

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

IN RE:	)	
	)	
PEPPERELL MILLS LIMITED	)	Chapter 11
PARTNERSHIP	)	
	)	Case No. 18-11804-JNF
Debtor	)	
	)	

RENEWED MOTION BY DEBTOR FOR ENTRY OF AN AGREED INTERIM ORDER PROVIDING ADEQUATE PROTECTION AND (1) USE OF CASH COLLATERAL, (2) GRANTING OF REPLACEMENT LIENS, (3) SCHEDULING A HEARING ON THE FURTHER USE OF CASH COLLATERAL, AND (4) ADDITIONAL RELIEF

Pursuant to Section 105 and 363 of Title 11 of the United States Code, Federal Rules of Bankruptcy Procedure 2002, 4001 and 9014 and MLBR 4001-2, PEPPERELL MILLS LIMITED PARTNERSHIP, the above-captioned debtor and debtor-in-possession in this proceeding (the “Debtor”), hereby move this Honorable Court, for entry of an order authorizing the use of cash collateral generated by rents collected (the “Cash Collateral”) to maintain the value of the property and to pay certain actual and necessary expenses of the Debtor with respect to the real property owned by the Debtor. Pursuant to this motion, the Debtor respectfully requests the entry of an order:

- (1) Authorizing use of Cash Collateral in the ordinary course of business pursuant to the proposed budget attached as Exhibit A;
- (2) Granting replacement liens to MDFA, to the extent described in this motion, to provide adequate protection for the use of Cash Collateral;

- (3) Entering the order authorizing use of cash collateral, granting of replacement liens and other relief, and adequate protection. (*Agreed Interim Order* – Debtor will submit the proposed order prior to the hearing scheduled for June 29, 2018 at 11:00 a.m.).

I. Factual Background

A. General

1. On May 15, 2018 (the “Petition Date”) the Debtor filed a voluntary for relief under Chapter 11 of the United States Bankruptcy Code (the “Code”) in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

2. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

B. Debtor’s Business and Background

3. The Debtor is a Massachusetts limited partnership which owns the commercial real property located at 502 Bedford Street, Fall River, Massachusetts (“Real Property”). The all-granite, 6-story mill building was built in 1870, contains 217,000± square feet. The building is in good shape and primarily used for textile/clothing/fabric manufacturing and was the former headquarters of the “Anderson Little” men’s clothing line. The Debtor has owned the property since 1993 and there are currently seven tenants operating in the building.

4. The Debtor has received an offer to purchase the Real Property for approximately \$1,800,000 inclusive of the payment of the outstanding real estate taxes owed to the City of Fall River, MA (approximately \$200,000). This offer is from a present tenant of the building

(Marrow Manufacturing). There is also interest expressed by another, unrelated 3rd party to purchase the real property for approximately the same price.

5. On June 15, 2018, Debtor submitted an *Expedited Motion by Debtor for Entry of Agreed Interim Order Providing Adequate Protection and (1) Use of Cash Collateral; (2) Granting of Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Additional Relief* (Docket No. 23) (“Cash Collateral Motion”). A hearing on this Cash Collateral Motion was held on June 21, 2018 and approved by the Court. Authorization for Cash Collateral expires on June 30, 2018.

C. MDFA’s Loan

6. The Debtor and MassDevelopment New Markets CDE #1, LLC (the “**MassDevelopment CDE**”) entered into certain loan arrangements (collectively, the “**Loan Arrangements**”) evidenced by, among other documents, instruments and agreements, the following (collectively, the “**Loan Documents**”): (i) that certain Loan Agreement dated as of March 18, 2008 by and between the MassDevelopment CDE and the Debtor; (ii) that certain Commercial Promissory Note dated March 18, 2008 made by the Debtor payable to the MassDevelopment CDE in the original principal amount of \$1,000,000.00 (the “**Note**”); (iii) that certain Guaranty dated March 18, 2008 executed and delivered by the Debtor to the MassDevelopment CDE pursuant to which the Debtor guaranteed to the MassDevelopment CDE the payment of a certain \$2,000,000 promissory note dated March 18, 2008 made by Griffin Manufacturing Company, Inc. (“**Griffin**”)¹ in favor of the MassDevelopment CDE (the

¹ Griffin Manufacturing Company was a manufacturing company with its principal business located at the Debtor’s property. Griffin was owned by one of the Debtor’s principal, Gene Laudon. In or around the summer of 2017, BankFive conducted a private sale of all of Griffin’s assets to Marrow Manufacturing and received approximately \$135,000 towards the first lien on Griffin personalty, furniture, fixtures and equipment and other assets held by BankFive.

“**Guaranty**”); (iv) that certain Mortgage and Security Agreement dated March 18, 2008 granted by the Debtor to the MassDevelopment CDE encumbering the Mortgaged Property (the “**Mortgage**”); (v) that certain Collateral Assignment of Leases and Rents dated as of March 18, 2008 granted by the Debtor in favor of the MassDevelopment CDE encumbering the Mortgaged Property (the “**Assignment of Leases**”); (vi) that certain Side Letter Agreement dated March 20, 2008 between the MassDevelopment CDE and the Debtor; and (vii) that certain Hazardous Substances Compliance and Indemnification Agreement dated March 18, 2008 by the Debtor and Griffin, among others, in favor of the MassDevelopment CDE. MDFA is the holder of the Loan Documents by assignment from the MassDevelopment CDE.

7. As of this date MDFA asserts approximately \$3,247,744.20 due and owing.

8. MDFA claims a first-priority security interest in the Real Property, together with a security interest grant encumbering all fixtures, equipment and all other tangible personal property located on or intended for use in connection with the Real Property, pursuant to the Mortgage and Guaranty, and (ii) the leases and rents from the Real Property pursuant to the Assignment of Leases.

D. Other Lien Holders

9. In March 2008, Fall River Five Cents Savings Bank d/b/a BankFive (“BankFive”) made a loan to Griffin, as Borrower, in the amount of \$5,000,000². The Debtor secured the indebtedness to Griffin with a second mortgage on the Real Property as well as a first lien on the Griffin assets. The Debtor also granted BankFive an interest in all its assets, including rents and leases. In addition, in September 2013, BankFive made a loan to the Debtor in the amount of

² Four Amendments have been recorded at the Registry of Deeds reducing the amount of indebtedness to \$2,500,000.

\$673,000, secured by the Debtor's Real property. BankFive is currently owed approximately \$2,100,000.

10. In September 2013, JFFR³, made a loan to Griffin in the principal amount of \$250,000. This loan was secured by a mortgage granted by the Debtor. JFFR is owed approximately \$260,000. JFFR's mortgage and financing statement grants them an interest in all the Debtor's assets, including accounts and accounts receivables.

D. Events Precipitating the Bankruptcy Filings

11. Though Griffin was the primary tenant of the building when the Debtor purchased the property, there was never enough other tenants to lease the additional space to maintain sufficient cash flow.

12. The sale of Griffin by BankFive further disrupted the Debtor's ability to pay until it was forced into foreclosure after years of negotiations.

13. Due to the lack of cash flow, and pressure from various lenders, it became increasingly difficult for Debtor to continue to operate.

14. Despite the fact that the Debtor had an offer to purchase the Real Property, which MDFA consented to the short sale, the junior lienholders could not agree and consent to a sale and release of their liens could not be procured. In January 2018, MDFA scheduled a foreclosure sale of the Real Property. This auction was postponed until May 2018, at which time MDFA elected to proceed. In order to maximize value, through an orderly third-party, arms-length sale, the Debtor elected to file this chapter 11 and utilize the §363 sale process.

³ JFFR is administered by the Fall River Office of Economic Development ("FROED")

II. REQUESTED USE OF CASH COLLATERAL AND OFFER OF ADEQUATE PROTECTION

A. Use of Cash Collateral

15. The Debtor requires the use of the Cash Collateral in order to fund the Debtor's ongoing operations pursuant to 11 U.S.C. 363(c)(2)(A). Absent the use of the Cash Collateral Debtor will be unable to pay the usual and ordinary operating expenses of the business. The use of the Cash Collateral is therefore necessary to preserve the value of the Debtor's estate⁴.

16. The Debtor requests authority to utilize, substantially in accordance with the monthly Budget (attached as Exhibit A), Cash Collateral to fund its operations.

17. The Debtor proposes to adequately protect the MDFA for the use of any Cash Collateral as follows:

a. by granting a replacement lien on the property to the extent the lien is properly perfected in pre-petition collateral;

b. if and to the extent (i) the Cash Collateral used by the Debtor *less* (ii) the reduction in the Pre-Petition Indebtedness exceeds the value of the Post-Petition Collateral (the "Post-Petition Shortfall"), then MDFA shall have a claim under §503(b) of the Bankruptcy Code in the amount of the Post-Petition Shortfall which shall, pursuant to §507(b) of the Bankruptcy Code, have priority over all other claims entitled to priority under §507(a)(2), with the sole exception of quarterly fees due to the United States Trustee pursuant to 28 U.S.C. §1930;

⁴ The Debtor segregated funds and is just beginning to collect June rents. Since the filing of the Petition, the Debtor has segregated all funds into its DIP account. MDFA, pending negotiations of the Agreed Interim Order on the use of Cash Collateral and subject to further Court approval, consented to the Debtor paying (i) the weekly net salary of the building superintendent (approximately \$825), and (1) the down payment of the liability and workers compensation insurance coverage.

- c. by maintaining insurance on Debtor's personal property and by paying all post-petition vendor and other administrative costs on a timely basis; and
- d. by continuing to maintain and preserve the property for the benefit of the Estate.

18. Approval of this Motion and the use of Cash Collateral on the terms identified in this Motion is in the best interest of the Debtor, the Debtor's estate and its creditors.

19. Absent the use of the Cash Collateral, Debtor would be unable to preserve the property and maintain adequate insurance coverage and pay the usual and ordinary operating expenses actually incurred by the Debtor. The use of cash collateral will allow the Debtor to preserve the going-concern value of the Real Property. Without the use of cash collateral to pay these expenses the value of the property would likely diminish.

20. The Debtor requests use of Cash Collateral from the date of the proposed Interim Order through the Termination Date (as defined) pursuant to § 363(c)(2) from rents, provided that such Cash Collateral used for Debtor's actual and necessary expenses in an amount up to 110% of aggregate expenses set forth in the Budget on a monthly basis or as otherwise agreed by MDFA.

C. Adequate Protection

21. 11 U.S.C. Section 363 of the Code provides that a party with an interest in property proposed to be used, sold, or leased by the debtor may receive adequate protection of such interest before the debtor may use, sell or lease such property. The Debtor proposes to provide adequate protection to MDFA through granting of post-petition liens on the Debtor's

property, and through the use of the Cash Collateral to maintain the value of the Debtor's property.

22. Section 361 of the Code provides that when adequate protection is required under Section 363 of the Code such adequate protection may be provided by –

“(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under Section 362 of this title, use, sale or lease under section 363 of this title...

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity's interest in such property; or...”

23. Debtor proposes to use the Cash Collateral in order to maintain and operate the business. As such, Debtor proposes granting of a replacement lien on the property, as adequate protection of MDFA's claim.

24. What constitutes adequate protection varies with the facts and circumstance of each particular case. Bankruptcy courts are vested with discretion to determine the form of protection that best reflects the spirit and intent of Section 361. *See In re Lackow Brothers, Inc.*, 10 B.R. 717, 720 (Bankr. S.D. Fla. 1981); *In re Family Investments, Inc.* 8 B.R. 572 (Bankr. W.D. Ky. 1981).

25. Regardless of its form, the entitlement to and measure of the adequate protection required is always determined by the extent of the diminution of value, if any, in the secured creditor's collateral, during the course of the bankruptcy case. *See In re First South Savings Assoc.* 820 F.2d 700, 710 (5th Cir. 1987).

26. “It is intended by the Bankruptcy Code only to assure that a secured creditor, during the pendency of a bankruptcy case, does not suffer a loss in the value of its interest in property of the bankruptcy estate.” *In re Markos Gurnee Partnership* 252 B.R. 712, 716 (Bankr. N.D. Ill. 1997). *See also United Savings Association of Texas v. Timbers of Inwood Forest Assoc. Ltd.*, 484 U.S. 365 (1988).

27. As adequate protection, Debtor proposes, proposes to grant MDFA a replacement lien on the property of the estate against which MDFA held a lien as of the Petition Date, and proposes to maintain and operate the property as a going concern, thus maintaining the property’s value. The replacement lien shall maintain the same priority, validity and enforceability as MDFA’s pre-petition lien. The replacement lien shall be recognized only to the extent of the diminution in value of MDFA’s pre-petition collateral after the Petition Date resulting from the Debtor’s use of the Cash Collateral during the bankruptcy case.

28. The Cash Collateral will be used as described in Debtor’s budget attached. As such, the Cash Collateral is being used to preserve and maintain the Debtor’s property. The Debtor’s use of its income to operate and maintain the property constitutes additional adequate protection. *See In re McCann*, 140 B.R. 926, 929 (Bankr. D. Mass. 1992) *citing with approval In re Prichard Plaza, L.P.* 84 B.R. 298 (Bankr. D. Mass. 1988).

29. In addition, the Debtor’s property is currently insured. This provides further adequate protection to the lienholders.

30. The Agreed Interim Order contains further provisions requiring the Debtor to cease using Cash Collateral upon the occurrence and continuance of certain defined “Termination Events” following, in most instances, three days written notice from MDFA to the Debtor. The Agreed Interim Order provides that any Committee or Trustee has must file any

objection or claim against MDFA within sixty (60) days of appointment or retention or such claims and defenses shall be barred. To the extent the provisions of the Agreed Interim Order may vary from the requirements of MLBR 4001-2(c), they have been set forth in bold print in the Agreed Interim Order.

31. For all the foregoing reasons, MDFA's collateral is not diminishing in value and the use of the Cash Collateral is therefore warranted.

III. NOTICE

32. The Debtor has served this Motion and proposed order on (a) all known secured creditors; (b) the Office of the United States Trustee; (c) the Debtor's 20 Largest Unsecured Creditors; and (d) all parties who have filed a notice of appearance and request for notices in this proceeding.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order:

- a. Approving the notice of this motion as described above;
- b. Authorizing the Debtor to use Cash Collateral on a continuing basis;
- c. Granting MDFA a replacement lien in accordance with the terms of this motion;
- d. Scheduling additional consideration of the use of the Cash Collateral following the expiration of the authorization in this motion; and

e. Granting such other relief as is just and proper.

Respectfully submitted
The Debtor,
By its Attorney,

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Dated: June 22, 2018

EXHIBIT A

			Jun-18	Jul-18	Aug-18
Beginning Cash			\$14,193.13	\$26,707.25	\$39,835.54
Monthly Rental Income ¹			\$30,417.24	\$30,417.24	\$30,417.24
Tenant Reimbursement (National Grid)			\$10,000.00	\$10,000.00	\$10,000.00
Total Income			\$40,417.24	\$40,417.24	\$40,417.24
Expenses					
Atlantic Elevator South Co., Inc	Elevator service (freight)		\$435.00	\$435.00	\$435.00
Big Blue Bug Solutions	Pest Control		\$88.00	\$88.00	\$88.00
City of Fall River ²	Taxes, Water, Sewer		\$4,692.00	\$4,692.00	\$18,977.00
Home Depot Credit Services	Miscellaneous Supplies		\$70.00	\$70.00	\$70.00
Liberty Utilities	Gas		\$150.00	\$150.00	\$150.00
National Grid	Electricity		\$12,750.00	\$12,750.00	\$12,750.00
Republic Services #097	Trash service		\$435.00	\$435.00	\$435.00
ThyssenKrupp Elevator	Elevator service (passenger)		\$382.02	\$382.02	\$382.02
Duarte's Commercial Cleaning ³	Common Area Cleaning		\$600.00	\$400.00	\$500.00
Verizon	Telephone - Elevator		\$374.00	\$374.00	\$374.00
Payroll & Payroll Taxes			\$4,871.00	\$4,871.00	\$4,871.00
W/C Insurance			\$597.30	\$183.13	\$183.13
Property Insurance			\$1,506.02	\$1,506.02	\$1,506.02
Liability Insurance			952.78	952.78	952.78
Miscellaneous Office Expense	May - check order				
Total Expenses			\$27,903.12	\$27,288.95	\$41,673.95
Monthly Net Cash Flow			\$12,514.12	\$13,128.29	-\$1,256.71
Ending Cash			\$26,707.25	\$39,835.54	\$38,578.83
1. Rent Roll: BC&J Manufacturing, LLC (\$1,650); Clark Security, Inc. (\$550); Creative Auction (\$3,380.60); George Bigelow (\$200); Merrow Mfg, LLC (\$13,259.16); Merrow Sewing (\$6,210); Penny Pockets (\$3,286); T-Mobile USA, Inc (\$1,881.48)					
2. June and July payments are calculated for May 16-June 30 (4th Q. FY 2017) (\$9,384/2). August payment represents 1st FY2019 payment.					
3. Debtor owes two weeks from May					
Total Space in Building - 220,000 sf; Total Rented/occupied = approx 170,000 sf; amount of vacant space = approx. 50,000 sf					