

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

In re:

Gilded Age Properties, LLC

Debtor-In-Possession

BK 17-10738df

CHAPTER 11

**EMERGENCY MOTION FOR INTERIM ORDER APPROVING
CONTINUING USE OF CASH COLLATERAL**

Gilded Age Properties, LLC (“Debtor-In-Possession” or “Debtor”) hereby moves this Court for entry of an interim proposed order, pursuant to 11 U.S.C. §363 and 364; Federal Rules of Bankruptcy Procedure 2002, 4001, 9014; Local Bankruptcy Rules 4001-2 and 9013-2. The Debtor seeks authorization to continue to use the cash collateral of Webster Bank, N.A. (the “Secured Creditor”), for thirty (30) days from November 1, 2017 through November 30, 2017 and to provide continued adequate protection of the Secured Creditor’s collateral positions to the extent as proposed and as more fully set forth in the attached proposed Interim Order.

In support of this motion the Debtor submits the accompanying Memorandum of Law.

WHEREFORE, the debtor requests entry of an order, consistent with the attached proposed order, allowing the use of the Secured Creditor’s cash collateral for thirty (30) days in order to continue the operation of the Debtor’s business operations.

Gilded Age Properties, LLC.

By its attorneys,

/s/ William J. Delaney

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NOTICE

Within fourteen (14) days after service, if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail or other excepted means specified, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2017 I electronically filed this document with the Clerk of the Bankruptcy Court for the District of Rhode Island using the CM/ECF System on a parties requesting notice in this case. To the extent that a party in interest requesting notice did not receive notice via this Court's CM/ECF service of the pleading will be accomplished through the U.S. Mail, first class, postage repaid, e-mail and/or facsimile no later than the next business day following the date of service hereof.

/s/ William J. Delaney

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

In re:

Gilded Age Properties, LLC
Debtor-In-Possession

BK 17-10738df
CHAPTER 11

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY
MOTION FOR INTERIM ORDERS (1) APPROVING CONTINUING USE OF CASH
COLLATERAL (2) SETTING PROCEDURES FOR NOTICE AND HEARING**

Gilded Age Properties, LLC (“Debtor-In-Possession” or “Debtor”) hereby files this memorandum of law in support of its motion for entry of interim order, pursuant to 11 U.S.C. §363 and 364, Federal Rules of Bankruptcy Procedure 2002, 4001 and 9014, and Local Bankruptcy Rules 4001-2 and 9013-2. The Debtor seeks authorization to continue to use the cash collateral of Webster Bank, N.A. (the “Secured Creditor”) for an additional thirty (30) days from November 1, 2017 through November 30, 2017 and to continue to provide adequate protection of the Secured Creditor’s collateral position to the extent necessary. The Debtor also seeks to 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 (the “Code”) on May 4, 2017. There have been four previous orders for use of cash collateral entered by the Court, the second one due to expire on October 31, 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, Newport, RI (the Bellevue Property”) and a residential apartment building located at 38-40 Freebody Street, Newport, RI (the “Freebody Property”). The Debtor-In-Possession is owned by its sole member.

On or about November 15, 2013, the Secured Creditor extended a \$712,500.00 mortgage loan to the Debtor on the Bellevue Property (the “Bellevue Loan”). As security for the Bellevue Loan, the Debtor executed and delivered to the Secured Creditor a certain Promissory Note, Mortgage Deed, Security Agreement and Assignment of Leases and Rents and Loan Agreement (the “Bellevue Documents”). Certain of the Bellevue Documents were recorded in the Office of Land Evidence Records of Newport RI in Book 2402 at Pages 244-267.

On or about November 26, 2013, the Secured Creditor extended a \$712,500.00 mortgage loan to the Debtor on the Freebody Property (the “Freebody Loan”). As security for the Freebody Loan, the Debtor executed and delivered to the Secured Creditor a certain Promissory Note, Mortgage Deed, Security Agreement and Assignment of Leases and Rents and Loan Agreement (the “Freebody Documents”). Certain of the Freebody Documents were recorded in the Office of Land Evidence Records of Newport RI in Book 2405 at Pages 180-201.

The Bellevue Documents and the Freebody Documents are collectively referred to as the Loan Documents. As of May 22, 2017, the balance due under the Loan Documents was \$1,370,716.00.

The Debtor defaulted under the Loan Documents; the Secured Creditor made demand upon the Debtor and filed a Petition for Receivership. The Debtor engaged in efforts to refinance and or to sell the Bellevue Property and/or the Freebody Property, but was unable to do so prior to the filing of the Receivership Petition and the Secured Creditor was unwilling to provide the Debtor with additional time to resolve the matter. The Debtor then filed its Voluntary Chapter Petition.

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 continue to use its post-petition cash generated by rents from tenants of the Properties (collectively, the “Rents”) in order to pay its post-petition operating expenses, United State 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 continue to use its cash from the Rents and equivalents despite the security interest of the Secured Creditor in these assets by offering the Secured Creditor adequate protection in the form of a continuing 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, the Secured Creditor and the equity holders; (2) that its post-petition cash generated from

Rents on the Properties are its only means of financing a successful reorganization; and (3) that the secured claims of the Secured Creditor 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 business through the Rents 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 the Secured Creditor and its current operating expenses. The inability to pay these expenses will lead to the immediate demise of the Debtor's business. The preservation of the Debtor's business as a going concern is beneficial to all constituents of the Debtor's business, including the Secured Creditor. If immediately liquidated, it is possible, but not absolute, that the obligations due to the Secured Creditor would be paid in full, and the unsecured creditors would receive virtually little to nothing on account of their claims.

The cash-on-hand of the Debtor is subject to the claim of the Secured Creditor pursuant to the Loan Documents. In the Debtor's business judgement, 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 Berkshires, Inc. (In re Jug End in the Berkshires, Inc.), 46 B.R. 892, 899 (Bankr. D.Mass. 1985).

The Secured Creditor'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 are consumed by the claims of the Secured Creditor, the value of the assets serving as security will ultimately have to be determined to assess the full extent of the Secured Creditor's security. See 11 U.S.C. §506(a). In the interim, based upon the amounts of Rents received, it is believed that the Secured Creditor is fully secured.

The Debtor is seeking the use of cash collateral for thirty (30) days conditioned upon Debtor's continuing payment of, among other things, post-petition mortgage payments, real estate taxes and municipal charges for the Properties. Debtor has attached to this pleading a proposed

thirty (30) day Cash Collateral Order setting forth the terms and conditions by which this Court will permit the debtor the use of the Secured Creditor's cash collateral.

CONCLUSION

The Secured Creditor's interest in the Debtor's cash collateral is entitled to protection based upon the amount of the cash generated through the Rents for ongoing operations while providing the Secured Creditor protection of its security interest in Debtor's prepetition collateral. In light of the foregoing, the Debtor, subject to Court approval, seeks permission to use cash collateral for ongoing operations.

Gilded Age Properties, LLC
By its attorneys,

/s/ William J. Delaney
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Dated: October 16, 2017

**Gilded Age Properties LLC
 Monthly Budget
 November
 2017**

Income

Rents	\$28,955.00
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Expenses

Bank Charges	40.00	
Cleaning	200.00	
Broker Commissions	1200.00	
Dues & Subscriptions	34.17	
Lawn care	92.00	
Fire Prevention fees	133.33	
Insurance	1071.00	
RE Taxes	6933.00	
Office supplies & expense	85.00	
Pest control	125.00	
Postage	18.75	
RI Sec of State	50.00	
Repairs	600.00	
Rubbish removal	284.04	
Sewer & water	785.00	
Supplies	250.00	
Utilities	2409.50	
Webster Mortgage	3353.04	
Webster Mortgage	3330.14	
Painting	3910.00	*
Sec Deposit return	1200.00	
Trustee fees	<u>205.00</u>	26,308.97

Net Income	\$2,646.03
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*prepare Gallery unit for new commercial tenant (awaiting signature on lease from proposed tenant)