwise, and (iii) be subject only to prior perfected and unavoidable liens in property of the Debtor’s estate as of the Petition Date. These measures of adequate protection are reflected in the

proposed Cash Collateral Order. The Debtor's use of MRR's cash collateral should be authorized accordingly.

ADEQUATE PROTECTION

28. As stated above, pursuant to 11 U.S.C. §§ 361 and 363(e), the Debtor requests authority to grant certain adequate protection measures to MRR on account of its asserted prepetition liens and security interests. As more specifically set forth in paragraph 3 of the Cash Collateral Order, the Debtor proposes that its use of MRR's cash collateral be accompanied by the conferral of replacement liens on all existing and hereafter acquired assets of the Debtor (excluding chapter 5 causes of action).

29. The adequate protection liens granted to MRR will secure payment of MRR's prepetition claims in an amount equal to the aggregate diminution, from and after the Petition Date, of the value of MRR's interest in prepetition collateral as a consequence of the Debtor's use or otherwise. Under paragraph 3 of the proposed Cash Collateral Order, the replacement liens shall (i) attach to the same extent and with the same validity and priority as MRR's existing interests in the Prepetition Collateral, (ii) be limited to the extent of the aggregate diminution subsequent to the Petition Date in the value of MRR's existing interests in the Prepetition Collateral (including the cash collateral subject to the Motion), whether by depreciation, use, sale, loss, or otherwise, and (iii) be subject only to prior perfected and unavoidable liens in property of the Debtor's estate as of the Petition Date.

NOTICE

30. As set forth in the certificate of service, the Debtor has served this Motion and notice of the hearing on the Motion (i) by mail and overnight delivery to MRR,; (ii) through ECF notification upon all parties who have appeared in the case to date, and (iii) by electronic mail to

counsel for the Office of the United States Trustee and MRR. The Debtor intends to provide notice of the final hearing on this Motion and the terms of the proposed Cash Collateral Order in accordance with the requirements of Fed. R. Bankr. P. 4001 and 9014 and as this Court may otherwise direct.

CONCLUSION

WHEREFORE, pursuant to 11 U.S.C. §§ 361, 362, 363(c)(2), 363(e), Fed. R. Bankr. P. 4001(b), and Local Rule 4001-2, the Debtor requests the entry of interim and final orders approving this Motion, and specifically: (i) authorizing the Debtor to use MRR's cash collateral on a final basis on substantially the same terms as the Cash Collateral Order and the Budget (as such budget may be subsequently extended, by agreement of the parties or approval by the Court); (iii) authorizing the Debtor to provide adequate protection in favor of MRR in the manner and to the extent described herein; and (v) granting such other and further relief as is just and to which the Debtor may be entitled under the circumstances.

Respectfully submitted,

7215 N Oakley, LLC

Dated: October 2, 2018

By: /s/ Robert W. Glantz
One of its attorneys

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