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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In the Matter of:	:	Chapter 11
	:	
STEPHANIE'S TOO, LLC,	:	Case No. 18-32221/JNP
	:	
Debtor(s).	:	
	:	

**DEBTOR'S MOTION FOR AUTHORITY TO USE
CASH COLLATERAL ON AN INTERIM AND FINAL BASIS**

Stephanie's Too, LLC, the debtor in the above-captioned Chapter 11 case, by and through its undersigned counsel, hereby submits this motion for the entry of interim and final Orders authorizing the use of cash collateral, pursuant to sections 361 and 363 of title 11 of the United States Code, and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure. In support of this Motion, the Debtor respectfully avers as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue is proper in this District pursuant to 28 U.S.C. § 1409.
3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory and procedural predicates for the relief requested herein are Bankruptcy Code Sections 361 and 363 and Federal Rules of Bankruptcy Procedure Rule 4001(b).

PROCEDURAL AND FACTUAL BACKGROUND

5. On November 8, 2018, the debtor, Stephanie's Too, LLC, filed with this Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Stephanie's Too, LLC is a bar and restaurant. It has been in business for since January 13, 2017. It has not been operating since September 26, 2018.

6. Pursuant to Bankruptcy Code Sections 1107 and 1108, the Debtor is managing its affairs as a debtor in possession.

7. As of the date hereof, no trustee, examiner or statutory committee has been appointed in this Chapter 11 Case.

8. The factual background relating to the Debtor's commencement of this Chapter 11 Case is set forth in detail in the Certification of Leon Kubis, the principal of the debtor corporation, in Support of the Debtor's Motion to Use Cash Collateral filed contemporaneously herewith and incorporated herein by reference. The facts and circumstances supporting this Motion are also set forth in said Certification.

RELIEF REQUESTED AND BASIS THEREFOR

9. By this Motion, the Debtor seeks the entry of interim and final Orders authorizing the use of cash collateral.

10. A Chapter 11 debtor in possession has all the rights and powers of a trustee serving in a case under Chapter 11, including operating the debtor's business. *See* 11 U.S.C. § 1107.

11. Section 363 of the Bankruptcy Code governs the post-petition use of property of the debtor estate. With respect to transactions within the ordinary course of the debtor's business, Bankruptcy Code section 363 provides, in relevant part:

(c)(1) If the business of the debtor is authorized to be operated under section...1108... of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless--

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

...

11 U.S.C. § 363(c).

12. Cash collateral is defined as:

[C]ash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).

13. In the event a secured creditor does not consent to the use of cash collateral in accordance with Bankruptcy Code section 363(c)(2)(A), a debtor may obtain the Court's authorization for such use, over the secured creditor's objection, upon a showing that the secured creditor is "adequately protected." 11 U.S.C. § 363(e).

14. "Adequate protection" may be provided as follows:

When adequate protection is required under section 362, 363, or 364 of this *title* [11 USCS § 362, 363, or 364] of an interest of an entity in property, such adequate protection may be provided by--

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this *title* [11 USCS § 362], use, sale, or lease under section 363 of this *title* [11 USCS § 363], or any grant of a lien under section 364 of this *title* [11 USCS § 364] results in a decrease in the value of such entity's interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
- (3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this *title* [11 USCS § 503(b)(1)] as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361.

15. To the best of the Debtor's knowledge, information and belief, the only secured creditor that has a lien on cash collateral is American Heritage Federal Credit Union, which is owed approximately \$609,687.47. The obligors for the American Heritage Federal Credit Union obligation are the Debtor and CWA Properties, Inc., Leon Kubis, Lisa Kubis and Stephanie's Restaurant & Lounge, LLC, co-debtors. They are all jointly and severally liable to American Heritage Federal Credit Union on account of the obligation (except that Lisa Kubis is not a guarantor of the \$135,000.00 obligation owed by the Debtor to American Heritage Federal Credit Union). A copy of a UCC search obtained on behalf of the debtor is attached hereto marked Exhibit A. The obligation of the Debtor stems from a loan from American Heritage Federal Credit Union to CWA Properties, LLC, whose principal is Leon Kubis. The loan was in the amount of \$430,393.50 from American Heritage Federal Credit Union to CWA Properties, LLC on August 8, 2016, and was guaranteed by Leon Kubis, his wife, Lisa Kubis, the Debtor, Stephanie's Too,

LLC, and another restaurant in Doylestown, PA known as Stephanie's Restaurant & Lounge, LLC, whose principal is also Leon Kubis. There was a second loan from American Heritage Federal Credit Union to Stephanie's Too, LLC dated August 8, 2016 in the amount of \$135,000.00. That loan was guaranteed by CWA Properties, LLC, Leon Kubis and Stephanie's Restaurant, LLC. Lisa Kubis was not a guarantor of this loan.

16. There is a second UCC-1 filing by U.S. Foods, Inc. securing, among other things, accounts, goods and inventory. However, the Debtor never did business with U.S. Foods, Inc., and there is nothing due and owing to U.S. Foods, Inc.

17. The Debtor proposes to make an adequate protection payment of \$4,223.74 to American Heritage Federal Credit Union during the week of March 24 through March 31, 2019, which represents \$1,515.78, the initial monthly payment on account of the \$135,000.00 direct loan to Stephanie's Too, LLC and \$2,707.96 on account of the initial loan due from CWA Properties, LLC to American Heritage Federal Credit Union that was guaranteed by the Debtor, Stephanie's Too, LLC and collateralized by a security interest in its assets, including a security interest in inventory and accounts. The debtor proposes to continue to pay all necessary operating and administrative expenses associated with its business that have accrued post-petition, and to give American Heritage Federal Credit Union a replacement lien on all post-petition receivables created.

18. In 2017, the Debtor had gross sales of \$410,003.00. In 2018, the Debtor's sales fell off dramatically, and the Debtor shut down during large periods of 2018 and shut down from September 26, 2018 through the present. In order to change the concept of Stephanie's Too, LLC, the Debtor has hired a new chef and a new staff and now wishes to reopen on approximately February 24, 2019.

19. In order to reopen, the Debtor will need the use of cash collateral so that it can pay its ongoing operating expenses, including payroll. A list of the Debtor's proposed income and operating expenses is attached hereto marked Exhibit B.

20. Approval of this Motion is in the best interest of the Debtor, as well as its bankruptcy estate and creditors. Allowing for use of cash collateral is crucial to avoid interruption of the Debtor's operations caused by lack of funds. Unless the Debtor is authorized to use cash collateral, the Debtor will not have sufficient funds to satisfy the necessary operating and administrative costs which are critical to its business operations.

21. For all the reasons stated above, the Debtor respectfully submits that approval of the Debtor's use of cash collateral is proper herein.

WAIVER OF MEMORANDUM OF LAW

22. The Debtor submits that this Motion does not present novel issues of law requiring the citation to any authority other than the authority cited herein, and accordingly, respectfully requests that the Court waive the requirement contained in Local Rule 9013-1 that a separate memorandum of law be submitted.

23. The Debtor reserves its rights, however, to submit a memorandum of law with respect to this Motion in the event that opposition is received.

CONCLUSION

24. In accordance with the foregoing, the Debtor respectfully requests that the Bankruptcy Court enter interim and final Orders authorizing the use of cash collateral, and granting

such other and further relief as the Bankruptcy Court deems just and proper.

Respectfully submitted,

KASEN & KASEN, P.C.
Attorneys for Debtor(s)

BY: /s/ David A. Kasen

Dated: February 20, 2019

DAVID A. KASEN, ESQUIRE