



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 26, 2017

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

GREENVILLE DOUGH, LLC.
47-3067177
2326 N. Henderson Avenue
Dallas, TX 75206

Debtor.

Case No.: 17-31858-BJH-11
Case No.: 17-31859-BJH-11
Case No.: 17-31860-BJH-11

Chapter: 11

IN RE:

MELKINNEY, LLC
46-1238634
218 E. Louisiana Street, 101
McKinney, TX 75069

Debtor.

JOINTLY ADMINISTERED UNDER:
Case No.: 17-31858-BJH-11

IN RE:

QUALITY FRANCHISE RESTAURANTS, LLC
45-0915613
5765 Cedar Grove Circle
Plano, TX 75093

Debtor.

SECOND INTERIM ORDER AUTHORIZING THE USE OF CASH COLLATERAL
AND SCHEDULING A FINAL HEARING

On this day came on for consideration the *Debtors' Emergency Motion for Order Authorizing the Interim and Final Use of Cash Collateral [11 U.S.C. §§ 105, 361, and 363]* (the "**Motion**"). After the Court held an emergency hearing on the Motion on May 10, 2017, the Court entered that certain Order Authorizing Interim Use of Cash Collateral, and set a hearing for further consideration of the Motion on May 25, 2017 (the "**Hearing Date**"). Greenville Dough, LLC ("**Greenville**"), Melkinney, LLC ("**Melkinney**"), and Quality Franchise Restaurants, LLC ("**QFR**" and collectively, the "**Debtors**") and AccessBank Texas ("**Access**") have advised the Court they have reached an interim agreement to allow the Debtors to use cash collateral pursuant to certain terms and conditions in light of which the Court hereby makes the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. General

1. The Debtors commenced the cases *sub judice* on May 5, 2017 (the "**Petition Date**"), by the filing of petitions for relief under chapter 11 of the Bankruptcy Code.
2. Debtors continue to operate their respective business enterprises as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Notice

3. Adequate and sufficient notice of the Motion and the Hearing Date have been provided to all persons entitled thereto pursuant to Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure.

C. Jurisdiction

4. This matter constitutes a “core proceeding” within the meaning of 28 U.S.C. § 157. This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.

D. Objections

5. Access timely filed an objection to the Debtors’ use of cash collateral [Docket Entry No. 32]. This objection has been resolved and there remain no other objections to the requested relief.

E. Cash Collateral

6. Access asserts it has perfected security interests and liens in, substantially all of the Debtors assets, including among other things, all inventory, chattel paper, accounts, equipment, general intangibles and all substitutions, replacements, product and proceeds relating to any of the foregoing (collectively, the “Collateral”) as more fully described in the following loan documents:

- Security Agreement dated September 15, 2015, by and between Greenville as debtor and Access as secured party.
- U.S. Small Business Administration Note dated September 15, 2015, by Greenville as borrower and Access as lender (“SBA Note”) in the original principal sum of \$1,881,000.00.
- Unconditional Guarantee of the SBA Note executed by Melkinney.
- Unconditional Guarantee of the SBA Note executed by QFR.
- Security Agreement dated June, 2015, by and between Melkinney and QFR as debtors and Access as secured party.
- Promissory Note dated June 10, 2015, by Melkinney and QFR as borrower and Access as lender in the original principal sum of \$1,167,315.70.

7. Access asserts all proceeds of the Collateral, and all cash from the product, offspring, rents or profits from such Collateral, constitute cash collateral as defined in 11 U.S.C. § 363 (the “Cash Collateral”).

8. The Debtors do not have sufficient unencumbered cash or other assets with which to continue to operate their respective businesses operations in Chapter 11. The Debtors require immediate authority to use Cash Collateral to continue those business operations without interruption toward the objective of emerging from Chapter 11. The Debtors' use of Cash Collateral, to the extent and on the terms and conditions set forth herein, is necessary to avoid immediate and irreparable harm to their respective bankruptcy estates pending a final hearing on the Motion

9. Access asserts that it will not be adequately protected, as defined in 11 U.S.C. §361 and §363, without conditioning Debtors' use of the Cash Collateral on the observance of the provisions of this Interim Order as hereinafter set forth.

10. The Court, after having reviewed the foregoing stipulations and the parties' agreement, finds that the parties' agreement is reasonable and appropriate and that the Motion should therefore be approved by the entry of this Interim Order.

ACCORDINGLY, IT IS ORDERED THAT:

1. Greenville is permitted to use Cash Collateral, in accord with the budget attached hereto as Exhibit "A" (the "**Greenville Budget**"), provided, Greenville may exceed any line item in the Greenville Budget by up to ten percent (10%). The Greenville Budget may be updated and modified through the date of the Final Hearing by agreement of Greenville and Access subject to further order of this Court. Nothing in this Order, the Greenville Budget or any pre-petition arrangement allowing Greenville to defer weekly royalty and brand development fund fees shall prejudice the rights of Home-Grown Industries of GA, Inc. ("**Franchisor**") from seeking or obtaining an allowed administrative expense for such accrued but unpaid obligations under the applicable franchise agreements between the Franchisor and Greenville.

2. Melkinney is permitted to use Cash Collateral, in accord with the budget attached hereto as Exhibit "B" (the "**Melkinney Budget**"), provided, Melkinney may exceed any line item in the Melkinney Budget by up to ten percent (10%). The Melkinney Budget may be updated and modified through the date of the Final Hearing by agreement of Melkinney and Access subject to further order of this Court.

3. QFR is permitted to use Cash Collateral, in accord with the budget attached hereto as Exhibit "C" (the "**QFR Budget**"), provided, QFR may exceed any line item in the QFR Budget by up to ten percent (10%). The QFR Budget may be updated and modified through the date of the Final Hearing by agreement of QFR and Access subject to further order of this Court

4. Debtors' right to use Cash Collateral under the Interim Order shall commence on the date of entry of the Interim Order and expire on the earlier of: (a) the entry of a subsequent interim cash collateral order; or (b) the entry of a Final Order.

5. As adequate protection of Access' interest, if any, in the Greenville Cash Collateral pursuant to sections 361 and 363(e) of the Bankruptcy Code to the extent of any diminution in value from the use of the Greenville Collateral the Court hereby grants Access replacement security liens on and replacement liens on all of Greenville's personal property (the "**Greenville Replacement Liens**"), whether such property was acquired before or after the Petition Date.

6. As adequate protection of Access' interest, if any, in the Melkinney Cash Collateral pursuant to sections 361 and 363(e) of the Bankruptcy Code to the extent of any diminution in value from the use of the Melkinney Collateral the Court hereby grants Access replacement security liens on and replacement liens on all of Melkinney's personal property (the "**Melkinney Replacement Liens**"), whether such property was acquired before or after the Petition Date.

7. As adequate protection of Access' interest, if any, in the QFR Cash Collateral pursuant to sections 361 and 363(e) of the Bankruptcy Code to the extent of any diminution in value from the use of the QFR Collateral the Court hereby grants Access replacement security liens on and replacement liens on all of QFR's personal property (the "**QFR Replacement Liens**"), whether such property was acquired before or after the Petition Date.

8. The Greenville Replacement Liens, Melkinney Replacement Liens and QFR Replacement Liens (collectively "**Replacement Liens**") are not cross collateralized.

9. Such Replacement Liens are exclusive of any avoidance actions available to the Debtors' bankruptcy estates pursuant to sections 544, 545, 547, 548, 549, 550, 553(b) and 724(a) of the Bankruptcy Code and the proceeds thereof.

10. Further, such Replacement Liens shall be equal to the aggregate diminution in value of the respective Collateral, if any, that occurs from and after the Petition Date. The Replacement Liens shall be of the same validity and priority as the liens of Access on the respective prepetition Collateral.

11. The Replacement Liens granted herein shall maintain the same priority, validity and enforceability as Access' liens on the respective prepetition Collateral. Access shall not be required to file or serve financing statements, notices of liens or similar interests which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect such Replacement Liens.

12. The Replacements Liens shall be subject and subordinate to: (a) professional fees and expenses of the attorneys, financial advisors and other professionals retained by the Debtors in the amounts set forth in the Greenville Budget, Melkinney Budget or the QFR Budget and any supplemental budget approved by the Court and/or consented to by Access and subject to this Court's approval under section 330 and/or section 331 of the Bankruptcy Code;

(b) professional fees and expenses of the attorneys, financial advisors and other professionals retained by any creditors committee if and when one is appointed; and (c) any and all fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and the Clerk of the Bankruptcy Court (collectively, the "Carve Out").

13. Greenville shall pay no adequate protection payments to Access for the period reflected in the Greenville Budget.

14. Melkinney shall pay to Access an adequate protection payment of \$4,765.00, such payment to be made on or before May 31, 2017.

15. QFR shall pay to Access an adequate protection payment of \$1,700.00, such payment to be made on or before May 31, 2017.

16. By and through the filing of the Debtors' monthly operating reports, Debtors shall provide Access with monthly reports of each of the Debtors' business operations no later than the 20th day of the following month.

17. Access shall have access during regular business hours, with 72 hours advance notice to Debtors and their bankruptcy counsel, to all locations where Debtors' records are stored to review all records of Debtors concerning the operation of any or all of the Debtors' business operations, the expenditure of funds generated from the operation of any or all of the Debtors' business operations, the accrual of expenses related thereto, the collection of receivables from any or all of the Debtors' business operations and any and all records reasonably relating to the operation of any or all of the Debtors' business operations and/or the Collateral.

18. Access shall have access to all locations where any of the Collateral is located for physical inspection and appraisal of such assets during regular business hours upon seventy-

two (72) hours' advance notice to any or all of the Debtors, their respective bankruptcy counsel and/or such other involved party.

19. The Debtors shall have one hundred twenty (120) days from the entry of this Interim Order to file any objection to the validity and perfection of the liens and security interests of Access. If any of the Debtors fail to timely object to the security interests and liens of Access, then as to the non-objecting Debtor, said liens and security interests shall be deemed valid and perfected against all of the non-objecting Debtors' Collateral.

20. Debtors shall timely deposit all post-petition taxes (whether federal, state or local) with the appropriate taxing authority and timely file appropriate tax returns.

21. Debtors shall timely pay all U.S. Trustee fees.

22. Debtors shall maintain insurance with respect to all of the Collateral for all the purposes and in the amounts maintained by Debtors in accordance with the requirements of its loan documents with Access. Such insurance shall contain a standard mortgage clause with Access named as loss payee, except that Access shall not be named as loss payee for any particular items of equipment as to which Access' liens are not superior to the liens of any other lien claimant.

23. The Debtors and the Debtors' officers, directors and employees shall not, seek to modify, vacate or amend this Interim Order, except to the extent that additional monies are needed for the business. If any of the provisions of this Interim Order are hereafter modified, vacated or stayed by subsequent order of this or any other Court, such stay, modification or vacatur shall not affect the validity and enforceability of any lien, priority, right, privilege or benefit authorized hereby with respect to the Access indebtedness. Notwithstanding any such stay, modification or vacatur, Access shall be entitled to all the rights, privileges and benefits,

including, without limitation, the security interests and priorities granted herein, with respect to all Access indebtedness.

24. This Interim Order will be binding on and inure to the benefit of the assigns, representatives and successors of the parties hereto, including any Trustee appointed by the Court under Chapter 11 or Chapter 7 of the Bankruptcy Code and all parties in interest.

25. Debtors' right to use Cash Collateral under this Interim Order shall commence on the date of entry of this Interim Order and expire on the earlier of: (a) June 26, 2017; (b) the entry of a subsequent interim cash collateral order; (c) the entry of a Final Order; (d) appointment of a Chapter 11 trustee; (e) conversion of this case to a Chapter 7 case; (f) lifting of the automatic stay to allow the Access or any other secured creditor to foreclose its liens on any of the Collateral; (g) a Debtor's failure to make the adequate protection payment established by this Interim Order (**but only as to the defaulting Debtor**), should Debtor fail to make such payment within 3 days after Access or Access' counsel gives written notice (via email or other written communication) that such payment is due; or (h) a Debtor's failure to provide Access with any of the reports, information or statements required by this Interim Order (**but only as to the defaulting Debtor**) within 3 days after Access or Access' counsel gives written notice (via email or other written communication) that such payment is due.

26. This Interim Order is without prejudice to the rights of Access or any of the Debtors as to any further order regarding the use of Cash Collateral as to the request for payment of any other expenses incurred during the period covered by this Interim Order. For the sake of clarity, this Order is without prejudice to the rights of Access to seek an emergency hearing with this Court to disallow continued use of Cash Collateral. In any such instance, the Debtors hereby agree and stipulates to the scheduling by the Court of an emergency hearing regarding a Debtors' use of Cash Collateral.

27. Except as otherwise provided herein, this Order is without prejudice to the rights of any party-in-interest to contest the priority, validity and enforceability of Access' liens and security interests in and to the Collateral.

28. During the term of this Interim Order, Debtors shall comply with the reporting requirements of Access, Franchisor and Henderson Shops (Dallas), LLC.

29. Nothing in this Interim Order shall be construed to acknowledge or grant liens that prime any *ad valorem* tax liens.

30. The Final Hearing to consider the entry of a Final Order authorizing and approving the use of Cash Collateral is hereby scheduled for **June 26, 2017, at 9:00 a.m.**

31. This Order is and shall be fully effective upon its entry.

END OF ORDER

ORDER SUBMITTED BY:

/s/ Robert T. DeMarco

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***Proposed Counsel for Debtors and Debtors
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APPROVED AS TO FROM AND CONTENT

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BUDGET ESTIMATE		
GREENVILLE		
		May 26 - June 25
	Beginning Balance	9,697.22
	Sales	120,000.00
		0.00
	Total Income	120,000.00
	Cost of Goods Sold	
	COGS (Food Produce and LBW)	34,200.00
		0.00
	Total COGS	34,200.00
	Gross Profit	85,800.00
	Labor	
	Salaries, Wages and Commissions	36,000.00
	(includes all Taxes and fees)	
	Total	36,000.00
	CredCard Processing (inc GCards)	2,400.00
	HGI (Royalties)	0.00
	Depreciation Expense	0.00
	Hotschedules, NCR, HCS, NoWait, IX	919.00
	Equipment Rental (Ecolab)	255.00
	Insurance Expense	
	General Liability	2,250.00
	Health Insurance	536.00
	Total Insurance Expense	2,786.00
	Interest Expense	0.00
	Licenses and Permits	0.00
	Favor	1,800.00
	Office Supplies	200.00
	Store Cash Withdrawls	5,000.00
	Other Minor Exp (Fire, CO2, Pand)	500.00
	Accounting Fees	1,500.00
	State BR Fee	0.00
	Metro Linen	500.00
	Total Other Expenses	2,500.00
	Rent Expense	23,548.00

EXHIBIT "A"

				Repairs and Maintenance	700.00
				Restaurant Supplies	300.00
				Taxes Franchise Tax	
				Sales Tax + TABC Paid	13,500.00
				Total Taxes	13,500.00
				Telephone/Internet (Spectrum)	350.00
					0.00
				Utilities (MP2, Trash, Atmos)	3,180.00
				Total Expense	93,438.00
				Cash Need or Excess	-7,638.00
				Ending Balance	2,059.22

BUDGET ESTIMATE		
MELKINNEY		
		May 26 - June 25
	Beginning Balance	16,519.70
	Sales	150,000.00
		0.00
	Total Income	150,000.00
	Cost of Goods Sold	
	COGS (Food, Produce and LBW)	40,500.00
		0.00
	Total COGS	40,500.00
	Gross Profit	109,500.00
	Labor	
	Salaries, Wages and Commissions	45,500.00
	(includes all Taxes and fees)	
	Total	45,500.00
	CredCard Processing (inc GCards)	2,800.00
	HGI (Royalties)	10,500.00
	Depreciation Expense	0.00
	Hotschedules, NCR, HCS, IX	919.00
	Equipment Rental (Ecolab)	255.00
	Insurance Expense	
	General Liability	2,250.00
	Health Insurance	2,000.00
	Total Insurance Expense	4,250.00
	Interest Expense	4,765.00
	Licenses and Permits	0.00
	Favor	1,800.00
	Office Supplies	200.00
	Store Cash Withdrawals	6,000.00
	Other Minor Exp (Fire, CO2, Pand)	500.00
	Accounting Fees	1,500.00
	State BR Fees	0.00
	Metro Linen	420.00
	Other Expenses	2,420.00
	Rent Expense	11,871.00
	Repairs and Maintenance	700.00
	Rest Supplies (Strategic)	300.00
	Taxes Franchise Tax	

EXHIBIT "B"

					Sales Tax + TABC Paid	15,500.00
					Total Taxes	15,500.00
					Telephone/Internet (ATT)	350.00
					Pest Control	100.00
					Utilities (Hudson, Atmos,DTV, Hoods	3,536.00
					Total Expense	111,766.00
					Cash Need or Excess	-2,266.00
					Ending Balance	14,253.70

BUDGET ESTIMATE		
QUALITY FRANCHISE RESTAURANT		
		May 26 - June 25
	Beginning Balance	25,762.00
	Sales	125,000.00
		0.00
	Total Income	125,000.00
	Cost of Goods Sold	
	COGS (Food, Produce and LBW)	35,625.00
		0.00
	Total COGS	35,625.00
	Gross Profit	89,375.00
	Labor	
	Salaries, Wages and Commissions	36,500.00
	(includes all Taxes and fees)	
	Total	36,500.00
	CredCard Processing (inc GCards)	2,500.00
	HGI (Royalties)	8,750.00
	Depreciation Expense	0.00
	Hotschedules, NCR, HCS, IX	810.00
	Equipment Rental (Ecolab)	255.00
	Insurance Expense	
	General Liability	1,047.00
	Health Insurance	
	Total Insurance Expense	1,047.00
	Interest Expense	1,700.00
	Licenses and Permits	0.00
	Favor	350.00
	Office Supplies	200.00
	Other Leases (VendLease)	1,459.00
	Store Cash Withdrawals	5,000.00
	Other Minor Exp (Fire, CO2, Pand)	500.00
	Accounting Fees	1,500.00
	State BR Fee	0.00
	Metro Linen	500.00
	Total Other Expenses	2,500.00
	Rent Expense	14,539.00
	Repairs and Maintenance	1,000.00
	Restaurant Supplies	300.00

EXHIBIT "C"

					Taxes Franchise Tax	0.00
					Sales Tax + TABC Paid	11,000.00
					Total Taxes	11,000.00
					Telephone/Internet (ATT)	308.00
					pest control	106.00
					Utilities (Coserve, Directv)	3,320.00
					Total Expense	91,644.00
					Cash Need or Excess	-2,269.00
					Ending Balance	23,493.00