

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

In re: _____ )	Bk. #16-11444-BAH
Olive Branch Real Estate Development, LLC )	Chapter 11
Debtor )	Hearing Date: 07/26/17
_____ )	Hearing Time: 1:30 p.m.

FIFTH MOTION OF DEBTOR AND DEBTOR-IN-POSSESSION  
FOR FURTHER AND CONTINUED USE OF CASH COLLATERAL

NOW COMES Olive Branch Real Estate Development, LLC, the Debtor and Debtor-in-Possession (hereinafter “the Debtor”), in this bankruptcy proceeding, pursuant to 11 U.S.C. Section 363, Federal Rule of Bankruptcy Procedure 4001(b) and Local Bankruptcy Rule 4001-2(b), and submits this Fifth Motion for Entry of Orders Authorizing Further and Continued Use of Cash Collateral in the ordinary course of the Debtor’s business and granting a replacement lien to Secured Co-Lenders, Louis A. Porrazzo and James Bascom (“Porrazzo and Bascom”) to the extent described herein as adequate protection for the use of cash collateral. In support of this motion, the Debtor states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a “core” proceeding pursuant to, inter alia, 28 U.S.C. § 157(b)(2)(A), (M), and (O). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The bases for the relief requested herein are Sections 363(c) of Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

Factual Background

**A. The Debtor's Business:**

3. Olive Branch Real Estate Development, LLC is a real estate development company with a principal address of 832 Route 3, Unit #1, Holderness, New Hampshire.

4. The Debtor is owned and operated by Gerard M. Healey. The business has been in operation since 2011.

5. The Debtor does not have any employees.

6. The Debtor is in possession of its property and is actively and effectively operating and managing its business as Debtor in Possession pursuant to sections 1107 and 1108 of the Code.

7. "Cash collateral" means and includes for the purposes of this Motion "cash, deposit accounts and other cash equivalents.... In which the estate and an entity other than the estate have an interest, and includes the proceeds .....of property" of the estate, including rents. Under Code Section 363(c)(2), a debtor may not use cash collateral without the consent of each "entity that has an interest in such cash collateral" or the "court.....authorizes such use".

8. At this time, Debtor believes that Porrizzo and Bascom hold a first priority lien on the pre-petition cash collateral.

**B. The Debtor's Debt Financing**

9. On the Petition date, the cash collateral consisted of approximately \$0.00 in cash, and the real estate located at 832 Route 3, Holderness, New Hampshire valued at \$255,510.00.

10. The Debtor has accounts receivables in the approximate amount of \$0.00.

11. The Debtor is not current on its monthly mortgage payment to secured co-lenders, Porrizzo and Bascom however secured lenders are working with Debtor.

**C. Events Precipitating the Bankruptcy Filing**

12. The Debtor is owned and managed by Gerard M. Healey. The business has been in operation since 2011.

13. Debtor's Secured lender, Sawin Capital, LLC / Norway Bank (hereinafter "Sawin / Norway"), initiated Foreclosure proceedings on the Debtor's real estate located at 6 Gould Terrace, Plymouth, New Hampshire.

14. The Debtor attempted to work with Sawin / Norway to continue to operate; however, the Bank refused to allow the Debtor to enter into a forbearance agreement or continue the scheduled foreclosure sale to allow Debtor an opportunity to seek alternative financing.

15. As a result, the Debtor was compelled to seek relief under the Bankruptcy Code because the secured lender Sawin / Norway served notice on the Debtor that it was planning to foreclose on the real estate and assets secured by its mortgages.

16. Unable to work out business plan with Sawin / Norway to move forward and operate the business, the Debtor had to file Chapter 11 bankruptcy on October 13, 2016 to stop further threat of foreclosure on the Debtor's real estate at 6 Gould Terrace, Plymouth, New Hampshire and to allow the Debtor the necessary time to refinance the corporate debt. These are the factors that led to the Debtor's filing a Chapter 11 Bankruptcy.

**Relief Requested**

17. Attached hereto as Exhibit A is a 60 day operating budget which sets forth, among other things, the Debtor's estimated cash receipts and cash disbursements for the period August 1, 2017 through September 30, 2017 (the "Budget Period") for the Debtor as to its Holderness property. This budget was prepared by the Debtor. As shown in its budget, the Debtor projects that during the Budget Period it will generate approximately \$800.00 in income from rent from August,

2017 and \$800.00 in income from rent from September, 2017. The Debtor's cash flow will be comprised of revenue from rent receipts, as listed on the attached Exhibit A.

18. The Debtor needs the use of the cash collateral from the rent received to pay its post-petition obligations.

19. After payment of post-petition obligations necessary to the operation of the properties, including estimated Chapter 11 expenses, the Debtor projects that it will have approximately (\$2,500.00) in August, 2017 and (\$2,500.00) in September, 2017. Secured lender is working with Debtor. The principal of Debtor will contribute sufficient funds to cover monthly operating bills for property. Debtor has filed a Reorganization Plan and a confirmation hearing is currently scheduled for July 12, 2017.

20. Porrazzo and Bascom have a lien on the Debtor's real estate at 832 Route 3, Holderness, New Hampshire. Thus, the Debtor has no cash with which to operate other than cash collateral. Such cash is necessary to pay operating expenses and payments, and monthly mortgage payments.

21. In order to provide adequate protection of the security interest of Porrazzo and Bascom in cash collateral and to protect the interest of other creditors, Debtor needs to use the cash collateral.

22. The Court, after notice and a hearing, may authorize a Debtor-in-Possession to use, sell, or lease cash collateral. See 11 U.S.C. § 363(c)(2)(B). The Debtor requests authority to utilize the cash generated by its post-petition operations in order to fund its operations during the Budget Period. Approving the use of cash collateral on the terms set forth herein is in the best interests of the Debtor, its estate, and its creditors, including Porrazzo and Bascom, because it will permit the

Debtor to continue as a going concern, thereby maximizing the value of its assets, a result which will inure to the benefit of all of the Debtor's creditors and other constituencies.

23. Absent the use of cash collateral, the Debtor will be forced to cease operations immediately, resulting in the forced liquidation of its assets. The Debtor needs the use of the cash collateral to satisfy necessary mortgage payments, utility, insurances, taxes and monthly expenses.

24. The Debtor requests authorization to use the income generated from its rent of \$800.00 for August, 2017 and \$800.00 for September, 2017 as cash collateral for monthly mortgage and expenses through September 30, 2017.

25. A hearing took place on May 31, 2017 and Debtor has obtained Court permission granting use of Cash Collateral through July 31, 2017. (See: Doc No 130).

26. The Debtor believes that only Porrizzo and Bascom have a security interest in cash collateral. The Debtor proposes granting Porrizzo and Bascom, a replacement lien on the estate's post-petition accounts receivable and the cash proceeds thereof (the "Post-Petition Cash Collateral"). The proposed replacement lien shall have the same priority, validity, and enforceability as such existing lien on the Pre-Petition Cash Collateral, but shall only be recognized to the extent of the diminution in value, if any, of the Pre-Petition Cash Collateral resulting from the Debtor's use of cash collateral during the Budget Period.

27. The above lien will be granted by the Debtor without prejudice to the future rights of the Debtor, creditors and any creditors committee or other party in interest to challenge the validity, priority and enforceability of any such lien. This post-petition lien will also be subject to Debtor's future right to seek Debtor-in-Possession financing pursuant to 11 U.S.C. Section 364.

28. This Order shall apply to the quarterly fees owed to the Office of the United States Trustee and the Debtor shall be allowed to pay out of the cash collateral any quarterly fees due and

outstanding to the Office of the United States Trustee and said fees shall be added to and made a part hereof of the Debtor's budget attached to the Order.

29. The Court has approved the sale of the real estate located at 6 Gould Terrace, Plymouth, New Hampshire which took place on or about February 15, 2017.

30. The Debtor has filed its Chapter 11 Plan of Reorganization and Disclosure Statement, a hearing on the Adequacy of the Disclosure Statement has taken place and a Confirmation Hearing is currently scheduled for July 12, 2017.

WHEREFORE, the Debtor respectfully requests that the Honorable Court:

1. Enter an Order authorizing the continued use of cash collateral in the ordinary course of the Debtor's business for the period August 1, 2017 through September 30, 2017;
2. Grant a replacement lien to Porrazzo and Bascom, to the extent described herein;
3. Grant such other and further relief as is deemed just and equitable.

Respectfully submitted,  
Olive Branch Real Estate  
Development, LLC  
Chapter 11 Debtor-in-Possession  
By its Attorneys,  
**VICTOR W. DAHAR, P.A.**

Dated: July 10, 2017

By: /s/ S. William Dahar II  
S. William Dahar II, Esq.  
20 Merrimack Street  
Manchester, NH 03101  
(603) 622-6595  
BNH 04040