

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	CHAPTER 11
	:	
S&F MEAT CORP.,	:	
	:	
	:	Case No. 17-14687 (AMC)
	:	
Debtor.	:	
	:	

**DEBTOR' S MOTION FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING USE OF CASH COLLATERAL;
(II) GRANTING ADEQUATE PROTECTION; (III) SCHEDULING A
FINAL HEARING AND (IV) GRANTING RELATED RELIEF**

S&F Meat Corp. (the "Debtor"), by and through its proposed counsel, Smith Kane Holman, LLC, hereby moves the Court for the entry of interim and final orders (i) authorizing the Debtor to use cash collateral; (ii) granting adequate protection to the Debtor's pre-petition secured creditor; (iii) scheduling a final hearing on the relief requested herein; and (iv) granting related relief (the "Motion"). In support of the Motion, the Debtor respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409.
3. The statutory predicates for the relief sought herein are sections 105, 361 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 4001 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Background

4. The Debtor filed its voluntary petition for relief 11 U.S.C. §101 et seq. (the

“Bankruptcy Code”) on July 10, 2017 (the “Petition Date”) and has continued in possession of its property and operating its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtor owns and operates a full service, community supermarket located at 1240 E. Erie Avenue, Philadelphia, Pennsylvania, trading as the Erie Plaza Market Place, and dedicated to providing its expanding customer base with quality grocery food, together with an outstanding shopping experience.

6. The Debtor prides itself in its commitment to its immediate and surrounding community, delivering the best selection of products, service, and competitive pricing, while creating jobs and opportunities throughout its local and trading areas.

7. Among its many connections to the local community, the Debtor has been a long-time partner and supporter of the Community Food Bank of Philadelphia, donating food, services, money and volunteers since its inception. Through its groundbreaking program called Supermarket Careers, the Debtor supports the education and training of special needs students in all local schools throughout its geographic region; this award-winning program helps prepare those with special needs for meaningful careers in the supermarket industry.

8. Moreover, every August, the Debtor celebrates its customer loyalty by hosting its annual Back to School/Customer Festival, where the Debtor’s principal reaches into his own pocket to give neighborhood children school backpacks and school supplies, while providing food and entertainment to the entire neighborhood.

9. The Debtor was founded upon, and continues to operate, by the basic tenets that a commitment to community, a desire to make a difference in the lives of those in need and the delivery of quality food and service at competitive prices will facilitate customer loyalty and

ultimate success in the grocery industry.

10. The Debtor currently employs thirty-five (35) full-time employees, including the sole principal/officer, and seven (7) part-time employees all of whom work out of the Debtor's Erie Avenue premises (the "Premises").

Pre-Petition Litigation

11. The Debtor's financial issues started with an agreement to borrow funds from General Trading Co., Inc. ("GTC"), as well as execute a certain cross corporate guaranty ("CC Guaranty"), pursuant to which it guaranteed payments to or sums owed by 476 Meat Corp. ("476 Meat"), a former affiliate of the Debtor in 2010.

12. GTC is a wholesale food distributor based in Carlstadt, New Jersey.

13. GTC lends money to start-up grocery/supermarkets in urban areas and forces the borrowers, to sign onerous loan documents which are subject to usurious interest rates and penalties.

14. Such borrowers are compelled by GTC to purchase all of their groceries from GTC at higher than market rates for the same inventory offered in the marketplace.

15. In the Fall of 2010, GTC loaned approximately \$859,000 to the Debtor and 476 Meat in order for the Debtor to complete construction of its grocery store and stock its shelves with products from GTC.

16. By 2013, the debt due to GTX by the Debtor and 476 Meat was approximately \$1,230,000.

17. Due to the usurious interest rates on the GTC loans, couple with exorbitant food process charged by GTC, the Debtor and 476 Meat needed to refinance and payoff GTC to stay competitive.

18. After *reluctantly* agreeing to GTC's heavy handed tactics, whereby GTC required the Debtor and 476 Meat to purchase future inventory from GTC *as a condition of accepting the loan payoff*, on or about September 6, 2013, the Debtor and 476 Meat closed on a loan with Capital One, National Association ("CONA") and, on the same day, paid GTC \$1,230,865.36, representing full payment of all obligations due to GTC. All debts due and owing to GTC were paid in full and satisfied.

19. As a result, the GTC loan documents, including the CC Guaranty (and any Debtor obligations thereunder) were satisfied and were no long valid and binding.

20. Thereafter, the Debtor and 476 Meat ended their affiliation through a stock exchange between the respective principals.

21. In March of 2015, unbeknownst to the Debtor, 475 Meat borrowed additional sums from GTC pursuant to a certain Time Promissory Note ("Promissory Note"). Following 475 Meat's alleged default on the Promissory Note, GTC commenced collection actions both against 475 Meat and the Debtor, including the filing of a confession of judgment.

22. The time and cost of the pre-petition litigation, coupled with the broader need to reorganize its affairs, left the Debtor with no choice but to file the within bankruptcy case.

Debtor's Pre-Petition Secured Debt

23. Prior to the Petition Date, as in common practice in the retail grocery industry, the Debtor borrowed funds over the years from three different food distributors to fund its inventory purchases: first from, GTC, then from Associated Supermarket Group ("Associated") and now from Key Food Stores Co-Operative, Inc. ("Key Food") (the "Distributors").

24. As security for the Debtor's obligations to the Distributors, the Debtor granted to GTC, Associated and Key Food, a security interest in and to all of its accounts, general

intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any property, and all proceeds and products thereof, equipment and inventory, (collectively, the “Collateral”). To the extent that any of the Distributors hold a valid, perfected and non-avoidable security interest, such Distributor’s security interest in the Collateral or in the proceeds thereof constitute the cash collateral of the Distributors (the “Cash Collateral”).

25. The Debtor also borrowed funds from The Reinvestment Fund (the “TRF”) to finance the acquisition of necessary retail grocery store equipment. In addition to a purchase money security interest (“PMSI”) in the equipment granted to TRF, the Debtor also granted TRF a security interest in and to the Collateral. To the extent that TRF holds a valid, perfected and non-avoidable security interest, TRF’s security interest in the Collateral or in the proceeds thereof constitute Cash Collateral of TRF.

26. The Debtor also borrowed funds from Capital One, National Association (“CONA”), including a Small Business Administration loan and a working capital loan to further fund operations. As security for the Debtor’s obligations to CONA, the Debtor granted to CONA, a security interest in and the Collateral. To the extent that CONA holds a valid, perfected and non-avoidable security interest, CONA’s security interest in the Collateral or in the proceeds thereof constitute Cash Collateral of CONA.

27. Finally, the Debtor borrowed funds from American Express (“AE”). As security for the Debtor’s obligations to AE, the Debtor granted to AE, a security interest in and the Collateral. To the extent that AE holds a valid, perfected and non-avoidable security interest, AE’s security interest in the Collateral or in the proceeds thereof constitute Cash Collateral of AE.

28. As of the Petition Date, (i) GTC asserts a claim in the approximate amount of \$475,000; however, the Debtor disputes that any amount is due and owing to GTC; (ii) Associated asserts a claim in the approximate amount of \$1,000,000 (although Debtor believes the actual amount due is approximately \$641,000); (iii) Debtor's current distributor, Key Food asserts a claim in the amount of \$234,000; the Debtor remains current on its obligations to Key Food; (iv) TRF asserts a claim in the approximate amount of \$126,000; the Debtor remains current on its obligations to TRF; (v) CONA asserts a claim in the approximate amount of \$736,000; and (vi) AE asserts a claim in the approximate amount of \$27,000.

29. A search of the Pennsylvania Department of State records indicates that, other than GTC, Associated, Key Food, TRF, CONA and AE (collectively, the "Secured Creditors") there are no other creditors who assert an interest in the Debtor's Cash Collateral.

Debtor's Request of Use of Cash Collateral

30. The Debtor needs immediate authority to use Cash Collateral to continue operations, to pay for goods and services, and to meet other ongoing obligations of the Debtor's business, including the Debtor's upcoming payroll of July 14, 2017 and its weekly payroll thereafter. The Debtor projects its *interim* cash collateral needs for the three week period commencing on Sunday, July 9, 2017 and continuing through and including Saturday, July 29, 2017 to be \$195,900.01, which includes weekly payroll and related obligations, overhead expenses, administrative expenses, secured loan payments to Key Food and TRF, as well as its other inventory purchasing requirements. A true and correct copy of the Debtor's interim six week cash collateral budget (the "Interim Budget") is attached hereto and made a part hereof as Exhibit "A."

31. The Court may authorize the use of cash collateral under 11 U.S.C.

§§363(c)(2)(B) and 363(e) if the Court determines that the secured party's interest in its collateral is adequately protected. A determination of adequate protection focuses on the nature of the collateral, the likelihood that it will deteriorate during the bankruptcy and the Debtor's prospects for a successful reorganization within a reasonable period of time.

32. The Debtor believes that the going concern value of the Debtor's business exceeds its liquidation value, that the value of the Cash Collateral will not decrease during this proceeding, and that even if the going concern value of the Debtor decreases during this proceeding, it will still exceed the liquidation value.

33. The Secured Creditors' interest in Cash Collateral will be protected as follows: to the extent that the Secured Creditors have a valid, perfected and a non-avoidable lien in the Cash Collateral and the Debtor's use of the Cash Collateral diminishes such interest, the Debtor will grant such Secured Creditors' replacement liens on post-petition accounts and proceeds thereof to secure such diminution.

34. Moreover, Key Food's and TRF's interest in Cash Collateral will be protected as follows: Debtor shall continue making (i) its weekly secured loan payment to Key Food (as reflected in the Interim Budget and (ii) its monthly secured loan payment to TRF in the amount of \$3,612.76.

35. The Debtor believes that the public interest is served by permitting use of Cash Collateral. If the use of Cash Collateral is denied, the Debtor will, in all probability, be forced to close, forcing its employees to lose their jobs and severely impairing the prospect of payment of its creditors' claims.

36. It is in the best interests of the reorganization of the Debtor, its creditors, its employees and its equity interest holders, to authorize the use of Cash Collateral immediately so

that the Debtor may continue its operations, meet its payroll obligations and purchasing needs on a current basis, provide employment for employees, and to propose a successful plan of reorganization.

**Expedited Consideration of the Motion is Necessary
to Prevent Immediate and Irreparable Harm**

37. The Debtor requests that the Court conduct an expedited preliminary hearing with respect to this Motion and schedule a final hearing at the earliest possible date in accordance with Fed.R.Bankr.P.4001(b).

38. Under Rule 4001 of the Bankruptcy Rules, a final hearing on a debtor's motion to authorize use of Cash collateral may not be commenced earlier than 14 days after service of the motion. Fed.R.Bankr.P.4001(b)(2). Upon request, however, the Court may conduct a preliminary, expedited hearing on such a motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to the debtor's estate. Fed.R.Bankr.P.4001(b)(2).

39. As noted above, the Debtor has an urgent and immediate need to use Cash Collateral to continue operating its business. As reflected on the Interim Budget, without immediate access to Cash Collateral - which is the sole source of funding for the Debtor's operations – the Debtor cannot pay current and ongoing operating expenses such as wages and salaries, necessary products and services and its secured loan obligations. Consequently, the use of Cash Collateral on an immediate and interim basis is required to avoid irreparable harm that will jeopardize any prospect for a successful reorganization.

40. In order to avoid immediate and irreparable harm to the Debtor's estate pending a final hearing on this Motion, the Debtor requires the use of Cash Collateral for at least a three

week interim period to pay, among other things, payroll and related expenses, its secured loan obligations and its ordinary business costs and expenses in accordance with the Interim Budget.

Notice

41. Notice of this Motion has been given to (i) the Office of the United States Trustee; (ii) the Debtor's twenty largest unsecured creditors; (iii) the Debtor's Secured Creditors and (iv) the Debtor. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

42. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that this Court enter interim and final orders, substantially in the form annexed hereto, (i) authorizing the Debtor's use of Cash Collateral; (ii) scheduling a final hearing on this Motion, and (iii) granting such other and further relief as is just and proper under the circumstances.

SMITH KANE HOLMAN, LLC

Date: July 11, 2017

By: /s/ Robert M. Greenbaum
Robert M. Greenbaum, Esquire
112 Moores Road
Suite 300
Malvern, PA 19355
(610) 407-7216 Phone
(610) 407-7218 Fax

Proposed counsel to the Debtor