

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

In re:	)	
	)	Case No. 09-15236-RGM
2136 WISCONSIN, LLC,	)	
	)	Chapter 11
Alleged Debtor.	)	
_____	)	
	)	
MID-ATLANTIC FEDERAL	)	
CREDIT UNION,	)	
	)	
Movant,	)	
	)	Motion for Relief from Stay
v.	)	
	)	
2136 WISCONSIN, LLC,	)	
	)	
Respondent.	)	
_____	)	

**MOTION OF MID-ATLANTIC FEDERAL CREDIT UNION  
FOR RELIEF FROM THE AUTOMATIC STAY AND NOTICE  
OF HEARING AND RESPONSE DEADLINE**

Pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and section 362 of the United States Bankruptcy Code (“Bankruptcy Code”) 11 U.S.C. §§101 *et seq.*, Mid-Atlantic Federal Credit Union (“MAFCU”) respectfully moves (the “Motion”), pursuant to sections 362(d)(1) and 362(d)(2) of the Bankruptcy Code, for entry of an order in the form attached hereto, modifying the automatic stay of section 362(a) of the Bankruptcy Code, so as to permit MAFCU to exercise its lien rights and remedies against the property of 2136 Wisconsin, LLC (the “Debtor”). In support of its Motion, MAFCU respectfully asserts as follows:

Stephen E. Leach (Va. Bar No. 20601)  
D. Marc Sarata (Va. Bar No. 68621)  
Roxanne F. Rosado (Va. Bar No. 51117)  
LEACH TRAVELL BRITT pc  
8270 Greensboro Drive, Suite 1050  
McLean, Virginia 22102  
(703) 584-8900  
Counsel to Mid-Atlantic Federal Credit Union

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

2. This Motion is brought pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) and Rule 4001 of the Bankruptcy Rules.

3. On June 30, 2009, Cengiz Ozsinanlar and Jerald Clark, two alleged creditors of Debtor, filed an involuntary bankruptcy petition (the “Involuntary Petition”) under chapter 11 of the Bankruptcy Code against the Debtor in this court. On July 1, 2009, Lester Foote, a third alleged creditor of the Debtor, joined in the Involuntary Petition.

4. The Debtor has not responded to the Involuntary Petition.

5. The filing of the Involuntary Petition gave rise to the automatic stay of section 362(a) of the Bankruptcy Code with respect to all property of the Debtor, notwithstanding that the Court has not entered an order for relief in this case.

### **I. REQUESTED RELIEF**

6. MAFCU seeks relief from the automatic stay of section 362(a) of the Bankruptcy Code, so as to exercise its lien rights and remedies against the Debtor’s property described below, including, but not limited to, conducting a foreclosure sale of the Debtor’s real property located at 2136 Wisconsin Avenue, N.W., Washington, D.C. 20007.

### **II. BACKGROUND**

7. MAFCU is a federally chartered credit union which maintains its principal place of business at 12820 Wisteria Drive, Germantown, Maryland 20874.

8. The Debtor is a Virginia limited liability company which maintains an office at 478 Elden Street, Suite 201, Herndon, Virginia 20170.

9. The Debtor is the fee simple owner of real property located at 2136 Wisconsin Avenue, N.W., Washington, D.C. 20007 (the "Property").<sup>1</sup> The Property is improved by an apartment building with five residential units and one on-grade commercial unit. The site size of the Property is 2143 square feet. The improvements have a gross building area of 9,800 square feet.

10. MAFCU has made a loan (as modified, the "Loan") to the Debtor in the current principal amount of Two Million Nine Hundred Ninety-Five Thousand and 00/00 Dollars (\$2,995,000.00), which Loan is evidenced by, among other things, (i) a Promissory Note dated April 28, 2005 made by the Debtor and payable to MAFCU, as amended by (ii) a letter agreement dated May 19, 2006, as further amended by (iii) a Second Amendment to Promissory Note dated as of August 1, 2006, as further amended by (iv) a Third Amendment to Promissory Note dated December, 2007, and as further amended by (v) a Fourth Amendment to Promissory Note dated May 1, 2008 (together, the "Note"). The Loan was made pursuant to a certain Building Loan Agreement (as amended, the "Loan Agreement") dated April 28, 2005, between the Debtor and MAFCU.

11. In addition to the principal due under the Loan of \$2,995,000, the Debtor is indebted to MAFCU for accrued and unpaid interest on the principal balance, attorneys' fees, late charges, and other fees and costs. As of June 30, 2009, the Debtor owed MAFCU principal, accrued interest, and late charges under the Loan totaling \$3,462,772.66. The Debtor was and is further indebted to MAFCU under the Loan for attorneys' fees, and other costs of collection.

12. To secure repayment of the Loan to MAFCU, the Debtor executed, among other

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<sup>1</sup> The legal description of the Property is: Lot 322 in Square 1300 in a subdivision made by W. Scott Walker, as per plat recorded in Liber 37 at Folio 117 among the Land Records of the Office of the Surveyor of the District of Columbia.

things, a Deed of Trust and Security Agreement, dated April 28, 2005, encumbering the Property for the Deed of Trust and Security Agreement, recorded in the Office of the Recorder of Deeds for the District of Columbia (the "Recorder's Office") on May 3, 2005 as Instrument No. 59967, as amended by (i) a First Amendment to Deed of Trust and Security Agreement dated as of August 1, 2006, recorded in the Recorder's Office on August 30, 2006 as Instrument No. 2006118985, as further amended by (ii) a Second Amendment to Deed of Trust and Security Agreement dated December 18, 2007, recorded December 24, 2007 in the Recorder's Office as Instrument No. 2007158507, and as further amended by (iii) a Third Amendment to Deed of Trust and Security Agreement dated May 1, 2008, recorded June 6, 2008 in the Recorder's Office as Instrument No. 2008061804 (as amended, the "Deed of Trust").

13. The Deed of Trust represents a perfected, first-priority lien against the Property in favor of MAFCU, to secure repayment of all indebtedness of the Debtor to MAFCU under the Loan.

14. The Loan matured and became due and payable in full on July 31, 2008. The Debtor is in material default under the Loan and Loan Documents as a result of the Debtor having (a) violated its obligations to pay the amounts due under the Loan as required by the Note and Loan Documents, (b) failed to pay the real estate taxes on the Property, (c) failed to insure the Property, (d) failed to comply with local law as the occupancy and use of the Property, and (e) violated the Loan covenant not to enter into a lease for any portion of the Property without the consent of MAFCU.

15. In light of the Debtor's inability to meet its obligations under the Loan, the Debtor and MAFCU entered into negotiations, which culminated in an agreement that on June 30, 2009, the Debtor would execute a Deed in Lieu of Foreclosure Agreement, by which the Debtor would

convey title to the Property to MAFCU in exchange for a release by MAFCU of the Debtor's obligations under the Note and Loan Documents.

16. The Debtor evidently had a change of heart as to its agreement to execute the Deed in Lieu of Foreclosure Agreement. On June 30, 2009, the Debtor's representatives failed to appear at the time and place scheduled for execution of the Deed in Lieu Agreement, and, instead, the Involuntary Petition was filed.

17. The District of Columbia has not issued a certificate of occupancy for the Property. Notwithstanding the Debtor's failure to obtain a certificate of occupancy, an inspection of the Property by a representative of MAFCU on June 30, 2009 indicated that the commercial space in the Property is being used as a dance or other entertainment club and that a portion of the residential space in the Property is occupied by at least one adult and one child. Occupancy of the Property without a certificate of occupancy and during construction is a violation of local law.

18. On June 30, 2009, MAFCU was advised that the Debtor had, in violation of its obligations under the Loan Documents, entered into both a residential lease for a portion of the Property and a separate lease for the commercial space in the Property.

19. On information and belief, the Property is being occupied without proper utility services and while the Property is still under construction.

### **III. ARGUMENT**

20. MAFCU is entitled to relief from the automatic stay of §362(d)(1) of the Code. That section provides

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under section (a) of this section, such as by terminating, annulling, modifying or conditioning such stay . . . for cause, including lack

of adequate protection of an interest in property of such party in interest.

11 U.S.C. §362(d)(1).

21. The Code does not expressly define “cause” for lifting the stay. *See Baldino v. Wilson (In re Wilson)*, 116 F.3d 87 (3rd Cir. 1997). In the absence of a formal definition, courts determine cause on a case by case basis. *Baldino*, 116 F.3d at 90.

22. The Property is insured only because MAFCU paid for insurance. The Property is at risk of loss and deterioration because it is being occupied and used for residential and commercial purposes without proper utilities and while construction is continuing.

23. MAFCU is entitled to relief from the automatic stay under section 362(d)(2) of the Code. That section provides

On request of a party in interest and after notice and a hearing, the court shall grant relief of the stay provided under section (a) of this section, such as by terminating, annulling, modifying or conditioning such stay . . . (2) with respect to a stay of an act against property under Subsection (a) of this Section, if (A) the debtor does not have equity in such property; and (B) such property is not necessary to an effect of reorganization.

11 U.S.C. §362(d)(2).

24. A debtor has no equity in the property for purposes of section 362(d)(2) when the debts secured by liens on the property exceed the value of the property. *In re Indian Palms Assoc. Ltd.*, 61 F.3d 197, 206 (3rd Cir. 1995); *Sutton v. Bank One Texas, N.A.* 904 F.2d 327, 329 (5th Cir. 1990); *Stewart v. Gurley* 745 F.2d 1194, 1195 (9th Cir. 1984).

25. In this case, the Debtor does not have equity in the Property. The outstanding debt owed to MAFCU as of the date of the Involuntary Petition was not less than \$3,462,772.66.

26. MAFCU has commissioned an appraisal that determined the “as is” market value of the Property as of January 14, 2009, to be \$2,700,000.

27. In order for property to be necessary for an effective reorganization, there “must be a reasonable possibility of a successful reorganization within a reasonable time,” and the property must be necessary to that reorganization. *United Sav. Ass’n v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375-376 (1987). In this case, the Property is not necessary to an effective reorganization because no reorganization plan is realistically possible. Indeed, in recognition of its lack of commercial viability, the Debtor had agreed, as the date of the Involuntary Petition, to execute the Deed in Lieu of Foreclosure Agreement, thereby conveying title to the property to MAFCU.

28. MAFCU respectfully submits that it is entitled to immediate relief from the automatic stay pursuant to section 361(d)(1) and 362(d)(2) of the Code to exercise its lien rights and remedies against the Property, including, but not limited to, a foreclosure of its deed of trust lien against the Property.

WHEREFORE, MAFCU respectfully requests that the Court enter an order substantially in the form attached hereto, granting it relief from the automatic stay pursuant to sections 361(d)(1) and 362(d)(2) of the Bankruptcy Code, and granting MAFCU such other relief as the Court deems appropriate.

#### **NOTICE OF MOTION AND HEARING**

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one, in this Bankruptcy Case. (If you do not have an attorney, you may wish to consult one.)**

If you do not wish the Court to grant the relief sought in this Motion, or if you want the Court to consider your views on the Motion, then **within fifteen (15) days from the date of service of this Motion, you must file a written response explaining your position with the**

**Court** at the following address: Clerk of Court, United States Bankruptcy Court, 200 South Washington Street, Alexandria, Virginia, 22314, and serve a copy on the Movant's attorney at the address shown below. Unless a written response is filed and served within this fifteen (15) day period, the Court may deem any opposition waived, treat the Motion as conceded, and issue an Order granting the requested relief without further Notice or Hearing.

If you mail your response to the Court for filing, you must mail it early enough so that the Court will receive it on or before the expiration of the fifteen (15) day period.

In order to oppose this Motion, **you must also attend the preliminary hearing scheduled to be held on August 5, 2009, at 9:30 a.m. in Courtroom III, United States Bankruptcy Court, 200 South Washington Street, 3<sup>rd</sup> Floor, Alexandria Virginia, 22314.**

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting the relief.

Respectfully submitted,

/s/Stephen E. Leach  
Stephen E. Leach (Va. Bar No. 20601)

/s/Roxanne F. Rosado  
Roxanne F. Rosado (Va. Bar No. 51117)  
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*Counsel for Mid-Atlantic Federal Credit Union*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 17, 2009, a copy of the foregoing motion was served by first class mail, postage prepaid upon the following:

2136 Wisconsin, LLC  
478 Elden Street, Suite 201  
Herndon, VA 20170  
*The Alleged Debtor*

2136 Wisconsin, LLC  
c/o Registered Agent, Arthur Velasquez  
44050 Ashburn Plaza, #195-630  
Ashburn, VA 20147  
*The Alleged Debtor*

2136 Wisconsin, LLC  
3970 Valley Ridge Drive  
Fairfax, VA 22033  
*The Alleged Debtor*

Damien G. Agostinelli  
3219 7<sup>th</sup> Street, N.E.  
Washington, DC 20017  
*Guarantor/Member of Alleged Debtor*

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*Guarantor/Member of Alleged Debtor*

David A. Cameron  
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Washington, DC 20017  
*Guarantor/Member of Alleged Debtor*

Cengiz Ozsinanlar  
2200 Arlington Terrace  
Alexandria, VA 22303  
*Petitioning Creditor*

Jerald Clark  
3530 T Street, NW  
Washington, DC 20007  
*Petitioning Creditor*

Lester Foote  
2800 Sherman Avenue, NW  
Washington, DC 20001  
*Petitioning Creditor*

W. Clarkson McDow, Jr.  
115 South Union Street  
Alexandria, VA 22314  
*U.S. Trustee*

/s/Stephen E. Leach  
Stephen E. Leach