

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

In re

VALDERRAMA A/C
REFRIGERATION, INC.,

Debtor.

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§
§
§
§

No. 17-32091
Chapter 11

DEBTOR-IN-POSSESSION'S EMERGENCY MOTION TO AUTHORIZE THE INTERIM USE
OF CASH COLLATERAL

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 14 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.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

TO THE HONORABLE KAREN K. BROWN:

Valderrama A/C Refrigeration, Inc., as Debtor-in-Possession, respectfully requests that the Court: (1) enter an interim order, with such terms as are just, to permit it to use cash collateral so that it may maintain its business operations, and (2) set a hearing date for the entry of a final order permitting the use of cash collateral. In further support, Valderrama respectfully shows:

I.
Jurisdiction & Venue

1. This Court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 1334(a) as the relief sought arises only under the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), 157(b)(2)(M), and 157(b)(2)(O). Therefore, this Court is constitutionally authorized to enter final orders in this contested matter.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

II.
Background

3. Valderrama A/C Refrigeration, Inc. (“*Valderrama*”) filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code on April 4, 2017. At all times Valderrama has operated as a Debtor-in-Possession. No trustee has been appointed, nor is there currently pending any motion for the appointment of a trustee.

4. The Debtor is the owner of a commercial warehouse located at 8412 Hansen Road, Houston, Texas 77057 (“*the Real Property*”). The Property is composed of 388,120 square feet of real property with a warehouse and office that is 6,400 square feet. The Property is described as:

An 8.91 acre parcel of land situated in Harris County, Texas, and being all of Tract Fifty-Eight (58) and the remainder of Tract Eighty-Seven (87) of SOUTH HOUSTON GARDENS, NUMBER 6, as recorded in Volume 2, Page 74 of the Map Records of Harris County, Texas.

5. Upon information and belief, the Real Property has a value of \$1,530,889.¹ The Debtor has not had the Real Property recently appraised.

6. The Real Property is collateral for two loans by WSB, described as:

¹ Based upon the 2017 property tax appraisal by the Harris County Appraisal District.

- a. Loan dated September 18, 2015 in the principal amount of \$1,150,100 bearing interest at 2.75% over the WSJ Prime Rate; and
- b. Loan dated September 18, 2015 in the principal amount of \$150,000 bearing interest at 2.75% over the WSJ Prime Rate.

7. The exact balances due as of today are unknown.

8. WSB is also secured by liens on Valderrama’s tangible and intangible personal property, including, but not limited to: (a) deposit accounts; (b) accounts receivable; (c) chattel paper; (d) instruments; (e) inventory; (f) equipment, furniture, fixtures, and other tangible property; (g) investment property; (h) documents of title; (i) general intangibles; and (j) property in WSB’s possession.

9. The value of Valderrama’s personal property is currently unknown, but it is known to consist of:

Description	Fairm Mkt. Value
Deposit accounts	\$55,000.00
Inventory	18,000.00
Fork lifts	17,000.00
Office equipment & furniture	<u>5,000.00</u>
Total	<u>\$95,000.00</u>

10. Upon information and belief, Wallis State Bank has not perfected its lien by the filing of a UCC financing statement with the Texas Secretary of State. Nonetheless, Wallis State Bank has a validly perfected security interest in Valderrama’s deposit accounts at Wallis State Bank. *See* Tex. Bus. & Com. Code § 9.312 (security interest in deposit accounts may be perfected by control); *id.* § 9.104(a) (control is achieved if the secured party is the bank that maintains the deposit account).

11. The Real Property also has outstanding, first-in-priority, tax liens, pursuant to Tex.

Tax. Code § 32.01, as follows:

Lienholder	Estimated Amount
City of Houston	\$9,984.13
Harris County Improvement District #9	2,491.38
Harris County Tax Assessor-Collector	22,925.87
Pasadena I.S.D.	43,222.75
San Jacinto Community College District	<u>2,919.62</u>
TOTAL	<u>\$81,543.75</u>

There is also a junior lien to the WSB liens on the Real Property held by Friedrich, LLC in the amount believed to be in the principal amount of \$200,000. Based upon the amount of the WSB liens and the tax liens, the Friedrich, LLC's debt is partly undersecured by \$149,345.25.

III.

Authority to Allow Use of Cash Collateral

12. The Bankruptcy Code defines "cash collateral" as:

In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552 (b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).

13. A Debtor may not use, sell, or lease cash collateral without the Court's authority or the secured creditor's consent. *Id.* § 363(c)(2). However, the Court may grant the Debtor authority to use cash collateral upon the provision of adequate protection. *Id.* § 363(e).

14. Valderrama requests the use of cash collateral in accordance with the budget set forth in **Exhibit A**, which is incorporated herein by reference.

15. Valderrama hereby requests that the Court approve the proposed Interim Cash Collateral Order that has been uploaded with this Motion. The decretal paragraphs of the Interim Cash Collateral Order are set forth below and define the terms of use of cash collateral proposed by the Valderrama and adequate protection afforded to Wallis State Bank.

IV. Need for Emergency Relief

16. Valderrama requires immediate access to the cash collateral to continue its business operations and pay its necessary operating expenses in the regular course of its business. The approval of the use of the cash in the proposed Interim Cash Collateral Order is consistent with the requirements for:

- a. maintaining the going concern value of the Debtor's business operations;
- b. the law under 11 U.S.C. §§ 363 (regarding the use of cash collateral) and 361 (regarding adequate protection); and
- c. facilitating a successful reorganization of the Debtor's business under Chapter 11.

17. The relief requested is in the best interests of the Debtor's estate. The failure to authorize the immediate use of the cash collateral will result in material harm to the Debtor's business, including the inability to pay post-petition wages to non-insider employees or to acquire inventories of equipment and parts. This could ultimately lead to the Debtor's liquidation.

18. The Court may conduct an expedited, preliminary hearing and authorize the use of cash collateral as "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2). The Debtor has an immediate, post-petition need for the

use of the cash collateral. Cash is essential for the Debtor to maintain the value of the Estate during the pendency of this case. The Debtor will use the cash collateral to, among other things, procure goods and services from vendors, pay their non-insider employees, pay for insurance, and satisfy other needs during the administration of this case. Without the ability to use the cash collateral for such purposes, the Debtor will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtor's ability to finance its operations and the availability to the Debtor of sufficient liquidity through the use of cash collateral is vital to the preservation and maintenance of the value of the Estate.

19. The Debtor, therefore, seeks immediate authority to use the cash collateral as set forth in this Motion and in the proposed Interim Order Authorizing the Use of Cash Collateral to prevent immediate and irreparable harm to the Estate pending the final hearing pursuant to Bankruptcy Rule 4001(b). Accordingly, to the extent Valderrama requires the use of cash collateral, the Debtor represents that it has satisfied the requirements of Bankruptcy Rule 4001 to support an expedited preliminary hearing and immediate Cash Collateral availability on an interim basis.

**V.
Declaration of Debtor's Representative**

20. The Declaration of the Debtor's corporate representative, Dario Ciriaco, verifying the facts set forth in this Motion and in the accompanying budget in Exhibit A is attached as Exhibit B, and its contents are incorporated herein by reference.

WHEREFORE, premises considered, Valderrama A/C Refrigeration, Inc. respectfully requests that the Court enter the attached order granting the interim use of cash collateral, set this

motion for a hearing for the entry of a final order, allow it to use the cash collateral on such terms as are just, and grant the Debtor all such further relief which is just.

Respectfully Submitted,

/s/ William P. Haddock

William P. Haddock

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Proposed Counsel for Debtor-in-Possession

Of counsel:

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Certificate of Service

I hereby certify that a true and correct copy of the above Debtor-in-Possession's Emergency Motion to Authorize the Interim Use of Cash Collateral has been served on the following counsel/parties of record in accordance with Fed. R. Bankr. 9013 and local rules for electronic filing and service via facsimile transmission on this 6th day of April 2017:

Parties having appeared via ECF:

Kyle L. Dickson, Counsel for Wallis State Bank
Stephen Douglas Statham, Counsel for the U.S. Trustee
Office of the U.S. Trustee

The 20 largest unsecured creditors as shown on the Amended List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders (ECF no. 3) via first-class mail, postage prepaid.

/s/ William P. Haddock
William P. Haddock

EXHIBIT A
Projected Interim Profit & Loss Statement
(Cash Basis)

	Week Ending			Total
	4/8/2017	4/15/2017	4/22/2017	
Net Sales	\$ 14,000.00	\$ 24,000.00	\$ 22,000.00	\$ 60,000.00
Collection of Accounts Receivables	2,500.00	-	-	
Cost of Goods Sold	7,000.00	7,000.00	7,000.00	21,000.00
Other Operating Income	-	-	-	-
Gross Profit	\$ 9,500.00	\$ 17,000.00	\$ 15,000.00	\$ 41,500.00
Operating Expenses				
Compensation of Insider Employees†	\$ -	\$ 8,490.00	\$ -	\$ 8,490.00
Compensation of Non-Insider Employee	5,380.00	-	5,380.00	10,760.00
Payroll Taxes	1,121.06	-	1,121.06	2,242.12
Payment on Promissory Notes*	-	-	10,317.99	10,317.99
Repairs & Maintenance	80.00	80.00	80.00	240.00
Insurance Premiums**	1,088.79	-	-	1,088.79
Telephone & Utilities	-	1,740.56	26.00	1,766.56
Transportation	700.00	700.00	700.00	2,100.00
Advertising & Promotion	700.00	700.00	700.00	2,100.00
Other				
Total Operating Expenses	\$ 9,069.85	\$ 11,710.56	\$ 18,325.05	\$ 39,105.46
Net Income from Operations	\$ 430.15	\$ 5,289.44	\$ (3,325.05)	\$ 2,394.54
Non-Operating Income	-	-	-	-
Net Income/(Loss)	\$ 430.15	\$ 5,289.44	\$ (3,325.05)	\$ 2,394.54
Projected Cash Flow for the Week				
Beginning Cash	\$ -	\$ 430.15	\$ 5,719.59	\$ -
Net Increase/(Decrease) in Cash	430.15	5,289.44	(3,325.05)	2,394.54
Ending Cash	\$ 430.15	\$ 5,719.59	\$ 2,394.54	\$ 2,394.54

*Wallis State Bank

**Auto, commercial liability & worker's comp.

†Jose Soto, Sonia Feliz, Perlia Martinez, Dario Ciriaco

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

In re VALDERRAMA A/C REFRIGERATION, INC., <p style="text-align: center;"><i>Debtor.</i></p>	§ § § § §	No. 17-32091 Chapter 11
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ORDER GRANTING THE INTERIM USE OF CASH COLLATERAL

Valderrama A/C Refrigeration, Inc. has filed an Emergency Motion to Authorize the Interim Use of Cash Collateral pursuant to 11 U.S.C. § 363. The Court makes the following findings of fact:

1. On April 4, 2017, the Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code. At all material times, the Debtor has been operating as a Debtor-in-Possession. No Trustee has been appointed, nor is there pending any motion for the appointment of a Trustee.
2. The Debtor has shown that the use of Cash Collateral will benefit the Creditors and the Estate and that Wallis State Bank (“*WSB*”), which has a lien on the Cash Collateral, is adequately protected by replacement liens and a substantial equity cushion.
3. The Debtor is the owner of a commercial warehouse located at 8412 Hansen Road, Houston, Texas 77057 (“*the Property*”). The Property is composed of 388,120 square feet of real property with a warehouse and office that is 6,400 square feet. The Property is described as:

An 8.91 acre parcel of land situated in Harris County, Texas, and being all of Tract Fifty-Eight (58) and the remainder of Tract Eighty-Seven (87) of SOUTH HOUSTON GARDENS, NUMBER 6, as recorded in Volume 2, Page 74 of the Map Records of Harris County, Texas.
4. The Property is collateral for two loans by WSB, described as:
 - a. Loan dated September 18, 2015 in the principal amount of \$1,150,100 bearing interest at 2.75% over the WSJ Prime Rate; and

- b. Loan dated September 18, 2015 in the principal amount of \$150,000 bearing interest at 2.75% over the WSJ Prime Rate.
5. These the respective security agreements, the loans are also secured by: (a) deposit accounts; (b) accounts receivable; (c) chattel paper; (d) instruments; (e) inventory; (f) equipment, furniture, fixtures, and other tangible property; (g) investment property; (h) documents of title; (i) general intangibles; and (j) property in WSB's possession.
6. It is disputed whether WSB's lien as to some of this personal property is properly perfected by a UCC Financing Statement(s) filed with the Texas Secretary of State. However, it is undisputed that WSB has a lien on the Debtor's deposit accounts at WSB pursuant to Tex. Bus. & Com. Code §§ 9.312 and 9.104(a).
7. The Debtor-in-Possession seeks to use the Cash Collateral, as that term is defined in 11 U.S.C. § 363(a), in accordance with the Budget attached hereto as **Exhibit A** and incorporated herein by reference.
8. WSB is adequately protected by an equity cushion, and the Debtor's proposed use of Cash Collateral is appropriate and should be granted.

IT IS THEREFORE ORDERED THAT:

1. Valderrama A/C Refrigeration, Inc., as Debtor-in-Possession, is authorized to use all cash generated by its business, including any receivables, collections, or cash (the "*Cash Collateral*"), as set forth in the Budget, for the three weeks ending April 22, 2017.
2. As adequate protection, but only to the extent of the use of the Cash Collateral, Wallis State Bank ("*Wallis State Bank*") is hereby granted, without any further action a continuing, additional and replacement lien and first-priority security interest in cash generated by the Debtor on a postpetition basis; (the "*Replacement Liens*"), but only as to the extent of Cash Collateral used by the Debtor after the Petition Date.
3. To the extent of the any decline in the value of Cash Collateral after the Petition Date, WSB is granted an administrative claim against the Debtor.
4. The rights and obligations of the Debtor and the rights claims, security interests, liens and priorities of WSB arising under this Order are in addition to, and not in lieu or substitution of, the rights, obligations, claims, security interests, liens and priorities granted under the prepetition loan documents, and are granted pursuant to 11 U.S.C. §§ 361, 362, and 363.

5. The Replacement Liens granted pursuant to this Order shall be deemed effective, valid, and perfected as of the date of the entry of this Order without the necessity of the filing or lodging by or with any entity of any documents or instruments otherwise required to be filed or lodged under applicable non-bankruptcy law. This Order shall be deemed to be a security agreement for purposes of creation, attachment and perfection of WSB's Replacement Liens. The Replacement Liens shall be valid and perfected as against, and binding upon, the Debtor and its successors, including any trustee, receiver, or similar successor, in this or any subsequent case under the Bankruptcy Code or in any insolvency or similar case or proceeding, and also upon any creditor of the Debtor who may have extended or may hereafter extend credit to the Debtor, or who may assert a claim in this or any subsequent case or proceeding, whether or not notice of this Order or this case has been filed in any place or with any person, including any official of any governmental jurisdiction within which the Debtor's property is located, whether municipal, county, state, or federal.
6. The provisions of this Order shall be binding upon and inure to the benefit of the WSB and the Debtor, and their respective successors and assigns, including any trustee appointed in this or any superseding case under the Bankruptcy Code.
7. This Order may be extended or modified by a subsequent interim order for the use of cash collateral upon the submission of additional weekly budgets.

IT IS FURTHER ORDERED THAT the Debtor may maintain deposit accounts at Wallis State Bank, which is not an authorized depository for debtor-in-possession accounts, so long as Wallis State Bank and the Debtor provide the Office of the United States Trustee with copies of all bank statements from such account(s).

IT IS FURTHER ORDERED THAT a hearing will be conducted on _____, 2017 at ____:____.m. in Courtroom 403, United States Courthouse, 4th Floor, 515 Rusk, Houston, Texas 77002 to consider whether and on what terms the use of cash collateral may be used by the Debtor on an ongoing basis.

SIGNED this _____ day of April 2017.

JUDGE KAREN K. BROWN
UNITED STATES BANKRUPTCY JUDGE