

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)	
)	Chapter 11
Crossroads Market, Inc.,)	
)	Case No. 18-20141
Debtor.)	
)	

**ORDER ON DEBTOR’S APPLICATION FOR AUTHORITY
TO EMPLOY PROFESSIONAL PERSON**

This matter is before the Court on debtor Crossroads Market, Inc.’s (the “Debtor”) Application for Authority to Employ Professional Person (Docket Entry “DE” 48) through which the Debtor seeks to employ John C. Carleen, Esq. and Carleen and Carleen, P.A. to assist the Debtor in the preparation of tax returns. Mr. Carleen’s affidavit submitted in support of the application states that his firm and he also represent the president of the Debtor in his personal Chapter 7 bankruptcy case. (DE 48-1). Employment of professionals is governed by 11 U.S.C. § 327 which provides in part: “Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.” In this instance the Debtor is a debtor in possession and has all of the rights and duties of a trustee. 11 U.S.C. §1107(a). Under the Bankruptcy Code a “disinterested person” is one who, among other things, “does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.” 11 U.S.C. §101(14)(C).

A hearing on the application was held on June 19, 2018 during which the Court expressed concern about whether Mr. Carleen and his firm were disinterested given that they are or were providing tax advice to the Debtor while representing the Debtor's president in his chapter 7 case. The Court was concerned that tax advice which is advantageous to one party might disadvantage the other. The Court permitted additional time for Debtor's counsel to file a supplement to the application addressing the status the Debtor's president's Chapter 7 case, the limited representation of Mr. Carleen and his firm, and anything else supporting a conclusion that Mr. Carleen and his firm are disinterested. The Debtor filed a supplement on June 20, 2018 (DE 53) which provided a copy of the docket report in the Chapter 7 case filed by the Debtor's president. The supplement disclosed that Mr. Carleen's services for the Debtor are limited to the preparation of the 2015 – 2017 corporate tax returns. However, nothing in the application or the supplement provide the Court with sufficient information to determine that Mr. Carleen and his firm are disinterested.

Further, at the hearing on June 19th, Debtor's counsel likened the application to employ to the employment of special counsel. 11 U.S.C. §327(e) is an exception to the general rule set forth in 11 U.S.C. §327(a) and permits the employment of special counsel in limited circumstances in which it is in the best interests of the estate and special counsel does not represent or hold any adverse interests to the debtor or the estate. The Court understands the practical considerations that Mr. Carleen and his firm, by virtue of their representation of the Debtor's president in his Chapter 7 case, may be able to more efficiently provide tax services to the Debtor in this case than a new accountant. However, §327(e) does not provide the Debtor with the relief he requests as the Debtor seeks to employ accounting professionals not special legal counsel.

This matter is currently scheduled for a continued hearing on July 10, 2018. If the Debtor wishes to provide further information in support of the application, it should do so by July 6, 2018.

Dated: June 27, 2018

/s/ Peter G. Cary
Peter G. Cary, Judge
United States Bankruptcy Court
for the District of Maine