

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)	Case No. 17-10597-TPA
)	Chapter 11
RCWE HOLDING COMPANY,)	
Debtor)	
)	
)	Docket No. _____
RCWE HOLDING COMPANY,)	
Movant)	
)	
vs.)	
)	
FIRST NATIONAL BANK OF)	
PENNSYLVANIA; AND)	
ENTERPRISE DEVELOPMENT)	
FUND OF ERIE COUNTY, INC.,)	
Respondents)	

MOTION FOR ORDER AUTHORIZING USE OF CASH COLLATERAL

AND NOW, comes RCWE Holding Company (hereinafter referred to as “Debtor-in-Possession” or “Debtor”), by and through its counsel, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, Pennsylvania 16501, with this Motion for Order Authorizing Use of Cash Collateral, as follows:

1. The Debtor filed a voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on June 12, 2017. The Debtor is represented by Knox McLaughlin Gornall & Sennett, P.C., Attention: Guy C. Fustine, Esquire, 120 West Tenth Street, Erie, Pennsylvania 16501.

2. Respondent First National Bank of Pennsylvania (“FNB”) maintains a place of business at One F.N.B. Boulevard, Hermitage, Pennsylvania 16148.

3. Respondent Enterprise Development Fund of Erie County, Inc. (“EDF”) maintains a place of business at 5240 Knowledge Parkway, Erie, Pennsylvania 16510-4658.

4. The Debtor owns and operates a building located at 155 West 8th Street, Erie, Pennsylvania 16501 (the "Property").

5. The Debtor owes FNB approximately \$1,171,000. FNB appears to be secured by a first priority mortgage lien against the Property, and by a first priority security interest in the Debtor's personal property, including accounts receivable, proceeds and cash. The first mortgage in favor of FNB was filed in Erie County, Pennsylvania on November 21, 2011 at Document No. 2011-28081.

6. The Debtor owes EDF approximately \$278,000. EDF appears to be secured by a second priority mortgage lien against the Property. The second mortgage in favor of EDF was filed in Erie County, Pennsylvania on January 4, 2011 at Instrument No. 2011-264, subordinated to FNB on November 21, 2011 at Instrument No. 2011-28083.

7. The Debtor previously listed the Property for sale by Howard Hanna Commercial Realtors, 4244 West 12th Street, Erie, Pennsylvania 16505 in the amount of \$1,600,000 for more than two (2) years and in the amount of \$1,400,000 for six (6) months but received no bona-fide offer.

8. In the meantime, the Debtor has maintained the Property and has made necessary repairs and improvements, including a new boiler and HVAC system repair.

9. Furthermore, the Debtor has entered into commercial leases with the County of Erie and the Commonwealth of Pennsylvania (state civil service), which leases provide on-going monthly revenues from rent; however, the monthly expenses, including the monthly payments due to FNB and EDF are in excess of the monthly revenues. The Debtor is now facing immediate cash flow deficiencies.

10. The debt to FNB alone is greater than, or approximately equal to, the fair market value of the Property.

11. The Debtor attempted to enter into negotiations for a voluntary work-out agreement with the Bank, but was unable to reach such an agreement.

12. The Debtor seeks an opportunity in Chapter 11 to maximize the value of the Property, for the benefit of all creditors and interested parties, by establishing a sale process designed to promote competitive bidding, under the jurisdiction of this Court.

13. An effective reorganization which incorporates such a process will maximize the value of the Debtor's assets for the benefit of the Respondents and the other creditors in the case.

14. Also, the continuation of the Debtor's business will prevent the diminution in value of the Debtor's assets which will occur if the business is forced to shut-down.

15. Under the protection of Chapter 11, the Debtor will be able to continue to operate and to pay its administrative expenses.

16. The Debtor's accounts receivable, rent and cash constitute property of the estate under Section 541 of the Bankruptcy Code. The Debtor requires the use of its cash in order to operate.

17. The Debtor's short-term, monthly cash budget is attached hereto as Exhibit A. The Debtor reserves the right to amend Exhibit A.

18. The budget provides for a monthly interest payment to FNB - at least for the time being - in the form of a monthly adequate protection payment, without prejudice to recharacterize the payments other than as "interest" payments, after the value of the Property and the extent of the liens thereagainst are finally determined.

19. The budget provides that \$2,500 per month will be paid to the Debtor's counsel to be held in escrow. The amount in escrow is property of the estate and will remain in escrow unless and until the Court may authorize an appropriate distribution therefrom, after notice and hearing on an appropriate application or motion.

20. The budget provides for no monthly payment to EDF in consideration of the fact that the value of the Property is likely to be such that there is no equity in the Property for the benefit of EDF's subordinated mortgage lien.

21. Unless the Debtor is authorized to use cash collateral, it may be forced to close down the business. If the Debtor is forced to close down the business, the going concern value of the Property and the value of the operating leases will be lost.

22. The Debtor requests an order authorizing it to use of cash collateral to avoid immediate and irreparable harm to the Property and to the estate.

23. The Debtor proposes to provide adequate protection to the Respondents by transferring their liens and security interests to the Debtor's post-Petition assets with the same force and effect as the liens and security interests attached to the Debtor's pre-Petition assets.

24. By filing this motion, no party, including but not limited to the Debtor, waives any right to contest any lien or security interest; no party admits hereby that the Respondents, or any other creditors, hold valid, perfected, enforceable and/or unavoidable pre-Petition liens or security interests; and, no party waives the right to object to the characterization of any payments provided for herein.

25. The proposed order which is attached hereto, if approved by the Court, would be in the best interest of the Debtor, the estate and creditors.

WHEREFORE, the Debtor requests that it be authorized to use cash collateral in accordance with the foregoing; and, that the Debtor have such other and further relief as is reasonable and just.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.
Attorneys for Debtor

By: /s/ Guy C. Fustine
Guy C. Fustine
PA I.D. No. 37543
John F. Kroto
PA I.D. No. 91208
120 West Tenth Street
Erie, Pennsylvania 16501-1461
(814) 459-2800
gfustine@kmgslaw.com

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