

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

34 SO. CROSSMAN STREET INC.,

Case No.: 18-10908-MJK

Debtor.

- AND -

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

GERALD SCHARF,

Case No.: 18-10909-MJK

Debtor.

**ORDER AUTHORIZING DEBTORS' EMERGENCY USE OF CASH COLLATERAL
AND ESTABLISHING DATE FOR INTERIM AND FINAL HEARINGS
ON DEBTORS' MOTION FOR LEAVE TO USE CASH COLLATERAL**

This matter having come before this Court upon the motion (the "Motion") of the Debtors-in-Possession, 34 So. Crossman Street Inc., d/b/a Scharf's German Restaurant Und Bar ("Scharf's German Restaurant"), and Gerald Scharf ("Mr. Scharf") (collectively, the "Debtors"), seeking the entry of Emergency, Interim and Final Orders, pursuant to Bankruptcy Code Section 363 and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure, authorizing the Debtors to use cash collateral and fixing the adequate protection which is to be provided to the Internal Revenue Service ("IRS") and the New York State Department of Taxation and Finance ("NYS Tax" and, with the IRS, the "Secured Creditors"), both of which have or claim liens,

AND, this matter having come before this Court for an emergency hearing on May 8, 2018, on notice to the Office of the United States Trustee, counsel for the IRS and counsel for NYS Tax, but otherwise *ex parte*,

NOW, upon all pleadings and proceedings had in this matter to date, and good cause appearing therefor, it is hereby

ORDERED, that the Debtors are hereby authorized and permitted to use cash collateral in the amount of up to \$12,000.00, on an emergency basis, until the time of an interim hearing on the Debtors' Motion; and it is

ORDERED, that as interim adequate protection to the Secured Creditors, the Secured Creditors are hereby granted "rollover" replacement liens in post-petition assets of Debtor Scharf's German Restaurant of the same relative priority and on the same types and kinds of collateral as they possessed pre-petition, as the same may ultimately be determined, to the extent of cash collateral actually used and not paid down by the Debtors, effective as of the date of the filing of these cases, without the necessity of any further public filing or other recordation to perfect such liens or security interests; and it is

ORDERED, that the additional adequate protection to NYS Tax and the IRS proposed in the Debtors' Motion will be addressed at the time of the interim hearing on this Motion; and it is

ORDERED, that nothing contained in this Order shall be deemed to constitute either a finding by this Court that those liens to be provided pursuant to this Order are themselves sufficient to adequately protect the Secured Creditors' secured claims, and the entry of this Order is without prejudice to the Secured Creditors' rights to oppose further use of cash collateral or, alternatively, asserting that they are entitled additional adequate protection of their secured claims, and the entry of this Order is without prejudice to the rights of the Debtors or any other

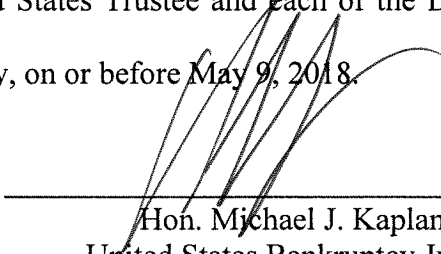
party seeking to challenge the secured status of the claims of the Secured Creditors or to assert that the Secured Creditors claims are less than fully secured or that the Secured Creditors should be entitled to lesser payments or protections as adequate protection of their claims; and it is

ORDERED, that an interim hearing on the Debtors' Motion will be held on May 16, 2018, at 10:00 a.m., at the United States Bankruptcy Court, Part I, Olympic Towers, 300 Pearl Street, Third Floor, Buffalo, New York 14202-2501; and it is

ORDERED, that a final hearing on the Debtors' Motion will be held on May 23, 2018, at 10:00 a.m., at the United States Bankruptcy Court, Part I, Olympic Towers, 300 Pearl Street, Third Floor, Buffalo, New York 14202-2501; and it is

ORDERED, that the Debtors shall serve a copy of this Order on the IRS and its counsel, NYS Tax and its counsel, the Office of the United States Trustee and each of the Debtors' 20 largest unsecured creditors, via First Class Mail only, on or before May 9, 2018.

Dated: Buffalo, New York
May 8, 2018



Hon. Michael J. Kaplan
United States Bankruptcy Judge

