

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)	
)	
MADISON PARK CHURCH OF GOD, INC.)	Case No. 13-07430-RLM-11
D/B/A MADISON PARK CHURCH OF GOD,)	
)	
Debtor.)	
_____)	

DEBTOR’S FIRST DAY MOTION FOR AUTHORITY TO: (A) MAINTAIN EXISTING BANK ACCOUNTS; (B) CONTINUE USE OF EXISTING CASH MANAGEMENT SYSTEM; AND (C) CONTINUE USE OF BUSINESS FORMS

Madison Park Church of God, Inc. d/b/a Madison Park Church of God, as debtor and debtor-in-possession (the “Debtor”), by counsel, hereby requests the entry of an Order pursuant to 11 U.S.C. §§ 105(a) and 363 authorizing and allowing the Debtor to: (a) maintain its existing bank accounts; (b) continue the use of its existing cash management system; and (c) continue the use of existing business forms. In support of its motion, the Debtor states as follows:

I. General Background

1. On July 12, 2013 (the “Petition Date”), the Debtor filed a voluntary petition under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to operate its business as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed in this chapter 11 case. No official unsecured creditors’ committee has been appointed in this case.

3. This is a “First Day Motion” as that term is defined in Southern District of Indiana Local Rule B-9013-3(f).

4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (M). The relief requested flows from the statutory scheme codified by the Bankruptcy Code, addresses an area of law long determined by Bankruptcy Courts, and is purely a creature of federal law. Accordingly, this Court has jurisdiction and authority to hear this matter under *Stern v. Marshall*, 131 S. Ct. 2594, 180 L.Ed.2d 475 (U.S. 2011) and *In re Ortiz*, 665 F.3d 906 (7th Cir. 2011).

5. The Debtor has discussed the filing of this case with the United States Trustee, and has advised the United States Trustee of the various First Day Motions and Rule 9006(c) Requests in accordance with Southern District of Indiana Local Rule B-9013-3(b).

II. Events Leading to the Filing

6. The Debtor operates a church located in Anderson, Indiana. The Debtor was founded in 1931 as an Indiana not-for-profit corporation and served its membership as such since its formation.

7. Prior to 2007, the Debtor operated programs at several locations in Anderson. In June 2007, the Debtor moved into new facilities adjacent to Exit 226 near Interstate 69.

8. The new facilities include a church, a community life, and early childhood center which are located on a portion of a 200 acre tract of real estate. The development of the 200 acres, together with the construction of the new facilities, was financed by three bridge loans to be repaid through a thirty-year bond issue.

9. Bonds were issued in three series (Series A, B and C) pursuant to three Trust Indentures. The Series B Bonds required a \$6 million balloon payment in July 2012. It was the

Debtor's intention to pay the Series B Bonds prior to July 2012 by the sale of certain Anderson-area real estate owned but not used by the Debtor, together with a portion of the 200 acres.

10. Unfortunately, the American economy (and the commercial real estate market in particular) experienced a dramatic and prolonged downturn shortly after the Debtor entered into the bond financing. This unprecedented real estate collapse, coupled with the devastating local effects from the bankruptcy of General Motors, one of Anderson's largest employers, left the Debtor unable to sell its real estate and fund the bond financing.

11. Even with these difficulties, the Debtor managed to make the required monthly payments to the Series A and C Trustees; however, it could not make the required balloon payment to the Series B Trustee in July 2012 due to its inability to sell the excess real estate. In addition, the Debtor owes several million dollars in principal to the Series A bridge lender due to the Debtor's inability to sell all of the Series A bonds.

12. The Debtor, following its failure to make the balloon payment in July 2012, entered into extensive negotiations with the Series A bridge lender, and the Series A and B Trustees. The Debtor has filed this chapter 11 case in order to implement a restructure of the Debtor's obligations to the Series A bridge lender, and the Series A, B and C Trustees pursuant to terms: (a) which have been agreed to by the Series A bridge lender and (b) which the Series A and B Trustees each believe to be appropriate and reasonable, subject to the approval of their respective bondholders.

III. Relief Requested

17. The Office of the United States Trustee ("UST") has established certain operating guidelines for a debtor-in-possession to supervise the administration of chapter 11 cases (the

“UST Guidelines”). One provision of the UST Guidelines requires a chapter 11 debtor-in-possession to open new bank accounts and to close all existing accounts.

18. The Debtor’s cash management system (the “Cash Management System”) consists of a single bank account at Star Bank into which it makes all deposits and from which it issues all checks (the “Bank Account”). The Debtor issues checks and receives funds in connection with the operation of its church, day care center, and shelter for battered women. Many of these transactions are conducted electronically via ACH and initiated by different employees across various sites of operations. With the exception of certain holiday weeks (such as July 4th), the Debtor disburses approximately \$35,000.00 weekly for operating expenses from the Bank Account.

19. By this motion, the Debtor seeks a waiver of the UST requirement that it close the Bank Account and open a new postpetition bank account. The UST requirement that the Debtor close and replace the Bank Account would unnecessarily disrupt the Debtor’s various organizational initiatives (including the daycare and women’s shelter), and impair its efforts to successfully reorganize and maintain the value of the business, and would not provide any significant benefit to the Debtor’s estate, its creditors, or parties-in-interest. For example, the Debtor services many ordinary obligations through this bank account and the timing and receipt of these transactions is vital to the Debtor’s ongoing vendor and constituent relations. There are multiple individuals who are authorized to conduct transactions for the Debtors’ various initiatives. It is critical to the continued operation of the Debtor’s business and the preservation of the value of its assets that the Debtor continues to utilize its existing cash management system and Bank Account without disruption.

20. Furthermore, the filing of this petition will undoubtedly be publicized and will place a strain on the Debtor's relationship with parties that are essential to the Debtor's continued operations and successful reorganization. Requiring the Debtor to close the Bank Account and open a new account would further strain this relationship due to potential payment delays and resulting confusion. On the other hand, granting the relief requested herein will avoid unnecessary disruption and confusion, and allow the efficient administration of this chapter 11 case.

21. The Cash Management System and related Bank Account described herein are central to the Debtor's ordinary, usual, and essential business practices, and the organization and mechanics are similar to those commonly employed by non-profit enterprises comparable to the Debtor in size and complexity. It would be extremely difficult for the Debtor to establish an entirely new account and create a new cash management system. It is therefore critical and essential that the Debtor be permitted to continue to utilize the Cash Management System and maintain the Bank Account to manage its cash and transfer money as needed in amounts necessary to continue the operation of its business. If the relief requested herein is granted, the Debtor's bank will be instructed not to pay any debts incurred prior to the Petition Date unless this Court specifically authorizes such payment.¹

22. Specifically, the Debtor requests that: (a) the Debtor and Star Bank be authorized to continue to perform pursuant to the terms of the prepetition agreements that exist between them; (b) that Star Bank be authorized and directed to continue to administer the Bank Account as such account was maintained prepetition, without interruption and in the usual and ordinary course of business, and to pay any and all checks, drafts, wires, or ACH transfers issued on the

¹ The Debtor has simultaneously filed a First Day Motion seeking authority to pay certain prepetition obligations such as employee wages, benefits, and withholdings, and to honor certain outstanding related checks and transfers.

Bank Account on account of any claims arising after the Petition Date so long as sufficient funds are in such Bank Account; (c) that Star Bank be authorized and directed to honor all representations from the Debtor as to which checks should be honored and dishonored; and (d) any final payment made by Star Bank prior to the Petition Date (including any ACH or wire transfers the banks are or become obligated to settle) against the Bank Account, or any instrument issued by a bank on behalf of any Debtor pursuant to a “midnight deadline” or otherwise, shall be deemed to be paid pre-petition, whether or not actually debited from the Bank Account prepetition. To the extent the Debtor has directed that any pre-petition checks be dishonored, it reserves the right to issue replacement checks to pay the amounts related to such dishonored checks, consistent with Orders of the Court.

23. In addition, the Debtor requests relief from the UST Guidelines to the extent they require the Debtor to make all disbursements by check. Considering the complexity and time sensitive nature of the Debtor’s operations, it is necessary for the Debtor to conduct some transactions by wire transfer. To deny the Debtor the opportunity to conduct wire transfers would interfere with the Debtor’s performance of its contracts and unnecessarily disrupt the Debtor’s operations.

24. Furthermore, in order to use the property of its estate and to ensure an orderly transition into this chapter 11 proceeding, the Debtor also requests authority to continue to use the Cash Management System as it may be modified in connection with the proposed debtor-in-possession financing or as required by the Debtor in the ordinary course of business and to deem the Bank Account a “debtor-in-possession” account.

25. The Debtor, in its ordinary course of business, uses many pre-printed correspondence and business forms. To minimize the expense to its estate, the Debtor also

requests that it be authorized to continue to use all correspondence, business forms (including, but not limited to, letterhead, purchase orders, invoices, etc.), and checks existing immediately prior to the Petition Date, modified only by stamping the above with a “DIP” stamp. Changing correspondence and business forms further would be unnecessary and burdensome to the estate, as well as expensive and disruptive to the Debtor’s business operations. Parties doing business with the Debtor undoubtedly will be aware, if not already, of the Debtor’s status as debtor-in-possession.

26. Accordingly, the Debtor requests authority to use its respective correspondence and business forms without placing the label “debtor-in-possession” or “DIP” on each such correspondence or form, but stamping such correspondence and business forms with “DIP.”

IV. Basis For The Relief Requested

27. Authority for the relief requested herein may be found under § 363(c) of the Bankruptcy Code, which allows the Debtor to use, sell, or lease property in the ordinary course of business, and in § 363(b)(1) of the Bankruptcy Code, which provides that a debtor-in-possession, after notice and a hearing, may “use, sell or lease, other than in the ordinary course of business, property of the estate.” Section 105(a) of the Bankruptcy Code provides additional authority stating that the Court may issue any order necessary or appropriate to carry out the provisions of title 11.

28. In this case, it is appropriate to grant the relief requested as the benefits of maintaining the Bank Account and Cash Management System and using existing correspondence and business forms vastly outweighs the *de minimus* burden and inconvenience, if any, on interested parties.

29. The relief requested herein or similar relief has been granted in numerous cases in this District (*see, e.g., In re Castleton Plaza, LP*, Case No. Case No. 11-01444-BHL-11; *In re R.L. Carter Trucking, Inc., et al.*, Case No. 10-14458-AJM-11; *In re Buehler Foods, Inc., et al.*, Case No. 05-70961-BHL-11; *In re ATA Holdings Corp., et al.*, Case No. 04-19866-BHL-11; and *In re Paul Harris Stores, Inc., et al.*, Case No. 00-12467-BHL-11) as well as cases around the country (*see, e.g., In re Friedman's, Inc., et al.*, Case No. 08-10161 (CSS) (Bank. D. Del. 2008)).

30. Based on the foregoing, the Debtor respectfully requests that the Court enter an Order granting the relief requested herein as it is in the best interests of the Debtor, its creditors and estate and is critical to the ability of the Debtor to successfully reorganize.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order: (1) authorizing the Debtor to maintain its existing Bank Account; (2) authorizing the Debtor to maintain its existing Cash Management System; (3) authorizing the Debtor to continue to use its existing correspondence and business forms and adding only a stamp identifying the Debtor as a debtor-in-possession; and (4) granting the Debtor such other and further relief as the Court deems proper.

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DATED: July 12, 2013

MADISON PARK CHURCH OF GOD,
INC. D/B/A MADISON PARK CHURCH
OF GOD,
as debtor and debtor-in-possession,

By: /s/ Jerald I. Ancel
Jerald I. Ancel, one of its proposed
counsel

Jerald I. Ancel
Marlene Reich
Jeffrey J. Graham
Erin C. Nave
TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204
Telephone: (317) 713-3500
Facsimile: (317) 713-3699
Email: jancel@taftlaw.com
mreich@taftlaw.com
jgraham@taftlaw.com
enave@taftlaw.com