

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 30, 2018 at 11:00 a.m.

1. [18-90029](#)-E-11 JEFFERY ARAMBEL MOTION TO USE CASH COLLATERAL
[MF-36](#) Matthew Olson O.S.T.
10-24-18 [[678](#)]

TO BE HEARD IN COURTROOM 34

No 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).

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

Sufficient Notice Provided. The court ordered Debtor in Possession to provide telephonic notice by 10:00 a.m. on October 26, 2018; transmit by email or facsimile copies of the Motion, supporting pleadings, and notice of the October 30, 2018 hearing, to the respective counsel for each of the creditors asserting a lien against the cash collateral; and deposit in the U.S. Mail for service the Motion, supporting pleadings, and notice by the close of business on Friday October 26, 2018. Dckt. 680. By the court's calculation, 4 days' notice was provided.

The Motion 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 11 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. At the hearing -----.

<p>The Motion to Use Cash Collateral is granted on an interim basis pending final hearing.</p>

On October 24, 2018, Jeffery Arambel, the Debtor in Possession, filed a Motion to Use Cash Collateral. Motion, Dckt. 678. The grounds stated with particularity in the Motion are summarized as follows:

1. The bankruptcy case was commenced on January 17, 2018.
2. The Debtor in Possession is operating property of the bankruptcy estate consisting of several thousands acres of land in Stanislaus County, which includes stone-fruit orchards, grazing land, and development and industrial properties.
3. During the month of September 2018, the Debtor in Possession has received rent monies totaling approximately \$180,557.00. These monies are cash collateral, subject to the liens of various creditors in this case.

The Monthly Operating Report for September 2018 states that rents in the amount of \$281,285.00 were received in September 2018. Dckt. 675 at 2. The September Monthly Operating Report further states that the aggregate rents collected in the case, including the \$281,285.00, for the eight months of the case total only \$301,091.00. *Id.*^{FN.1.}

FN.1. Presumably the explanation is that the “rent” is paid from crop proceeds, that were harvested the end of summer and received by the tenant farmer in September 2018. However, such an explanation was not provided in the Motion or supporting Declaration (Dckt. 679).

In looking at the August 2018 monthly operating report it states that the aggregate rents collection as of that month were only \$19,806.00. Dckt. 609 at 2.

4. The Debtor in Possession previously obtained authorization to use unencumbered monies of the estate to fund the expenses in the budget and make the adequate protection payments to Metropolitan Life on its secured (property on which Debtor’s residence is located) claim.
5. By the start of October 2018, there existed only \$9,000.00 of such unencumbered monies (which is significantly less than the Debtor in Possession’s normal expenditures).
6. Debtor in Possession seeks authorization to now use cash collateral over the months of October through December 2018 in the aggregate amount of \$165,850.00 (\$57,017.00 in October, \$64,917.00 in November, and \$42,911.00 in December).
7. The unencumbered monies of the bankruptcy estate, \$9,000.00 as of October 1, 2018, being insufficient to make the necessary payments, Debtor

in Possession now seeks by the October 24, 2018 emergency authorization to make the following payments pending final hearing on the Motion:

Farming Expenses	
Water and Power	\$5,000
Labor	\$4,500
Fuel	\$1,467
Parts	\$600
Insurance	\$28,100
Contract labor (office)	\$1,000
Pharmacy	\$300
Home maintenance + HOA	\$400
Food, Clothing, and household	\$650
Utilities (includes water)	\$650
Transportation/gas	\$150
Total Cash Out Operating	\$42,817

8. It is asserted that the value of the property securing the claims (asserted to be in excess of \$100,000,000.00) provides adequate protection for the use of the cash collateral.

See Motion, Dckt. 678.

Denial of Stipulation

On October 1, 2018, the court entered its order denying a Motion for Approval of Compromise. Dckt. 661. While the pleading styled as a “Compromise” contained many terms that appeared reasonable for a plan of reorganization, the court concluded that the purported “compromise” was a *de facto* plan, could not be “approved” or “granted” outside of the statutory confirmation process. Civil Minutes, Dckt. 656. The court also found several terms objectionable and not permissible under the Bankruptcy Code, including interpreting one provision as effectively making the creditor that was the party to the “compromise” a receiver in control of property of the bankruptcy estate. *Id.*

The Debtor had a prior motion to use cash collateral set for hearing in conjunction with the Motion to Approve Compromise. The use of cash collateral was based on the consent of the creditor as

provided in the “compromise” which was not approved by the court. Order, Dckt. 662. This may have led to the Debtor in Possession not having the current Motion, in light of the October 1, 2018 unencumbered cash shortage, set for a hearing prior to November 1, 2018, believing that the Compromise would provide the needed use of cash collateral.

OPPOSITION - AMERICAN AGCREDIT FLCA

Though set on shortened time, American AgCredit FLCA (“American”) was proactive and filed a written opposition to afford the court opportunity to consider such issues in preparation for the emergency hearing. American first notes that in making the request, the Debtor in Possession aggregates all of the cash collateral into one pot, without regard to the property and lien which is at issue for those rental proceeds.

American directs the court to the Motion which identifies the cash collateral as being approximately \$75,000, rents monies from the Zacharias Ranch and “other ranches.” The Objection focuses the points into four main grounds.

First, American objects to the apparent commingling of cash collateral from different properties, subject to liens of different creditors, into one spending pot. It is asserted that this does not respect the specific, and different, lien rights of various creditors. Also, it does not match the use of cash collateral to expenses relating to the property that is generating the cash collateral.

American questions (objects to) the Debtor in Possession using rent monies from American’s collateral to pay for the residence and residence expenses of the Debtor in Possession. It is asserted that the real property subject to American’s deed of trust is rented as cattle grazing land, for which there is little cost and expense to the Bankruptcy Estate.

Second, American indicates consent to the use of its cash collateral for the expenses relating to the property subject to its deed of trust. The court is directed to the Stipulation for Stay Relief (Dckt. 475) which includes the provision that the Debtor in Possession shall maintain insurance on American’s collateral. Stipulation ¶ 5, Dckt. 475. However, American does not consent, and does not believe the court has evidence that the value of the property otherwise provides adequate protection for American’s secured claim to permit the use of cash collateral.

Third, American asserts that it holds the first deed of trust on the Zacharias Ranch (6,187 acres of native pasture agricultural land). American asserts further that its claim now exceeds \$6,000,000, and American values its collateral (based on a recent appraisal) at \$6,810,000.

Based on American’s appraisal, it appears that there is \$810,000 in value in excess of its claim, a 13% equity cushion.

Fourth, American cites back to the Stipulation for Relief, which has been approved by order of this court. Order, Dckt. 539. Under the Order, American could proceed with exercising its lien rights, and further, that the Debtor in Possession has agreed in the Stipulation that American’s lien rights will not be impaired in any plan of reorganization, adversary proceeding, or contested matter. Stipulation ¶ 6, Dckt. 475. Additionally, the Debtor in Possession relinquished any surcharge rights. Stipulation ¶ 17, *Id.*

REVIEW OF SEPTEMBER 2018 MONTHLY OPERATING REPORT

The Monthly Operating Report for September 2018 states that \$281,285 in rent monies were received in that month. Dckt. 675 at 2. The Variance to Statement of Operation attached to the Monthly Operating Report, states for rents the actual is \$181,255, the forecast was \$0, and the variance was \$181,255. *Id.* at 3. It identifies the lease payments as

“\$17k Cammy Wells. \$89k + \$74k in new cattle leases”

This appears to be in conflict with the information on Page 2 of the Monthly Operating Report stating that there was \$281,285 in rent income, with a variance of \$281,285.

On the Statement of Cash Receipts and Disbursements attached to the September 2018 Monthly Operating Report, the “Rents/Creditors/Other Cash-in” is stated to be \$281,285. *Id.* at 13. For the bank statements attached to the Monthly Operating Report, the following deposits are reported:

Acct -866,	Office Deposit.....\$106,250
Acct-798,	
	Office Deposit.....\$75,662.98
	Office Deposit.....\$25,064.79
	Wire Transfer.....\$74,307.00

Id. at 19-20, 23.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. 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.

. . . .

(c)(1) If the business of the debtor is authorized to be operated under section 721 , 1108 , 1203 , 1204 , or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless--

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

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

At the hearing, the Debtor in Possession addressed the issue concerning the sources of rent and the specific liens encumbering the cash collateral.

~~Debtor in Possession has shown that use of the funds is in the best interest of the estate. The proposed use again provides for expenses of the farming business, which generate income.~~

The court shall issue a minute 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 Monies of the Bankruptcy Estate Pursuant to Budget filed by Jeffery Arambel ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~granted, pursuant to this order, and the Debtor in Possession is authorized to use the cash collateral rent monies consisting of xxxxxxxxxxxxxx~~ to pay the following expenses:

Category	Monthly Amt.
Water and Power	\$ 5,000
Labor	\$ 4,500
Fuel	\$ 1,467
Parts	\$ 600
Insurance	\$28,100
Contract labor (office)	\$ 1,000
Pharmacy	\$ 300
Home maintenance + HOA	\$ 400
Food, Clothing, and household	\$ 650
Utilities (includes water)	\$ 650
Transportation/gas	\$ 150
Total	\$42,817

~~on an emergency basis pending final hearing on the Motion to Use Cash Collateral.~~

~~**IT IS FURTHER ORDERED** that the final Hearing on the Motion to Use Cash Collateral shall be conducted at **xxxx a.m. on November xxx, 2018.** Written Opposition shall be filed and served on or before **November xxx, 2018**; and Replies, if any, filed and served on or before **November xxxx, 2018.**~~