

In re: Gilded Age Properties, LLC
Debtor-In-Possession

Bk No: 1:17-bk-10738
Chapter 11

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDERS (1) APPROVING
USE OF CERTAIN CASH COLLATERAL POST-PETITION (2) PROVIDING ADEQUATE
PROTECTION PAYMENTS TO PREPETITION SECURED PARTY (3) AND MODIFYING
THE AUTOMATIC STAY**

Gilded Age Properties, LLC (“Debtor-In-Possession,” “GAP” or “Debtor”) hereby files this memorandum of law in support of its motion for entry of order, pursuant to 11 U.S.C. §363 and 364, Federal Rules of Bankruptcy Procedure 2002, 4001 and 9014, Local Bankruptcy Rules 4001-2 and 9013-2. The Debtor seeks authorization to use the cash collateral of Webster Bank, N.A. (“WB” or “Secured Creditor”) to provide adequate protection of the Secured Creditor’s collateral position to the extent necessary. The Debtor also seeks an order approving the procedures employed in providing notice of this motion and hearing thereon.

The Debtor filed a Voluntary Petition under Chapter 11 of the Bankruptcy Code on May 4, 2017. The Debtor has continued to operate and manage its business and property since that date as a Debtor-In-Possession, pursuant to Sections 1107-1108 of the Bankruptcy Code. The Debtor owns and operates two properties: a commercial rental property located at 117 Bellevue Avenue in Newport, Rhode Island (hereinafter, “the Bellevue Property”) and a residential apartment building located at 38-40 Freebody Street in Newport, Rhode Island (hereinafter “the Freebody Property”). The Bellevue Property and the Freebody Property are hereinafter collectively referred to as “The Properties.” GAP is owned by its member.

On or about November 15, 2013, WB extended a \$712,500.00 mortgage loan to GAP on the Bellevue Property (hereinafter, “the Bellevue Loan”). As security for the Bellevue Loan, the Debtor executed and delivered a certain Promissory Note, Mortgage Deed, Security Agreement and Assignment of Leases and Rents and Loan Agreement to WB. The Loan Documents were duly recorded in the land evidence records of the City of Newport in Book 2402 at Pages 244-267.

On or about November 26, 2013, WB extended a \$712,500.00 mortgage loan to GAP on

Case 1:17-bk-10738 Doc 25-1 Filed 06/05/17 Entered 06/05/17 16:21:06 Desc
Memorandum of Law Page 2 of 6
the Freebody Property (hereinafter, “the Freebody Loan”). As security for the Freebody Loan, the Debtor executed and delivered a certain Promissory Note, Mortgage Deed, Security Agreement and Assignment of Leases and Rents and Loan Agreement to WB. The Loan Documents were duly recorded in the land evidence records of the City of Newport in Book 2405 at Pages 180-201.

The Notes, Mortgages, Security Agreements and Assignments regarding the Bellevue Loan and the Freebody Loan are hereinafter collectively referred to as the “Loan Documents.” As of May 22, 2017, the balance due on the Loans was \$1,370,716.00.

The Debtor defaulted on the obligations to WB. WB made demand upon Debtor and filed a Petition for Receivership. The Debtor engaged in efforts to refinance and/or to sell the Property, but was unable to do so prior to the scheduled receivership filing and WB was unwilling to provide GAP additional time to resolve the matter.

NOW, THEREFORE, the Debtor states as follows:

1. The Debtor hereby acknowledges and confirms that: (a) as of May 22, 2017, the outstanding balance due WB under the loans is \$1,370,716.00.

ARGUMENT

Section 363(c)(2) of the Code states in relevant part, “The Trustee may not use, sell, or lease cash collateral...unless (A) each entity that has an interest in the collateral consents; or (B) the court, after notice and a hearing, authorizes such use.” This section further provides that the court may condition such use as is necessary to provide adequate protection to the entity claiming to be secured by the cash the debtor seeks to use. *Id.* By the instant Motion, the Debtor seeks to use its pre-petition cash, accounts receivable and post-petition generated receivables to pay its post-petition operating expenses, United States Trustee quarterly fees, professional fees and any and all other expenses deemed necessary by the Debtor for the operation of the Debtor and to finance its operation under §§1107 and 1108 of the Code and its anticipated plan of reorganization. The Debtor seeks to use its cash and equivalents despite the security interest of WB in these assets by offering WB adequate protection in the form of 1) payment of regular monthly post-petition mortgage payments due pursuant to the Loan Documents; 2) payment of

Case 1:17-bk-10738 Doc 25-1 Filed 06/05/17 Entered 06/05/17 16:21:06 Desc
Memorandum of Law Page 3 of 6
post-petition real estate taxes; 3) payment of post-petition water and sewer charges; and, 4) a rollover replacement lien for any diminution in value which results from Debtor's post-petition use of the prepetition collateral.

The Debtor believes that: 1) its reorganization is in the best interests of its unsecured creditors, WB, and the equity holders; 2) that its pre-petition cash and receivables and its post-petition generated receivables are its only means of financing a successful reorganization; and, 3) that the secured claims of WB are being adequately protected. The use of cash collateral is in the best interests of the Debtor and its creditors.

The cash currently held and yet to be generated by the operation of the Debtor's commercial and residential real estate rental business is the sole source of funding for the continued operation of the Debtor's business leading to its plan of reorganization under Chapter 11 of the Code. Therefore, the use of cash collateral is essential to the Debtor's operation and reorganization. If the Debtor is unable to use cash collateral it will be unable to pay its only secured creditor, WB and its current operating expenses. The preservation of the Debtor's business as a going concern is beneficial to all constituents of the Debtor's business, including WB. If immediately liquidated, it is anticipated the obligations of WB would likely be paid in full, but the unsecured creditors would receive nothing on account of their claims.

The Debtor holds no unencumbered assets available to secure alternative financing of its continued operation. Its pre-petition account receivables and cash-on-hand are subject to the claims of WB pursuant to the Loan Documents. Post-petition generated receivables from post-petition rents are subject to WB's security interest.

In the Debtor's business judgment, it is currently unable to obtain unsecured credit allowable as an administrative expense under §503(b)(1).

In order to determine if a secured creditor is adequately protected such that its collateral may be used in reorganization, the first logical step is to consider the value of the creditor's claim in relation to the collateral which secures it. Baybank-Middlesex v. Ralar Distributors, Inc., 69 F.3d 1200, 1203 (1st Cir. 1995). "The classic protection for a secured debt...is the existence of an 'equity cushion.'" *Id.* (quoting First Agricultural Bank v. Jug End in the

The Properties are currently assessed by the City of Newport at \$1,783,300.00 (\$855,300 for the Bellevue Property and \$928,000.00 for the Freebody Property). WB's claim is fully secured by a Mortgage against the Properties, the Assignment and the Security Agreement.

WB's claims are secured to the extent of their respective interest in the Debtor's interest in the claimed collateral. 11 U.S.C. §506(a). Since it appears the entire value of the Debtor's assets may be consumed by the claims of WB, the value of the assets serving as security will ultimately have to be determined to assess the full extent of WB's security. See 11 U.S.C. §506(a). In the interim, based upon the assessed value of the Properties alone, it is believed that WB is fully secured.

The Debtor is seeking the use of cash collateral for forty five (45) days conditioned upon Debtor's payment of post-petition mortgage payments, real estate taxes and municipal charges for the Properties. Debtor has attached a proposed forty five (45) day Order setting forth the terms and conditions by which the Court will permit Debtor the use of WB's cash collateral.

CONCLUSION

As secured creditor, WB's interest in the Debtor's cash collateral is entitled to protection based upon the value of the interest in the collateral. The Debtor seeks an Order to use WB's cash collateral, subject to Court approval, which permits the Debtor to use cash collateral for ongoing operations while providing WB protection of their security interest in Debtor's prepetition collateral.

Gilded Age Properties, LLC
By its attorney,

Dated: June 5, 2017

/s/ Gregory P. Sorbello
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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2017 I electronically filed Emergency Motion to Limit Notice with the Clerk of the Bankruptcy Court for the District of Rhode Island using the CM/ECF System. The following participants have received notice electronically:

Gary L. Donahue
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Jennifer V. Doran on behalf of Creditor Webster Bank, N.A.
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I hereby certify that on June 6, 2017 I have mailed by United States Postal Service, postage pre-paid, the Emergency Motion to Limit Notice and a copy of the Notice of Electronic Filing to the attached list of non CM/ECF participants:

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/s/ Erica F. Charboneau