

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

IN RE:

S&S HOLDING COMPANY LLC,

Debtor.

CHAPTER 11

CASE NO. 17-41199-3DK

EMERGENCY MOTION OF DEBTOR S&S HOLDING COMPANY LLC FOR
AUTHORIZATION ON AN INTERIM AND PERMANENT BASIS FOR USE OF CASH
COLLATERAL REGARDING 14 OAKLAND PLACE, BROCKTON, MA
(Emergency Determination on or before 7/12/17 is requested)

Debtor S&S Holding Company LLC (“S&S/Debtor”), by and through its counsel, Ann Brennan Law Offices hereby moves this Court for entry of an order pursuant to Sections 361 and 363(c)(2) of the Bankruptcy Code, and MLBR 4001-2, authorizing the use of the cash collateral of the secured creditors in this case, including but not limited to Radius Bank (“Radius”). **As set forth below, S&S will need to pay certain ongoing expenses, including insurance premiums by Saturday, July 15. Accordingly, S&S requests, pursuant to MLBR 903-1(g), emergency determination of this Motion by July 13, 2017.** In support of this Motion, S&S respectfully represents:

I. Introduction

1. On June 29, 2017 (the “Petition Date”) S&S filed a voluntary petition under Chapter 11 of the Bankruptcy Code in this Court.
2. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, S&S continues to manage its business and financial affairs as a debtor-in-possession. No creditors’ committee has yet been appointed in this case.

II. Background

3. S&S is a Massachusetts LLC that owns 4 investment real estate properties that are subject to sale. They are: 1) A three (3) family located at 4 Bartlett Place, Brockton, MA 02301 (“Bartlett Property”)(Subject to an offer dated June 21, 2017.); 2) A three (3) family located at 14 Oakland Place, Brockton, MA 02301 (“Oakland Place Property”)(Subject to a P&S dated June 14, 2017.); A four (4) family located at 446-448 Main Street, Brockton, MA 02301 (“Main Property”) (Subject to a Listing Agreement dated May 19, 2017.) (“Brockton Properties”); and 4) a single family located at 14 Concetta Way, Franklin, MA (“Concetta Property”) (Subject to an accepted offer dated June 14, 2017. Subsequently significant water damage to property so offer expired.).
4. This Chapter 11 filing was necessitated by a foreclosure sale scheduled by Radius for the three Brockton Properties for June 30, 2017.

III. The Secured Debt

5. The Property is subject to a Mortgage and Security Agreement and a Collateral Assignment of Leases and Rents dated August 4, 2015, given to Radius. As of the date of the filing of this petition, the mortgagee has not exercised any rights with regard to the Assignment of Rents.
6. The Debtor is not aware of any other liens on the Property and believes it is current with the property taxes. The Mortgage and Security Agreement secures rents, accounts, accounts receivables, contract rights and rents and profits.
7. The fair market value of the Property, based on a recently signed P&S, is \$380,000.00. The first mortgagee, Radius Bank is the holder of a first mortgage with a balance of approximately \$268,508.12. The Debtor anticipates that there will be net proceeds from the sale of the Property of approximately \$85,677.88. At the present time all three units are leased.

8. The Property is currently insured in the amount of \$400,000.00. A copy of the binder is attached hereto as Exhibit "A".
9. The Debtor receives rent with regard to the Property. This rent constitutes cash collateral. The Debtor has prepared a Projected Income and Expense Accounting for the period July 1, 2017 through September 1, 2017. Said Accounting is attached hereto as Exhibit "B".
10. The Debtor requests the entry of an Order by way of this Motion for Authority to Use Cash Collateral in the ordinary course of business to pay the expenses indicated in the Accounting and for the purpose of providing adequate protection to the mortgage holder.
11. The Debtor requests that said rents shall be used to make the insurance, property taxes and any other ordinary operating expenses for the Property.
12. The Debtor requests that said rents shall be used to pay the quarterly United States Trustee's fees.
13. The Debtor is requesting periodic monthly post-petition interest payments to Radius Bank be waived given a Buyer is located for this Property and a Purchase and Sales Agreement has been signed. The Debtor is offering a replacement lien. Said offer shall satisfy the Debtor's requirement regarding adequate protection given the large equity cushion, and that the Property shall be sold in a short period of time.
14. It is necessary for the Debtor to make use of the rents in order to maintain and preserve the value of the Property. Absent the Debtor's ability to use the cash collateral to maintain the Property and service the tenants, to pay usual and ordinary operating expenses of the Property, the value of the Property is certain to diminish.
15. The use of cash collateral is necessary in order to preserve the value of the Property of the Debtor's bankruptcy estate.

16. The rents are necessary for the purposes outlined and the Debtor has no other financing sources at this time that could be used to replace the cash flow from the rents.
17. As adequate protection, the Debtor proposes the following:
 - a. To continue maintaining insurance on the Property;
 - b. Enter an Order authorizing the Debtor to use cash collateral on a continuing basis in accordance with this Motion;
 - c. To grant to the mortgage holder a replacement lien on the same type of post-petition property of the estate against which the lienholder held lien as of June 29, 2017, the Chapter 11 petition date. Said replacement lien shall maintain the same priority, validity and enforceability as the mortgage holder's respective pre-petition lien. Said replacement lien shall be recognized only to the extent of the diminution in value of the mortgage holder's pre-petition collateral after the petition date resulting from the Debtors' use of cash collateral during the pendency of this case;
 - d. To set aside on a monthly basis and to pay when due the real estate taxes accruing on each property;The Debtor submits that this proposal adequately protects the interest of the lien holder with regard to its collateral.
17. The Debtor has not formulated its Plan of Reorganization at this juncture given the early stage of this case, except that it plans to sell the four (4) properties. An offer to purchase the property has been accepted. The Debtor plans to pay off its creditors with the net proceeds from the sale and the sale of the other three (3) properties owned by the Debtor.
18. The Debtor's initial premium payment of \$2,786.00 for the property insurance covering the three (3) Brockton properties is due July 15, 2017. Debtor will need authorization to make said payments using the post-petition rents.

WHEREFORE, the Debtors respectfully request that this Honorable Court:

1. Grant a hearing on an emergency basis with regard to this Motion;
2. Enter an Order authorizing the Debtor to use cash collateral on a continuing basis in accordance with this Motion;
3. Granting the mortgage holder a replacement lien on the rents of the Property securing its claims;
4. Schedule further hearings with regard to the use of cash collateral as the Court deems necessary to protect the interest of the mortgage holder; and
5. Enter an Order for such other and further relief as is meet and proper and as justice may require.

Respectfully submitted,

S&S HOLDING COMPANY LLC
By its Attorneys,
ANN BRENNAN LAW OFFICES

By: /s/Ann Brennan
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ROCKLAND, MA 02370
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CERTIFICATE OF SERVICE

I, Ann Brennan, do hereby certify that on July 7, 2017 I electronically filed with the Clerk of the Bankruptcy Court: EMERGENCY MOTION OF DEBTOR, S&S HOLDING COMPANY LLC FOR AUTHORIZATION ON AN INTERIM AND PERMANENT BASIS FOR USE OF CASH COLLATERAL REGARDING 14 OAKLAND PLACE, BROCKTON, MA and served same in the following manner upon the interested parties:

E-Mail Service: via the Court's CM/ECF system which sent notification of such filing to the following:

- Richard King USTPRegion01.WO.ECF@USDOJ.GOV
- Frank McGinn ffm@bostonbusinesslaw.com
- Troy L. Costa troycosta@utrlaw.com

Mail Service: via Regular, first-class United States mail, postage fully pre-paid, addressed to:

S&S Holding Company LLC
430 Franklin Village Drive #273
Franklin, MA 02038

Creditors and Interested Parties attached as Exhibit "A".

/s/Ann Brennan
Ann Brennan, Esq.

S&S.OAKLAND.usecashcollateral.7.7.17

EXHIBIT "A"

FITZSIMONS DEVELOPMENT CORPORATION
D/B/A EASTON ROOFING
17 REYNOLDS STREET
NORTH EASTON, MA 02356

RADIUS BANK
ATTN: LOAN SERVICING
1 HARBOR STREET, STE. 201
BOSTON, MA 02210

WESTFIELD MANAGEMENT
207 PLEASANT STREET
ROCKLAND, MA 02370