

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

In re: *
*
EVERGREEN INFORMATION & *
TECHNOLOGY SERVICES, INC. * Case No. 18-17749
* (Chapter 11)
Debtor-in-Possession. *
*

* * * * *

EMERGENCY MOTION FOR USE OF CASH COLLATERAL

Evergreen Information Technology Services, Inc., (“Evergreen”) as Debtor and Debtor-in-Possession in the above -captioned Chapter 11 case, hereby submits this motion (the “Motion”) for entry of an interim order, substantially in the form attached hereto as **EXHIBIT A**, authorizing the Debtor’s use of cash collateral and scheduling a final hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the “**Final Order**”, and together with the interim order the “**Cash Collateral Order**”, pursuant to sections debtors and debtors in possession in the above-captioned chapter 11 pursuant to sections 105(a), 361, 363(b), and 363(c)(2) of chapter 11 of title 11 of the United States Code, §§ 101–1532, as amended (the “**Bankruptcy Code**”).¹ In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and

¹ The Debtors are in the process of investigating the validity of the Secured Creditors’ prepetition liens on the accounts, accounts receivable and other collateral, as a result, fully reserve their rights to later challenge, if appropriate, the secured status of any, or all, of the Secured Creditors. Further, the Debtor directly challenges that the alleged secured Creditor Zones, Inc., is entitled to any property at all, whether secured or unsecured. Nothing herein shall be construed as an admission as to the validity of any prepetition liens nor as a waiver of the right to later challenge such liens, all such rights being expressly reserved.

1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Maryland (the “**Local Rules**”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

2. Venue of this Chapter 11 Case and this Motion is proper in this District Pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 363(b), and 363(c)(2) of the Bankruptcy Code, Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 4001-2.

BACKGROUND

4. The Debtor-in-Possession is an All-Inclusive Information Technology Integration and Support Service Provider with two business units; Professional Services & Interconnectivity and Multimedia Design. The primary focuses of the Debtor are as follows:

- Security Operations Center (SOC) / Assessment / ATO support
- -Service desk operations (ITIL support
- Telecommunication support
- Project / Program operations management
- Internal & External Marketing Support
- Emerging technologies support
- Infrastructure & Cabling support
- VMWare (SANs)
- Network & Infrastructure operations (NIO)
- Enterprise wide implementations
- Agency migration management
- Conference room as a service
- Legacy video teleconferencing VTC as a Service (VTaAS)

5. The Debtors primary source of income over the years has been by and through

government contracts, which have taken a downturn in the last couple of years.

RELIEF REQUESTED

6. By this Motion, and pursuant to sections 105(a), 363(b), and 363(c)(2) of the Bankruptcy Code, the Debtors request the Court enter an order (a) authorizing the Debtors' use of cash collateral, (b) approving the adequate protection to the Secured Creditors and (b) scheduling a final hearing to consider entry of an order granting the relief requested in the Motion on a final basis to consider the relief requested in this Motion and the entry of a final order and approving.

7. Section 363(a) of the Bankruptcy Code defines cash collateral, which includes, *inter alia*, deposit accounts, whether existing before or after the commencement of a case under the Bankruptcy Code.

8. Further, the Accounts Receivable and proceeds therefrom constitute "cash collateral" pursuant to 11 U.S.C. § 541(a)(6), 11 U.S.C. § 552(b), and 11 U.S.C. § 363(a). Cash collateral also includes post-petition accounts receivable subject to a continuing security interest under any security agreement executed before the commencement of the case for purposes of 11 U.S.C. § 552(b), and such extends to property of the Debtor acquired pre-petition and to any proceeds, products, offspring, or profits of such property post-petition, including accounts receivable unless the Court orders otherwise.²

9. As such, the Debtors bank accounts and accounts receivable may constitute cash collateral of the secured creditors.

² The Debtor has assigned approximately \$241,809.60 of its accounts receivable to Associated Receivables Funding, Inc. ("A/R Funding) pre-petition that is still outstanding. Through their factoring agreements with A/R Funding, the Debtor has assigned its accounts receivable and granted a security interest; for advanced funding to pay monthly operating obligations of the business. The Debtor contemporaneously with the filing of the instant motion is filing a Motion to Approve Financing with A/R Funding with respect to post-petition accounts receivable.

10. Section 363(c) further provides as follows:

(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The Trustee may not use, sell, or lease cash collateral under paragraph

(1) of this subsection unless –

(A) each entity that has an interest in cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provision of this section.

U.S.C. § 363(c)(1)–(2).

11. Notwithstanding the objection of a party with an interest in cash collateral, pursuant to section 363(e), the court may authorize the use of cash collateral if such creditors' interest in the cash collateral is adequately protected.

12. The Debtor's use of their bank accounts and accounts receivable under the circumstances of this Chapter 11 case are authorized pursuant to section 363(c) of the Bankruptcy Code.

13. As set forth below, to the extent there are any valid Secured Creditors' interest in the bank account(s) and/or accounts receivable, the interest is adequately protected inasmuch as the use of the accounts to operate the business is necessary to keep the business operating.

Without the ability to use the accounts and/or accounts receivable, there will be no means by which the Secured Creditors or otherwise can realize any payment on their claims.

14. The principal purpose of adequate protection “is to assure that the lender’s economic position is not worsened because of the bankruptcy case.” *In re DeSardi*, 340 B.R. 790, 804 (Bankr. S.D. Tex. 2006). A secured creditor is “not entitled to adequate protection payments without a showing of economic depreciation.” *In re Immenhausen Corp.*, 164 B.R. 347, 352 (Bankr. M.D. Fla. 1994) (citing *United Savings Ass’n v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 369-73 (1988)). The interest in property that is entitled to protection is value of the collateral securing such claim. *Id.* It follows therefore that where a secured creditor’s interest and the value of the collateral is not diminishing by its use, sale or lease, the secured creditor’s interest is adequately protected. *Id.*

15. The Bankruptcy Code does not explicitly define adequate protection, but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including other relief resulting in the indubitable equivalent of the secured creditor’s interest in such property. *See* 11 U.S.C. § 361. Because the term “adequate protection” is not defined in the Bankruptcy Code, the precise contours of the concept are necessarily determined on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp. Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (citing *In re O’Connor*, 808 F.2d 1393, 1396–97 (10th Cir. 1987)); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1995) (same); *In re Senior Care Props., Inc.*, 137 B.R. 527, 528 (Bankr. N.D. Fla. 1992) (same); *In re Family Place P’ship*, 95 B.R. 166, 171 (Bankr. E.D. Cal. 1989); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984); *see also* S. Rep. No. 95-989, 95th Cong., 2d Sess. 54 (1978) and H.R. Rep. No. 595, 95th Cong., 2d Sess. 339 (1978) (acknowledging that the statute confers upon “the parties and the courts flexibility by allowing such other relief as will

result in the realization by the protected entity of the value of its interest in the property involved.”). **See Exhibit B.**

16. Preserving the value of the collateral against the decline in value that would result from a precipitous liquidation is a crucial factor to consider in making an adequate protection determination. *In re Snowshoe Co. Inc.*, 789 F.2d 1085, 87 (4th Cir. 1986) (affirming 364(d) financing order where trustee reported that the collateral would lose from 50% to 90% of its value if operations ceased); *In re Ralar Distribs., Inc.*, 166 B.R. 3, 6 (Bankr. D. Mass. 1994), *aff’d* 182 B.R. 81 (D. Mass.), *aff’d* 69 F.3d 1200 (1st Cir. 1995).

17. Accordingly, to meet the general rehabilitative purpose of chapter 11, which requires that debtors have the ability to access their cash to operate, the Debtors request authority to use the Bank Accounts and accounts receivable.

18. In this Chapter 11 case, the Secured Creditors are adequately protected because without access to the bank accounts and accounts receivable, the Debtor would have no means by which to pay its employees and no other sources of income to do the same, which would make it impossible for the Debtor to remain in business and successfully reorganize.

19. Based on the foregoing, the Debtors respectfully submit that entry of an Order authorizing the interim use of cash collateral and scheduling a Final Hearing to approve the use of cash collateral on a final basis is necessary and appropriate.

REQUEST FOR FINAL HEARING

20. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtor requests that the Court set a date for the Final Hearing and fix the date and time prior to the Final Hearing for parties to file objections to the relief requested by this Motion

**IMMEDIATE RELIEF IS NECESSARY TO AVOID
IMMEDIATE AND IRREPARABLE HARM**

21. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. The Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors.

NOTICE

22. Notice of this Motion has been given to (a) the Office of the United States Trustee serving the District of Maryland; (b) the parties included on the Debtors’ list of largest unsecured creditors; (c) the parties included in the Debtors’ proposed creditor matrix filed with their petitions; (i) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rules. In light of the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required. The Debtors submit that, under the circumstances, no other or further notice need be given.

CONCLUSION

The Debtor respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors' interim and final use of cash collateral and (b) authorizing, but not requiring, the Debtors to continue remitting all Policy Payments and any other amounts due related to the Policies which are the most significant assets of the Debtors' estates and to satisfy certain obligations in respect thereof and granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

**AXELSON, WILLIAMOWSKY,
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