

HONORABLE TIMOTHY DORE

**HEARING DATE: FRIDAY, FEBRUARY 24, 2017
HEARING TIME: 9:30 A.M.**

LOCATION: SEATTLE, COURTROOM 8106

RESPONSE DUE: 12:00 P.M. (NOON), TUESDAY, FEBRUARY 21, 2017

*SUBJECT TO ENTRY OF ORDER SHORTENING TIME

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

HANSELL MITZEL, LLC,

Debtor.

Lead Case No. 16-16311
(Administratively Consolidated with Case
No. 17-10565)

In re

DANIEL R. MITZEL AND PATRICIA R.
BURKLUND,

Debtors.

DEBTORS' MOTION FOR INTERIM
ORDER AUTHORIZING USE OF CASH
COLLATERAL AND
SETTING FINAL HEARING

Daniel R. Mitzel and Patricia R. Burklund (also "Debtors"), debtors in possession herein, move the Court pursuant to sections 105, 361, 362, and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure, and Rules 4001-3, and 9013-1(d)(2)(E) Local Rules of Bankruptcy Procedure for the Western District of Washington (the "Local Rules"), for the entry of an interim Order (1) authorizing the Debtors' use of cash collateral in which certain parties assert a security interest; and (2) setting a final hearing. This

1 motion is based upon the files and records herein and upon the Declaration of Daniel R. Mitzel (the
2 “Mitzel Declaration”).

3 I. FACTUAL BACKGROUND

4 Dan Mitzel and Patti Burklund have lived, worked, and been a vibrant part of the Skagit
5 Valley community for all of their adult lives. Since the early 1980’s, Dan has worked as a developer
6 and occasionally builder of more than 50 residential and commercial real estate projects in Skagit,
7 Island, Snohomish, Lewis, and Pierce counties. Patti built a very successful and active career in
8 public service, working at the Port of Seattle before serving as the Executive Director for the Port of
9 Skagit prior to her retirement. Both Dan and Patti have served on numerous community, professional,
10 and church groups, committees, and councils over the years.

11 During the early-mid 2000’s, Dan Mitzel and Jeff Hansell partnered to develop and build
12 single-family residences in Skagit County. In several of those years, Hansell Mitzel Homes was the
13 largest developer of single family neighborhoods in Skagit County, and built hundreds of homes in
14 Skagit County from 2002-2008. Today, Dan and Patti own substantial commercial and residential
15 real estate in their own names, and hold interests in a number of LLC’s that, in turn, own commercial
16 and residential real estate.

17 This bankruptcy was precipitated by a residential development project owned by Hansell
18 Mitzel LLC (“the LLC”), the jointly-administered debtor in this matter, and related loan with
19 Washington Federal, National Association (“WaFed”). The LLC acquired property known as
20 Highland Greens in 2005. Horizon Bank financed the acquisition and its loan was secured by a deed
21 of trust against the Highland Greens property and guaranteed by Mr. Mitzel. Horizon Bank failed,
22 and WaFed purchased Horizon Bank’s assets from the FDIC Receiver in January 2010. The principal
23

1 balance of the Highland Greens loan at the time was approximately \$8.4 million. The note rate of
2 interest rate was 3.75%. The default rate of interest, then in effect, was 7.75%.

3 As with virtually every developer and builder, the recession created enormous challenges and
4 pressures for the LLC and Dan Mitzel. Fortunately, Dan Mitzel and the LLC were able to survive and
5 ultimately to flourish as the recession receded. Due to the sheer amount of pent-up residential
6 property in the Skagit Valley, development of the Highland Greens project became protracted. Mr.
7 Mitzel and WaFed developed a productive working relationship on this and a number of other projects
8 and loans that formed a robust business relationship.

9 Throughout 2016, Mr. Mitzel worked tirelessly to obtain preliminary plat approval from
10 Skagit County to complete the lot development and build out of the remaining 129 lots in the
11 Highland Greens project. WaFed remained supportive, encouraging Mr. Mitzel and the LLC to
12 complete that effort and telling him that it supported the LLC developing the project and would
13 ultimately work out an approach that would waive/forgive default interest.

14 In August 2016, Skagit County approved the preliminary plat. Almost immediately, WaFed
15 seemed to shift its approach to the Highland Greens project, no longer interested in allowing the LLC
16 to develop the project and pushing for a liquidation of the project and a deficiency agreement with Mr.
17 Mitzel, as guarantor of the Highland Greens loan. Despite efforts among the LLC, Mr. Mitzel, and
18 WaFed over the last 6 months, they could not come to reach a negotiated resolution of the matter.

19 On December 30, 2016, WaFed obtained a judgment against Mr. Mitzel, personally, and his
20 marital community, in an amount slightly over \$10,000,000. After attempts failed to reach agreement
21 regarding how this loan would be paid, WaFed communicated that it would begin efforts to execute
22 against the Debtors' personally owned assets. WaFed has recorded its judgment in the counties in
23 which the Debtors' own real property, thus creating judgment liens against those properties.

1 The Debtors have filed this case to provide sufficient breathing room to take necessary steps to
2 maximize the value of their assets and the LLC's assets. This includes development of the Highland
3 Greens lots for sale and vertical construction. The Skagit County permit requires that all lots be
4 recorded by May 19, 2019. The value of the Highland Greens property is much greater as developed
5 property than in its current state. In fact, the delta between the developed value and the current "as is"
6 value is millions of dollars. The LLC and Mr. Mitzel will work to facilitate this development. The
7 increased value, which will inure to WaFed's benefit, will, in turn substantially reduce Mr. Mitzel's
8 personal exposure on his personal guaranty liability.

9
10 **A. Cash Collateral**

11 The Debtors seek authority to use cash collateral with respect to their real properties that are
12 both (i) subject to secured debt; and (ii) income-producing ("Cash Collateral").

13 **1. Peoples Bank/PIPGP Industrial Building, Arlington**

14 The Debtors own a 52,500 square foot warehouse industrial building located in Arlington,
15 Washington referred to by the Debtors as the "PIPGP Building." The Debtors believe Peoples Bank
16 holds a secured claim against the PIPGP Building pursuant to loan documents dated as of October 30,
17 2014 in connection with an original loan in the amount of \$2,380,000, with a current balance
18 approximately \$2,286,254.73. Mitzel Decl. The Debtors seek to use the Cash Collateral as to the
19 PIPGP Building pursuant to Exhibit A-1 Budget attached to the Mitzel Declaration in order to make
20 current debt payments to Peoples Bank and to preserve the Bank's collateral. The Debtors believe the
21 PIPGP Building has a value of no less than \$4,200,000, with equity in the Building of approximately
22 \$1,900,000. Id.

1 **2. Whidbey Island Bank/Cascade Professional Building**

2 The Debtors own a professional building in Burlington, Washington referred to by the Debtors
3 as the “Cascade Building.” The Debtors believe Whidbey Island Bank holds a secured claim against
4 the Cascade Building pursuant to loan documents with an original loan in the amount of \$2,490,000,
5 with a current balance approximately \$2,169,858.62. Mitzel Decl. The Debtors seek to use the Cash
6 Collateral as to the Cascade Building pursuant to Exhibit A-2 Budget attached to the Mitzel
7 Declaration. The purpose of the Cash Collateral use is to make payments to Whidbey Island Bank
8 from available cash flow and to preserve the Bank’s collateral. The Debtors believe the Cascade
9 Building has a value of no less than \$2,700,000, with equity in the Building of approximately
10 \$530,000. Id.

11 **3. US Bank/Markwood Rd., Burlington**

12 The Debtors own a rental house in Burlington, Washington referred to by the Debtors as the
13 “Markwood Property.” The Debtors believe US Bank holds a secured claim against the Markwood
14 Property pursuant to loan documents dated as of December 5, 2005 (in favor of Horizon Bank) in
15 connection with an original loan in the amount of \$144,800, with a current balance approximately
16 \$120,910. Mitzel Decl. The Debtors seek to use the Cash Collateral as to the Markwood Property
17 pursuant to Exhibit A-3 Budget attached to the Mitzel Declaration. The purpose of the Cash
18 Collateral use is to make current debt payments to US Bank and to preserve the Bank’s collateral.
19 The Debtors believe the Markwood Property has a value of no less than \$295,000, with equity in the
20 Property of approximately \$174,000. Id.

21 **4. Peoples Bank/Blackburn Rd. and Gunn Rd., Mount Vernon**

22 The Debtors own vacant commercial land and two residential rentals in Mount Vernon,
23 Washington which serve as collateral for the same loan and which are referred to by the Debtors as the

1 “Blackburn/Gunn Property.” The Debtors believe that Peoples Bank holds a secured claim against
2 the Blackburn/Gunn Property pursuant to loan documents dated as February 1, 2008 in connection
3 with an original loan in the amount of \$633,000, with a current balance approximately \$568,582.
4 Mitzel Decl. The Debtors seek to use the Cash Collateral as to the Blackburn/Gunn Property pursuant
5 to Exhibit A-4 Budget attached to the Mitzel Declaration. The purpose of the Cash Collateral use is to
6 preserve the Bank’s collateral. The Debtors believe the Blackburn/Gunn Property has a value of no
7 less than \$850,000, with equity in the Property of approximately \$281,000. Id.

8 **5. Peoples Bank/North Hill Triplex**

9 The Debtors own a 50% tenancy in common interest (with 50% owner Debode Revocable
10 Living Trust) a rental triplex in Mount Vernon, Washington referred to by the Debtors as the “North
11 Hill Triplex.” The Debtors believe that Peoples Bank holds a secured claim against the
12 Blackburn/Gunn Property pursuant to loan documents dated as February 1, 2008 in connection with
13 an original loan in the amount of \$633,000, with a current balance approximately \$568,582. Mitzel
14 Decl. The Debtors seek to use the Cash Collateral as to the Blackburn/Gunn Property pursuant to
15 Exhibit A-4 Budget attached to the Mitzel Declaration. The purpose of the Cash Collateral use is to
16 make current debt payments to Peoples Bank and to preserve the Bank’s collateral. The Debtors
17 believe their 50% interest in North Hill Triplex has a value of no less than \$437,500 (with a full value
18 of the Triplex of \$875,000 and equity of \$312,829). Id.

19 **6. UCC1 Filings.**

20 The following UCC1’s are on file and do not relate to the properties subject to this Motion.

21

<u>Party</u>	<u>Filing No.</u>	<u>Subject of Filing</u>
22 Seattle Bank	20125417479	23 Proceeds of undivided interest in: (i) industrial property located in Arlington, Washington; and (ii) property located in Burlington, Washington

<u>Party</u>	<u>Filing No.</u>	<u>Subject of Filing</u>
		(referred to as Goldenrod Road Property)
	201226544754	Identical collateral description as above.

7. Washington Federal Judgment

In January 2017, WaFed recorded its judgment in counties in which the Debtors’ own real property, thus creating judgment liens against those properties. The Debtors will be filing a complaint to avoid Washington Federal’s judgment lien.

B. Use of Cash Collateral

The Debtors require the immediate use of the Cash Collateral to maintain the properties that are the subject of this Motion to avoid immediate and irreparable harm to the properties. The Debtors seek to use Cash Collateral in accordance with the Budgets referenced as to each property with each lender adequately protected by an equity cushion.

II. CONCLUSION

WHEREFORE, the Debtors respectfully request an Order from the Court authorizing use of Cash Collateral as set forth herein.

DATED this 13th day of February, 2017.

BUSH KORNFELD LLP

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