

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - GRAND RAPIDS**

In re:

PAMELA F.R.O.G., LLC,

Debtor in Possession.

Case No. 16-04965
Chapter 11
Hon. Scott W. Dales
Filed September 28, 2016

Michael S. Mahoney, Esq. (P71428)
MICHAEL S. MAHONEY, P.C.
Attorney for Debtor in Possession
Capitol Commerce Center
912 Centennial Way, Suite 320
Lansing, MI 48917
Tel: (517) 323-4410
Fax: (517) 323-4503

**DEBTOR'S RULE 4001 MOTION TO USE CASH COLLATERAL FOR
PAYMENT OF PREPETITION PROPERTY TAXES AS AGREED**

NOW COMES, the Debtor, PAMELA F.R.O.G., LLC, through its attorney, MICHAEL S. MAHONEY, P.C., by Michael S. Mahoney, Esq. (P71428), and for its *Rule 4001 Motion to Use Cash Collateral for Payment of Prepetition Property Taxes as Agreed* (the "Motion"), requests this Court enter an order permitting Debtor to use cash collateral on deposit for the payment of 2015 delinquent property taxes due Ingham County Treasurer in connection with Debtor's principal place of business located at: 1205 Pierce Road, Lansing, MI 48933 (the "Property"), saying in support thereof:

1. Debtor brings its Motion pursuant with the United States bankruptcy code (the "Code"); chiefly, 11 U.S.C. § 363(c)(2), as well as with Fed R. Bankr. P. 4001(b)(1), and L.B.R. 4001-3.
2. The Debtor filed for protection under Chapter 11 of the Code on September 28, 2016.

3. The Debtor is a Michigan Limited Liability Company that operates its ongoing concern from two parcels of commercial real property, chiefly from its principal place of business located at: 1205 Pierce Road, Lansing, Michigan (the "Property").

4. The Debtor operates a commercial daycare business on the Property as Debtor in possession.

5. The Property is encumbered by the 1st position secured claim of Creditor, Bayview Fund Acquisitions, IIIb, LLC as successor in interest to CBC Trust 2011-1 (the "Creditor" or "Bayview").

6. Bayview asserts a secured claim against the Property and Debtor's cash collateral in the amount of \$606,454.55, identifying in its amended *Proof of Claim*, the value of the Property as being \$655,000. [See Claim 3, as amended].

7. Upon information and belief, Bayview is the primary interested creditor.

8. Bayview is the only creditor claiming an expressed secured interest specifically in the Debtor's cash collateral on deposit.

9. The Debtor responsible for the payment of, *inter alia*, utilities, labor, employee wages, taxes, business supplies, insurance, and building maintenance. Debtor's obligation includes providing for the payment of property tax on the Property to the appropriate taxing authority.

10. That to date, there exists a pre-petition delinquent 2015 property tax obligation to the Ingham County Treasurer in the amount of \$25,431.77 (or \$25,722.06 if paid after July 31, 2017), which if not paid by March 1, 2018, will result in absolute title to the Property vesting in the foreclosing governmental unit. See *Ingham County Delinquent Tax Notice* as Debtor's **Exhibit '1'** hereto annexed.

11. That in order to protect: (a) the property utilized solely by the Debtor in operation of its ongoing concern, and (b) the interests of all Creditors holding a secured interest in the Property, it is imperative that the obligations stated above be paid in full.

12. Debtor and Bayview have reached an agreement whereby the Debtor would be permitted to pay to the Ingham County Treasurer the sum of \$25,431.77 (or \$25,722.06 if paid after July 31, 2017) from cash collateral on deposit in Debtor's general fund. See *Stipulated Agreement* as **Exhibit '2'** hereto annexed.

13. Debtor is presently operating Pamela F.R.O.G., LLC, under the provisions of an *Interim Order* providing for Debtor's use of cash collateral for the purposes of maintaining and preservation of its assets, the continued operation of its business, including but not limited to payroll, payroll taxes, employee expenses, and insurance costs and to otherwise maintain its day-care operations as well as cover administrative costs associated with the employment of professional(s) as necessary. [DN 25].

14. It is the Debtor and Bayview's position that the payment of pre-petition delinquent property taxes is payment in the ordinary course of Debtor's operation of its concern, a prudent expenditure favoring the preservation of the interests of all concerned in the Property, and is incumbent on Debtor's principal in the good-faith operation of the concern—thereby consistent with the provisions of the *Interim Order*.

15. Debtor and Bayview have sought concurrence from the United States Trustee's Office prior to Debtor's filing of its Motion.

JURISDICTION

16. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

17. By this Motion, the Debtor seeks the entry of an order, substantially in the form of the proposed order of **Exhibit '3'** hereto annexed, therein authorizing Debtor's use of cash collateral pursuant to 11 U.S.C. § 363, Federal Rules of Bankruptcy Procedure 4001(b)(2), and Local Rule 4001-3, for payment of the 2015 delinquent property taxes.

BASIS FOR RELIEF SOUGHT BY THE DEBTOR

18. The statutory predicate for the relief requested in this Motion is, *inter alia*, 11 U.S.C. §§ 105 and 363, and Rule 4001(d)(1)(D) of the Federal Rules of Bankruptcy Procedure.

19. The Debtor's use of property of the estate is governed by section 363 of the Bankruptcy Code, which provides that:

If the business of the debtor is authorized to be operated under section ... 1108 ... of this title and unless the court orders otherwise, the [debtor] 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, any may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c)(1).

20. When a Chapter 11 debtor-in-possession is authorized to operate its business, it may use property of estate in ordinary course of business, but is prohibited from using cash collateral absent consent of the secured creditor or court authorization. *In re Kahn*, 86 B.R. 506 (Bankr. W.D. Mich. 1988); *In re Westport-Sandpiper Associates Ltd. P'Ship*, 116 B.R. 355 (Bankr. D. Conn. 1990)(debtor may not use cash collateral unless entity that has interest in it consents or debtor proves that interest of the entity is adequately protected).

21. "Cash collateral" is defined by the Code as, "cash, negotiable instruments, documents of title securities, deposit accounts or other cash equivalents whenever acquired in the which the estate an entity other than the estate have an interest..." 11 U.S.C. § 363(a). Any cash collateral generated by the Debtor may constitute the cash collateral of certain secured creditors.

22. In the instant case, adequate protection provided to Bayview includes a replacement lien on the Debtor's receivables and the Debtor's projected positive cash flow as well as up to \$2,900 in monthly cash payments.

23. The use of cash collateral will preserve the Debtor's going concern value which will inure to the benefit of Bayview and other creditors.

24. The continued operation of the Debtor's business will preserve its going concern value, enable the Debtor to capitalize on that value through a reorganization strategy, and ultimately facilitate the Debtor's ability to confirm a Chapter 11 plan. If the Debtor is not allowed to use cash collateral, it will be unable to operate and potentially cause harm to the property.

25. The Debtor believes that use of cash collateral pursuant to the terms and conditions set forth above is fair and reasonable and adequately protects the secured creditor in this case. The combination of: (a) the Debtor's ability to preserve the going concern value of the business with the use of cash collateral; and (b) providing Bayview with the other protections set forth herein, adequately protects its alleged secured position under § 361(2) and (3). For all of the reasons stated above, this Court's approval of the Debtor's use of cash collateral is proper herein.

26. The Debtor believes that the approval of this Motion is in the best interest of the Debtor, its Creditors and its estate because it will enable the Debtor to: (a) continue the orderly operation of its business and avoid an immediate total shutdown of operations; (b) meet its obligations for necessary ordinary course expenditures, and other operating expenses, and (c) continue to make payments authorized under other orders entered by this Court, thereby avoiding immediate and irreparable harm to the Debtor's estate.

WHEREFORE, the Debtor respectfully requests that this Court enter an order: (a) authorizing the Debtor's use of cash collateral in payment of the entire amount of delinquent 2015 property taxes, and (b) granting such other and further relief that is just and proper.

Respectfully submitted:
MICHAEL S. MAHONEY, P.C.,

Attorney for Debtor in Possession

Dated: July 26, 2017

By: /s/ Michael S. Mahoney
Michael S. Mahoney, Esq. (P71428)