

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

September 25, 2024 at 10:00 a.m.

1. [23905-E-12](#)  
[GG-1](#)

DEAVER RANCH, INC., A  
CALIFORNIA CORPORATION  
David Goodrich

CONTINUED MOTION TO USE CASH  
COLLATERAL  
9-3-24 [\[5\]](#)

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court's calculation, 15 days' notice was provided. The court set the final hearing for September 19, 2024. Dckt. 33.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Motion for Authority to Use Cash Collateral is XXXXXXX.**

**September 25, 2024 Hearing**

The court continued the hearing on this Motion as counsel for Debtor in Possession reported at the prior hearing that a stipulation on use of cash collateral was in the works. As of the court's review of the Docket on September 24, 2024, no stipulation has been filed with the court. At the hearing, XXXXXXX

## REVIEW OF THE MOTION

Deaver Ranch, Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral. Debtor in Possession is a California certified sustainable vineyard located in Amador County, California. Debtor in Possession owns the vines which produce wine grapes. In addition to the vines, the Debtor owns cows and sheep that are used primarily for weed control. The land on which the vineyard is situated is owned by the Debtor in Possession’s principals, Kenneth Deaver and Mary Jean Deaver. Debtor in Possession also owns various motor vehicles, equipment and tools.

Debtor in Possession proposes to use cash collateral generated from its business operations in accordance with the two proposed budgets at Exhibit 1. Docket 6. The first budget is a proposed 13-week budget, and the second budget is a proposed year budget. Over 13 weeks the total projected income is \$204,500, and over a year the projected income is \$1,265,000. Ex. 1 at 3-4, Docket 6. The total expenses over the 13-week period are projected to be \$156,492, and over the one year period are projected to be \$1,238,322. *Id.* The budgets account for general operating expenses of the business, including paying employees, rent, and utilities.

Debtor in Possession argues no adequate protection is needed because the collateral will only decrease in value marginally, if at all. Mem. 5:13-21, Docket 8.

Debtor in Possession submits four Declarations in support. Dockets 7, 9, 27, and 28. Mr. Goodrich, Debtor in Possession’s attorney, testifies at Dockets 7 and 27 as to the facts alleged in the Motion, as well as authenticating the attached Exhibits.

Mr. Deaver, one of the principals of Debtor in Possession, further authenticates the facts alleged in the Motion. Docket 9. Mr. Deaver testifies that other than the annual sale of grapes to wine makers, the value of the Debtor’s assets will not change significantly during the bankruptcy case - unless cash collateral use is not permitted. *Id.* at ¶ 9. Mr. Deaver also testifies that the value of the grapes after harvest will be depressed because of an over saturation of the wine market for 2024. Mr. Deaver estimates the sale of grapes harvested in 2024 will yield less than \$300,000 over the fall and winter months. *Id.* at ¶ 11.

## APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor’s farm or commercial fishing operation. 11 U.S.C. § 1203. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

**(b)(2) Hearing**

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the vineyard and farm business operations and generating income to fund a Chapter 12 plan.

At the hearing, counsel for the Debtor in Possession reported that a Stipulation has been reached for the use of cash collateral and it will be filed shortly. The Parties requested that the hearing be continued to allow for the court to review the Stipulation and conduct a hearing, if the court believes it necessary.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:00 a.m. on September 25, 2024.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Use Cash Collateral filed by Deaver Ranch, Inc. (“Debtor in Possession”) having been presented to the court, counsel for the Debtor in Possession and counsel for Creditor AgWest reporting that a Stipulation for the use of cash collateral has been reached and will be filed shortly, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Authority to Use Cash Collateral is  
**XXXXXXX.**

2. <a href="#"><u>24-23909-E-12</u></a> <a href="#"><u>GG-1</u></a>	<b>SHENANDOAH INVESTMENT PROPERTIES, INC. A CALIFORNIA CORPORATION David Goodrich</b>	<b>CONTINUED MOTION TO USE CASH COLLATERAL 9-3-24 <a href="#"><u>[10]</u></a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court’s calculation, 15 days’ notice was provided. The court set the final hearing for September 19, 2024. Dckt. 32.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

<b>The Motion for Authority to Use Cash Collateral is <span style="color: red;">XXXXXXX.</span></b>
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**September 25, 2024 Hearing**

The court continued the hearing on this Motion as counsel for Debtor in Possession reported at the prior hearing that a stipulation on use of cash collateral was in the works. As of the court’s review of the Docket on September 24, 2024, no stipulation has been filed with the court. At the hearing, XXXXXXX

**REVIEW OF THE MOTION**

Shenandoah Investment Properties, Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral. Debtor in Possession sells approximately 2,500 - 3,000 cases of wine annually,

primarily through its operation of a tasting room and through a wine club which has approximately 1,000 members (“Business”). The Debtor in Possession’s assets consist of bulk wine, bottled wine, gift bag supplies, equipment, barrels and tumblers. Although Debtor in Possession’s wine club is lucrative, the delivery of wine is a prerequisite to payment from its club members. Mot. 4:4-9, Docket 10.

Debtor in Possession proposes to use cash collateral generated from its business operations in accordance with the two proposed budgets at Exhibit 1. Docket 13. The first budget is a proposed year budget, and the second budget is a proposed 13-week budget. The budgets propose adequate protection payments of \$1,000 per month to the Small Business Administration (“SBA”) and \$500 a month to AgWest Farm Credit (“AgWest”). *Id.* SBA’s lien is estimated to be in the amount of \$773,614 and AgWest’s lien is estimated to be in the amount of \$1,200,000. Mot. 4:20-28, Docket 10. The budgets account for general operating expenses of the business, including paying employees, for insurance and permits, and utilities.

Debtor in Possession submits four Declarations in support. Dockets 11, 12, 29, and 30. Mr. Goodrich, Debtor in Possession’s attorney, testifies at Dockets 12 and 30 as to the facts alleged in the Motion, as well as authenticating the attached Exhibits. Mr. Deaver, one of the principals of Debtor in Possession, further authenticates the facts alleged in the Motion. Docket 11. Mr. Deaver testifies:

Debtor makes wine seasonally. During the next several months, the Debtor’s wine inventory (bulk and bottled) will decrease because of sales. Debtor will purchase additional supplies, including grapes, and produce more wine to be sold in the future. If cash collateral use is not permitted, the Debtor will be unable to produce additional wine and the value of the Debtor’s lucrative wine-making business will be lost. The value of the Debtor’s assets will not change significantly during the bankruptcy case - unless cash collateral use is not permitted.

*Id.* at ¶ 9.

## **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor’s farm or commercial fishing operation. 11 U.S.C. § 1203. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

**(b)(2) Hearing**

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the winery business and generating income to fund a Chapter 12 plan.

At the hearing, counsel for the Debtor in Possession reported that a Stipulation has been reached for the use of cash collateral and it will be filed shortly. The Parties requested that the hearing be continued to allow for the court to review the Stipulation and conduct a hearing, if the court believes it necessary.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:00 a.m. on September 25, 2024.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Use Cash Collateral filed by Shenandoah Investment Properties, Inc. (“Debtor in Possession”) having been presented to the court, counsel for the Debtor in Possession and counsel for Creditor AgWest reporting that a Stipulation for the use of cash collateral has been reached and will be filed shortly and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Authority to Use Cash Collateral is  
**XXXXXXX.**