

UNITED STATES BANKRUPTCY COURT
EASTERN DIVISION, DISTRICT OF MASSACHUSETTS

In re:

Missionary Assembly of God
Of Marlborough, Inc.

Debtor

Chapter 11

Docket No. 17-41182-EDK

EMERGENCY MOTION FOR ORDER APPROVING USE OF CASH COLLATERAL AND
RELATED RELIEF AND SETTING FINAL HEARING AND PRESCRIBING FORM
AND MANNER OF NOTICE

NOW COMES Missionary Assembly of God Of Marlborough, Inc (the “Debtor” or “MAG”), and moves the Court for entry of interim and final orders, on an emergency basis, pursuant to sections 105 and 363 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Bankruptcy Rules 4001-2 and 9013-1: (i) authorizing the Debtor to use cash collateral of its mortgage creditor (the “Lender”) pursuant to 11 U.S.C. § 363(c)(2); (ii) authorizing Debtor to provide adequate protection payments in the amount of \$2,000 per month to the secured party pursuant to this motion; (iii) approving the use of cash collateral on an interim basis pending final approval (the “Interim Order”); (iv) setting procedures for providing appropriate notice of the foregoing; and (v) granting other related relief. In support thereof, Debtor represents as follows:

Summary

1. By this Motion, Debtor seeks interim and final authority to use the cash collateral of its mortgagee. The mortgage, a copy of which is attached, was originally given to Alaska Seaboard Partners Limited Partnership, which secured a loan in the original principal amount of \$911,000. It was eventually assigned to Marlboro BFC, LLC, a Massachusetts Limited Liability Company, which, upon information and belief, is the present holder of the Promissory Note.
2. Although the mortgage includes language indicating it was intended to be a UCC lien as well, after preliminary investigation including title and UCC searches at the internet site of the Secretary of the Commonwealth, it does not appear that a UCC lien was perfected. Nonetheless, the language of the mortgage appears broad enough to encompass personal property as well as the real property.
3. The cash collateral and accounts receivable (e.g., rents) of Debtor are the only sources of financing available to Debtor at present. Thus the Debtor’s use of cash collateral is essential to Debtor’s reorganization success, in that Debtor needs all of its cash and equipment and funds generated by the collection of its accounts receivable to pay for Debtor’s post-petition operating expenses, including the salary and benefits of its pastor and utilities.

4. Specifically, the Debtor must be able to use cash collateral to pay for all necessary post-petition operating expenses including wages, taxes, utilities, and other normal and necessary operating expenses of operations, as described below.
5. Approval of the use of cash collateral is necessary to enable Debtor to maintain and reorganize its business while marketing the real estate for sale (although a good offer has been received). Absent the availability of cash collateral, the Debtor will not be able to continue in business or pay for the services that are essential to the preservation of the going-concern value of its business and payment to creditors and employees.

Background

6. Chapter 11 filing. On June 28, 2017 (the “Petition Date”), Debtor filed a voluntary petition in this Court for reorganization relief pursuant to Chapter 11 of the Bankruptcy Code. Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
7. Business Operations of Debtor. The debtor is a religious corporation as defined by Massachusetts law, and a §501(c)(3) charitable organization. Incorporated in 2007, its purpose, as stated in the Articles of Organization, are:
 - (a) to establish and maintain a place of worship, to operate a church, to provide for Christian fellowship for those of like faith, and to provide religious and educational services.
 - (b) to conduct such other activities and programs in furtherance of the foregoing purposes as may be carried out by a corporation organized under Massachusetts General Laws chapter 180 and described in section (501)(c)(3) of the internal revenue code.
8. The debtor’s financial problems stem in part from a decline in attendance, but mostly from the fact that the mortgage on the property was a short-term, balloon mortgage which came due. While the mortgagee granted more than one modification or forbearance, it eventually declined to grant a further accomodation and commenced foreclosure. Because the debtor believes that it has substantial equity in the property, it has been marketing the property for sale, but the mortgagee declined to allow time for proper marketing¹, thus necessitating the filing of an emergency petition.
9. Creditors’ Committee. No creditors’ committee has yet been appointed by the United States Trustee. The first meeting of creditors is scheduled for August 8.
10. Jurisdiction. The Court has jurisdiction over this motion pursuant to 28 U.S.C. § 157(b)(2). Venue in this District and this motion are proper pursuant to 28 U.S.C. §§ 1408 and 1409 because the debtor owns real estate in Massachusetts. The statutory predicates for the relief requested herein are sections 363, 1107(a) and 1108 of the Bankruptcy Code.

¹ Nonetheless, the debtor states that it has received a bona fide offer of \$2 million for the property and is in negotiations with respect to that offer. This amount is well in excess of the amount the debtor believes is owed on the mortgage.

Debtor's Prepetition Financing

11. The Prepetition Loan Documents. Debtor and Lender had entered into certain loan arrangements evidenced by a mortgage recorded at the Registry of Deeds. A copy of the mortgage is attached hereto.
12. As stated above, the debtor's financial problems stemmed from a decline in attendance and the coming due of the mortgage pursuant to a balloon payment provision.
13. Prepetition Collateral. While there does not appear to be a perfected UCC lien on record at the Secretary of State's office, the mortgage language is broad enough to encompass personal property as well as the real property. Preliminarily, the mortgage appears to have been properly perfected as to the real property.
14. Perfection of Prepetition Security Interests and Liens. The Debtor is not, by the filing of this motion, waiving any right to contest the amount due under the Loan Documents or the priority or perfection of the Security Interests alleged to be held by Lender, nor is the debtor admitting that any of them are *actually* secured within the meaning of 11 USC §506. As noted above, there is doubt as to whether the UCC lien(s) are properly perfected.
15. Debtor's Urgent Need for Use of Cash Collateral. The Lender appears to have a security interest in all real and personal property of the Debtor pursuant to the Loan Documents (except as to a UCC lien). As of the Petition Date, the Debtor had insufficient unencumbered cash on hand to operate without the use of the cash on hand and post-petition proceeds of accounts receivable, member dues or contributions and other income, including rent. Specifically, without the use of said cash collateral, the Debtor cannot pay the wages, salaries, utilities and other expenses associated with operating its business.
16. Based upon the foregoing, it is evident that the consequences of leaving Debtor without use of cash collected would have a materially adverse affect on the estate and its creditors. Without the immediate access to cash collateral, the Debtor's business operations likely would be terminated and the mortgage foreclosed. Debtor will be unable to purchase the materials or inventory it needs to maintain its business, nor will it be able to employ the staff² necessary to operate its facilities or to pay its utilities and other expenses.
17. Debtor has determined, in the exercise of its sound business judgment, that it requires the use of the Lender's cash collateral in the specific estimated monthly amounts detailed on the *pro forma* preliminary budget attached hereto. The cash flow budget reflects the specific uses to which the funds will be put for the period through confirmation, absent any material change in circumstances. While the mortgage payment appears to be less than the contractual amount, it is believed to be sufficient to avoid irreparable harm to the lender, especially since it is substantially oversecured and the debtor intends to market and sell the property as quickly as possible.
18. Relief Requested. By this Motion, Debtor requests, pursuant to § 363(c)(2) of the Bankruptcy Code, that this Court enter an order authorizing Debtor to use cash collateral

² At this time, there is only one employee, Pastor Jose Goulart, who is also President of the corporation.

of the Lender in the specific amounts set forth in the *pro forma* budget, attached, which represents the average amounts over the last six months (except for the mortgage³). The Debtor respectfully suggests that this will adequately protect the interests of Lender within the meaning of §361(1), especially as the property has been appraised at \$2 million, while the mortgagee is owed about \$1.2 million, and a bona fide offer for the property has been received.

19. Section 363(c)(2) of the Bankruptcy Code provides that:

(2) The trustee [or a debtor in possession] may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless— . . .

the court, after notice and hearing, authorizes said use; sale or lease in accordance with the provisions of this Section

11 U.S.C. § 363(c)(2). Section 363(e) provides that the Court may condition said use, sale or lease as is necessary to provide adequate protection to Lender.

Based upon the foregoing, this Court is authorized to grant the interim and final relief requested in this Motion and to authorize and approve the use of cash collateral by the Debtor.

20. Granting of this motion is in the Best Interests of Debtor, its Creditors and the Estate.

Debtor believes that resuming payments to the mortgagee, albeit in a reduced amount, while marketing the property for sale, and other ordinary course creditors, such as employees and utilities, is in the best interests of the Debtor, its creditors and the Estate, given that the Debtor has equity in the real estate and believes it has good prospects for selling it quickly.

21. In the circumstances, the debtor believes that it is inadvisable to seek to obtain unsecured credit allowable pursuant to section 503(b)(1) of the Bankruptcy Code as an administrative expense in an amount necessary for the maintenance and preservation of its assets and operation of its business, as its income is sufficient to maintain basic operations while marketing the real estate.

22. Granting this motion is in the best interests of Debtor, its estate and creditors and will enable Debtor among other things, to (i) pay employees and trade creditors, (ii) maintain continuity of operations, and (iii) maximize the value of the business. In addition, the availability of funds will instill confidence in members, employees and creditors of Debtor, which will facilitate a smooth transition into Chapter 11 and a successful reorganization.

23. Moreover, Debtor submits that the use of cash collateral contemplated by this motion is appropriate and proper under the facts herein. All amounts on deposit in all of Debtor's banking, checking and other deposit accounts (now in DIP account(s)) and all accounts receivable all appear to constitute cash collateral within the meaning of section 363 of the Bankruptcy Code. As indicated above, Debtor cannot operate post-petition without the use of its prepetition cash and accounts receivable and post-petition income.

³ It appears that the mortgagee was refusing payments over the last several months.

24. Based upon the foregoing, Debtor urges the Court to grant this motion, thereby authorizing Debtor to use cash collateral and make the payments contemplated by the *pro forma* preliminary budget.
25. Notice and Final Hearing. No trustee, examiner or creditors' committee has been appointed in this Chapter 11 case. Notice of this Motion has been given to the United States Trustee and the mortgagee by the court's CM/ECF system, and by first class mail to all creditors presently on the matrix (including the Lender). Debtor submits that such notice is appropriate and sufficient pursuant to Local Rule 4001-2(b), and Debtor's imminent and urgent need for working capital.
26. Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, Debtor respectfully requests that this Court schedule a final hearing on the relief sought in this Motion on the earliest appropriate date. Debtor further requests that it be authorized to provide notice of the final hearing by serving a copy of the Motion, together with the order approving the Proposed Order on an interim basis, upon the United States Trustee by the court's CM/ECF system and upon all creditors (including taxing authorities) presently on the matrix.
27. No Prior Request. No previous request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, Debtor respectfully requests that this Court enter an Order which among other things:

1. Authorizes Debtor to use the cash collateral of the Lender pending a final hearing;
2. Sets the time and date for the filing of objections to final approval of the use of cash collateral;
3. If an objection to the approval of the use on a final basis is filed, sets a hearing at a time and place set forth therein to consider approving the continued use on a final basis pursuant to Bankruptcy Rule 4001 and MLBR 4001-2;
4. After the final hearing (if necessary), enter a final order, authorizing Debtor to utilize the cash collateral in accordance with the terms and subject to such terms as the court orders; and
5. Grant such other and further relief as is just and proper.

21 July 2017

Respectfully submitted,
Missionary Assembly of God of Marlborough
By its attorney,

/s/ David G. Baker

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