

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

FILED

Lucinda B. Rauback, Clerk
United States Bankruptcy Court
Brunswick, Georgia
By cking at 12:07 pm, Mar 08, 2016

In re:	§	
	§	Chapter 11
BRANTLEY LAND & TIMBER COMPANY, LLC,	§	Case No. 15-20584-JSD
	§	
Debtor.	§	Judge John S. Dalis

**INTERIM CONSENT ORDER AUTHORIZING USE OF
CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363**

On August 17, 2015, Debtor, Brantley Land & Timber Company, LLC ("**Debtor**") filed its Motion for Authorization to Use Cash Collateral of State Bank & Trust Company ("**State Bank**" or "**Lender**"), as successor in interest to Security Bank of North Fulton, Pursuant to 11 U.S.C. § 363 (Doc. No. 31) (the "**Motion**"). The Court finds that the Motion is well-taken and approves the interim use of cash collateral as follows:

A. **Pre-Petition Liens.** On or about April 25, 2007, Security Bank of North Fulton ("**Security Bank**"), made a loan to Debtor secured by certain real and personal property located in Brantley County, Georgia pursuant to, among other documents, the following:

- a. Loan Agreement dated April 25, 2007, in the original principal amount of \$10,000,000.00, made by Debtor as Maker in favor of Security Bank as Payee (the "**Note**");
- b. Security Deed dated April 25, 2007, executed by Debtor in favor of Security Bank of North Fulton, recorded on May 4, 2007, at Deed Book 403, Pages 77-100, Brantley County Records (the "**Security Deed**"), conveying by a security interest in certain real property owned by Debtor and located in Brantley County, Georgia, and being more particularly described in the Security Deed (the "**Real Property**");

c. Certain related documents, contracts, assignments, subordination agreements, instruments, and UCC filings; and

d. Assignments of the foregoing documents to State Bank.

B. Debtor is subject to an original Receivership Order dated July 5, 2011, Amended Receivership Order dated August 26, 2011 and Second Amended Receivership Order dated February 23, 2015, wherein Jerry W. Harper, CPA and the accounting firm of Schell & Hogan, LLP, are receiver in control of Debtor.

All of such documents, as at any time amended, modified, or restated, are collectively referred to hereinafter as the "**Loan Documents.**" Security Bank assigned all of its right, title, and interest in and to the Loan Documents to State Bank & Trust Company. State Bank is the successor-in-interest to Security Bank, to the best of Debtor's knowledge. State Bank has a properly perfected security title to, security interests in, and liens upon the Real Property and the Personal Property, including all receivables, profits, and proceeds derived therefrom (the "**Cash Collateral**"). State Bank has a first-priority security interest in the Cash Collateral.

C. **Pre-Petition Debt.** As of July 16, 2015 (the "**Petition Date**"), the principal amount of the indebtedness owed by Debtor to State Bank under the Note was approximately \$11,004.383.74, inclusive of interest, costs, attorneys' fees, and other amounts chargeable to Debtor under the Loan Documents.

D. **Need for Use of Cash Collateral.** Debtor asserts that it requires the use of Cash Collateral to continue operating its business, by and through its Receiver, to incur administrative expenses of this case all in order to effectuate the orderly liquidation of the Debtor's assets. Debtor asserts that serious and potentially irreparable harm to Debtor, its creditors and its estates may occur absent authorization for the use of Cash Collateral.

Based on the foregoing facts, the Court approves the interim use of cash collateral as follows:

1. **Grant of Motion.** The Motion is *granted* as hereinafter set forth.
2. **Authority to Use Cash Collateral.**

Upon entry of this Interim Consent Order, Debtor may use Cash Collateral currently held by Debtor-in-Possession or received by Debtor during the pendency of this case until confirmation of a plan, dismissal, conversion to Chapter 7 or until further Order of Court (the "Interim Period") as long as the adequate protection payments set forth herein remain current. Such cash collateral may be used to pay regular operating expenses of the Debtor and the administrative expenses of this case. Post-petition attorney's fees and expenses remain subject to approval by the Court. Until expended by Debtor, all Cash Collateral shall remain subject to the asserted liens and claims of State Bank under the Loan Documents.

3. **Adequate Protection Granted to Lender.** During the Interim Period, State Bank shall be entitled to adequate protection as follows:

- a. **Adequate Protection Liens.** As adequate protection for any diminution in the value of State Bank's interest in the Cash Collateral, the Personal Property, or the Real Property, including any diminution resulting from the use of Cash Collateral on or after the Petition Date pursuant to this Interim Consent Order, Lender is hereby granted a lien (the "Post-petition Lien") in the debtor's post-petition assets to the same extent, validity, and priority as the Lender's Prepetition Liens. The Post-petition Lien shall not attach to causes of action under Chapter 5 of the Bankruptcy Code. Nothing in this Order is or shall be considered a determination as to the priority or perfection of any party's prepetition security interest in property of the debtor

b. **Loan Payments.** Debtor shall make adequate protection payments to Lender in the amount of \$5,000 per month beginning on August 17, 2015 and then each month thereafter on the first (1st) of each month beginning **September 1, 2015.**

4. **Reporting.** Debtor shall file its monthly operating report with the Court each month as required by the U.S. Trustee.

5. **Challenge by Trustee.** This Interim Order is entered without prejudice to (i) the claims, rights, and actions that the U.S. Trustee may have to challenge the nature, validity, or extent of the liens asserted by State Bank, and (ii) the right of State Bank to defend against any such challenge as to the nature, validity, or extent of such liens.

6. **Order Immediately Effective.** Notwithstanding anything to the contrary in the Federal Rules of Bankruptcy Procedure or otherwise, the effectiveness of this Interim Order shall not be stayed, and this Interim Order shall be immediately effective upon entry. This order may be extended upon agreement of the parties, or by order of this Court, after notice and a hearing. The entry of this Order is without prejudice to Sate Bank's right to seek such other and further relief as it may deem appropriate.

The entry of this Order shall not in any way constitute: (a) a finding of adequate protection of the interests of Lender or application of any payments made pursuant to this Order; or (b) a preclusion or a waiver of any right of Lender to file any motions in this case; or (c) agreement, consent, or acquiescence to the terms of any plan of reorganization by virtue of any term or provision of this Order; or (d) preclusion or waiver of right of the Lender to assert any other rights, causes of action, remedies, or defenses available to the Lender or to respond to any motion, application, proposal, or other action, all such rights, remedies, defenses, and opportunities to respond being specifically reserved by the Lender; or (e) a preclusion or waiver

of any right of Debtor to assert any defenses, rights, remedies or causes of action against Lender or any other party or to file or continue to prosecute any motion or adversary proceeding.

This Order in no way constitutes a waiver or forgiveness by Lender of existing defaults by Debtor under the terms of its loan and security documents and does not constitute a waiver by Lender of the remedies exercised by or available to them under said documents, or under applicable law. Likewise, this Order does not prohibit or constitute a waiver by Debtor of its rights and remedies under the Bankruptcy Code to seek the use of the cash collateral in a manner and on terms other than as set forth herein.

Nothing contained in this Order shall be construed as creating a joint venture or partnership among Debtor and Lender. There shall be no sharing of losses, costs, and expenses among Debtor and Lender and Lender shall not have any right of control or supervision over the Debtor, except as provided hereunder or through further order of this Court.

Lender shall not have any obligation to make any payment nor any liability for payment or nonpayment, of any expenses or other obligations of Debtor, including without limitation those related to the Debtor's business, including taxes owed to governmental entities, except as provided in the loan documents.

All notices required or permitted under this Order shall be sent to the respective party and/or attorney at the address listed below by certified mail, return receipt requested, or by e-mail transmission. In the event of notice by certified mail, notice shall be effective upon receipt or refusal of delivery as shown by the return receipt. In the event of notice by e-mail, notice shall be effective the same day as the e-mail is sent.

If notice is to be given to Lender it shall be sent to:

Joseph P. Quirk, Esq.
Quirk & Quirk, LLC

6000 Lake Forrest Drive, N.W.
300 Century Springs West
Atlanta, Georgia 30328
(404) 376-3244 Telephone
(404) 671-9135 Facsimile
jpq@quirklaw.com
Attorney for Lender

If notice is to be sent to Debtor, it shall be sent to:

C. James McCallar, Jr., Esq.
McCallar Law Firm
115 West Oglethorpe Avenue
Savannah, GA 31401
(912) 234-1215 Telephone
(912) 236-7549 Facsimile
mccallar@mccallarlawfirm.com
Attorney for Debtor

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PO Box 220
5 Glynn Avenue
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Jerry W. Harper, CPA
Schell & Hogan, LLP
101 Plantation Chase
St. Simons Island, GA 31522
(912) 638-9031 Telephone
(912) 638-7711 Facsimile
jerry@schellhogan.com

Except as expressly provided in this Order, nothing herein contained shall be construed to alter, modify, or change in any respect, the terms and conditions of the loan and security documents of the Lender.

Pursuant to the above, it is hereby

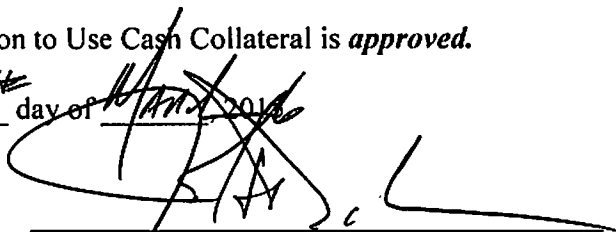
ORDERED that the Debtor's Motion to Use Cash Collateral is *approved*.

IT IS SO ORDERED, this

8th

day of

March, 2016



Honorable John S. Dalis
United States Bankruptcy Judge
Southern District of Georgia

Prepared by:

McCALLAR LAW FIRM

By: /s/ C. James McCallar, Jr.

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