

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

In re: § Chapter 11
§
JUBEM INVESTMENTS, INC. D/B/A § Case No. 17-10288
BUFFALO WINGS & RINGS §
§
Debtor §

EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING
DEBTOR TO USE CASH COLLATERAL AND GRANTING ADEQUATE
PROTECTION TO PRE-PETITION LENDER

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Jubem Investments, Inc. ("Debtor" or "Debtor-in-Possession"), the Debtor and Debtor-in-Possession, files this Emergency Motion for Final Orders Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection to Pre-Petition Lender (the "Motion") and in support thereof respectfully shows the Court as follows:

I. PROCEDURAL BACKGROUND

1. On July 31, 2017, (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the "Code") as a "small business" debtor. The Debtor continues to manage and operate its financial affairs as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No

creditors' committee has yet been appointed in this case by the United States Trustee. No trustee or examiner has been requested or appointed.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

III. BACKGROUND

A. Business Description

3. In May 2014, Jubem Investment, Inc. was formed and purchased certain assets, and a building located in Hidalgo, Texas.

4. Debtor currently has 36 full and part time employees working at its restaurant.

5. On or about May 1, 2015, Debtor entered into a Note and Deed of Trust with Cache Private Capital Diversified Fund, LLC ("Cache") to build and operate a restaurant. Debtor has substantial monthly revenues and sufficient equity with real property valued at approximately \$5 million to complete a reasonable 100% reorganization plan. Debtor's management believes that these factors combined with restructuring its debt will likely allow for a successful reorganization.

6. Debtor has attached its monthly budget average from the previous 6 months as Exhibit A, which includes some of the slowest months in the Debtor's business cycle. Business typically picks up as kids come back to school; therefore, Debtor has attached as Exhibit B a proposed budget that takes into account the increased projected sales as we move into late August and early September. Debtor has attached as Exhibit C the list of employees that currently work and are paid by the Debtor. The list includes the two principals of the Debtor Juan and Bella Miranda who both work in the business earning modest salaries of \$880.00 every two weeks. While Debtor has agreed to not pay the principals' salaries for as long as no cash collateral order

has been entered, Debtor requests to be able to pay all salaries, including the two small salaries of the principals during the pendency of the bankruptcy.

B. The Debt

7. Debtor has an outstanding secured debt to Cache in the amount of approximately \$2,385,000.00. The Note was for a 12-month loan with a maturity date of May 1, 2016. The Note was amended to be effective April 30, 2015, with a new maturity date of April 30, 2016. The loan was extended a number of times and three forbearance agreements were entered into, and the third forbearance extended the “Forbearance Period” to October 31, 2016.

8. Debtor has additional unsecured debt to noninsiders in the amount of approximately \$25,000.00 and a secured loan on a mixed use building located at 107 and 109 Zavala Ave, Pharr, Texas in the amount of approximately \$379,000 with Hardy Realty, Inc. for which no cash collateral use is needed currently as the building is being remodeled and has no tenants.

9. At this time, the only other identified secured debts are potential ad valorem taxes.

IV. BASIS FOR RELIEF

10. By this Motion, Debtor seeks authority to use Cash Collateral while it continues to reorganize. Debtor has immediate needs requiring the use of cash collateral for building inventory, paying employees, and operating its restaurant. Prior to filing this petition, Debtor’s secured debts consisted of Debtor’s real property securing the Cache debt, which is a blanket lien over all of Debtor’s assets, including cash collateral. All other debts appear to be unsecured. Cache’s secured interest will be adequately protected by a replacement lien to the same extent and priority as their prepetition lien and by reasonable adequate protection payments. For the purposes of this motion, Debtor proposes treating the Cache claim as fully secured at the estimated claim amount of \$2,385,000.00 and paying interest only payments at 6.5% (\$12,900.00/monthly).

V. GROUNDS FOR RELIEF

11. The Debtor needs to use cash collateral to fund post-petition operations. In the conduct of Debtor's business it must pay for supplies needed for operation of the business, pay taxes on the business property, have funds necessary to pay for repairs on the property, fund its reorganization effort, and make employee payroll.

12. The importance in cases like these of access to cash was recognized in *In re George Ruggieri Chrysler-Plymouth, Inc.*, 727 F.2d 1017 (11th Cir. 1984). The court in that case noted, "A debtor, attempting to reorganize in business under Chapter 11, clearly has a compelling need to use 'cash collateral' in its effort to rebuild." *Id.* At 1019. The Debtor is hopeful that the secured lender will consent to the proposed use of cash collateral, subject to receiving a replacement lien and other protections as provided in the agreed order. To the extent they do not consent, however, the Court may authorize the use of cash collateral by the Debtor provided that the Court determines that any objecting entity's interest is adequately protected. 11 U.S.C. § 326(c)(2)(B) and (e).

13. Section 361 sets forth three non-exclusive examples of what may constitute adequate protection. They include "providing the secured creditor with "additional or replacement lines" and other relief that provides the secured creditor with the "indubitable equivalent" of the secured creditor's interest in the cash collateral. Legislative history indicates that Congress intended to provide courts with the flexibility to grant relief on a case-by-case basis.

14. Pursuant to this motion, Debtor proposes to grant the lender a replacement lien on post-petition cash collateral to the extent its interest is secured by Debtor's assets, a recognized method for providing adequate protection as specified under sections 361 and 363.

15. Without access to cash collateral, the Debtor may be unable to build sufficient inventory to meet customer demand, fail to pay taxes when they come due or make necessary repairs to the property at issue. Furthermore, Debtor may fail to make employee payroll resulting in the loss of employees, and hindering its reorganization efforts. The going concern of Debtor's

assets may plummet. From that standpoint, the overall collateral position of the secured creditor will deteriorate markedly, more than offsetting any erosion of the cash collateral.

VI. CONCLUSION

WHEREFORE, the Debtor, Jubem Investments, Inc..., requests that the Court enter an order (a) authorizing the use of cash collateral to pay business related expenses in accordance with the attached budget with at 10% variance per line item; (b) grant Cache Private Capital a replacement lien on all inventory, equipment, accounts receivable, real estate, and general intangibles from the Jubem Investments, Inc. estate acquired after the bankruptcy filing to the same extent, validity, and priority as existed on the date the Chapter 11 case was filed, and to the extent of cash collateral that is actually used; (c) grant Cache adequate protection payments as requested herein (d) set a final hearing on this motion; and (e) grant such other and further relief as is just and proper.

Dated: August 2, 2017

Respectfully submitted,
GUERRA & SMEBERG, PLLC

/s/ Ronald J. Smeberg
Ronald J. Smeberg
State Bar No. 24033967
2010 West Kings Highway,
San Antonio, Texas 78201
210-695-6684 (Tel)
281-754-4042 (Fax)
ATTORNEY FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of August, 2017, true and correct copies of the foregoing motion were forwarded electronically to all parties requesting notice and by U.S. first class mail on August 2, 2017, postage prepaid, on all parties listed on the attached Service List.

/s/ Ronald J. Smeberg
RONALD J. SMEBERG

SERVICE LIST

Abraham Martinez-Say
6710 N. Cynthia Street
McAllen, TX 78504

Juan and Bella Miranda
3600 E. Las Malpas Road
Hidalgo, TX 78557

U.S. Attorney
Attn: Bkcy Division
600 E Harrison St #201,
Brownsville, TX 78520

Cashe Private Capital
126 W. Sego Lily Drive
Ste 270
Sandy, UT 84070

Linebarger Goggan Blair
& Sampson
P.O.Box 17428
Austin, TX 78760

David L. Campbell
Underwood Perkins, P.C.
5420 LBJ Freeway, Suite
1900
Dallas, Texas 75240

San Juanita Carlos
1203 Grosbreak Dr.
Pharr, TX 78577

Saul Salinas
1416 Travis Lake Ct
Brownsville, TX 78520

Fabian Martinez
6710 N. Cynthia Street
Garland, TX 75040

Stephen Douglas Statham
Office of US Trustee
515 Rusk, Ste. 3516
Houston, TX 77002

Hardy Realty Inc.
P.O. Box 203909
Dallas, TX 75320

Texas Comptroller of
Public Accounts
P.O. Box 149359
Austin, TX 78714-9359

Hidalgo County Tax
Assessor Collector
2804 South US Hwy 281
Edinburg, TX 78539

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-
7346

Underwood Perkins, P.C.
Two Lincoln Center
5420 LBJ Freeway, Ste
1900
Dallas, TX 75240

Exhibit A

Jubem - BWR HidalgoBudget**Description**

Gross Profit	\$ 78,300.00
Expenses	
80250 Property Taxes	\$2,125.00
Restaurant Equipment Taxss	\$933.00
51080 Wages	\$32,837.12
51110 Payroll Tax	\$988.21
51120 FICA	\$3,131.92
56020 Advertising/Marketing	\$250.00
Main Street (FaceB, Twiter, etc) \$250.00	
56040 Comp Meals	\$91.31
56080 Resturant Entertainment	\$4,958.19
Buzz Time \$725.00	
Elizondo DJ (Kareoke Night) \$275 per night X4	
J&J Sport Production (Fights Channel) \$900-	
\$5,000.00	
Ambience Radio \$40.00	
56120 Repair & Maintenance	\$836.84
Lawn guy \$120.00 (\$60.00x2)	
Hood Cleaning Services \$476.00 (4 Times a year)	
Tech & Plommer \$245.00	
56130 Television/Satellite/Internet	\$824.80
Direct TV \$423.00	
Spectrum - Internet & Cable \$402.00	
56150 Restaurant Supplies	\$1,610.87
BeerSavers System \$155.00	
AirGas \$269.00	
Cintas \$135.00 per week Aprox	
Mission Rest Supply \$220.00 Varies	
HEB / Sams / Walmart \$200.00 Aprox	
56165 Computer /Internet/Software	\$80.00
56167 IT Micros POS System	\$225.00
56170 Telephone & Answering	\$140.00
56175 Security	\$637.17
56190 Utilities	\$4,457.63
Magic Valley Elect \$2,800.00	
Republic Servs Trash \$427.00	
City of Hidalgo Water & Swer \$310.00	
Texas Gas \$520.00	
The Water Boy- Softener \$87.00	
61010 Dues & Subscriptions	\$42.59
61020 Printing & Reproduction	\$80.00
61090 Professional & Legal Fees	\$1,000.00
80010 Accounting	\$560.00
80020 Bank Service Charges	\$260.00
80030 Credit Card Fees	\$5,759.49
80050 Licenses & Permits \$100-\$6,000.00	\$600.00
80060 Payroll Service Fees	\$100.00
80070 BWR Marketing Fee \$2,300-\$2,800.00	\$2,450.00
	Depending on Sales per week 2%
80080 BWR Royalties \$5,000.00-\$7,500.00	\$6,050.00
	Depending on Sales per week 5%
80110 Insurance	\$1,703.00
Property & GL Ins - CPF \$1,062.00	
Workers Comp - first Comp \$641.00	
80130 Cleaning Servs - Chemicals	\$293.03
80140 Termite/Pest Control	\$110.00
80220 State & Local Taxes	\$1,350.00
Total Expenses	\$ 74,485.17
Net Operating Income	\$ 3,814.83

Jubem - BWR Hidalgo

Budget

Exhibit B

Description

Gross Profit	\$ 101,900.00	
Expenses		
80250 Property Taxes	\$2,125.00	
Restaurant Equipment Taxss	\$933.00	
51080 Wages	\$32,837.12	
51110 Payroll Tax	\$988.21	
51120 FICA	\$3,131.92	
56020 Advertising/Marketing	\$250.00	
Main Street (FaceB, Twiter, etc) \$250.00		
56040 Comp Meals	\$91.31	
56080 Resturant Entertainment	\$4,958.19	
Buzz Time \$725.00		
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Lawn guy \$120.00 (\$60.00x2)		
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BeerSavers System \$155.00		
AirGas \$269.00		
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56165 Computer /Internet/Software	\$80.00	
56167 IT Micros POS System	\$225.00	
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56175 Security	\$637.17	
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80030 Credit Card Fees	\$5,759.49	
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80060 Payroll Service Fees	\$100.00	
80070 BWR Marketing Fee \$2,300-\$2,800.00	\$2,450.00	Depending on Sales per week 2%
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Property & GL Ins - CPF \$1,062.00		
Workers Comp - first Comp \$641.00		
80130 Cleaning Servs - Chemicals	\$293.03	
80140 Termite/Pest Control	\$110.00	
80220 State & Local Taxes	\$1,350.00	
Total Expenses	\$ 74,485.17	
Net Operating Income	\$ 27,414.83	

Jubem - BWR Hidalgo
List of Active Employees as of 7/31/17

Exhibit C

Name	Dept	Pay Rate	Type	Cicle
A Erika	Mngr	\$1,346.15	Salary	Biwkly
H Jimenes	Mngr	\$10.00	Hour	Biwkly
E Macias	Mngr	\$10.00	Hour	Biwkly
M M Macias	Mngr	\$1,600.00	Salary	Biwkly
C Arias	Server	\$2.13	Hour	Biwkly
J De la Torre	Server	\$2.13	Hour	Biwkly
Y De la Torre	Server	\$2.13	Hour	Biwkly
G Fernandez	Server	\$2.13	Hour	Biwkly
K Figueroa	Server	\$2.13	Hour	Biwkly
Y Garcia	Server	\$2.13	Hour	Biwkly
SJ Hernandez	Server/L	\$5.00	Hour	Biwkly
A Isla	Server	\$2.13	Hour	Biwkly
H Merle	Server/L	\$5.00	Hour	Biwkly
A Ramirez	Server	\$2.13	Hour	Biwkly
K Salinas	Server	\$2.13	Hour	Biwkly
D Villagomez	Server	\$2.13	Hour	Biwkly
A Mata	Bartender	\$4.00	Hour	Biwkly
C Ruiz	Bartender	\$4.00	Hour	Biwkly
J Gomez	Bartender	\$4.50	Hour	Biwkly
K Leal	Bartender	\$4.00	Hour	Biwkly
A Alaniz Jr	Kitchen	\$8.00	Hour	Biwkly
A Antonio V	Kitchen	\$7.25	Hour	Biwkly
C Castillo	Kitchen	\$8.00	Hour	Biwkly
J Cuellar	Kitchen	\$8.00	Hour	Biwkly
P Lopez J	Kitchen	\$7.25	Hour	Biwkly
A Macias	Kitchen	\$8.00	Hour	Biwkly
J Macias	Kitchen	\$8.00	Hour	Biwkly
H Rocha	Kitchen	\$8.00	Hour	Biwkly
E Rodriguez	Kitchen	\$8.00	Hour	Biwkly
J Tobias	Kitchen	\$8.00	Hour	Biwkly
N Cantu	Hostess	\$7.25	Hour	Biwkly
A Ramirez	Hostess	\$7.25	Hour	Biwkly
J Ventura	Hostess	\$7.25	Hour	Biwkly
A Martinez-Sayave	Staff	\$1,600.00	Salary	Biwkly
J Miranda	Staff	\$880.00	Salary	Biwkly
B Miranda	Staff	\$880.00	Salary	Biwkly