

## A BUSINESS UP IN SMOKE

It was a warm August morning on Florida's Gulf Coast in the lovely tourist town of CashSands, FL. Unfortunately all was not well in the world of Herbert Smokemore [Herb]. After trying with all his might to avoid doing so, Herb had no other choice but to set an appointment with the reputable debtor's firm of Canwe Cheatem & How.

During his appointment with counsel he advised them of the following:

- Herb explained that he owned a commercial retail space known as High Roller Plaza. He owned this plaza in his business's name High Roller LLC. High Roller Plaza was a bit of a destination hot spot in the area thanks to Florida's new Medical Marijuana laws.
- On one end of the plaza was the renowned Munchies Restaurant [Munchies], a restaurant known for its bodacious array of shareable snacks for everyone. From wood fired pizzas, the French Fry Station , and of course their Mile High Nachos; Munchies always aimed to build a community that lived up to their famed motto of "Snack Snack Pass".
- On the other end of the Plaza was, The Hometown Cinema [THC], a single cinema movie theater known for showing cult classics from across generations. THC was a huge hit, visitors would pack into the small theater to watch their favorite classics on the big screen like the good ole days. However, the most popular night was Always Kung Fu Fridays – 24 hours of non-stop B List or Worse Kung Fu Flicks – there was never an empty seat.
- Herb meanwhile maintained the featured retail space for his other organization Herb's Herbs A Florida Medicinal Marijuana dispensary. Licensed and authorized through the state of Florida's registry to cultivate and distribute their own line of medicinal cannabis products.
- In early 2017, Herb took out a 3-million-dollar loan from Goliath National Bank [GNB] for purposes of outfitting the spaces and funding any and all renovations. The commercial property itself was worth an approximate 4 million dollars, so in order to provide added security for the Bank, Herb provided a personal guarantee and granted a continuing interest in cash collateral and receivables to GNB in any business owned and operated by Herb at High Roller Plaza.
- Prior to the grand opening of the High Roller Plaza, Herb had executed long term lease agreements with MMMP and THC. Pursuant to the lease, Herb would take a 4.20% interest in each of their businesses in exchange for a lower monthly rent payment. Each tenant paid equal rent of \$5000/mo and would submit their 4.20% payment to Herb each quarter along with a copy of their quarterly financial statements. Additionally, prior to the opening, Herb granted GNB an interest in cash collateral and A/R for Herb's Herbs.
- High Roller Plaza opened with booming success in 2018 and carried that success into 2019. 2020 was posed to be their best year yet until \*Cue ominous music\* the rolling COVID-19 Shutdowns began.
- THC was the first to close its doors, and Munchies closed its dining room transitioning to a purely take out model, but neither were able to make full rent payments.
- To the surprise of no one, Herb's Herbs actually saw an increase in business but its revenues were still not enough to offset the loss of income from the other two tenants.

- Herb had deferred his payments to GNB for 90 days, but that time is expiring and GNB is demanding full payment at the end of the deferment period or else they will exercise their rights of default against High Roller and Herb's Herbs.
- Herb advised that he is looking into possible SBA loans as well, but isn't sure what he is legally allowed to do.

## **QUESTIONS**

1. Which entities of Herb's should/can file bankruptcy and/or does he need to file personally? Is it an issue that one of his businesses conducts a business that while legal at a state level is illegal federally?
2. What benefits would Herb have to filing one or possibly multiple Sub Ch. V bankruptcies?
3. Is it an issue that the majority of a plan would be funded by an organization that profits from federally illegal activity?
4. Is GNB's security interest on the Cash Collateral of Herb's Herbs valid due to the nature of the business and its interplay with Federal banking laws?
5. Can Herb take out any SBA Loan and from who?
6. Can Herb confirm any type of bankruptcy plan?