

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Bankruptcy Court  
Southern District of Texas  
FILED

JUN 05 2017

David J. Bradley, Clerk of Court

IN RE: §  
APOLLO COMPANIES, INC. § Case No. 17-80148-G1-11  
Debtor. § Chapter 11  
§ JUDGE MARVIN ISGUR

DEBTOR IN POSSESSION’S MOTION FOR AUTHORITY TO USE CASH  
COLLATERAL PURSUANT TO 11 USC Sec. 363

Apollo Companies Inc.\Debtor-in-Possession. (the “Debtor”), by and through its undersigned proposed counsel, hereby files its Motion for Authority to Use Cash Collateral Pursuant to 11 U.S.C. § 363, and in support thereof, respectfully states as follows:

**JURISDICTION**

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

2. The statutory predicate for the relief requested in this Motion is 11 U.S.C. §§ 105 and 363 and Rule 4001(d)(1)(D) of the Federal Rules of Bankruptcy Procedure.

**BACKGROUND**

3. On May 5, 2017, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Petition Date”). Pursuant to Bankruptcy Code §§ 1107(a) and 11Q8, the Debtor is operating its business and managing its affairs as a debtor in possession. As of the date hereof, not trustee, examiner, or statutory committee has been appointed in this Chapter 11 case.

4. The Debtor is a Texas Corporation whose primary business involves sale and service of office equipment.

5. Debtor's operations manager failed to pay certain employment taxes due and owing to the IRS, which caused Debtor to owe substantial tax and penalty to the IRS. Debtor further went into debt with creditors On Deck, Kabbage, and Forward Financing, in an effort to obtain funds for operations. Each of those creditors have liens on Debtors receivables.

6. The Debtor has filed this case to restructure its debt and pursue a traditional chapter 11 reorganization plan by paying the liquidation value to its unsecured creditors and to service its debts to Mellon over time through a plan of reorganization.

7. The Debtor primarily generates income from sales and service of office equipment. At the time of filing, the Debtor had a total balance of approximately \$21,099.34 in its operating account.

RELIEF REQUESTED

8. By this Motion, the Debtor seeks the entry of an Order authorizing its use of cash collateral pursuant to 11 U.S.C. § 363, Federal Rules of Bankruptcy Procedure 4001(b)(2) and Local Rule 4001-3; setting the time for a final hearing and objection deadline for this Motion; and granting such other and further relief as is just and proper.

9. As set forth in the budget, incorporated herein and attached hereto as Exhibit "A", the Debtor requires the use of cash collateral to fund all necessary operating expenses of the Debtor's business.

10. The Debtor will suffer immediate and irreparable harm if it is not authorized to use cash collateral to fund the expenses set forth in the Budget. Absent such authorization, the Debtor will not be able to maintain and protect the Property.

11. Debtor acknowledges that Kabbage, On Deck, and Forward Financing may have a lien on the cash collateral in accordance with 11 U.S.C §§ 361 and 363. In connection therewith, the Debtor seeks the use of Cash Collateral in the ordinary course of business.

**CASH COLLATERAL AND THE RELIEF SOUGHT BY THE DEBTOR**

12. The Debtor's use of property of the estate is governed by section 363 of the Bankruptcy Code, which provides that:  
If the business of the debtor is authorized to be operated under section ... 1108 ... of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, any may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). A debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with Section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).

13. When a Chapter 11 debtor-in-possession is authorized to operate its business, it may use property of estate in ordinary course of business, but is prohibited from using cash collateral absent consent of the secured creditor or court

14. "Cash collateral" is defined by the Bankruptcy Code as, "cash, negotiable instruments, documents of title securities, deposit accounts or other cash equivalents whenever acquired in the which the estate an entity other than the estate have an interest..." 11 U.S.C. § 363(a). Any cash collateral generate by the Debtor may constitute the cash collateral of the alleged secured creditors.

15. Further, the Debtor proposes to use the Cash Collateral in accordance with the terms of the Budget. The Debtor also requests that it be authorized: (i) to exceed any line item on the budget by an amount up to ten (10) percent of each such line item; or (ii) to exceed any line item by more than ten (10) percent so long as the total of all amounts in excess of all line items for the Budget do not exceed ten (10) percent in the aggregate of the aggregate of the total budget.

**APPLICABLE AUTHORITY FOR RELIEF REQUESTED**

**A. The Court Should Enter an Order Authorizing the Continued Use of Cash Collateral Because the Debtor is Providing the Secured Creditor with Adequate Protection.**

16. The Bankruptcy Code does not define "adequate protection" but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including "other relief" resulting in the "indubitable equivalent" of the secured creditors' interest in such property. See 11 U.S.C. § 361.

17. Adequate protection is to be determined on a case-by-case factual analysis.

18. In the instant case, adequate protection provided to the Creditors may include a replacement lien on the Debtor's receivables and the Debtor's projected positive cash flow.

19. Section 361(2) of the Bankruptcy Code expressly provides that the granting of a replacement lien constitutes a means of providing adequate protection. 11 U.S.C. § 361(2). In the instant case, granting Creditors a replacement lien on post-petition collateral to the extent its prepetition collateral is diminished by the Debtor's use of cash collateral provides them with adequate protection.

20. The Use of Cash Collateral will Preserve the Debtor's Going Concern Value Which will Inure to the Benefit of Mellon and other Creditors.

21. The continued operation of the Debtor's business will preserve its going concern value, enable the Debtor to capitalize on that value through a reorganization strategy, and ultimately facilitate the Debtor's ability to confirm a Chapter 11 plan. If the Debtor is not allowed to use cash collateral, it will be unable to operate and potentially cause harm to the property.

22. The Debtor will use the cash collateral during the interim cash collateral period to pay association dues, utilities and otherwise maintain and protect the real property.

23. It is well established that a bankruptcy court, where possible, should resolve issues in favor of preserving the business of the debtor has a going concern. A debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use cash collateral in its effort to rebuild. Without the availability of cash to meet daily operating expenses such as rent, payroll, utilities etc., the congressional policy favoring rehabilitation over economic failure would be frustrated.

24. Accordingly, courts authorize the use of cash collateral to enhance or preserve the debtor's going concern value. R. 600, 602 (Bankr. S.D. Fla. 1981) (marginally secured creditor adequately protected by lien on postpetition property acquired by debtor, debtors can use cash collateral in the normal operation of their business).

25. If the Debtor cannot use cash collateral, it will be forced to cease operations. By contrast, granting authority will allow the Debtor's to maintain operations and preserve the going concern value of its business which will inure to the benefit of any secured creditors and all other creditors.

26. The Debtor believes that use of Cash Collateral pursuant to the terms and conditions set forth above is fair and reasonable and adequately protects the secured creditor in this case. The combination of: (i) the Debtor's ability to preserve the going concern value of the business with the use of cash collateral; and (ii) providing the Secured Lender with the other protections set forth herein, adequately protects its alleged secured position under § 361(2) and (3). For all of the reasons

27. The Debtor believes that the approval of this Motion is in the best interest of the Debtor, its creditors and its estate because it will enable the Debtor to (i) continue the orderly operation of its business and avoid an immediate total shutdown of operations; (ii) meet its obligations for necessary ordinary course expenditures, and other operating expenses; and (iii) make payments authorized under other orders entered by this Court, thereby avoiding immediate and irreparable harm to the Debtor's estate.

28. A proposed order granting the relief requested is attached hereto as Exhibit B.

WHEREFORE, the Debtor respectfully requests that this Court enter an order (a) authorizing the Debtor's use of cash collateral in accordance with the attached Budget and provide related adequate protection; (b) granting the replacement liens set forth above in connection with the use thereof; (c) granting such other and further relief that is just and proper.

Dated: May 23, 2017.

Respectfully submitted,



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CERTIFICATE OF ADMISSION AND SERVICE I HEREBY CERTIFY

that I am admitted to the Bar of the United States District Court for the Southern District of Texas and I am in compliance with the additional qualifications to practice in the Court set forth in Local Rule 2090-1(A).

I FURTHER CERTIFY that a true and correct copy of the foregoing was served via ECF Electronic Mail and/or U.S. Mail this 15<sup>th</sup> day of August, 2011, upon the parties on the service list attached hereto.

By: /s/ William L. Bennett

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