

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:)
LTD Management, Inc) Chapter 11
) Case No.: 17-10684-BAH
)

**DEBTOR’S EX PARTE MOTION FOR
INTERIM AUTHORITY TO USE CASH COLLATERAL**

The debtor-in-possession, LTD Management, Inc (the “Debtor”) respectfully moves, pursuant to Sections 363(c)(2)(B), 105(a), 361, and 362 of title 11 of the United States Code (the “Bankruptcy Code”), 4001(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Bankruptcy Rule 4001-2, for an order authorizing: (a) the limited interim use of cash collateral pending a final hearing at least 14 days, but not more than 30 days, after the filing of this Motion, and (b) the use of cash collateral on a final basis through confirmation of a plan of reorganization or through May 31, 2018, whichever is shorter (the “Use Period”).

As shown on the budget attached as Exhibit A (the “Budget”), use of the cash collateral is necessary through confirmation to: (i) make payments to the Debtor’s utility providers in order to continue to rent the units to the Debtor’s tenants; (ii) pay insurance premiums as necessary to ensure continuation of the necessary insurance coverage, (iii) supplement the retainer for Debtor’s counsel who is representing the Debtor through the confirmation process; and (iv) to pay vendors and suppliers for ongoing maintenance and other ordinary and necessary expenses to prevent an immediate cessation of the business.

Accompanying this Motion is an Affidavit in Support of Debtor’s *Ex Parte* Motion for Interim Authority to Use Cash Collateral, as well as a Budget of Cash Collateral usage, and Order Concerning Interim Use of Cash Collateral. In further support of this Motion the Debtor hereby states as follows:

I. Factual Background

1. The Debtor LTD Management, Inc., a New Hampshire corporation, was formed in July 1992 for the purpose of owning real estate located at 63 Route 27 Raymond, New Hampshire (the “Real Estate”) and leasing out certain units within the building. Lisa D’Aoust owns a 100% interest in the Debtor.

2. The Real Estate is a commercial building comprised of five units. Four of the units are leased to third parties and one is leased to Ltd Teamwork Realty, LLC, a single member LLC owned by Lisa D’Aoust. The Real Estate has been so owned and operated since the Debtor came into existence. Presently, the building is fully occupied.

3. As indicated on the Debtor’s bankruptcy schedules, the real estate is encumbered by a variety of liens and attachments. First in time, is the mortgage held by TD Bank to which approximately \$80,000 presently is owed. That mortgage has termed out. However, pre-petition the Debtor and TD Bank arrived at an agreement under which the Debtor has been making payments of \$1,000 to TD Bank toward the balance. TD Bank also holds a security interest in the rents pursuant to the Collateral Assignment of Leases and Rents executed on even date with the mortgage.

4. Other liens on the Real Estate, in order of priority, include the following:

- Four real estate tax liens held by the Town of Raymond. These, of course, have super-priority status under which approximately \$43,928.87 is owed;
- An IRS lien under which approximately \$7,521.14 is owed;
- A mortgage held by National Finance Corp (the “NFC Mortgage”), the junior mortgage holder. The NFC mortgage was entered into by the Debtor to secure obligations owed by a non-debtor entity. There is no associated assignment of leases and rents.
- Three more IRS tax liens under which approximately \$17,918.67 is owed; and

- An inchoate real estate tax lien owed to the Town of Raymond for the first half of the 2017 real estate taxes in the approximate amount of \$4,218.00.

5. The Debtor filed this case to prevent foreclosure of the Real Estate by National Finance Corp and to put in place a plan of reorganization that will pay the real estate and income tax debt, the debt owed to TD Bank, and to treat the debt owed to National Finance Corp. as a secured debt to the extent of the value of its collateral and to treat the remainder of the National Finance Corp. debt as unsecured.

II Jurisdiction and Venue

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M).

7. No trustee or examiner has been appointed in Debtor's case and no official statutory committee has yet been appointed or designated by the U.S. Trustee.

III. The Debtor's Need for the Use of Cash Collateral

8. Without access to cash collateral generated from the rents received, the Debtor will be unable to pay: (i) its modest utility obligations; (ii) its property and general liability insurance premiums, or (iii) its other ordinary and necessary operating expenses such as modest and necessary maintenance – small repairs, landscaping, plowing etc.. To be unable to pay these limited expenses would cause the Debtor to have to abruptly cease operations because without these critical services the Debtor would not be able to maintain a safe and beneficial situation for its tenants.

9. The Debtor, accordingly, requests authority to use TD Bank's cash collateral as shown in the Budget at Exhibit A for the Use Period. During the Use Period, the Debtor intends to: (i) continue operations by continuing to rent to its existing tenants and to fill vacancies as they present themselves; (ii) continue to pay insurance premiums to maintain property and

general liability insurance; (iii) pay the Debtor's quarterly obligations to the US Trustee; (iv) pay reasonable and necessary maintenance expenses for the building as they come up in the ordinary course; (iv) make monthly adequate protection payments to TD Bank; and (v) make payments to Debtor's counsel to be held in its IOLTA account pending application and court approval for payment of the attorney's fees and costs. Exhibit A

10. The Debtor believes through the continued rental of the building, the cash collateral will be adequately replaced during the Use Period. The Debtor believes its limited use of cash collateral during the Use Period will permit it to maintain essential business operations, thereby preserving the value of the estate, and confirm a plan that will be in the best interest of the Debtor's creditors.

11. The Debtor's principal Lisa D'Aoust attempted to secure TD Bank's assent to the relief requested in this motion but was unable to locate an individual able to provide a response.

IV. Legal Authority for Use of Cash Collateral

12. The use of cash collateral is conditioned on adequate protection of the lender in its cash collateral. Adequate protection is a flexible concept that requires a court to make decisions on a case-by-case basis. *In re Harrington & Richardson, Inc.*, 48 B.R. 431, 433 (Bankr. D. Mass, 1985).

13. The types of adequate protection available to protect a secured creditor whose cash collateral is going to be used by a debtor pursuant to §363(c)(2)(B) are enumerated in §361 of the Bankruptcy Code, as well as by case law. That section envisions adequate protection to be provided either by cash payments, replacement liens, or other relief that will result in the realization by the secured creditor of the indubitable equivalent of the secured creditor's interest in such property. *See In re: Isaacson Steel* (Bankr.D.N.H. 2013) *citing Baybank-Middlesex v. Ralar Distribs (In re Ralar Distribs., Inc.)*, 182 B.R. 81, 85 (D. Mass. 1995). In each instance,

the focus of the Bankruptcy Code is on making sure that any decrease in the value of the collateral during the period involved is adequately protected.

14. Since the Debtor intends to use the cash collateral in the normal course of its business operations during the Use Period, it is reasonable to expect that the amount of cash on hand will decrease. However, in this case, the Debtor will continue to operate and will continue to collect rents and believes that the building will continue to be fully occupied during the Use Period. As such, the Debtor does expect that the cash collateral it uses will be replaced by incoming revenues.

IV. Notice

15. In accordance with the requirements of LBR 4001-2(b) relating to the interim use of cash collateral, the Debtor provides the following information:

- a. The names and addresses of all creditors holding a secured interest in the cash collateral, and their attorneys if known:

TD Bank, N.A.
Attn: Bankruptcy
Mail Stop ME2-002=035
70 Gray Road
Falmouth, ME 04105

- b. The efforts made to contact such secured creditors or their attorneys and any appointed committee or, if no committee has been appointed, the twenty (20) largest unsecured creditors with regard to the application to use cash collateral:
 - Debtor's president Lisa D'Aoust contacted TD Bank by telephone and obtained the following fax number for the bankruptcy department 207-317-4053; the undersigned counsel faxed the motion for cash collateral with exhibits to TD on 6/7/17 at noon. Today, Ms. D'Aoust spent close to two hours on hold with TD trying to determine if TD assents, but was unable to reach a person;
 - No committee has yet been appointed in this case;
 - A copy of this Motion has been mailed on this date to each of the Debtor's creditors in this case;

- c. The nature of the emergency requiring an *ex parte* order:
 - Without access to cash collateral generated from the collections of accounts receivable, the Debtor will be unable to pay its modest utilities, insurance premium, and other ordinary and necessary operating expenses. This could cause the Debtor to have to abruptly cease operations because without these critical services the Debtor would not be able to maintain a safe and beneficial situation for its tenants. Allowing the Debtor to continue to operate in the ordinary course until confirmation will preserve the value of the estate for the benefit of creditors.
- d. The total dollar amount of cash collateral use requested to be authorized:
 - In accordance with the Budget, the sum of \$41,200 in cash collateral will be used during the Use Period.
- e. A description of the adequate protection which will be provided to such secured creditor:
 - The senior secured lender will receive a payment of \$1,000 per month from the rents as an adequate protection payment.

16. Attached as Exhibit B is the *Affidavit In Support of Debtor's Ex Parte Motion for Interim Authority to Use Cash Collateral* required by LBR 4001-2(b).

17. The proposed cash collateral order does not include any of the provisions required to be highlighted pursuant to LBR 4001-2(c).

V. Waiver of Memorandum of Law

18. Based upon the legal authority cited herein and the lack of any novel issues of law, the Debtor respectfully requests that the requirement of Local Bankruptcy Rule 7102(3) be waived.

VI. No Prior Request

19. No prior request for the relief sought in this Motion has been made to this or any other court.

VII. Relief Requested

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form of the proposed interim order filed herewith, granting the Debtor the following relief:

- a. Authority to use the cash collateral of TD Bank, N.A., on an interim basis during the Use Period in accordance with the Budget;
- b. Schedule a final hearing on this Motion in such a fashion that the Debtor can provide at least fourteen (14) days' notice as required by BR 4001-b(2);
- c. At the Final Hearing, continue the authorization to use cash collateral as has been provided on an interim basis until May 31, 2018 or the date of confirmation or May 31, 2018, whichever is sooner; and
- d. Grant such other and further relief as may be appropriate and just.

Respectfully submitted,

LTD MANAGEMENT, INC.

By Its Attorney,

Dated: June 9, 2017

/s/ Cheryl C. Deshaies
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CERTIFICATE OF SERVICE

I, Cheryl C. Deshaies, do hereby certify that on this 9th day of June, 2017 a copy of the foregoing *Motion for Interim Authority to Use Cash Collateral* with exhibits and proposed order was this day forwarded to the following parties as indicated below:

Electronically via the CM/ECF System to:

Christopher M. Dube on behalf of Creditor National Finance Corporation
christopher.dube@mclane.com, bankruptcy@mclane.com

Philip S. Levoff on behalf of Creditor National Finance Corporation
plevoff@aol.com

Office of the U.S. Trustee
USTPRegion01.MR.ECF@usdoj.gov

Via First Class Mail Postage Prepaid to:

TD Bank, N.A.
Attn: Bankruptcy
Mail Stop ME2-002=035
70 Gray Road
Falmouth, ME 04105

AND,

All other creditors not receiving service via the CM/ECF system.

Dated: June 9, 2017

/s/ Cheryl C. Deshaies
Cheryl C. Deshaies (BNH #05451)