



*Laura T Beyer*  
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Laura T. Beyer  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION**

**IN RE:** ) Case No.: 18-50750  
 ) Chapter 11  
 )  
Hayes & Hayes Enterprises, LLC, )  
Debtor )  
\_\_\_\_\_ )

**SECOND INTERIM ORDER TO USE CASH COLLATERAL**

This matter comes on to be heard before the undersigned Bankruptcy Judge, presiding at the January 11, 2018 session of Bankruptcy Court, upon the Debtor in Possession's (DIP) Motion to Use Cash Collateral.

Based upon the record in this action, the representation of counsel, the Court finds as facts:

1. On November 30, 2018, the DIP filed a Chapter 11 bankruptcy petition with this Court.
2. The DIP owns multiple tracts of commercial real property.
3. On October 17, 2013, Certus Bank, NA, filed a Deed of Trust, Deed Book 1835, Page 1538, Caldwell County and Assignment of Leases and Rents, Deed Book 1835, Page 1557, Caldwell County for two tracts of real property located at 596 Central Street, Hudson, NC 28638 (real property).
4. Pinnacle Financial Partners (Pinnacle) is successor in interest to Certus Bank, NA. Pinnacle is now owed \$204,431.23 on its Promissory Note and related Deed of Trust and Assignment of Leases and Rents.

5. The real property has a tax value of \$559,000. However, the DIP disputes this value. The DIP opinion value is \$250,000 due to the condition of the building. There is equity in the real property.
6. The DIP proposes to pay Pinnacle interest payments at the rate of 6.25% in the amount of \$1,075.88 per month as adequate protection to Pinnacle.
7. The real property is leased to Caldwell Discount Drug Company, Inc., which operates a pharmacy out of the property, and is the DIP's sole source of income. Caldwell is owned by the same parties who own Hayes & Hayes Enterprises, LLC, being John and Selena Hayes.
8. Based upon the applicable loan documents and liens asserted by Pinnacle, it appears that the rental income collected by the Debtor constitutes the cash collateral of Pinnacle within the meaning of §363 and §552 of the Bankruptcy Code.
9. For the purposes of this Order, the DIP acknowledges and does not dispute the validity, priority, and enforceability of the security interest and liens asserted by Pinnacle or the amounts due to Pinnacle.
10. The DIP also owns 4 tracts of commercial real property located off Main Street, Hudson, NC. BB&T Bank holds a Deed of Trust and Assignment of Rents and Leases on this property with a debt of \$626,915. This property is currently vacant with no rent paying tenant. The DIP is not requesting the use of cash collateral on this property due to no income is being produced by this property. The DIP's plan is to sell the property to pay down on BB&T's debt.
11. The DIP intends to propose a Reorganization Plan that will continue to operate the business and pay the creditors over a period of years. This case will include continuing to rent some tracts and surrender other tracts of real property to reduce debt and paying creditors over a period of years.
12. The cash collateral will be used to pay operating and other necessary expenses for the DIP's operations. The DIP must use cash collateral in order to continue operations during the Chapter 11 proceeding.
13. It is in the best interest of the Chapter 11 estate to allow the DIP to operate and use cash collateral.

**WHEREFORE**, based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby **ORDERS**:

1. The DIP shall be authorized to use cash collateral for its post-petition, necessary and reasonable operating expenses, on an interim basis as set forth in the budget attached hereto as **Exhibit "A"** until the return hearing on this Motion which is currently set for February 8, 2019.

2. The Parties acknowledge the the budget is an estimate of expenses and the DIP is authorized to vary from any line item by up to 10% without seeking additional approval. However, any expenditure above 10% of any line item is only authorized with Pinnacle's written consent in advance.

3. As adequate protection for the use of cash collateral, the DIP shall continue to keep current all insurance on the DIP's property and, upon demand, provide proof thereof to Pinnacle.

4. The DIP shall maintain one or more DIP bank accounts, into which it will deposit all cash, checks, and other cash items.

5. During the term of this Order, the DIP shall:

a. maintain the property in its current condition and undertake all appropriate steps to maintain and otherwise keep the real property in good repair;

b. specifically avoid engaging in any conduct which would constitute waste or other acts detrimental to the real property;

c. maintain the information stored in the computer system with regard to rental income and leases in its current condition, and shall avoid taking any actions to jeopardize or otherwise cause such information to be deleted, including maintaining appropriate back-up systems;

d. provide Pinnacle with copies of all DIP bank statements within 10 days of receipt;

e. allow Pinnacle and its agents scheduled access to the real property to inspect its collateral and its records upon reasonable notice; and

6. The terms and conditions of this Order do not necessarily constitute adequate protection of the interests of the Pinnacle in cash collateral, and Pinnacle expressly reserves its right to seek further relief under 11 U.S.C. §361, §362 and §363. The DIP expressly reserves its right to seek additional use of cash collateral beyond the stated term of this Order. Any party may seek further consideration of the relief granted in this Order or other cash collateral issues by filing a request with the Court; provided, however, that a hearing on any such request shall not occur on less than three business days' notice to Pinnacle, the Bankruptcy Administrator and the DIP.

7. This Order shall remain in full force and effect until the earlier of (a) entry of an

Order by the Court modifying the terms of use of cash collateral; (b) entry of an Order by the Court terminating this Order for cause, including but not limited to breach of its terms and conditions; or (c) upon filing of a notice of default as provided in this Order.

8. It shall be a default hereunder for any one or more of the following to occur:
  - a. the DIP shall fail to comply with any of the terms or conditions of this Order;
  - b. the DIP shall use cash collateral other than as agreed in this Order; or
  - c. the appointment of a trustee or examiner in this proceeding, conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code.

8. Upon the filing with the Court by Pinnacle of a written notice of any such default (which shall be served upon the DIP by e-mail and United States mail, and shall be served upon the Bankruptcy Administrator by e-mail and United States), the DIP may request a hearing to challenge the declaration of default hereunder. The parties shall have the right to seek an expedited hearing on any challenge by the DIP to a default or any motion by Pinnacle to terminate the use of cash collateral. provided, however, that such hearing shall not occur on less than three business days' notice. If the DIP does not challenge the declaration of default within five business days after service of a written notice, Pinnacle is granted relief from the automatic stay provision of 11 U.S.C. § 362 to collect any outstanding debt. The Parties hereby waive notice requirements for such hearing, other than as set forth herein.

9. The DIP shall not dispose of any asset out of the ordinary course of its business without the advance written consent of Pinnacle, and, as necessary, the approval of this Court.

10. This Order shall be binding upon and inure to the benefit of the DIP and Pinnacle. The terms and provisions of this Order shall bind any trustee appointed for the DIP's estate under any provision of the Bankruptcy Code. Notwithstanding anything in this Order to the contrary, in the event a default under this Order is found to exist, the obligations specified in this Order shall remain binding on the DIP until such time as the Court appoints a Chapter 11 trustee or converts this case to one under Chapter 7 of the Code. This binding effect is an integral part of this Order.

11. The DIP shall serve notice of this Order on all parties entitled to receive the same pursuant to Bankruptcy Rule 4001.

12. The DIP shall pay Pinnacle interest payments at the rate of 6.25% per month for January, 2019 upon entry of this Order and for February, 2019 on the 5<sup>th</sup> day of February, 2019.

It is further Ordered that this matter is continued for a return hearing and consideration of a final Order for the Use of Cash Collateral to February 8, 2018 at 11:00 am in the Bankruptcy Courtroom, First Floor, 200 West Broad Street, Statesville, NC 28677. This Order will be served on all parties in the case.

This order has been signed electronically. The judge's signature and court's seal appear at the top of the order.

United States Bankruptcy Court