

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:)	Bk. #17-11142-BAH
Stefanovouno, LLC)	
Debtor)	Chapter 11
)	

EX PARTE, EMERGENCY FIRST DAY MOTION FOR ORDER
AUTHORIZING USE OF CASH COLLATERAL
AND PROVISION FOR ADEQUATE PROTECTION

NOW COMES Stefanovouno, LLC, the Debtor and Debtor-in-Possession (hereinafter “the Debtor”), in this bankruptcy proceeding, pursuant to Federal Rule of Bankruptcy Procedure 4001(b) and Local Bankruptcy Rule 4001-2(b), and requests as follows:

Statement of Introduction

1. Pursuant to Code Sections 105, 363 and 361, the Debtor asks this Court to authorize the Debtor to use the proceeds of its accounts and other cash collateral to pay the mortgage, bills, costs and expenses listed as estimated in the budget attached as Exhibit A for the period beginning August 17, 2017 and ending on September 30, 2017 (the “Interim Use Period”) and Exhibit B for the period beginning on the day following the last day of the Interim Use Period and ending on October 31, 2017 in the absence of an objection by the lien holder which is sustained by this Court (the “Extended Use Period”) and, collectively with the Interim Use Period, the “Use Periods” and Budget”).

2. The following exhibits are attached hereto and incorporated herein by reference:
- a. Exhibit A Budget for the Interim Use Period
 - b. Exhibit B Budget for the Extended Use Period

c. Exhibit C Affidavit of Thomas Katsiantonis in Support of this Motion

3. Accompanying this Motion is a proposed Order granting the Debtor the relief requested herein through (a) the last day of the Interim Use Period (the “Interim Order”) and (b) thereafter until the last of the Extended Use Period unless this Court should sustain an objection to the continued use of cash collateral during such Extended Use Period or an order revoking Debtor’s right to use cash collateral should be entered by this Court (the “Continued Order”), which among other things: (i) limits the amount of cash collateral which Debtor may spend during the Use Periods, (ii) grants the lien holder a replacement lien on the Debtor’s post-petition cash collateral to the extent such lien holder held a valid pre-petition lien thereon as security for the payment of any loss or diminution in the value thereof resulting from Debtor’s post-petition operations as opposed to pre-petition actions taken or omitted to be taken by a lien holder, (iii) reserves the right to contest the validity , perfection, enforceability or value of any lien held or claimed by a lien holder for any reason, (iv) specifically excludes from the scope of a replacement lien actions arising under Chapter 5 of the Bankruptcy Code and the proceeds thereof and (v) in the case of the Interim Order, expires on the earliest date on which a hearing on an objection to this Motion can be held under the notice and service requirements of Bankruptcy Rules 4001(b) absent the entry of an order extending following such hearing. None of the provisions that must be highlighted and justified pursuant to Local Bankruptcy Rule 4001-2(c) are included in the proposed Order.

Jurisdiction and Venue

4. On August 16, 2017 (the “Petition Date”), the Debtor commenced this Chapter 11 reorganization by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. Section 101-1330 (the “Code”).

5. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

6. This is a “core” proceeding pursuant to, inter alia, 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7. 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.

8. No Committee has been appointed in this Case as of this motion.

9. On information and belief, the sole cash collateral lien holder of the Debtor is the secured creditor in first position Charbel Realty, LLC, 24 Colonial Drive, Bedford, New Hampshire 03101.

Factual Background

A. The Debtor’s Business:

10. Stefanovouno, LLC is the owner of the business and real estate located at 2323 Brown Avenue, Manchester, New Hampshire.

11. The Debtor is owned, managed, and operated by Thomas Katsiantonis. Thomas Katsiantonis has owned, managed, and operated Stefanovouno, LLC since November, 2014.

12. The Debtor has owned the real estate at 2323 Brown Avenue, Manchester, NH since March, 2015.

13. The Debtor operates a pizza restaurant known as Tommy K’s in the building at 2323 Brown Avenue, Manchester, NH. It is open seven (7) days a week.

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

15. “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 proceedsof 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”.

16. At this time, Debtor believes that Charbel Realty, LLC holds a first priority lien on the pre-petition cash collateral.

B. The Debtor’s Debt Financing

17. In addition to the mortgage that Charbel Realty, LLC holds on the real estate, it has UCC Financing Statements securing all of the business assets and equipment of Stefanovouno, LLC as part of its mortgage which provides the creditor with an interest in the cash collateral of the real estate and business.

18. On the Petition date, the cash collateral consisted of approximately \$0.00 in cash, and the real estate valued at \$900,000.00.

19. The Debtor does not have any accounts receivables.

20. On or about March 24, 2015, the Debtor, by its Manager Thomas Katsiantonis, purchased the restaurant property located at 2323 Brown Avenue, Manchester, NH from Charbel Realty, LLC.

21. At that time, Charbel Realty, LLC received from the Debtor two (2) Promissory Notes, one in the amount of \$495,000.00 and another in the amount of \$290,000.00.

22. The Promissory Notes were secured by two (2) mortgages of even date from the Debtor to Charbel Realty, LLC collateralizing the property located at 2323 Brown Avenue.

23. Secured Creditor Charbel Realty, LLC accused the Debtor of defaulting on the mortgages, for delayed payment of real estate taxes and an untimely payment for insurance. In both cases, the Debtor promptly cured the alleged defaults.

24. As a result of the alleged defaults by the Debtor under the terms of the Notes and mortgages, secured creditor Charbel Realty, LLC commenced foreclosure proceedings and planned to foreclose on the real estate on August 17, 2017.

25. The Debtor believes that the real reason for Charbel Realty, LLC's intent to foreclose on its property is because the Debtor has a profitable business, the restaurant, and the Debtor has improved the real estate.

26. In fact, the Debtor believes that Charbel Realty, LLC waited until the Debtor could not refinance its debt to pay off Charbel Realty, LLC and then it commenced foreclosure proceedings.

27. The Debtor believes that Charbel Realty, LLC preferred owning a thriving business rather than the Notes and Mortgages securing the debt. The foreclosure sale was planned, not to secure the Notes and Mortgages but to take back the real estate and business previously sold to the Debtor.

28. The Debtor believes that the foreclosure sale was being conducted in bad faith.

29. Despite its attempts to stall the foreclosure through injunction proceedings in state court, attempts to promptly cure the alleged default, and attempts to pay all amounts due to Charbel Realty, LLC, the Debtor had to file this Chapter 11 bankruptcy to stop the foreclosure sale.

30. The Debtor believes that he is current with the payments due to Charbel Realty, LLC; however, Charbel Realty, LLC has accelerated the Notes in order to receive a pre-payment penalty. The secured creditor also increased the interest rates under the Notes. The secured creditor also demanded payment in full based on the higher interest rate and the added pre-payment penalty forcing the Debtor to file the Chapter 11.

Relief Requested

31. Attached hereto as Exhibit A is the Budget for the Interim Use and Exhibit B is the budget for the Extended Use Periods prepared by the Debtor which sets forth, among other things, the Debtor's estimated income and monthly disbursements for the period August 17, 2017 through September 30, 2017 (the "Budget Period") for the business. The Budget for periods of time includes bills and expenses, which will be incurred in the ordinary course of the Debtor's on-going business during the Interim Use and Extended Use Periods. The Budget projects and summarizes fairly and accurately the expected results of the Debtor's business operations on a cash flow basis during the Interim Use and Extended Use Periods based on the information available to the Debtor at this time. The Debtor's cash flow is comprised of income from the operation of the restaurant business.

32. Charbel Realty, LLC has liens on all of the Debtor's business assets and real estate. Thus, the Debtor has no cash with which to operate other than cash collateral. Such cash is necessary to pay real estate taxes, building maintenance and monthly mortgage payments and monthly operating expenses of the restaurant business including employee wages.

33. The Debtor cannot continue its operations without the use of cash collateral because like any other operating company, the Debtor must pay its mortgage payments, real estate taxes, and monthly operating expenses and wages each month.

34. The Budget projects the amount of the projected receipts and disbursements as required by LBR 4001-2(d) and shows that the Debtor will be able to meet its mortgage payments, real estate taxes, building maintenance expenses and restaurant operating expenses during the Use Periods.

35. The Budget also shows that the Debtor's cash will increase over the Use Period.

36. No significant diminution in the amount of the Debtor's accounts or asset will occur during the Use Periods because of their value of the Petition Date. The use of the cash collateral is essential to the effective reorganization of the Debtor.

37. The Debtor has the ability to reorganize its business and affairs for the benefit of its creditors and equity holder. Debtor expects to be able to propose a confirmable plan.

38. The Debtor's business and assets have more value in reorganization than through liquidation.

39. Without the ability to pay its real estate taxes, building expenses and mortgage payments and restaurant operating expenses monthly as listed in the Budget, this reorganization will fail. The creditors will be irreparably and unnecessarily harmed. Pending a hearing on this Motion, this Court should grant the Debtor and its bankruptcy estate the relief requested in this Motion, on an ex parte, emergency basis.

40. 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 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, the estate, and creditors, because it will permit the Debtor to continue as a going

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

Adequate Protection

41. Section 363(e) of the Bankruptcy Code entitles a creditor with a security interest in cash collateral to adequate protection of such security interest prior to the use, sale, or lease of the cash collateral. See 11 U.S.C. § 363(e). In deciding whether a security interest is adequately protected, the Court must determine “the value of the [creditor's] interest and whether the [Debtor's] proposed use of their cash collateral would impair that interest.” In re Dynaco Corp., 162 B.R. 389, 394 (Bankr. D.N.H. 1993). Although adequate protection may take the form of, inter alia, “additional or replacement liens to the extent such . . . use, sale, [or] lease . . . results in a decrease in the value of such entity's interest in such property,” 11 U.S.C. § 361(2), the ultimate determination must be “based upon equitable considerations arising from the particular facts of each proceeding.” Dynaco, 162 B.R. at 394. Moreover, “early in the reorganization proceeding, the Court will generally permit the business operation to continue, at least to the point of plan formulation, if the debtors make an evidentiary showing to support their projections.” Id. at 395.

42. The Debtor has the following security interest and mortgages on the real estate at 2323 Brown Avenue, Manchester, NH:

Charbel Realty, LLC	First Mortgage	\$495,000.00
Charbel Realty, LLC	Second Mortgage	\$290,000.00
Anagnost Investments, Inc.	Third Mortgage	\$170,000.00
Columbia Financial, LLC	Fourth Mortgage	\$260,000.00

43. The Debtor believes that only Charbel Realty, LLC has a security interest in cash collateral. The Debtor proposes granting Charbel Realty, LLC 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 liens 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.

44. The Debtor’s budget demonstrates that it will generate sufficient positive cash flow from its operations to meet all of its post-petition operating and other expenses, and generate surplus cash. Most importantly, there is not a “substantial danger of a permanent decline” in the projected level of collateral supporting the pre-petition liens. To the contrary, based on its budget, the value of the Debtor’s cash collateral will remain the same and not decrease from the commencement of this proceeding (the “Petition Date”), to the end of the Budget Period. Accordingly, Charbel Realty, LLC will be adequately protected by the proposed grant of replacement liens.

45. The above liens 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.

46. 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.

Notice

47. This Motion has been served as set forth in the certificate of service. Given the nature of the relief requested herein, the Debtor submits that no further notice is necessary.

48. A copy of this Motion for Use of Cash Collateral, the Affidavit of Thomas Katsiantonis and the Budgets were forwarded to Roy W. Tilsley, Jr., counsel of record for the secured lender, Charbel Realty, LLC.

WHEREFORE, the Debtor respectfully requests that the Honorable Court:

1. Enter an Order authorizing the use of cash collateral on an interim basis (a proposed order is attached hereto as Exhibit D);
2. Enter an Order authorizing the continued use of cash collateral in the ordinary course of the Debtor's business (a proposed Order is attached hereto as Exhibit E);
3. Grant a replacement lien to Charbel Realty, LLC to the extent described herein;
4. Schedule emergency and final hearings on the use of cash collateral, as necessary;
5. Grant such other and further relief as is deemed just and equitable.

Respectfully submitted,
Stefanovouno, LLC,
Chapter 11 Debtor-in-Possession
By its Attorneys,

VICTOR W. DAHAR, P.A.

Dated: August 25, 2017

By: /s/ Eleanor Wm. Dahar
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