

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 ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 366: (A) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING OR DISCONTINUING SERVICE ON ACCOUNT OF UNPAID PREPETITION INVOICES; (B) APPROVING PROPOSED ADEQUATE ASSURANCE OF PAYMENT; AND (C) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT BY UTILITIES

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 366: (a) prohibiting utilities from altering, refusing or discontinuing service to the Debtor on account of unpaid prepetition invoices; (b) approving the proposed adequate assurance of payment; and (c) establishing procedures for determining requests for additional adequate assurance of payment by utilities. 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/or 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. In the normal conduct of its business operations, the Debtor uses a number of utility services, including but not limited to, gas, water, electric, telephone, fuel, sewer, telecommunications, and internet services (collectively, the “Utility Services”) provided by various utility companies and other providers (each, a “Utility Provider” and collectively, the “Utility Providers”). A non-exhaustive list of the Debtor’s Utility Providers is attached hereto as Exhibit A.¹

18. The Debtor’s business operations depend upon uninterrupted Utility Services for its continued operation and to preserve the value of its business. Any interruption of Utility Services would severely disrupt the Debtor’s business operations and would jeopardize its restructuring efforts to the detriment of its estate and creditors. Therefore, it is critical that Utility Services provided to the Debtor continue uninterrupted as contemplated in the Bankruptcy Code.

19. Section 366 of the Bankruptcy Code prohibits utilities from altering, refusing or discontinuing service to, or discriminating against, a debtor solely on the basis of the commencement of a case under chapter 11 or on account of unpaid pre-petition invoices. Pursuant to § 366(c)(2) of the Bankruptcy Code, however, in a chapter 11 case a utility may alter, refuse, or discontinue service if, during the thirty (30) day period following the petition

¹ The Debtor’s inclusion of an entity on Exhibit A is not an admission that such Utility Provider is a utility within the meaning of § 366 of the Bankruptcy Code. The Debtor reserves all rights to further address the characterization of any particular entity listed as a utility company within the meaning of § 366 of the Bankruptcy Code. The Debtor also reserves all rights to terminate the services of any Utility Provider at any time and to seek an immediate refund of any deposit without effect to any right of setoff or claim asserted by any Utility Providers against the Debtor. The relief requested herein is with respect to all Utility Providers and is not limited to only those identified as Utility Providers on Exhibit A.

date, the utility does not receive adequate assurance of payment for future services from the debtor that is satisfactory to the utility.²

20. In compliance with § 366(c)(1) of the Bankruptcy Code, the Debtor proposes to provide adequate assurance of payment to Utility Providers within seven (7) business days of entry of an Order approving this motion by serving each Utility Provider listed with: (a) a copy of the motion and Order; and (b) notice of the proposed deposit in an amount equal to the approximate equivalent of one month's aggregate cost of such utility provider's service to the Debtor (the "Utility Deposit"). The Utility Deposit will be placed into a segregated account with Star Bank (the "Utility Deposit Account") created by the Debtor within thirty (30) days of the Petition Date (the "Utility Deposit Account"). Such Utility Deposit shall be held in escrow in the Utility Deposit Account pending further Order of the Court for the purpose of providing each Utility Provider adequate assurance of payment of its postpetition utility services to the Debtor. To the extent a Utility Provider has a deposit of at least one month's aggregate cost of service in its possession, the Debtor shall not provide an additional deposit.³

21. To the extent a Utility Provider believes that the Debtor's proposed Utility Deposit is not satisfactory adequate assurance of payment, the Debtor requests that such Utility Provider be required to file a motion pursuant to § 366(c)(3) of the Bankruptcy Code seeking additional adequate assurance of payment and that such Utility Provider be prohibited from altering, refusing, or discontinuing services to the Debtor until such time as the Court rules on such motion.

² Section 366(c)(1)(A) of the Bankruptcy Code provides that adequate assurance of payment means (i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between a utility and the debtor. Section 366(c)(1)(B) of the Bankruptcy Code specifically excludes the granting of an administrative expense priority as adequate assurance of payment.

³ For example, Vectren is in possession of a \$6,167.00 deposit from the Debtor, and therefore, the Debtor will not make an additional deposit because adequate assurance of payment already exists.

22. Although the Debtor has used its best efforts to identify all Utility Providers, it is possible that one or more Utility Providers may have been inadvertently omitted from Exhibit A. Accordingly, the Debtor requests authority, without further Order of the Court, to supplement the list of Utility Providers in order to include any omitted provider(s). If the Debtor supplements its list, the Debtor will promptly serve a copy of this motion and the Utilities Order on any Utility Provider that is added, and shall also file with the Court the supplemental Exhibit A noting the Utility Provider(s) so served. The added Utility Provider(s) shall have thirty (30) days from the date of service of this motion and the Utilities Order to file a motion, if any, under § 366(c)(3) of the Bankruptcy Code; if such a motion is filed, the Debtor shall abide by the Adequate Assurance Procedures set forth herein, as applicable.

IV. Basis For The Relief Requested

23. Section 366(c)(1)(A) of the Bankruptcy Code provides the forms of adequate assurance that are acceptable (cash deposit, letter of credit, certificate of deposit, surety bond, prepayment, or other form of security mutually agreed upon by the parties), and the type that is unacceptable (the granting of an administrative expense priority). However, the 2005 amendments to § 366 of the Bankruptcy Code do not give any guidance as to what amount of adequate assurance must be provided to utilities. Accordingly, it is in the Court's discretion to determine how much adequate assurance of payment is necessary.

24. Section 366 of the Bankruptcy Code seeks to strike a balance between a debtor's uninterrupted receipt of utility services and a utility's required provision of postpetition services to the debtor. The Utility Deposit and the Adequate Assurance Procedures described herein maintain that balance by ensuring that the Debtor continues to receive the Utility Services which are vital to its continued operations while at the same time providing a mechanism for Utility

Providers to contest the amount of adequate assurance proposed by the Debtor. The Utility Deposit is sufficient to ensure that a Utility Provider is not subject to an unreasonable risk of nonpayment for postpetition services. In addition, the Adequate Assurance Procedures allow a Utility Provider to seek additional adequate assurance of payment in the event that that particular Utility Provider can show that the Utility Deposit is insufficient to sufficiently protect that Utility Provider from nonpayment and that greater protections are merited. Accordingly, the goals of §§ 366(c)(1)(A) and (B) of the Bankruptcy Code are met.

25. The Utility Deposit and the Adequate Assurance Procedures provide the proper balance between the Debtor's need for continued, uninterrupted utility services and a Utility Provider's need to protect itself from nonpayment for services provided post-petition. Absent the relief requested in this motion, the Debtor will be exposed to significant harm, as it cannot effectively operate its business without continued Utility Services. If any of the Utility Providers alter, refuse, or discontinue services, even for a brief period, the Debtor's business operations would be severely disrupted. Such disruption would have a devastating impact on the Debtor's going concern value and its ability to reorganize. In contrast, the Utility Providers will not be prejudiced by the continuation of its services absent a Court Order approving termination and will be paid all postpetition charges. The relief requested herein is therefore in the best interests of the Debtor, its creditors and the estate and does not significantly impact any Utility Provider.

26. Additional authority for the relief requested herein is found in § 105(a) of the Bankruptcy Code, as the Utility Deposit and the Adequate Assurance Procedures are reasonable, necessary and further the Debtor's ability to reorganize under chapter 11.

27. Based on the foregoing, the Debtor respectfully requests that the Court approve this motion and enter an Order granting the relief requested herein.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order: (1) determining that those entities listed on Exhibit A are utilities as contemplated under § 366 of the Bankruptcy Code; (2) finding that the Utility Deposits provide adequate assurance of payment to Utility Providers; (3) authorizing and approving the Utility Deposits; (4) authorizing and approving the Utility Deposit Account; (5) authorizing and approving the Additional Assurance Procedures; and (6) granting the Debtor such other and further relief as the Court deems proper.

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
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