

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(CENTRAL DIVISION)**

In re:

CON-NIC APARTMENTS, LLC,

Debtor.

**Chapter 11
Case No. 18-41697-EDK**

MOTION FOR INTERIM AND FINAL USE OF CASH COLLATERAL

To the Honorable Elizabeth D. Katz, United States Bankruptcy Judge:

NOW COMES the debtor, Con-Nic Apartments, LLC (the “Debtor”), and hereby moves this Court, pursuant to 11 U.S.C. §§ 105(a), 361, and 363, and 364(c), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure, and Rule 4001-2 of the Massachusetts Local Bankruptcy Rules (“MLBR”), for the entry of an Order: (i) authorizing the interim use of cash collateral; (ii) scheduling a further hearing on the final use of cash collateral; and (iii) authorizing the final use of cash collateral. In support of this Motion, the Debtor represents as follows:

BACKGROUND

1. On September 12, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

2. Pursuant to the provisions of §§ 1107 and 1108 of the Bankruptcy Code, the Debtor has continued to operate its business and manage its business affairs as a Debtor-in-Possession. No Trustee or Examiner has been requested or appointed.

3. The Debtor owns two apartment buildings in Gardner, Massachusetts, and serves as the landlord to 12 residential tenants.

4. The filing of the Debtor's bankruptcy case resulted from a number of unexpected events that lead to the Debtor being unable, temporarily, to keep current with mortgage payments to Fidelity Co-Operative Bank ("Fidelity"). The arrearage owed to Fidelity lead to the bank scheduling a foreclosure. Accordingly, Chapter 11 relief was necessary in order to allow the Debtor an opportunity to cure its arrears.

5. As of the Petition Date, the Debtor held no cash as prior to September rents coming due, and in advance of scheduled foreclosures on the Debtor's properties, Fidelity Co-Operative Bank exercised its rights under an assignment of leases and rents, which after the payment of normal monthly expenses for the properties in August, left the Debtor's bank account completely empty.

6. The Debtor intends, however, to collect rents due of October 1, 2018. The anticipated rent to be collected each month will total approximately \$10,300.00.

7. As of the Petition Date, the sole creditor holding a security interests in the assets of the Debtor that may constitute cash collateral is Fidelity. Fidelity holds a security interest in the approximate amount of \$570,000.00. There are no other secured creditors.

8. Unsecured debt totals less than \$5,000.00.

JURISDICTION

9. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core matter within the meaning of 28 U.S.C. § 157 (b) (2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

SUMMARY OF RELIEF REQUESTED

10. The Debtor seeks authorization to use "Cash Collateral" as defined in § 363(a) of the Bankruptcy Code. Pursuant to Rule 4001 (b) (1) (B) of the Federal Rules of Bankruptcy Procedure, the Debtor represents as follows:

a. Parties Claiming an Interest in Cash Collateral

On or about June 9, 2017 the Debtor refinanced existing obligations to Colonial Co-Operative Bank ("Colonial"), whereby Colonial loaned the Debtor a total of approximately \$581,000.00 in two loans, secured by two agreements each styled as Commercial Mortgage, Security Agreement and Assignment of Leases and Rents. Fidelity is the Successor-by-Merger to Colonial.

b. Purposes for Use of Cash Collateral

The Debtor requires the use of cash collateral to continue its business operations uninterrupted. The Debtor intends to use the cash collateral to pay normal monthly expenses including real estate taxes as they come due, utilities, insurance and to pay for repairs and other incidentals as necessary. The Debtor seeks authority to use certain assets of the Debtor that may constitute cash collateral substantially in accordance with the Budget annexed hereto as Exhibit "A".

c. Material Terms of Use of Cash Collateral; Duration

The Debtor requests the use of cash collateral in accordance with, and on the same terms as, the underlying loan documents, between the Debtor and parties holding valid, perfected security interests in the cash collateral. The Debtor seeks authorization to use cash collateral during the term of any Interim Order that may

be entered in connection with this Motion and during the term of the Chapter 11 case upon the entry of any Final Order on this Motion.

d. Cash Payments to be Provided.

The Debtor proposes to make monthly payments of principal and interest, at the contract rate, to Fidelity, of \$4,544.52 ("Post-Petition Payments").

e. Reporting

Within two (2) business days after filing, Debtor shall give TD Bank copies of each report filed with the Office of the U.S. Trustee.

RELIEF REQUESTED

11. By this Motion, and pursuant to § 363 of the Bankruptcy Code, Rule 4001 of the Federal Rules of Bankruptcy Procedure and Rule 4001-1 of the Massachusetts Local Bankruptcy Rules, the Debtor requests the use of cash collateral.

12. The Debtor requires the immediate use of cash collateral to fund operational and administrative expenses. Absent the use of cash collateral, the Debtor will be forced to cease operations, destroying the going concern value of the Debtor's business to the detriment of the Debtor, its Estate, and its creditors.

13. Use of the cash collateral is, therefore, critical to preserve and maintain the Debtor's Estate, to promote a successful reorganization of this Chapter 11 bankruptcy case, and to ensure the safety of the Debtor's patients. Granting the requested relief, therefore, is necessary to prevent immediate and irreparable harm to the Debtor, its Estate, the Secured Creditors, the Debtor's employees, and its patients.

14. Section 363(e) of the Bankruptcy Code provides, in relevant part, that the use of property subject to a security interest shall not be permitted unless the secured creditor consents or the secured interest in such property is adequately protected. 11 U.S.C. § 363(e).

15. The Debtor anticipates that Fidelity will consent to the use of cash collateral.

16. To the extent Fidelity withholds consent to the use of cash collateral, the Debtor submits that the payments to Fidelity set forth in Paragraph 10(d) above, constitutes adequate protection for Fidelity.

17. The Debtor asserts that the Budget (Exhibit "A") demonstrates that income generated by the Debtor's continued operation of the business will generate sufficient cash flow to pay the accruing obligations, including operational and administrative expenses.

NOTICE

18. Pursuant to MLBR 4001-2, notice of this Motion has been given to: (i) Fidelity; (ii) Howard D'Amico, Esq., counsel to Fidelity; (iii) taxing authorities; (iv) the largest twenty (20) unsecured creditors; (v) all creditors having requested notice pursuant to Rule 2002; and (vi) the Office of the United States Trustee.

19. Pursuant to MLBR 4001-2, notice of this Motion has been given to: (i) Fidelity; (ii) Howard D'Amico, Esq., counsel to Fidelity; (iii) taxing authorities; (iv) the largest twenty (20) unsecured creditors; (v) all creditors having requested notice pursuant to Rule 2002; and (vi) the Office of the United States Trustee.

20. The Debtor requests that a hearing on this Motion be scheduled as soon as possible because the use of cash is essential to avoid immediate and irreparable harm to the Debtor.

WHEREFORE, the Debtor requests the entry of the attached Interim Order: i) authorizing the interim use of cash collateral; ii) scheduling a Final Hearing on this Motion, prescribing the form and manner of the Notice of the final hearing authorizing the use of cash collateral; and iii) providing such other and further relief as the Court deems just and proper.

Respectfully submitted,

CON-NIC APARTMENTS, LLC

/s/James A. Wingfield

James A. Wingfield, BBO #657561

Law Offices of James Wingfield

1102 Pleasant Street, Suite 828

Worcester, MA 01602

Phone: (508) 797-0200

Fax: (508) 797-0201

Email: wingfield@wingfieldlaw.com

Dated: October 3, 2018

EXHIBIT A

Monthly Revenue (Rents) \$10,300.00

Expenses:

Insurance \$ 1,156.00

Garbage Collection \$ 227.36

Taxes \$ 882.00

Water & Sewer \$ 525.00

Electric \$ 75.00

Heating Oil \$ 525.00

Misc. Repair Costs \$ 100.00

TOTAL EXPENSES: \$ 3,490.00

Fidelity Loan Payment \$ 4,544.52

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2018, I caused copies of the following document to be served upon each party noted on the attached Service List by First-Class United States mail, postage pre-paid or through the Court's electronic noticing system:

MOTION FOR INTERIM AND FINAL USE OF CASH COLLATERAL

/s/ James A. Wingfield

James A. Wingfield, BBO #657561
Law Offices of James Wingfield
1102 Pleasant Street, Suite 828
Worcester, MA 01602
Phone: (508) 797-0200
Fax: (508) 797-0201
Email: wingfield@wingfieldlaw.com

Dated: October 3, 2018

SERVICE LIST

**Con-Nic Apartments, LLC, Debtor
Chapter 11, Case No. 18-41697-EDK**

Richard King, Esq.
Office of U.S. Trustee
446 Main Street
14th Floor
Worcester, MA 01608
(U.S. Trustee)
Via ECF Service

Howard B. D'Amico
Howard B. D'Amico, P.C.
33 Waldo Street
Worcester, MA 01608
(Counsel to Fidelity Co-Operative Bank)
Via ECF Service

City of Gardner
95 Pleasant Street
Gardner MA 01440
(Unsecured Creditor)
Via First Class Mail

Fidelity Co-Operative Bank
9 Leominster Connector
Leominster MA 01453
(Secured Creditor)
Via First Class Mail