

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

In Re:)
)
SEBA BROS. FARMS, INC.) Case No. 18-42569-can11
)
Debtor)

EMERGENCY MOTION FOR USE OF CASH COLLATERAL
AND REQUEST FOR IMMEDIATE HEARING

COMES NOW the Debtor, by and through its attorneys, and moves the Court for authority to use cash collateral, and in support thereof states as follows:

1. Debtor filed its Petition for Relief under Chapter 11 of the Bankruptcy Code on September 28, 2018.
2. No trustee has been appointed, and Debtor has remained in possession of the property of its estate as a Debtor-In-Possession. The Debtor operates a farming business. The business is located in Cass County, Missouri.
3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. Venue is proper pursuant to 28 U.S.C. §§1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Debtor files this Motion and requests relief herein pursuant to 11 U.S.C. §363(c)(2).
4. BMO Harris Bank (“BMO Harris”) has asserted a perfected security interest in all cash, cash equivalents, and accounts generated by Debtor’s business (“Cash Collateral”).
5. Debtor seeks (i) an interim Order of the Court authorizing it to use Cash Collateral for payment of the normal and necessary expenses of its business, pending an evidentiary hearing, if necessary, if an objection to the Motion is filed, and (ii) a further Order of the Court authorizing Debtor’s continued use of Cash Collateral until December 31, 2018, or until the Plan of Reorganization is confirmed, whichever is earlier, and reserving to Debtor the right to seek a further extension of such Order.

6. Use of the Cash Collateral is essential to the continued business operations and the reorganization of Debtor. Absent authorization to use the Cash Collateral, Debtor will suffer irreparable harm and will be forced to cease its business operations, to the detriment of the Secured Creditors and all other creditors.

7. Debtor shall not use the Cash Collateral to pay prepetition interest or principal on any existing indebtedness other than as ordered by the Court.

8. Attached hereto as Exhibit A is Debtor's estimated monthly budget of income and expenditures for the next thirty (30) days, which should be a good reflection of the Debtor's activity for the months in the future while the chapter 11 is pending. The budget confirms that, with the cash on hand, the Debtor is able to cash flow its business operation through the period requested. The Debtor submits that the collateral pledged to BMO Harris is valued at substantially more than the outstanding balances owed on the two Promissory Notes held by BMO Harris. Therefore, BMO Harris is adequately protected and no adequate protection payments should be required at this time.

9. The Debtor will begin harvesting its crops on approximately 5,000 acres. Some of the land is owned but the majority of the land is leased or share cropped from other landowners.

Once it harvests sufficient soybeans and sells the beans, Debtor shall pay the first set of expenses relating to the harvesting of the beans, including rent to landowners who leased farmland to Debtor (and who would otherwise claim a lien against the crops), fuel, salaries, taxes, insurance and custom work. By way of illustration, the Debtor estimates the custom work to be Bauman Brothers for \$100,000 and Kornukopia Farms for \$50,000. The Debtor believes that it can harvest the crops at a much cheaper rate than the bank could do by hiring custom farmers. The Debtor has been in business for 40 years and has substantial experience in the costs involved for harvest. The Debtor expects a figure of \$28/acre for its harvesting. The market rate for custom harvesting is easily in excess of \$30/acre. When taken into account the number of fields, location, area of coverage, and care of land that the landlords

require, the Debtor cannot simply just hire whoever is cheapest. Further, the Debtor also has a no-till operation, which requires additional levels of management. The Debtor's harvest also includes the management of seed varieties, seed quality, and market opportunities that dictate what moisture levels and what end-user will pay the most for our crop. A high level of detail is given to both harvesting and marketing of the crop. David Seba has spent years creating relationships with a large network of end-users who rely on us delivering a high-quality crop.

The landowners who are owed and need to be paid from the first set of proceeds include George and Rhoda Craycraft \$22,219, Mike McQuaid \$25,680, and Cristina Brown \$20,101. The payroll will include: David Seba \$1,000/week, Harold Seba \$1,000/week, Kevin Thompson (varies) average of \$600/week and Jennifer Fizer (who handles all accounting work \$1,400/week. These are reasonable and necessary wages. All of these individuals will be engaged in the operation of the business and harvesting. The wages will also be used to assist with selling the crops for other farmers as detailed in paragraph 13 below.

The Debtor also needs to pay for an appraisal that has been completed and is ready to be provided to Debtor once the appraiser is paid. This appraisal will be used by Debtor to obtain alternative financing to pay off BMO Harris.

Once the first thirty (30) days of expenses are paid of \$227,804, the Debtor will pay \$320,000 to BMO Harris from the sale of beans. Then, regular operational expenses (which includes payroll, fuel, taxes, insurance, custom work) will be paid in the next thirty (30) days of \$140,204. Thereafter, the next \$300,000 from the sale of beans will be paid to BMO Harris by December 31, 2018. Then, the remaining expenses from the harvest, which are estimated at \$477,204 will be paid.

The attached Budget includes utilities which cover electricity for the office, shop and grain elevators, water, phone, internet and cell phones. Taxes include payroll taxes. Insurance includes monthly payment for property casualty and liability insurance premiums.

The attached Budget includes payments to the landowners who lease the land to Debtor as well as payments to the owners who provide land to the Debtor on a share crop basis.

10. Debtor shall make monthly reports to BMO Harris and to the U. S. Trustee of receipts and expenditures of the Cash Collateral.

11. BMO Harris shall be granted replacement liens, as its interest appears, on all of the proceeds and replacements of the Cash Collateral.

12. Debtor's counsel requests a carve-out of her retainer of \$10,000, plus any further sums approved by the Court as attorneys' fees and expenses for the Debtor's counsel.

13. Debtor owns several grain elevators on its property. It has in past years and desires to do so for this crop, take in crops from other farmers into its elevators and then once the crops are sold, pay the farmers for their crops. As an illustration, Debtor proposes to pay the farmer \$9.00 per bushel and should be able to sell the crop at Cargill for \$9.50 per bushel, realizing a profit of \$0.50 per bushel. The price will vary with the supply and demand. This is an estimate at the present time. The Debtor seeks authority to pay these farmers from the proceeds the Debtor receives from the sale of these farmers' crops. Typically, the Debtor pays these farmers two to three days after the crops are delivered to its elevators and then sold by the Debtor.

WHEREFORE, Debtor prays for an interim Order of the Court authorizing it to use its cash collateral for payment of the normal and necessary expenses of its business, according to the attached budget, pending an evidentiary Hearing; for a further Order of the Court authorizing Debtor's continued use of Cash Collateral until December 31, 2018 or until the Plan of Reorganization is confirmed, whichever is earlier, and reserving to Debtor the right to seek a further extension of such Order; that in the event of an objection to said Motion, to set an immediate hearing on the within Motion; and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

KRIGEL & KRIGEL, P.C.

/s/ Erlene W. Krigel
Erlene W. Krigel No. 29416
4520 Main Street, Suite 700
Kansas City, Missouri 64111
Telephone: (816) 756-5800
Facsimile: (816) 756-1999
ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2018, a copy of the foregoing was mailed, either electronically or by U. S. Postal Service, postage prepaid, to all persons requesting notice through the Court's ECF noticing system, as well as the secured creditors: Bruce LeMoine, attorney for BMO Harris Bank.

/s/ Erlene W. Krigel
Erlene W. Krigel