



George R. Hodges
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United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IN RE:)
) CASE NO. 11-40506
SCOTTO RESTAURANT GROUP, LLC)
) CHAPTER 11

**INTERIM ORDER GRANTING DEBTOR'S EMERGENCY MOTION FOR
AUTHORITY TO USE CASH COLLATERAL, GRANTING ADEQUATE
PROTECTION TO PRE-PETITION SECURED LENDERS, AND SETTING FINAL
HEARING**

THIS MATTER came before the Court on the Motion of Scotto Restaurant Group, Inc. ("Debtor"), a debtor and debtor-in-possession herein, for entry of an order authorizing the Debtor to use cash collateral, granting adequate protection to pre-petition secured lenders, and setting final hearing pursuant to sections 105(a) and 363(c)(2)(B) of title 11 of the United States Code (the "Motion"). Notice of the Motion and Hearing was given to the petitioning creditors, CIT Small Business Lending, Mission Valley Bank, the Bankruptcy Administrator the Debtor's twenty largest unsecured creditors. The Motion was heard on September 29, 2011. Based on the matters of record and the testimony provided, the Court finds as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code.

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

BACKGROUND

3. On September 27, 2011 (the "Petition Date"), the court entered an Order for Relief following the filing of an involuntary petition. The Debtor continues in possession of its assets and in the management of its business pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee, examiner or committee has been appointed in the Chapter 11 case.

4. To ensure the continued viability of its enterprise, the Debtor has an immediate and urgent need to use funds to allow it to pay various operating expenses including food, payroll, payroll taxes, utilities, insurance and payments to vendors.

5. The Debtor has determined that projected post-petition cash flows, plus cash reserves, are sufficient to adequately finance the Debtor's post-petition activities. A copy of the Debtor's projected bi-weekly expenses (the "Budget") is attached hereto as Exhibit "A".

6. The Debtor's business is cash and carry. The Debtor does not have accounts receivable. 11 U.S.C. Section 552(a) provides in part that "...property acquired after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case". This case was commenced with the filing of an involuntary petition on August 11, 2011. The Debtor was authorized by 11 U.S.C. Section 303(f) to use, acquire and dispose of property without court approval.

7. Justin Scotto, the Managing Member of the Debtor, testified that all funds in the Debtor's accounts were earned and received subsequent to August 11, 2011. The Debtor contends that any cash, or cash in "accounts" or "deposit accounts" are not the cash collateral of the holders of claims secured by "accounts". If such liquid assets are not cash collateral, the Debtor would not need the Court's authority to use cash collateral nor would any creditor with a lien on cash, accounts or deposit accounts require adequate protection of such interests.

8. To the extent any of the Debtor's funds are found at the final hearing to be cash collateral, the Debtor's Motion seeks the authority to use such cash collateral in making payments on items in the Budget and payments authorized pursuant to the Debtor's Motion for Entry of an Order Authorizing Debtors to Pay, in the Ordinary Course of Business, Certain Undisputed Claims of Critical Vendors and Essential Service Providers.

9. The Debtor requires the use of funds which may be cash collateral to fund, among other things, its ongoing working capital requirements. If the use of cash collateral is not approved, the Debtor will suffer immediate and irreparable harm.

10. The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtor's business and the management and preservation of its assets. It is in the best interests of the Debtor's estate that the use of cash collateral be authorized. The Debtor's estate will be immediately and irreparably harmed if this Interim Order is not entered. Good cause has, therefore, been shown for entry of this Interim Order.

11. A creditor with a properly perfected security interest in the Debtor's accounts may be entitled, pursuant to Bankruptcy Code sections 361, 363(c) and 363(e), to the adequate protection of its interest in the Pre-petition Collateral (to the extent of the Pre-petition Secured Indebtedness) from any diminution in value of the Pre-petition Collateral resulting from the Debtor's use of Cash Collateral and the imposition of the automatic stay. The Debtor is willing and able to provide adequate protection to such creditors.

IT IS THEREFORE ORDERED:

1. The Motion is granted on an interim basis and on the terms set forth in this Order. The Interim Order shall be valid, binding on all parties-in-interest, and fully effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and 9014.

2. The Debtor is authorized to use Cash Collateral for items shown on the budget attached hereto as Exhibit "A". Any dispute in connection with the use of Cash Collateral and the Interim Order shall be heard by the Court.

3. Any lender with a valid perfected lien on cash collateral is granted a replacement lien (the "Post-Petition Liens") on the Debtor's assets, to the same extent and priority as existed with the pre-petition collateral.

4. The Post-petition Liens shall not at any time be (i) made subject or subordinated to, or made pari passu with any other lien, security interest or claim existing as of the Petition Date, or created under Bankruptcy Code sections 363 or 364(d) or (ii) subject to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under Bankruptcy Code section 551.

5. The Post-petition Liens will be deemed fully perfected liens and security interests, effective and perfected upon the date of this Interim Order (to the extent of any lender's pre-petition perfection) without the necessity of execution by the Debtor of mortgages, security agreements, pledge agreements, financing agreements, financing statements and other agreements or instruments, such that no additional steps need be taken by any lender to perfect such interests. However, the Debtor is authorized to make, execute and deliver such instruments (in each case without representation or warranty of any kind) to enable a lender to further perfect, preserve, and enforce the Post-petition Liens.

6. The Post-petition Liens will continue in this and in any superseding case or cases under the Bankruptcy Code, and such liens and security interests shall maintain their first priority as provided in this Interim Order until all the Debtor's obligations to such lenders have been indefeasibly paid in full in cash and completely satisfied in accordance with the pre-petition Loan Documents.

7. Nothing in this Interim Order will waive any rights of any party to request at any time that the Court provide additional or further protection of its interests in the Pre-petition and Post-

petition Collateral (including the Cash Collateral), or to seek further or additional adequate protection in the event the adequate protection provided herein proves to be inadequate.

8. The Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Interim Order and relating to the application, re-imposition or continuance of the automatic stay of Bankruptcy Code section 362(a), use of Cash Collateral, or other injunctive relief requested.

9. A final hearing on the Debtor's Motion will be held on October 12, 2011 at 9:30 a.m.

This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order

United States Bankruptcy Court

Scotto Restaurant Group LLC
Profit & Loss
2 Week Estimated Budget

Cost of Goods Sold

21 COST OF GOODS SOLD - PURCHASES	
5100 MEAT COST	
5110 PRODUCE COST	
5120 BREAD COST	
5130 SOUP/CHILI COST	
5140 DAIRY COST	
5150 NON-REVENUE COST	
5160 COOKIE/CHIP COST	
5170 BEVERAGE COST	
5300 PAPER COST - FOOD RELATED COST	
5350 MERCHANDISING COST	
5360 PRODUCT WASTE COST	
5370 COUNTER HOT SAUCE COST	
Total Cost of Goods Sold	<u>\$ 57,900.00</u>

Expenses

22 SALARIES & WAGES EXPENSES	
7105 HOURLY WAGES PAID	
7106 SALARY WAGES	
Total 22 SALARIES & WAGES EXPENSES	<u>\$ 44,688.00</u>

23 EMPLOYEE BENEFITS

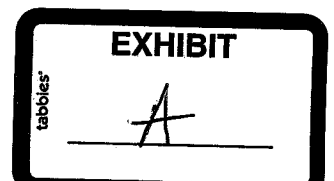
7205 FICA COMPANY PORTION - HOURLY	
Manager Medical Benefits	
7255 EMPLOYEE MEALS EXPENSE	
7258 MANAGER MEALS EXPENSE	
Total 23 EMPLOYEE BENEFITS	<u>\$ 7,747.18</u>

24 DIRECT OPERATING EXPENSES

7402 UNIFORMS - HOURLY	
7403 UNIFORMS - MANAGERS	
7404 LAUNDRY AND LINEN	
7410 SMALLWARES	
7418 CLEANING SUPPLIES	
7420 PAPER - NON FOOD RELATED	
7430 LICENSES AND PERMITS	
7450 STORE OFFICE EXPENSE	
7460 REGISTER SUPPLIES	
7470 ROYALTY TO FIREHOUSE OF AMERICA	
Total 24 DIRECT OPERATING EXPENSES	<u>\$ 12,908.08</u>

25 MARKETING

- 7610 NATIONAL MARKETING EXPENSE
- 7620 LOCAL MARKETING EXPENSE
- 7626 LOCAL STORE MARKETING
- 7627 COUPON REDEMPTION PROGRAM



Total 25 MARKETING	\$	8,611.79
26 ENERGY & UTILITY SERVICES		
7705 ELECTRIC UTILITY		
7710 GAS UTILITY		
Total 26 ENERGY & UTILITY SERVICES	\$	4,059.00
27 OCCUPANCY COSTS		
7305 RENT EXPENSE		
7315 SECURITY		
7320 EQUIPMENT RENTAL		
7360 BUSINESS INSURANCE		
Total 27 OCCUPANCY COSTS	\$	27,563.66
28 ADMINISTRATIVE & GENERAL		
7820 TELEPHONE EXPENSE		
7822 DSL/CABLE INTERNET EXPENSE		
7825 DUES AND SUBSCRIPTIONS		
7840 CREDIT CARD DISCOUNTS		
7856 ACCOUNTING EXPENSES		
7860 BANK SERVICE CHARGES		
Total 28 ADMINISTRATIVE & GENERAL	\$	7,550.00
29 REPAIRS & MAINTENANCE		
7900 GENERAL REPAIRS AND MAINT.		
7994 MAINTENANCE CONTRACTS		
7998 EQUIPMENT EXPENSE		
Total 29 REPAIRS & MAINTENANCE	\$	950.00
OWNER'S OVERHEAD		
8205 OWNER'S SALARIES		
8211 OWNER AND OTHER FICA		
8230 OWNER TRAVEL AND ENTERTAINMENT		
8235 OWNER AUTOMOBILE EXPENSE		
8240 OWNER OFFICE EXPENSE		
Total 33 OWNER'S OVERHEAD	\$	5,015.00