

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

<b>IN RE:</b>	§	
	§	
<b>MARCANTONIO ENTERPRISES, LLC,</b>	§	<b>CASE NO. 17-51968-CAG</b>
	§	
<b>DEBTOR</b>	§	<b>CHAPTER 11</b>

**EMERGENCY MOTION FOR AUTHORITY TO USE, SELL,  
OR LEASE CASH COLLATERAL IN THE ORDINARY COURSE,  
PROVIDE ADEQUATE PROTECTION AND FOR PRELIMINARY HEARING**

**TO THE HONORABLE CRAIG A. GARGOTTA, UNITED STATES BANKRUPTCY JUDGE:**

Now comes Marcantonio Enterprises, LLC, the Debtor-in-possession herein, by and through its attorney of record, who files this Emergency Motion, pursuant to 11 U.S.C. § 363, for Authority to Use, Sell or Lease Cash Collateral in the Ordinary Course, Provide Adequate Protection and for Preliminary Hearing, and would respectfully show the Court the following:

1. Through this Motion, the Debtor seeks interim and final relief allowing it to use cash collateral in the continuing operation of its business.

**JURISDICTION AND PROCEDURAL BACKGROUND**

2. On August 18, 2017, Marcantonio Enterprises, LLC (hereinafter, the “Debtor”) filed a Voluntary Petition for Relief under Chapter 11 of Title 11, United States Code. Debtor continues in possession of its property and it is operating and managing its business as a debtor in possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.

3. No trustee or examiner has been appointed in the Debtor’s Chapter 11 Case, nor has a creditors’ committee or other official committee been appointed pursuant to 11 U.S.C. §1102.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The basis for the relief herein is primarily grounded in 11 U.S.C. §§ 105(a) as supplemented and amplified by Fed. R. Bank. P. 6003.

### **THE DEBTOR'S BUSINESS**

#### Overview/Company History

6. The Debtor is a single member limited liability corporation based in New Braunfels, Texas, which is involved in the real estate business. The Debtor, through its sole member, acquires commercial real estate to improve and rent to commercial tenants or to sell.

7. Debtor receives income in the form of rents from commercial tenants and note payments from properties previously sold by the Debtor or its owner.

8. Debtor has no current employees, but pays contract labor on an “as needed” basis.

9. Debtor was formed on April 20, 2010. Debtor has always generated a profit and was current on all of its debt service obligations when the case was filed. However, as noted below, an entity with whom the Debtor has a business dispute filed suit and took a sizable default judgment against the Debtor, after obtaining a substituted service order, which left the Debtor with no alternative but to file this case to avoid the fire-sale of assets and bank account garnishment that would have shut down the Debtor's business while it pursued an appeal seeking to set aside the default judgment.

Financial Information

10. The Debtor or its owner own certain commercial properties used to produce income for the Debtor's operations. The properties are located in Bexar and Comal County and are worth approximately \$3,115,000.00 collectively. The two most valuable properties are located at 4343 Industrial Center Drive, San Antonio, Texas (worth \$1,350,000) and 6910 N.E. Loop 410, San Antonio, Texas (worth \$1,150,000). The Debtor's primary lender, TexStar National Bank (hereinafter "TexStar"), holds a purchase money Deed of Trust lien against these properties with an approximate loan balance of \$834,000.00. TexStar also holds a security interest in the leases and rents derived from these properties. The Debtor receives approximately 75% of its gross revenue from the rents derived from such properties. In addition to the foregoing, the Debtor receives rents from other properties, as well monthly payments on real estate notes from properties previously sold by the Debtor, and against which it carried back real estate notes. The Debtor also owns a property legally described as Lot 16, NCB 12117, Vogan Subd., in San Antonio, Texas - valued at \$140,000, but subject to an owner carried note and deed of trust in the amount of \$70,000.00. The later property produces no current income, but is under contract right now to sell at a profit.

11. All of the collateral of the above-named secured lender is adequately insured against risk of loss.

12. There are no delinquent ad valorem taxes owed by the Debtor against the properties. Further, the Debtor's principal believes the Debtor is current on its filings with the Internal Revenue Service, and owes no unpaid federal income taxes. As of the petition date, the Debtor owes no unpaid wages to employees. Other than the Debtor's principal, the Debtor will schedule one unsecured creditor, being Stellar Restoration Services, LLC (hereinafter "Stellar") - the entity that

took a default judgment against the Debtor in the amount of \$276,300.00. Debtor will schedule Stellar's claim as disputed, as the matter is currently on appeal. However, Debtor will propose a plan of reorganization in this case that will pay 100% of all allowed claims, including any claim of Stellar that may be allowed pursuant to a final order.

#### Reasons for Filing Bankruptcy

13. As noted above, the judgment creditor Stellar took a default judgment on April 18, 2017, against the Debtor based upon alleged substituted service. It is the Debtor's position that it did not receive service and had no notice of the lawsuit filed against it. The Debtor employed counsel who timely filed a motion to set aside the default judgment; however, the trial court denied the Motion. Therefore, the Debtor timely filed an appeal to the Fifth Court of Appeals in Dallas, Texas, where the matter is currently pending. The size of the default judgment created problems for the Debtor that placed its continued existence in jeopardy. The Debtor has sufficient cash to fund its operations on a monthly basis, but could not possibly post a supercedas bond even approaching the amount that would be required during the pendency of the appeal. Further, the Debtor cannot pay its monthly obligations or sustain its operations without being able to maintain a bank account - something that could not happen if a garnishment occurred. Finally, when a judgment creditor obtains a writ authorizing a sheriff's sale, properties are sold at substantial losses resulting in forfeiture of a large amount of the Debtor's equity. The Debtor therefore had no choice but to file this case, seeking to reorganize its debts in an orderly fashion. Because of the equity the Debtor has in its assets, the Debtor will be able to meet all of its obligations, including the payment of any allowed claim of the judgment creditor, in a manner that ensures that all other creditors are paid

without the disruption of the Debtor's business operations that would have occurred without the filing.

#### Going Forward

14. Through this case, the Debtor will seek to reorganize its debts under Chapter 11 of the Bankruptcy Code. The Debtor will continue to pursue its appeal of the default judgment and once a final determination is made concerning the claim of such creditor, Debtor will be able to provide for the full payment of any allowed claim through the combination of property sales and monthly payments.

#### **FACTUAL BACKGROUND ON NECESSITY FOR REQUESTED RELIEF**

15. Based upon an analysis of the Debtor's records, the following party holds secured claims against the Debtor which give rise to cash collateral:

Creditor	Est. Amt. Owed	Collateral	Insider?	Perfection Date(s)
TexStar National Bank	(1). \$834,000 (2). \$150,000	Commercial Properties located at 4343 Industrial Center Drive, San Antonio, Texas & 6910 N.E. Loop 410, San Antonio, and all rents revenues and proceeds therefrom - and - Assignment(s) of (Leases and) Rents from properties (w/cross-collateralization)	No	(1). 11/3/08 (2). 1/9/13

Debtor owes no delinquent ad valorem taxes. Further, no Federal Tax Liens have been filed against the Debtor.

16. As noted above, Debtor generates most of its income from the rents paid by commercial tenants presently renting commercial space at the two properties referenced above. The

rents are the cash collateral of TexStar National Bank. Until a plan of reorganization is confirmed in this case, Debtor must obtain approval for the use of the cash collateral. It is critical for Debtor to have access to its cash and other business property to continue to operate in the ordinary course of business and to pay normal operating expenses.

17. Debtor can meet its ongoing post-petition obligations only if it obtains authority for use of Cash Collateral. Debtor has generated projections and believes it is able to cash flow post-petition if it has the funds available from or generated by its pre-petition cash collateral to pay its post-petition expenses. A copy of the Debtor's Cash Collateral Budget is attached hereto as Exhibit "A". Thus, in order to continue operations as normal and to preserve the value of the estate pending confirmation of a plan of reorganization, Debtor needs immediate authority to use the Cash Collateral.

**ARGUMENTS AND AUTHORITIES IN SUPPORT OF REQUEST  
FOR TEMPORARY AND FINAL USE OF CASH COLLATERAL**

18. Debtor requires immediate authority from the Court to use the Cash Collateral in the ordinary course of its business and on an interim basis until there is a final hearing on this Motion.

19. Debtor requests the authority to use cash collateral to operate its business. Pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure, Debtor requests that the Court set an expedited, preliminary hearing on the use of cash collateral and, at such preliminary hearing, that the Court authorize the temporary use of cash collateral, if any, to avoid immediate and irreparable harm to Debtor and its bankruptcy estate pending a final hearing. Debtor also requests the Court set a final hearing as soon as possible after fifteen (15) days from the filing of this Motion for continued use of cash collateral thereafter.

20. Debtor requires the continued authority to use Cash Collateral beyond the interim period in order to continue its business and maintain the assets of the estate until it can confirm a plan of reorganization. Debtor's need to use the Cash Collateral will continue during the pendency of this bankruptcy case.

21. Debtor also requests that this Court schedule a hearing for final approval on the use of Cash Collateral, on notice to creditors and parties in interest, in the event an objection is filed to the terms of the interim order.

22. The immediate and temporary approval for the use of the Cash Collateral is consistent with (i) Bankruptcy Code requirements for maintaining the going concern of a debtor's business operations; (ii) the law under 11 U.S.C. §§ 363 and 361 as to the use of cash collateral and adequate protection; and (iii) facilitating a successful reorganization under chapter 11 of the Bankruptcy Code.

23. The failure to authorize the immediate use of Cash Collateral on which the secured party holds a lien will result in a swift and significant deterioration of Debtor's business. Failure to gain authority to use, sell, or lease such collateral will result in a cessation of Debtor's business activities, which would expose Debtor to additional liability when it is unable to meet its obligations to its many tenants who are renting space from the Debtor, and result in irreparable injury to the Debtor and its chances for reorganization. In order to continue its business activity in an effort to achieve successful reorganization, the debtor needs to use cash collateral in its ordinary business operations.

24. The Bankruptcy Code contemplates a debtor's use of collateral during the reorganization of its business. Sections 102(1) and 363 of the Bankruptcy Code provide that

collateral may be used upon notice and opportunity for a hearing appropriate in the particular circumstances. Relief may be authorized without an actual hearing if there is insufficient time available and adequate protection has been provided. 11 U.S.C. § 363(e). The combination of Debtor's emergency needs to satisfy pending obligations and current operating needs, together with the provision of adequate protection are sufficient to authorize the interim use of the collateral as set forth herein.

25. Section 361 of the Bankruptcy Code sets forth various types of adequate protection which Debtor may provide:

- a. making periodic cash payments to the extent that the creditor holding a security interest in cash collateral suffers a decrease in the value of its interest in such property;
- b. granting replacement liens in collateral to compensate the creditor for any decrease in the value of the creditor's interest in such property; or
- c. granting other relief as will result in the realization of the indubitable equivalent of the creditor's interest in collateral.

26. Debtor proposes to provide adequate protection to the party with an interest in Cash Collateral in the following manner:

- a. Providing for payment of TexStar's monthly debt service during the pendency of the case;
- b. Granting a replacement lien to the same extent, priority and validity as its pre-petition lien;
- c. The Debtor will continue to operate its business in the ordinary course of business thus generating additional Cash Collateral; and
- d. Debtor will maintain insurance upon the property giving rise to the Cash Collateral.

26. Debtor requests permission to pay, or have paid, its usual and customary operating expenses of the same type and approximate amounts set forth on the cash collateral budget attached hereto as Exhibit "A".



**REQUEST FOR EMERGENCY HEARING**

27. Debtor requests that the Court schedule an emergency hearing on the Motion.

WHEREFORE, Debtor requests that the Court authorize the use, sale, or lease of Cash Collateral on an interim basis and, upon setting and conducting a final hearing, issue a final order authorizing the use, sale, or lease of such cash collateral with the adequate protection to the secured parties as set forth herein; and grant any other and further relief to which Debtor is justly entitled.

Respectfully submitted,

LAW OFFICE OF H. ANTHONY HERVOL  
4414 Centerview Road, Suite 200  
San Antonio, Texas 78238  
(210) 522-9500  
(210) 522-0205 (Fax)

By /s/ H. Anthony Hervol  
H. Anthony Hervol  
State Bar Number 00784264  
Attorney for the Debtor-in-possession

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing document has been served upon the parties listed below, by the methods indicated hereunder, and to the parties on the attached mailing list by first class mail, postage prepaid, on the \_28th\_ day of August, 2017.

**DEBTOR:**

Marcantonio Enterprises, LLC  
7765 FM 482  
New Braunfels, Texas 78132  
*Via Electronic Mail, with consent*

**INTERESTED PARTIES:**

Robert L. Barrows  
Warren, Drugan & Barrows, P.C.  
800 Broadway  
San Antonio, Texas 78215  
*Counsel for TexStar National Bank*  
*Via Electronic Mail, with Consent*

**REQUESTING NOTICE:**

Don Stecker  
Linebarger Goggan Blair & Sampson, LLP  
711 Navarro Street, Ste 300  
SAN ANTONIO, TX 78205  
*Counsel for Bexar County*  
*Via the Court's ECF Filing System*

**UNITED STATES TRUSTEE:**

Post Office Box 1539  
San Antonio, Texas 78295-1539  
*Via the Court's ECF Filing System*

\_\_\_\_\_/s/ H. Anthony Hervol\_\_\_\_\_  
H. Anthony Hervol

United States Trustee  
P.O. Box 1539  
San Antonio, TX 78295-1539

Bexar County  
c/o Don Stecker  
Linebarger, Goggan et al  
711 Navarro, Suite 300  
San Antonio, TX 78205

Comal County  
c/o Lee Gordon  
MCCREARY, VESELKA, BRAGG &  
ALLEN, P.C  
P.O. Box 1269  
Round Rock, TX 78680

Ralph M. Marcantonio  
7765 FM 482  
New Braunfels, TX 78132

Reece and Cynthia Heaton  
819 Patricia  
San Antonio, TX 78216

Robert L. Barrows  
Warren, Drugan & Barrows, P.C.  
800 Broadway  
San Antonio, TX 78215

Stellar Restoration Services, LLC  
10497 Town & Country Way, Suite 930  
Houston, TX 77024

TexStar National Bank  
600 Pat Booker Road  
Universal City, TX 78148

The Suster Law Group, PLLC  
1316 Village Creek Drive, Suite 500  
Plano, TX 75093-4461