

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

In re:	)	Bk. #17-11142-MAF
Stefanovouno, LLC	)	Chapter 11
Debtor	)	Hearing Date: 10/24/17
	)	Hearing Time: 10:00 a.m.

SECOND MOTION OF DEBTOR AND DEBTOR-IN-POSSESSION  
FOR FURTHER AND CONTINUED 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 11 U.S.C. Section 363, Federal Rule of Bankruptcy Procedure 4001(b) and Local Bankruptcy Rule 4001-2(b), and submits this Second Motion for Entry of Orders Authorizing the Further and Continued Use of Cash Collateral and Provision for Adequate Protection in the ordinary course of the Debtor’s business and granting a replacement lien to Charbel Realty, LLC (“Charbel”) 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. Stefanovouno, LLC is the owner of the business and real estate located at 2323 Brown Avenue, Manchester, New Hampshire.

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

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

6. 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.

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

8. "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".

9. 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**

10. 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.

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

12. The Debtor does not have any accounts receivables.

**C. Events Precipitating the Bankruptcy Filing**

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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

22. 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.

23. 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.

24. As a result of the above, the Debtor was compelled to seek relief under the Bankruptcy Code because the secured lender Charbel Realty, LLC served notice on the Debtor that it was planning to foreclose on the real estate and assets secured by its mortgage.

25. Unable to work with Charbel Realty, LLC to move forward and operate the business, the Debtor had to file Chapter 11 bankruptcy on August 16, 2017 to stop further threat of foreclosure on the Debtor's real estate and to allow the Debtor the necessary time to bring the arrearage on the real estate taxes and mortgage current. These are the factors that led to the Debtor's filing a Chapter 11 Bankruptcy.

26. In addition to the mortgage of Charbel Realty, LLC, the Debtor has the following security interest and mortgages on the real estate at 2323 Brown Avenue, Manchester, NH:

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

Relief Requested

27. Attached hereto as Exhibit A is a 61 day operating budget which sets forth, among other things, the Debtor's estimated cash receipts and cash disbursements for the period November 1, 2017 through December 31, 2017 (the "Budget Period") for the Debtor. This budget was prepared by the Debtor. As shown in its budget, the Debtor projects that during the Budget Period it will generate approximately \$134,230.00 in income from restaurant sales in the month of November, 2017 and \$134,230.00 in income from restaurant sales in the month of December, 2017. The Debtor's cash flow will be comprised of revenue from operation of the pizza restaurant as listed on the attached Exhibit A.

28. The Debtor needs the use of the cash collateral generated from the restaurant business to pay its post-petition obligations as outlined in the attached budget.

29. After payment of post-petition obligations necessary to the operation of the business and maintenance of the property, including estimated Chapter 11 expenses, the Debtor projects that it will have approximately \$101,386.97 in November, 2017 and \$132,812.23 in December, 2017 surplus cash-on-hand at the end of the Budget Period.

30. Charbel has liens on all of the Debtor's business assets and equipment and real estate. 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.

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

32. 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 Charbel Realty, LLC, 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.

33. 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, including State of NH Rooms and Meals taxes, and monthly expenses.

34. The Debtor requests authorization to use the income generated from its restaurant sales of \$134,230.00 in November, 2017 and \$134,230.00 in December, 2017 as cash collateral for monthly mortgages and expenses through December 31, 2017.

35. The Debtor has an Order dated September 18, 2017 granting use of Cash Collateral through October 31, 2017 (Doc. #46).

36. The Debtor believes that only Charbel has a security interest in cash collateral. The Debtor proposes granting Charbel adequate protection liens on the estate's post-petition accounts receivable and the cash proceeds thereof (the "Post-Petition Cash Collateral"). The proposed adequate protection 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.

37. 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.

38. 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.

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 November 1, 2017 through December 31, 2017;
2. Grant an adequate protection lien to Charbel, to the extent described herein;

3. 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: October 6, 2017

By: /s/ Eleanor Wm. Dahar  
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