



SO ORDERED.

SIGNED this 06 day of August, 2004.


LEIF M. CLARK
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE: §
§
SCHLOTZSKY'S, INC., et al., § **CHAPTER 11**
§
§ **Case No. 04-54504 (lmc)**
Debtors. § **Jointly Administered**

ORDER GRANTING IN PART DEBTORS' EMERGENCY MOTION FOR INTERIM AND FINAL ORDER AUTHORIZING THE USE OF CASH COLLATERAL

On this day came on for consideration the Debtors' Emergency Motion for Interim and Final Order Authorizing the Use of Cash Collateral (the "Motion") filed by Schlotzsky's, Inc. ("SI"), Schlotzsky's Restaurants, Inc. ("Restaurants"), Schlotzsky's Real Estate, Inc. ("Real Estate"), Schlotzsky's Franchisor, LLC ("Franchisor"), Schlotzsky's Franchise Operations, LLC ("Franchise Operations"), Schlotzsky's Brand Products, LLC ("Brand Products"), DFW Restaurant Transfer Corp. ("DFW"), 56th and 6th, Inc. ("56th and 6th"), RAD Acquisition Corp. ("RAD"), San Felipe, L.L.C. ("San Felipe") (collectively, "Schlotzsky's" or the "Debtors"). After considering the pleadings of the parties, the evidence presented and the arguments of

counsel, and so as to avoid immediate and irreparable harm to the Debtors, their creditors, and estates, and the Debtors having furnished notice of the Motion telephonically and by electronic mail and facsimile, to the United States Trustee for the Western District of Texas, and the Franchisor Secured Creditors (as defined in the Motion) and by electronic mail, facsimile or overnight delivery to the Debtors' twenty (20) largest unsecured creditors as set forth on the consolidated lists of unsecured creditors accompanying the Debtors' chapter 11 petitions (the "20 Largest Creditors") and upon the Motion and the record made at the hearing; and after due deliberation, sufficient cause appearing therefore;

AND IT APPEARING that:

A. Each of the Debtors filed a petition for reorganization under title 11, United States Code (the "Bankruptcy Code") on August 3, 2004 (the "Petition Date");

B. The filing of such petitions commenced several cases under the Bankruptcy Code (collectively, the "Cases");

C. The Debtors, as debtors in possession, continue in the possession and the management of their businesses and property pursuant to §§ 1107 and 1108 of the Bankruptcy Code;

D. No trustee or statutory committee has been appointed in these Cases;

E. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334 and the Motion constitutes a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (D), (G) and (M);

F. The Debtors have an immediate need for use of the Cash Collateral¹ to maintain and/or operate their business and property;

¹ Capitalized Terms are defined in the Motion.

G. The Franchisor Secured Creditors do not consent to the use of the Cash Collateral for any purpose other than as provided herein;

H. Absent the ability of the Debtors immediately to use the Cash Collateral for the purposes set forth in the Interim Budget (as defined below), the Debtors would not be expected to be able to operate their businesses and the Debtors, and their creditors and estates would be expected to suffer irreparable harm. Accordingly, the granting of the relief sought in the Motion is in the best interests of the Debtors, their creditors and estates, and

I. The Notice provided by the Debtors regarding the interim relief sought is appropriate and sufficient. Therefore, it is:

ORDERED as follows:

1. The Motion is hereby granted to the extent provided for herein, but not otherwise.
2. Pending the Court's determination of the Motion at the final hearing thereon regarding the Debtors' use of cash collateral (the "Final Hearing"), the Debtors are hereby authorized to use cash constituting cash collateral (as such term is defined in § 363(a) of the Bankruptcy Code) in which the Franchisor Secured Creditors assert a security interest (the "Cash Collateral"), upon the terms and conditions set forth herein. The period commencing on the petition date and ending upon entry of a final order regarding use of Cash Collateral is hereinafter defined as the "Interim Period."
3. Notwithstanding Bankruptcy Code §552, to the extent the Franchisor Secured Creditors hold properly perfected, enforceable, and unavoidable liens in the Franchisor Collateral, their liens and claims shall attach to the Franchisor Collateral accrued or received after the Petition Date and any proceeds thereof as replacement liens, and such replacement liens shall have the same priority in such post petition Franchisor Collateral as their respective pre-

petition liens and claims, in the amount of all Cash Collateral actually used by the Debtors on and after the Petition Date pursuant to this Interim Order, all subject only to validly perfected non-avoidable liens and security interests which had attached to the Debtors' assets prior to the Petition Date.

4. The replacement liens granted to the Franchisor Secured Creditors pursuant to this order shall constitute valid and duly perfected security interests and liens and this order shall be sufficient and conclusive evidence of the priority, perfection and validity of all of the security interests and liens upon the post-petition Franchisor Collateral granted to the Franchisor Secured Creditors hereunder and the Franchisor Secured Creditors shall not be required to file, record or serve any financing statements, mortgages, notice or other documents which may otherwise be required under federal or state law in any jurisdiction or to take any other action (including the taking of possession) to validate or perfect such post-petition security interests and liens.

5. The Debtors are authorized to use the Cash Collateral during the Interim Period only to pay the expenses identified in Exhibit A to the Motion in an amount not to exceed the amounts set forth on Exhibit A to the Motion (the "Interim Budget"); provided, however, that the Debtors may exceed the amounts on Exhibit A with the prior written consent of Commerce National Bank and NS Associates I, Ltd.

6. As reflected in the Interim Budget, the Debtors shall pay \$190,000 to Commerce National Bank on August 13, 2004, and \$66,000 to NS Associates I, Ltd. (payable in weekly installments of \$22,000 each) as adequate protection for the Interim Period.

7. The Debtors are authorized consistent with the limitations contained in the Interim Budget to transfer funds held or received by Franchisor to Franchise Operations and SI

in amounts necessary to permit each to satisfy its post petition liabilities set forth in the Interim Budget.

8. The Final Hearing on the Motion shall be held on August 20, 2004 at 10:00 a.m. (prevailing Central Time) before the Honorable Leif M. Clark, U.S. Courthouse, 615 E. Houston Street, Room 383, San Antonio, Texas 78295 to consider the entry of a Final Order regarding use of the Cash Collateral and the relief requested therein.

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Schlitzky's, Inc. and Subsidiaries
Cash Plan

	Entity	Description	Projected 6-Aug	Projected 13-Aug	Projected 20-Aug
	SRI	Restaurant Sales	425,000	425,000	425,000
	SI	Other	-	-	-
	Franchisor	Royalties	225,000	250,000	225,000
	Franchisor	Master Franchise Fee	-	-	-
	Franchisor	Brand License Fees	20,000	20,000	215,570
	SFO	NAMF Reimbursement	-	27,000	-
		San Felipe Funds	-	-	-
		Total Inflows	<u>670,000</u>	<u>722,000</u>	<u>965,570</u>
Payroll/Insurance	SI	Payroll and Health Insurance	30,000	226,000	20,000
Payroll	SRI	Payroll and Health Insurance	210,000	15,000	210,000
	SFO	Payroll	-	99,000	-
Notes Payable	Franchisor	Commerce National Bank Payment	-	190,000	-
Notes Payable	DEW	NS Associates	22,000	22,000	22,000
Notes Payable	Franchisor	IC W/JW monthly Payment	-	-	-
Notes Payable	SRI	GE Notes Payable	-	-	-
Notes Payable	SRI	State Bank NP	-	-	-
		Thomas Payment	-	-	-
Notes Payable	SRI	American Bank of Commerce	-	-	-
Notes Payable	SRI	Texas Coffee Traders	-	-	5,000
Rent	SI	203 Colorado Lease and Parking	-	-	-
Rent	SI	Trammell Crow - Corporate storage	-	-	-
Rent	SRI	Balcones Woods	-	-	-
Rent	SRI	Peaf, MS	-	-	-
Rent	SRI	Guadalupe	-	-	-
Rent	SRI	University - College Station	-	-	-
Rent	SRI	Littlefield	-	-	-
Rent	SRI	Southwood - College Station	-	-	-
Rent	SRI	Brodie Oaks	-	-	-
Rent	SRI	218 Lamar	-	-	-
Rent	SRI	218 Lamar	-	-	-
Rent	SRI	Northcross	-	-	-
Rent	SRI	Parmer	-	-	-
Rent	San Felipe	San Felipe	-	-	-
Property Taxes	SI/SRI	Texas County Property Tax Payment Plan	-	-	-
	SI/SRI	State Franchise Taxes	-	-	-
Sales Taxes	SRI	Expected June remittances	-	-	160,000
Vendor/employees	SE/SRI/SFO	Employee Expense Reprints/Utilities/Vendors	125,000	55,000	55,000
Franchisor	Franchisor	Independent Directors	-	-	-
	Franchisor	Commerce National Bank Legal Fees	25,000	-	-
Vendor	SI	Ed Cashell	-	-	-
Vendor	SI	UCC Financial Advisor	-	-	-
Vendor	SI	Trinity	-	-	10,000
Vendor	SI	UCC	-	-	-
Vendor	SI	Haynes and Brone	-	-	-
Vendor	SI	Insurance	-	-	-
Vendor	SI	Oglethorpe	4,000	-	-
Vendor	SI/SFO	Legal - Franchise Issues	10,000	10,000	10,000
	Franchisor	NS Legal Fees	-	-	-
Vendor	SRI	Vistar - Food Supplier	-	45,000	110,000
Vendor	SRI	Fabani - Frost Supplier	6,000	6,000	6,000
	SRI	Vistar Deposit	130,000	-	-
Vendor	SRI	Other Payables	-	15,000	15,000
		Voided Checks	-	-	-
		Outflows	<u>762,000</u>	<u>713,000</u>	<u>653,000</u>
		Net Change	(92,000)	9,000	312,570
		Ending Cash Balance	<u>177,000</u>	<u>286,000</u>	<u>598,570</u>