The Honorable Mary Jo Heston
Chapter 11
Hearing Date: March 22, 2018
Hearing Time: 2:30 pm
Hearing Place: Tacoma Courthouse
Response Date: March 21, 2018

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

In Re: Furniture Factory Direct, Inc. Debtor.	Case No. 18-40718-MJH Chapter 11 BANKRUPTCY MOTION FOR FINAL ORDER AUTHORIZING THE USE OF CASH COLLATERAL AND TO PROVIDE FOR ADEQUATE PROTECTION PAYMENTS

COMES NOW the Debtor, Furniture Factory Direct, Inc., by and through the undersigned attorneys, and requests that the Court enter a final Order authorizing Debtor a) to use cash collateral and b) granting adequate protection to certain prepetition secured lenders. In support of this Motion Debtor submitted the Declaration of Svetlozar Ganev Todorov (the "First Day Declaration," Docket No. 22) and supplemental declaration to the First Day Declaration, Docket No. 86. Debtor respectfully states as follows:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

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3. The bases for the relief requested herein are sections 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-3 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Western District of Washington (the "Local Bankruptcy Rules").

Background

4. On March 5, 2018 ("the Petition Date"), Debtor filed a petition with the Court under Chapter 11 of the Bankruptcy Code. Debtor is operating and managing its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. Debtor filed several first day motions on March 5, 2018. A hearing was held for those motions on March 6, 2018. The Court set a final hearing on March 22, 2018.

6. Debtor operates a furniture retail business known as Furniture Factory Direct. It has six retail locations as well as a warehouse facility located in Fife Washington. Debtor filed several motions to reject lease as indicated below.

Location	Address	Motion to Reject Lease Docket No.
Bellevue Store	2209 Bel-Red Rd. Redmond, WA 98052	
Tukwila Store	402 Strander Blvd. Tukwila, WA 98188	76
Tukwila Store	16705 Southcenter Parkway, WA 98188	
Lakewood Store	2402 84th St. S. Tacoma, WA 98444	
Lacy Store	5420 Martin Way E. Lacey WA 98516	73
Everett Store	510 SW Everett Mall Way, Everett, WA 98204	67
Fife Warehouse	2925 70th Ave. E. Fife, WA 98424	70

7. Debtor's president, Mr. Svetlozar Ganev Todorov is the sole member of IMOT, LLC, which owns two properties located at 16705 Southcenter Parkway, WA 98188 and at 2402 84th St. S. Tacoma, WA 98444. Debtor intends to assume those leases at a later time.

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8. Debtor is currently in negotiations with a potential sub-lessee who will take over the leasehold for 2209 Bel-Red Rd. Redmond, WA 98052. Debtor intends to file a motion to approve sub-lease or assignment of lease at a later date.

9. On October 2, 2006, the Debtor entered into a financing agreement with Bank of America, N.A. ("BOA") secured by Debtor's assets. As of the Petition Date, the Debtor was indebted to the BOA in the approximate total principal amount of $350,000.00.

10. Debtor has scheduled approximately $2,180,229.94 as the value of its inventory. It is believed that BOA is completely secured as set forth below.

RELIEF REQUESTED

Use Cash Collateral

11. Debtor seeks authority to use cash collateral to operate its furniture stores in the ordinary course of business. Section 363(c)(2) of the Bankruptcy Code permits a debtor in possession to use cash collateral without the consent of the secured party subject to court approval. Section 363(e) of the Bankruptcy Code provides that upon request of an entity that has an interest in property to be used by a debtor, the court shall prohibit or condition such use as necessary to provide adequate protection of such interest.

12. The facts and circumstances of Chapter 11 cases compel the continued use of Cash Collateral. As described above, the Debtor has six retail store locations plus a warehouse. It needs to continue to operate its business to reduce inventory and downsize its operations in order to become profitable. Without the use of the Cash Collateral to permit continued operations the value of the Debtor's inventory will be significantly reduced in the event of a forced liquidation. Debtor would rather continue to operate its retail business in order to maximize a return on investment.

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13. Here, Debtor proposes to provide BOA with, among other things, the following primary forms of adequate protection. First, the Debtor propose to grant BOA a superpriority claim equal to any diminution in the value of the property securing the Debtor's obligations pursuant to section 507(b) of the Bankruptcy Code (the "Superpriority Claim"). Debtor believes that diminution in the value of the inventory (primarily new furniture) is very unlikely if Debtor is allows to continue to operate the business. To the extent that the inventory does decrease in value BOA would receive a corresponding increase in its secured interest in cash or receivables.

14. Second, the Debtor will make cash payments to BOA (the "Adequate Protection Payments"). Debtor proposes to pay 1% of the balance owed per month as Adequate Protection Payments.

15. Third, BOA has a security interest as to pre-petition indebtedness to the extent of the value of the Pre-Petition Collateral, as well as in all net proceeds of sales or collections. Debtor believes the value of the inventory is well in excess of BOA's claim. Upon sale of any portion of the collateralized inventory BOA would have a replacement lien against the cash proceeds of sale. In the unlikely event of the reduction in the value of the inventory below the amount of BOA's claim, it would be allowed a replacement lien in such cash proceeds (the "Replacement Liens").

16. In addition to the above payment BOA, Debtor proposes to pay each landlord the following lease payment in the ordinary course of business until the leases are rejected and property is surrendered or the leases are assumed. As indicated above, four motions to reject lease have already been filed. Debtor expects that these line items will be removed from its monthly budget once those leaseholds are terminated by either rejection or assignment, as the case might be.

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Bellevue Store	$26,302.00	2209 Bel-Red Rd. Redmond, WA 98052
Tukwila Store	$43,000.00	402 Strander Blvd. Takwila, WA 98188
Tukwila Store	$25,359.86	16705 Southcenter Parkway, WA 98188
Lakewood Store	$33,488.54	2402 84th St. S. Tacoma, WA 98444
Lacy Store	$45,398.59	5420 Martin Way E. Lacey WA 98516
Everett Store	$26,002.63	510 SW Everett Mall Way, Everett, WA 98204
Fife Warehouse	$64,733.77	2925 70th Ave. E. Fife, WA 98424

17. The Debtor proposes to use cash collateral in accordance with a budget attached as Exhibit A. The budget assumes 30 to 75 days to surrender several leases and downsize its business operation. Because Debtor will endeavor to aggressively reduce its inventory through liquidation sales, this short term budget is not reflective of its usual operation. The numbers show significant departure from recent monthly profit and loss statements. Because expenses cannot be predicted precisely, Debtor proposes that it be considered in compliance with the budget as long as Debtor does not exceed the Budget by more than 15% per line item on a cumulative basis.

18. As Debtor's business locations are reduced, Debtor also expects to have lower costs of operation by reducing its total number of employees. Traditionally, hourly, salaried and contract labor comprise nearly 38% of the Debtor's operating costs. Debtor expects to be more profitable by reducing the business locations and concentrating its reorganization effort under one or two stores.

BASIS FOR REQUESTED RELIEF

Pursuant to Section 363(c)(2) of the Bankruptcy Code a debtor in possession may not use cash collateral except with either the consent of the secured party or upon court approval. 11 USC §363(c)(2). In order for a court to authorize the use of cash collateral over the objection of the secured party, the secured party's interest in the cash collateral must be adequately protected. Section 361 sets forth three methods by which a debtor can sustain its burden of proof in establishing adequate protection: (1)

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periodic cash payments equivalent to the decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *In re Mellor*, 734 F. 2d 1396, 1400 (9th Cir. 1984); Bankruptcy Code §361.

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

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

BOA has adequate protection against the diminution in value of its pre-petition collateral, *i.e*, the inventory in the form inventory. The collateral has substantially more value upon sale and conversion into cash in the ordinary course of business than simply being stored. The continued operation of debtor's business preserves the value of the business as an ongoing concern, and as a result prevents diminution of the value of the inventory as well as the good will of the business.

The Debtor will suffer immediate and irreparable harm without the interim relief requested. In the absence of an order authorizing the use of cash collateral, the Debtor will have to cease its business operations rather than reorganizing for the benefit of creditors, including BOA. The Debtor's ability to reorganize and maintain the value of its assets hinges on access to cash collateral. Absent an order permitting access to cash collateral it will have to cease operations, to the detriment of all creditors, and the purpose of Chapter 11 of the Bankruptcy Code will be frustrated.

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Accordingly, Debtor requests that this Court grant an authority to use cash collateral in accordance with the terms of the budget provided herewith.

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

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

Dated this 12th day of March, 2018.

/s/ Masafumi Iwama
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/s/ S. Lamont Bossard, Jr.
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CERTIFICATION OF COMPLIANCE

Debtor's Counsel hereby certifies that the proposed cash collateral order does not contain any provision listed in Part A of Appendix A to Local Bankruptcy Rules GUIDELINES FOR CASH COLLATERAL AND FINANCING STIPULATIONS.

Dated this 12th day of March, 2018.

/s/ Masafumi Iwama
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