

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

G & G BEVERAGES, INC.,)
d/b/a MOORE BROTHERS SUPER-)
MARKETS,)

DEBTOR)

CASE NO. BK83-478

MEMORANDUM

This preliminary hearing comes before this Court pursuant to court order and in accordance with 11 U.S. Code §363(c)(3) which provides that the application to use cash collateral may be a preliminary hearing. Although that statutory subpart is somewhat clouded, I interpret it to require of the Court the initial determination of the following issue. If the debtor is authorized at this hearing to use cash collateral, is the creditor adequately protected? That is the preliminary inquiry. The statutory subpart goes on to provide that a final hearing may be held. That final hearing is to be a request by the creditor, here it would be the SBA, that it be adequately protected. Thus, the focus of the preliminary hearing is whether there is adequate protection for the creditor if the debtor is permitted to use cash collateral. The preliminary hearing authorizes a temporary finding subject to the more binding determination at the final hearing.

Here the evidence shows that the SBA has a security interest in equipment and inventory. The debtor's request is that it be authorized to use cash collateral which results from the sale of inventory.

A separate statutory provision provides that a security interest in after-acquired property is not attached to inventory which is generated after the filing of the petition. Thus, if the debtor is authorized to use the cash collateral today and it buys new inventory, the security interest of the SBA will not attach. Any new inventory which is acquired would be free and clear of the security interest of the SBA. At the same time, the cash collateral from the sale of the inventory would be used and the collateral now claimed by the SBA would be gone.

The result is that there is no adequate protection in this case because the net effect of the authorization to use cash collateral would be to strip the SBA of its collateral. Accordingly, the application is denied.

DATED: 6-28-83

BY THE COURT:


U.S. Bankruptcy Judge