



SO ORDERED.

SIGNED this 21st day of November, 2016.

Lena Mansori James
LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)	
)	
Color Landscapes by Michael Dickey, Inc)	CASE NO. 16-10435
)	Chapter 11
Debtor.)	
)	

FIFTH INTERIM CONSENT ORDER AUTHORIZING USE OF CASH COLLATERAL AND PRESCRIBING NOTICE AND TIME FOR FURTHER HEARING

THIS MATTER, coming on for hearing before the Court on November 8, 2016 pursuant to §363 of the Bankruptcy Code and Bankruptcy Rules 4001 and 9014 with respect to the Emergency Motion for Order Authorizing Use of Cash Collateral and Request for an Order Authorizing Use of Cash Collateral and the Granting of Adequate Protection (the “Motion”) filed by Color Landscapes by Michael Dickey, Inc., Debtor-in-Possession (hereinafter “Color Landscapes”, “Debtor” or “Debtor Corporation”), on May 2, 2016. Dirk W. Siegmund appeared on behalf of the Debtor, James E. Vaughan, on behalf of Creditor Branch Banking & Trust Company (“BB&T”), and Sarah Bruce appeared on behalf of the Bankruptcy Administrator.

Having considered the matter set forth in the Motion, the evidence presented at the hearing and all arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law:

1. The above captioned Debtor filed a voluntary petition under Title 11, Chapter 11 of the United States Bankruptcy Code on May 2, 2016. Since the filing, the Debtor has operated as a Debtor-in-Possession.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 1107, 1108, and other applicable sections of the United States Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157.

3. On September 6, 2016 the Court entered an Order Authorizing the Use of Cash Collateral up to and including November 8, 2016.

4. The Debtor is in the business of providing landscaping installation and maintenance for commercial customers in North Carolina, South Carolina and Virginia. Color Landscapes has been in business for 22 years and employs 50 – 90 people. The Debtor's financial difficulties stem from certain contracts which were larger than the company normally serviced. Additionally, these jobs required expenses to be paid up front causing cash flow difficulties. Further causing harm was issues arising from a related entity, Color Hardscapes which suffered from embezzlement by an employee. As the company at the time did not have proper systems in place, by the time the issues were discovered, all cash reserves had been exhausted, leading to the necessity of filing the Chapter 11.

5. The Debtor owns all the equipment that is being used in its operations. The Debtor also owns bank accounts, rights to accounts receivable, and inventory used in the business. These bank accounts, rights to accounts receivable, and inventory constitute Cash Collateral as that term is defined in 11 U.S.C. §363(a).

6. The Debtor owes approximately \$482,407.25 to BB&T pursuant to a promissory note dated May 5, 2015 (the "Promissory Note")

7. The Promissory Note is secured by the Debtor's inventory, equipment and accounts pursuant to a Security Agreement dated May 5, 2015. BB&T contends it has filed the requisite UCC Financing Statement for this Security Agreement, as well as all corresponding continuation statements, necessary to make this Security Agreement a properly perfected first-priority security interest in the Debtor's inventory, certain equipment and accounts. Attached to the Motion as Exhibit A was a true and accurate copy of the Security Agreement dated May 5, 2015, and the requisite UCC Financing Statements for this Security Agreement.

8. As of the Petition Date, Color Landscapes' bank accounts had an available balance of approximately \$56,251.62. As of the Petition Date, Color Landscapes' accounts receivable was worth approximately \$603,970.85 of which \$374,879.00 was less than 90 days old. Attached to the Motion as Exhibit B was a true and accurate copy of the Debtor's accounts receivable report as of the Petition Date. As of April 29, 2016, Color Landscapes was holding approximately \$50 worth of inventory and at this time is holding a substantially similar amount. In addition, the Debtor has equipment with a value of \$243,755.00 and equity of \$127,942.01. Collectively, the Debtor's bank accounts, accounts receivable, and inventory have a collective value of approximately \$660,272.47. The Debtor's bank accounts, accounts receivable, and inventory constitutes cash collateral as defined by the Bankruptcy Code.

9. The Debtor is not aware of any other valid security interests on any of the cash collateral owned or operated by the Debtor, except as set forth herein.

10. The Debtor's accounts and inventory represent BB&T's cash collateral (the "Cash Collateral")

11. BB&T asserts that it holds a valid, enforceable, first priority security interest and lien against the Cash Collateral and that the Debtor owes BB&T approximately \$482,407.25 (exclusive of attorneys' fees) under the Promissory Note. No party in interest shall be precluded from reviewing and challenging the validity, priority, and enforceability of the security interests and liens held by creditors (including BB&T) in addition to the amounts due to creditors (including BB&T). BB&T likewise reserves its rights to review and challenge the validity, priority and enforceability of the security interests and liens or the amount of any claim asserted by any other creditor, including, without limitation, claims asserted by insiders and pre-petition payments to insiders.

12. BB&T asserts it is entitled to adequate protection relative to its interests in the Cash Collateral.

13. The Debtor is entitled to use the Cash Collateral for its ordinary and reasonable operating expenses, which shall include payment of reasonable and necessary payroll and all standard and reasonable operating expenses.

14. The secured creditors' interests in the Cash Collateral authorized to be used by the Debtor pursuant to the budget attached hereto and incorporated herein by referenced as Exhibit 1 (the "Budget") and will be adequately protected on an interim basis by the adequate protection payments afforded by the terms of this Order.

15. It is in the best interest of the Debtor, its secured creditors, the unsecured creditors, and all other parties in interest for the Court to authorize the immediate use of Cash Collateral by the Debtor for the purposes stated herein.

16. If the Debtor is not authorized to use the Cash Collateral there will be immediate and irreparable harm caused to the estate.

17. Without finding waiver or admission of any kind or nature as to any fact, claim, defense or other matter of any kind, BB&T has consented to the use of Cash Collateral under the express terms and conditions of this interim Order.

Now, upon the Motion, the record before the Court and sufficient cause appearing therefore, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:**

1. Pending further orders of this Court, the Cash Collateral Motion is GRANTED in part upon the terms and subject to the limitations set forth in this Order.

2. The Debtor shall be authorized to use the Cash Collateral in the ordinary course of Debtor's business pursuant to the Budget attached hereto as Exhibit "1" and incorporated herein by reference through the earliest of (i) the entry of a final order authorizing the use of Cash Collateral, or (ii) the entry of a further interim order authorizing the use of Cash Collateral, or (iii) a further hearing on the use of Cash Collateral will be held on December 21, 2016, in Winston Salem at 2:00 p.m. or (iv) the entry of an order denying or modifying the use of Cash Collateral,

or (v) an occurrence of default as provided herein, or (vi) the occurrence of a Termination Event, as defined below (the "Usage Period").

3. The Debtor shall only be authorized to use Cash Collateral for the actual and necessary expenses of operating the Debtors' business and maintaining the Cash Collateral pursuant to the Budget. The Debtor shall not voluntarily contract for any administrative expense claims other than as set forth in the Budget or authorized by Court order. Unless, otherwise authorized by order of this Court, the Debtor shall not use Cash Collateral for payment of any pre-petition indebtedness or obligations of, or pre-petition claims against, the Debtor. The Debtor shall submit to BB&T and to the Bankruptcy Administrator monthly reports of operations and cash flow. Such reports shall be due not later than the close of business on the 10th day for the activities during the previous calendar month.

4. To the extent the Debtor uses the Cash Collateral of BB&T, pursuant to and consistent with 11 U.S.C. § 363(e) and § 361, BB&T is hereby granted a post-petition replacement lien in Debtor's post-petition property of the same type which secured the indebtedness of BB&T pre-petition, with such liens having the same validity, priority, and enforceability as BB&T had against the same type of such collateral as of the Petition Date. The lien of BB&T in post-petition collateral is and shall be, without any further action by BB&T, deemed perfected to the extent the pre-petition liens and security interests were valid, perfected, enforceable, and non-avoidable as of the Petition Date; provided however, that nothing in this Order shall be deemed to grant BB&T a post-petition lien on assets, if any, in which it did not possess a valid, perfected, enforceable, and otherwise unavoidable pre-petition lien. The post-petition liens and security interests provided for herein shall survive the term of this Order to the extent the pre-petition lien was valid, perfected, enforceable, and non-avoidable as of the Petition Date.

5. The security interests and liens herein granted to BB&T: (i) are and shall be in addition to all security interests, liens and rights of set-off existing in favor of BB&T on the Petition Date, if any; and (ii) shall secure the payment of the indebtedness owing to BB&T in an amount equal to the aggregate Cash Collateral used or consumed by the Debtor.

6. During the Usage Period the Debtor shall make monthly adequate protection payments to BB&T in the amount of \$1,965.46, with the first payment due on or before May 30, 2016. Subsequent payments would be due on the same day of each month thereafter during the Usage Period. Interest shall continue to accrue on the unpaid principal balance owed to BB&T during the Usage Period pursuant to the applicable non-default rates as set out in the Promissory Note. The adequate protection payments shall be applied as provided in the Promissory Note.

7. The Debtor shall preserve, protect, maintain and adequately insure the Cash Collateral. Such maintenance performed on the Cash Collateral, in addition to the Adequate Protection Payment described in Paragraph 6 above, is sufficient to adequately protect the secured parties until a further hearing on the Cash Collateral Motion is held.

8. During the period this Interim Order Authorizing Limited Use of Cash Collateral is in effect, the Debtors are authorized to make expenditures for expenses as outlined in Exhibit "1". The Debtor is authorized to make additional expenditures on any one particular expense line item, not to exceed fifteen percent (15%) of such line item, should the need arise. However, under

no circumstance shall the Debtor expend greater than fifteen percent (15%) of the overall Budget. The Debtor is not authorized to make expenditures on any expense line item exceeding fifteen percent (15%) of the budgeted amount without prior written approval from the Bankruptcy Administrator and BB&T. By the 10th of each month, the Debtor shall provide to BB&T and the Bankruptcy Administrator a budget to actual report, reflecting the actual income received and the expenses incurred during the previous month compared to the budget attached hereto.

9. As additional adequate protection, the Debtors shall keep all of the Debtor's personal property insured for no less than the amounts of the pre-petition insurance. The Debtor shall timely pay all insurance premiums related to any and all of the collateral securing the claims of BB&T.

10. Subject to the provisions which follow, this Order shall be binding on the parties hereto and upon any subsequently appointed Chapter 11 trustee or Chapter 7 trustee. Nothing contained herein shall prevent a creditor, the Bankruptcy Administrator, any official creditors' committee, or other party in interest from contesting the validity, perfection and enforceability, or priority of BB&T's liens or the amounts owing to BB&T, or from raising any defenses, offsets, deductions or counterclaims thereto. The Debtor does not hereby waive, and expressly reserves for itself and the bankruptcy estate (including the Bankruptcy Administrator, any subsequently appointed Chapter 11 or Chapter 7 trustee, other creditors, other parties in interest and any Committee in this proceeding) the right to raise any defenses, offsets, deductions or counterclaims to, or to challenge the amount, validity, perfection, enforceability or priority of, the pre-petition liens and amounts owed which are asserted by BB&T and, derivatively, any replacement lien provided for hereunder. BB&T does not hereby waive, and expressly reserves for itself, the right to raise any and all rights, remedies, and defenses under the applicable Promissory Note and other agreements with the Debtor or any other person or entity. BB&T further expressly reserves for itself the right to raise any and all matters, claims and/or defenses, of any kind or nature relating to any matter whatsoever specifically including, without limitation, the right to challenge the valuations of the collateral securing the repayment of the Promissory Note provided by the Debtor in connection with the instant bankruptcy proceeding. Subject to the foregoing, the findings, conclusions, or orders set forth herein are made as to all parties are on an interim basis, shall not constitute final decisions of this Court on any legal or factual issue, and are without prejudice to the right of any party to raise, contest, or seek the same or a different outcome at any subsequent hearing.

11. All professional fees are subject to approval of the United States Bankruptcy Court.

12. A further hearing on the Cash Collateral Motion and any objections and responses to the Cash Collateral Motion, shall be heard at 2:00 p.m. on December 21, 2016, at the United States Bankruptcy Court in Winston-Salem, North Carolina.

13. These obligations of the Debtor are continuing in nature, shall survive the term of this Order, and shall remain in effect until the earlier of (collectively a "Termination Event"):

- (i) The effective date of any confirmed Chapter 11 plan in this proceeding;
- (ii) Conversion of this case to another Chapter of the Bankruptcy Code;

- (iii) The entry of further orders of the Court regarding the subject matter hereof; or
- (iii) Dismissal of this proceeding.

14. BB&T expressly reserves its rights to seek further adequate protection of its interests and to seek a later determination that the provisions of this order do not constitute adequate protection of its interests. BB&T expressly reserves its right to seek further relief under 11 U.S.C. §§ 361, 362 and 363. The Debtor expressly reserves its rights to seek additional use of Cash Collateral beyond the stated term of this Order.

15. It shall be a default hereunder for any one or more of the following to occur:

- (i) The Debtor shall fail to comply with any of the terms or conditions of this Order;
- (ii) The Debtor shall use Cash Collateral other than as agreed in this Order;
- (iii) Appointment of a trustee or examiner in this proceeding, conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code;
- (iv) Cancellation or lapse of the Debtor's applicable insurance coverage;
- (v) Cessation of business operations by Debtor; or
- (vi) Dismissal of this case.

16. Upon the service upon Debtor's counsel by BB&T or the Bankruptcy Administrator of a written notice of any default (which shall be served upon the Debtor and the Debtor's counsel by facsimile or electronic mail (and shall be served upon the Bankruptcy Administrator and counsel for any committee formed in this case by electronic mail)), the Debtor shall have a period of five (5) business days to cure such default. If the Debtor fails to cure the default within such cure period, BB&T and/or the Bankruptcy Administrator may request this matter be reset for hearing on an expedited basis to determine the continued use of Cash Collateral.

17. Debtor shall pay all applicable insurance premiums, taxes, and other governmental charges as they become due, and will make all tax deposits and file all applicable tax returns on a timely basis.

18. If any or all of the provisions of this Order are hereafter modified, vacated, or stayed by subsequent order of this Court, or by any other Court, or the use of Cash Collateral pursuant hereto is terminated, such stay, modification, vacation, or termination, shall not affect the validity and enforceability of any lien or priority authorized herein with respect to BB&T and any indebtedness of Debtor to BB&T.

19. As further adequate protection, and subject to the provisions of paragraph 10 above, this Order grants to BB&T, for the benefit of itself, as and to the extent provided by Section 507(b) of the Bankruptcy Code, an allowed super-priority administrative expense claim pursuant to Sections 503(b) and 507(a)(2) of the Bankruptcy Code to the extent of any diminution in value of BB&T's interests in prepetition collateral caused solely by the use of Cash Collateral pursuant to the terms of this Order. BB&T's super-priority claim shall have priority over all administrative expense claims and unsecured claims against the Debtor or its estate now existing or hereafter arising, of any kind or nature whatsoever.

20. If an event of default shall occur, or the Court terminates the Debtor's right to use Cash Collateral, unless otherwise ordered by this Court, the Debtor shall pay all expenses of operation incurred by the Debtor in their normal course of business up through the time of the termination of the Debtor's right to use Cash Collateral, provided that and solely to the extent that such payments are in compliance with the Budget attached and this Order, and the liens granted herein shall be subordinate to a carve out for such expenses, including all fees pursuant to 28 U.S.C. 1930 (the "Trailing Expenses").

21. Pursuant to the approved budget, the Debtor may deposit the designated budgeted funds into the attorney trust account at Ivey, McClellan, Gatton & Siegmund, LLP; however, any funds deposited post-petition remain property of the estate subject to further orders of the Court. Ivey, McClellan, Gatton & Siegmund, LLP shall have no interest in such funds deposited by the Debtor, pending further orders of the Court.

[END OF DOCUMENT]

CONSENTED TO:

/s/ Dirk W. Siegmund
Dirk W. Siegmund,
Attorney for Debtor

/s/ Sarah Bruce
Sarah Bruce,
Attorney for Bankruptcy Administrator

/s/ James E. Vaughan
James E. Vaughan,
Attorney for Branch Banking & Trust

LIST OF PARTIES TO BE SERVED
COLOR LANDSCAPES BY MICHAEL DICKEY, INC. 16-10435

William P. Miller, Esq. CM/ECF

Dirk W. Siegmund, Esq. CM/ECF

See Attached "A"

Color Landscapes

Cash Collateral Budget

	NOV	DEC
Ordinary Income/Expense	Budget	Budget
Income		
Construction	95,000.00	95,000.00
Construction PROJECTED		
JOINT CHECKS		
Maintenance	69,000.00	64,000.00
Gain / Loss & Reimb Expenses		
Snow Removal		
Total Income	164,000.00	159,000.00
Cost of Goods Sold		
CONTRACT LABOR	500.00	500.00
JOINT CHECK CONTRACT LABOR		
DAMAGE CLAIMS		
DIRECT LABOR	56,000.00	82,000.00
DIRECT MATERIALS	30,000.00	30,000.00
JOINT CHECKS MATERIALS		
EQUIPMENT REPAIRS	4,500.00	4,500.00
EQUIPMENT GAS	6,000.00	6,000.00
EQUIPMENT LABOR	2,000.00	2,000.00
EQUIPMENT RENTAL	250.00	250.00
JOINT CHECK EQUIPT RENTAL		
MISC DIRECT JOB COSTS	1,500.00	1,500.00
JOINT CHECK MISC		
Total COGS	100,750.00	126,750.00
Gross Profit	63,250.00	32,250.00
Expense		
OVERHEAD		
General Advertising	150.00	50.00
Bank Fees	100.00	100.00
Car Allowance	200.00	200.00
Co. Paid Med/ Expense Drug Tests	-	-
Computers LMN	300.00	300.00
Computers Adobe	16.00	16.00
Computers HighRise	24.00	24.00
Computers Intuit	350.00	350.00
Design Center Utilities	300.00	300.00
Dumpster	120.00	120.00
Employee Development	150.00	850.00
Health Insurance - M Dickey	906.69	906.69
Insurance - Health	2,000.00	2,000.00
Insurance - Gen. / Auto/ inland	3,864.00	3,864.00
Insruance - Work Comp	1,400.00	1,400.00

Color Landscapes

Cash Collateral Budget

	NOV	DEC
Ordinary Income/Expense	Budget	Budget
JOINT CHECK INTEREST		
Labor Payroll Con.	14,000.00	14,000.00
Labor Payroll Maint	5,500.00	5,500.00
Office Supplies	250.00	250.00
Payroll expense - FICA/SS/MM/ FUTA	6,750.00	9,250.00
Pension contributions	150.00	150.00
Postage and Delivery	75.00	75.00
Printing & Reproduction	50.00	50.00
Professional Fees - Legal	3,000.00	3,000.00
Recruiting		
Rent	2,700.00	2,700.00
Rental Equip. - ice machine	102.00	102.00
Computer Repairs	450.00	450.00
Safety Supplies	50.00	50.00
Seminars & Education		
Shop Supplies	50.00	50.00
Small Tools	50.00	50.00
Taxes: Property		
Telephone - Office	500.00	500.00
Telephone - Cell phones	950.00	950.00
Utilities - Gas & Electric	600.00	600.00
Utilities - Water	400.00	400.00
Total Expense		
Net Ordinary Income	45,507.69	48,607.69
	17,742.31	(16,357.69)
Adequate Protection PMT	3,923.08	3,923.08
Creditor Payments		
Lease Payments		
BA Quarterly Fee		
Balance Forward	12,000.00	25,819.23
Net Cash Flow	13,819.23	(20,280.77)
Ending Cash Balance	25,819.23	5,538.46

3 payrolls

Attachment "A"

BB&T
Attn: Bill Stalker
2600 Lake Lucien Drive, Suite 201
Maitland, FL 32751

Ally Bank
c/o Registered Agent
CT Corporation
150 Fayetteville Street, Box 1011
Raleigh NC 27601-2957

Ally Bank
Attn: Diane E. Morais, CEO
440 S. Church Street
Charlotte, NC 28202

John Deere Company
c/o Registered Agent
Corporation Service Co.
327 Hillsborough Street
Raleigh NC 27603

John Deere Financial
Attn: Legal Department
6400 NW 86th Street
Johnston, Iowa 50131-6600

Sheffield Finance Company
c/o Registered Agent
CT Corporation
150 Fayetteville Street, Box 1011
Raleigh, NC 27601

Sheffield Finance Company
Attn: Legal Department
6010 Golding Center Drive
Winston-Salem, NC 27103

Stearns Bank
Attn: Legal Department
500 13th Street
Albany, MN 56307

Takeuchi North American Headquarters
Attn: Legal Department
519 Bonnie Valentine Way
Pendergrass, GA 30567

Wells Fargo
Bankruptcy Department
4137 121st Street
Urbandale, IA 50323

Wells Fargo
Attn: Traci L. Hoffe, VP
2501 Seaport Drive
Chester PA 19013

Wells Fargo
c/o Registered Agent
Secretary of State
2 South Salisbury Street
Raleigh, NC 27601

BB&T
c/o Registered Agent
CT Corporation System
150 Fayetteville St, Box 1011
Raleigh, NC 27601-2957

BB&T
Attn: Kelly S. King, President
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Winston-Salem, NC 27101

Jose M. Rosales Framing & Concrete
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Durham, NC 27713

County of Alamance
124 W. Elm Street
Graham, NC 27253-2802

City of Burlington
244 W. Davis Street
Burlington, NC 27215

North Carolina Department of Labor
1101 Mail Service Center
Raleigh, NC 27699-1101

Assistant U.S. Attorney
101 S. Edgeworth St., Suite 400
Greensboro, NC 27401

North Carolina Department of Revenue
Attn: Legal Department
501 N Wilmington St
Raleigh NC 27604

Employment Security Commission
700 Wade Avenue
Raleigh, NC 27605

Securities & Exchange Commission
Atlanta Regional Office
950 East Paces Ferry, N.E. Suite 900
Atlanta, GA 30326-1382

Internal Revenue Service
Centralized Insolvency
2970 Market Street
Mail Stop 5-Q30.133
Philadelphia, PA 19104-5016

GrowingGreen, Inc.
14703 Old Greensboro Road
Kernersville, NC 27284

Green Resource
5204 Highgreen Court
Colfax NC 27235

Pender Nursery
2630 Wall Store Road
Garner NC 27529

BELOW WERE SERVED
VIA EMAIL

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934 E. River Road
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BB&T
Attn: Bill Stalker
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Mebane, NC 27302
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Huffman Oil Co., Inc.
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Greensboro, NC 27406
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