

The Honorable Timothy W. Dore
Chapter 11
Hearing Date: July 28th, 2017
Hearing Time: 9:30 am
Hearing Place: Seattle Courthouse
Response Date: July 21, 2017

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In Re:

GREENSTAR HOSPITALITY LLC
dba CABANA MOTEL,
Debtor.

Case N17-12815

**MOTION FOR AUTHORITY TO USE CASH
COLLATERAL AND TO PROVIDE FOR
ADEQUATE PROTECTION PAYMENTS.**

COMES NOW the Debtor, by and through the undersigned attorneys, and requests that the Court enter an order authorizing the use of cash collateral and to provide for adequate protection for the use thereof, pursuant to Sections 105, 361 and 363 of Title 11 of the United States Code (the "Bankruptcy Code") as well as Rule 4001 of the Federal Rules. In bringing this Motion, the Debtor relies on the record herein and the Declaration of Ahmed Fataftah submitted herewith. Debtor respectfully alleges as follows:

JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 USC §§157 and 1334. This matter is a core proceeding pursuant to 28 USC §157(b)(2). The relief requested in this motion are based on sections 105, 345(b), 361 and 363 of the Bankruptcy Code and Bankruptcy Rule 4001.

FACTS

Debtor is a limited liability company organized and existing under the laws of the State of Washington and having its primary office in Kent, Washington. The Debtor was organized as an LLC on February 24, 2009. Debtor owns and operates a business known as the Cabana Motel located at 665 E.

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1 Windsor Street, Othello Washington, 99344. Its Managing Member and sole owner is Mr. Ahmed
2 Fataftah; its business manager is Mr. Sajjad Khan.

3 The Debtor entered into a loan with Plaza Bank secured by a deed of trust against the
4 subject real property on April 23, 2009. That loan was extended by an agreement of the parties dated
5 February 2, 2015. The extension of the note provided for an interest rate of 7.5%. The note matured on
6 February 2, 2017. Plaza Bank initiated foreclosure of its note and the Trustee's sale was set for June 23rd.
7 This case was filed on June 22nd.

9 In late 2016 Debtor negotiated a sale of its business. Thinking the sale would take place,
10 Debtor did not secure financing to take out the Plaza Bank loan. That sale failed, however, and Debtor has
11 since then been unable to secure financing to pay off the Plaza Bank loan, which then matured, resulting
12 in the foreclosure.

14 It is Debtor's opinion that the business is worth approximately \$1,200,000 based on its
15 recent gross annual earnings of about three hundred thousand dollars. Motels in Eastern Washington
16 typically sell for a range of up to four times the gross earnings of the business.

18 Debtor is in negotiations with a national motel chain known as Motel 6 to enter into a
19 franchise agreement. Upon finalization of that franchise agreement the value of the property as a Motel 6
20 will substantially increase. Debtor estimates that once the conversion is implemented the business will be
21 worth as much as two million dollars based on the projected income figures Motel 6 has provided. Such
22 an increase in value will enable Debtor either to sell its assets or to refinance its current debt and pay
23 Plaza Bank and all other creditors in full. Mr. Khan met with Ms. Sheri Prosek, the regional
24 representative for Motel 6, on July 5th. She advised him that Motel 6 is prepared to offer a franchise
25 agreement upon submittal of an application and appropriate documentation.

27 Debtor has ongoing expenses in operating the motel, including utilities, insurance,
28 supplies, taxes, food and wages. It employs three individuals in its operation, two of whom reside in the
29 motel building as part of their compensation. A significant portion of its business is housing temporary
30 workers who perform seasonal work in agriculture in the area and whose accommodations are paid for by

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1 agricultural concerns. In addition, the business caters to seasonal tourist trade as well as to hunters during
2 the hunting season. As a result there is a seasonal aspect to the business, which enjoys its highest income
3 during summer and fall.

4 Plaza Bank has issued a Notice of Trustee's Sale. The sale set for June 23rd, 2017 was
5 halted by the filing of this case. The amount owed to Plaza Bank at the time of filing is believed to be
6 approximately \$1,029,000.00 based on the most recent notice Debtor has received.

8 RELIEF REQUESTED

9 Debtor seeks authority to use cash collateral pending confirmation of its plan of
10 reorganization in order to operate its motel until a plan can be confirmed for the reorganization of the
11 business. The Debtor proposes to use cash collateral in accordance with a budget attached as Exhibit A to
12 the Declaration of Ahmed Fataftah, which reflects monthly costs and income based on recent years.
13 Because expenses cannot be predicted precisely, and because Debtor's income is seasonal, Debtor
14 proposes that it be considered in compliance with the budget as long as Debtor does not exceed the
15 Budget by more than 10% per line item on a cumulative basis.

17 BASIS FOR REQUESTED RELIEF

18 Pursuant to Section 363(c)(2) of the Bankruptcy Code a debtor in possession may not use
19 cash collateral except with either the consent of the secured party or upon court approval. 11 USC
20 §363(c)(2). In order for a court to authorize the use of cash collateral over the objection of the secured
21 party, the secured party's interest in the cash collateral must be adequately protected. Section 361 sets
22 forth three methods by which a debtor can sustain its burden of proof in establishing adequate protection:
23 (1) periodic cash payments equivalent to the decrease in value; (2) an additional or replacement lien on
24 other property; or (3) other relief that provides the indubitable equivalent. *In re Mellor*, 734 F. 2d 1396,
25 1400 (9th Cir. 1984); Bankruptcy Code §361.

26 A debtor has the burden to establish that the holder of a lien whose cash collateral will be used,
27 has adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection must be determined on a case-by-
28 case basis, permitting a debtor maximum flexibility in structuring its adequate protection proposal. See In
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1 re Martin, 761 F.2d 472, 474 (8th Cir. 1985); In re George Ruggerie Chrysler-Plymouth, Inc., 727 F.2d
2 1017, 1019 (11th Cir. 1984). Nonetheless, "[a] debtor, attempting to reorganize a business under chapter
3 11, clearly has a compelling need to use 'cash collateral' in its effort to rebuild." George Ruggerie, 727
4 F.2d at 1019. Debtor currently has no alternative source of funds to operate its business. The failure to
5 obtain authorization for the use of cash collateral will mean the business will terminate.

6
7 In the context of a cash collateral motion, the purpose of adequate protection is to protect
8 the secured lender from a diminution in the value of the collateral during the period that it is prevented
9 from foreclosing on the collateral by the automatic stay. In this case, Plaza Bank is the only party with a
10 security interest in cash collateral.

11 Plaza Bank has adequate protection against the diminution in value of its pre-petition
12 collateral. First, the collateral has more value as an ongoing business that can be refinanced or sold than
13 as empty real property. The continued operation of its business preserves the value of the business as an
14 ongoing concern, and as a result prevents diminution of the value of the collateral. The building itself will
15 suffer no diminution in value by the continuation of the motel business, but rather will benefit from
16 ongoing operation, with continued maintenance and repair by on-site employees. To provide adequate
17 protection within the meaning of Sections 361 and 363 of the Bankruptcy Code and protect against
18 diminution in value of the collateral from its pre-petition value, Debtor proposes to make adequate
19 protection payments in the amount of \$8255.10 while remaining in operation as a motel and converting to
20 a Motel 6, resulting in an anticipated increase in the value of the business. As a result the value of the
21 business will be preserved and likely enhanced from its pre-petition value. Upon conversion to a Motel 6
22 the Debtor will either refinance or sell the ongoing business.

23 As of the date of filing Debtor values the business at \$1,200,000, an amount in excess of
24 Plaza Bank's loan balance. This is based on the fact that motels in Eastern Washington typically sell at a
25 value of up to four times the gross annual earnings of the business. The earnings of the motel have been
26 approximately three hundred thousand dollars per year. Debtor believes that once the business becomes a
27 Motel 6 it will increase substantially in value, thereby enhancing the value of Plaza Bank's security.
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1 Moreover, the value of the existing real estate sold at auction as a building with no ongoing business is
2 not likely to diminish in value within the period of time anticipated for reorganization. Plaza Bank's
3 collateral will therefore remain undiminished in value during the use of cash collateral.

4 Debtor's cash flow, as demonstrated by the Fataftah declaration, indicates that there is
5 sufficient liquidity in the business to maintain Plaza Bank's collateral position during the reorganization.

6 Debtor respectfully submits that its use of cash collateral is therefore proper pursuant to Section 363(c)(2)
7 of the Code.
8

9 The Debtor will suffer immediate and irreparable harm without the interim relief
10 requested. In the absence of an order authorizing the use of cash collateral, the Debtor will have to cease
11 its business operations rather than reorganizing for the benefit of creditors, including Plaza Bank. The
12 Debtor's ability to reorganize and maintain the value of its assets, including the real property that is the
13 collateral for Plaza Bank's loan, hinges on access to cash collateral. Absent an order permitting access to
14 cash collateral it will have to cease operations, to the detriment of all creditors, and the purpose of
15 Chapter 11 of the Bankruptcy Code will be frustrated.
16

17 Accordingly, Debtor requests that this Court grant it interim authority to use cash
18 collateral in accordance with the terms of the budget provided herewith.
19

20 A proposed order providing the requested relief is submitted together with this motion.

21 WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested
22 as well as such further and additional relief as the Court may deem just and equitable.
23

24 Dated this 7th day of July, 2017.

25
26 */s/ S. Lamont Bossard, Jr.*
27 S. Lamont Bossard, Jr. WSBA #12295
28 Masafumi Iwama, WSBA #40821
29 Iwama Law Firm
30 Attorney for Debtor