

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:) Chapter 11
)
) Case No. 16-19927
CREATIVE FOODS, LLC)
) Hon. Jack B. Schmetterer
Debtor.)

**FIFTH AGREED INTERIM ORDER AUTHORIZING USE OF CASH
COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND GRANTING ADEQUATE
PROTECTION AND OTHER RELIEF TO RIDGESTONE BANK**

Upon the Motion (“Motion”) of Creative Foods, LLC (“Debtor”) seeking this Court’s authorization pursuant to § 363 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the “Bankruptcy Code”) and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure and Rule 4001-2 of the Local Rules of this Court (as amended, the “Bankruptcy Rules”), to use Cash Collateral (as defined below); a preliminary hearing having been held before this Court; Ridgestone Bank (“Lender”) having objected to the Debtor’s use of cash collateral, and this Court having found good and sufficient cause appearing therefor,

THE DEBTOR STIPULATES THAT:

Debtor’s Bankruptcy Case

A. On June 17, 2016 (the “Petition Date”), the Debtor filed its voluntary petition for relief with this Court under Chapter 11 of the Bankruptcy Code (this “Chapter 11 Case”). The Debtor is continuing in possession of its property, and operating and managing its business as a debtor in possession pursuant to Bankruptcy Code §§ 1107 and 1108.

B. This Court has jurisdiction over this Chapter 11 Case and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

Lender Loan

C. Lender holds a valid first priority security interest in and lien on all of the assets of the Debtor including without limitation, equipment, inventory, accounts, instruments, chattel paper, general intangibles, now owned or hereafter acquired together with all replacements, accessions, proceeds and products (the "Pre-Petition Collateral") pursuant to (i) that certain Security Agreement dated September 26, 2011 ("Security Agreement"); and (ii) UCC Financing Statement recorded on September 26, 2011 as Document No. 201100008258532 ("UCC").

D. The Security Agreement and UCC secure a loan (the "Loan") made by Lender to Debtor as evidenced by a Note executed by Debtor on September 26, 2011 in the original principal amount of \$511,000.00 (the "Note") and Loan Agreement dated September 26, 2011 ("Loan Agreement").

E. The Loan is guaranteed by Unconditional Guarantee dated September 26, 2011 from Anthony Swigon ("Guaranty") and further secured by Mortgage dated September 26, 2011 and recorded on September 28, 2011 with the Recorder of Deeds for Porter County, Indiana as Document No. 2011-019678 ("Mortgage") on the real property located at 464 Wexford Road, Valparaiso, Porter County, Indiana ("Real Estate") owned by John W. Small and Gwen E. Small. The Loan Agreement, Note, Security Agreement, UCC, Guaranty and Mortgage and all other documents evidencing or delivered in connection with the Loan are referred to as the "Loan Documents".

F. In accordance with the terms of the Loan Documents, Lender alleges and the Debtor does not dispute that as of the Petition Date the aggregate amount of \$331,804.29, plus attorney's fees are owed by Debtor to Lender, without defenses, counterclaim or offset of any kind (the "Prepetition Indebtedness").

G. Debtor stipulates that the Lender's security interests in and liens on the Pre-Petition Collateral and the Real Estate ("Pre-petition Liens") were properly perfected and are valid and

enforceable first priority liens on and security interests in the Pre-Petition Collateral and Real Estate. The Debtor's cash constitutes proceeds of the Pre-Petition Collateral and, therefore, is cash collateral of Lender within the meaning of Bankruptcy Code § 363(a) (collectively, "Cash Collateral").

H. Debtor stipulates that Lender is entitled, pursuant to Bankruptcy Code §§ 361 and 363(e), to adequate protection of its interest in the Pre-Petition Collateral, including Cash Collateral.

Background Facts

I. The Debtor represents that in the absence of the use of Cash Collateral, the Debtor does not have sufficient available sources of working capital and financing to operate its business and maintain its property, and that entry of this Order is necessary to avoid immediate and irreparable harm to the Debtor.

J. The Court therefore finds and concludes that entry of this Order is in the best interest of the Debtor's estate and creditors .

IT IS HEREBY ORDERED THAT THE MOTION IS GRANTED AS SET FORTH HEREIN, AND THAT:

1. Authorization to Use Cash Collateral. The Debtor is hereby authorized to use Cash Collateral pursuant to the terms and conditions of this Order for the sole purpose to pay the ordinary and necessary expenses relating to the Debtor's operation of its restaurant business located at 1 Walker Avenue, Clarendon Hills, Illinois (the "Business") as set forth and limited to such expenses on the attached Budget (attached hereto as Exhibit 1) (the "Budget").

2. DIP Account. The Debtor shall deposit all Business receipts into the debtor-in-possession account ("DIP Account").

3. Adequate Protection. As adequate protection for the interests of Lender in the Cash Collateral, the Lender shall have and is hereby granted (effective upon the date of this Order and without

the necessity of the recordation of mortgages, security agreements, pledge agreements, financing statements or otherwise) valid and perfected security interests in, and liens on (collectively, the "Replacement Liens") (to the same extent, validity and priority as existed on the Petition Date), all assets of the Debtor of any nature whatsoever and wherever located, tangible or intangible, whether now or hereafter acquired, including without limitation, rents and proceeds of the foregoing, wherever located, including insurance and other proceeds, excluding proceeds of any avoidable transfer actions instituted through this case (collectively, with all proceeds and products of any or all of the foregoing and including the Prepetition Collateral, the "Collateral"), which Replacement Liens shall be valid, perfective and enforceable and superior in right to any other lien hereinafter created or arising unless Lender consents in writing or the Court orders otherwise. Under the circumstances, the adequate protection provided herein is reasonable and sufficient to protect the interests of the Lender; provided, however, that nothing herein contained shall affect or impair the Lender's right to seek additional adequate protection of its interests.

4. AP Payments. As additional adequate protection for Lender's interests in the Cash Collateral, the Debtor shall pay \$1,387.50 per month to Lender on the 1st date of each month and continuing until further order of Court.

5. Insurance. Debtor shall maintain insurance coverage for the Collateral at all times during this Chapter 11 Case.

6. Financial Reporting. The Debtor shall deliver to the Lender such reasonable financial and other information concerning the business and affairs of the Debtor as the Lender shall reasonably request from time to time, including, without limitation, (i) monthly operating reports filed with the Court on a monthly basis on or before the 21st day of each month after the entry of this order; (ii) the financial reports and information provided to the Lender under the Loan Documents; and (iii) a

reconciliation report to be delivered to Lender by the 10th day of each month (for the prior month) which reconciles actual receipts and disbursements to the Budgeted receipts and disbursements (the "Reconciliation Report"). The Debtor shall cooperate with and permit the Lender to perform inspection and valuation of the Property at any reasonable times requested by the Lender.

7. Termination Date. Debtor's use of Cash Collateral is authorized only through November 15, 2016 (the "Term") unless terminated prior to this date upon an occurrence of the Termination Date defined below, and may not be extended other than on the express written consent of the Lender or order of the Court. If the Term expires or if an Event of Default (as defined in this Order) occurs (and with respect to payment or financial reporting default is not cured within five (5) business days following written notice of Event of Default), whichever sooner, the Debtor's authority to use of Cash Collateral shall immediately terminate (the "Termination Date") and Lender shall have the right to seek relief from the automatic stay.

8. Event of Default. An event of default under this Order ("Event of Default") shall include: (i) the entry of an order dismissing this Chapter 11 Case or converting this Chapter 11 Case to Chapter 7 case, (ii) the entry of an order appointing a Chapter 11 trustee in this Chapter 11 Case, (iii) the entry of an order granting any other claim superpriority status or a lien equal or superior to the respective liens granted to the Lender (except pursuant to an order under Bankruptcy Code § 506(c)), (iv) improper use of Cash Collateral not pursuant to the terms of this Order, (v) the entry of an order in this Chapter 11 Case appointing an examiner having enlarged powers beyond those set forth under Bankruptcy Code § 1106(a)(3) and (4), (vi) the entry of any order granting any relief from the automatic stay so as to allow a third party to proceed against any material asset or assets of the Debtor (vi) failure of the Debtor to maintain proper insurance for the Collateral (vii) failure to timely file the Debtor's

monthly operating statements or timely provide Lender with the Reconciliation Report or other information pursuant to this Order and/or (viii) failure to timely make an AP Payment.

9. Binding Effect; Survival. Any stay, modification, reversal or vacation of this Order shall not affect the validity of any obligation of the Debtor to the Lender incurred pursuant to this Order. Notwithstanding any such stay, modification, reversal or vacation, all use of Cash Collateral incurred by the Debtor pursuant hereto prior to the effective date of any such stay, modification, reversal or vacation, shall be governed in all respects by the provisions hereof and the Lender shall be entitled to all the rights, privileges and benefits of this Order, including without limitation, the Liens and Replacement Liens granted herein.

10. Authority. The Debtor is authorized to perform all acts, and execute and comply with the terms of such other documents, instruments and agreements as the Lender may reasonably require, as evidence of and for the protection of the use of Cash Collateral, or which otherwise may be deemed reasonably necessary by the Lender to effectuate the terms and conditions of this Order.

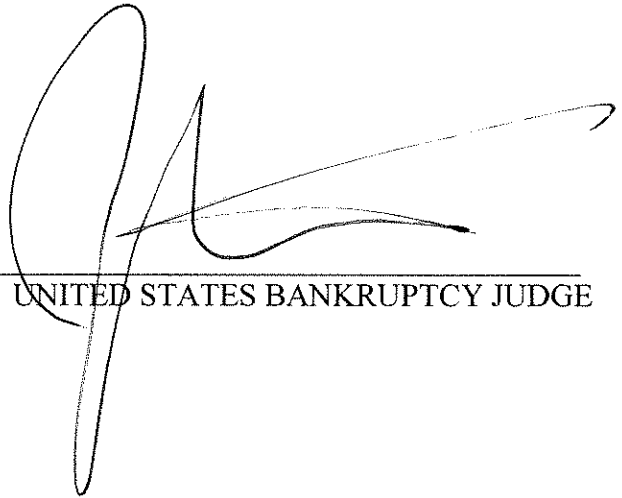
11. No Waiver. The Lender shall not be deemed to have suspended or waived any of its rights or remedies under this Order, the Loan Documents, the Bankruptcy Code or applicable nonbankruptcy law unless such suspension or waiver is in writing, signed by a duly authorized officer of the Lender and directed to the Debtor. No failure of the Lender to require strict performance by the Debtor (or by any Trustee) of any provisions of this Order shall waive, affect or diminish any right of the Lender thereafter to demand strict compliance and performance therewith, and no delay on the part of the Lender in the exercise of any right or remedy under this Order, the Loan Documents, the Bankruptcy Code or applicable nonbankruptcy law shall preclude the exercise of any right or remedy. Further, this Order shall not constitute a waiver by the Lender of any of its rights under the Loan Documents, the Bankruptcy Code or applicable nonbankruptcy law, including without limitation its right

to assert: (1) that its interests in the Collateral lack adequate protection within the meaning of Sections 362(d) or 363(e) of the Bankruptcy Code or any other provision thereof; or (2) a claim under Section 507(b) of the Bankruptcy Code. To the extent there exists any conflict between either the Loan Documents and the terms of this Order, this Order shall govern.

12. Next Hearing Date. A status hearing on Debtor's use of Cash Collateral shall be held on

November 14, 2016 at 10:30 a.m.

Dated: 10/20/16, 2016



UNITED STATES BANKRUPTCY JUDGE

CREATIVE FOODS, LLC
30- Day Budget

	<u>1 week</u>	<u>1 month</u>
Revenue		
Food Sales	18,500	79,550
Liquor Sales	8,700	37,410
Total Revenue	<u>27,200</u>	<u>116,960</u>
Cost of Goods Sold		
Food Purchases	6,014	25,860
Liquor Purchases	1,874	8,058
Total Cost of Goods Sold	<u>7,888</u>	<u>33,918</u>
Gross Profit	<u>19,312</u>	<u>83,042</u>
Expenditures		
Payroll Expenses		
Owner Payroll	1,744	7,500
Employee Payroll	6,881	29,631
Payroll Taxes	1,109	4,769
Total Payroll	<u>9,744</u>	<u>41,900</u>
Overhead Expenses		
See attached	1,252	5,383
Credit card processing	698	3,000
Rent (as adjusted)	3,953	17,000
Advertising	360	1,548
Promotions and goodwill	525	2,258
Utilities	615	2,645
Total Expenditures	<u>17,147</u>	<u>73,734</u>
Net Income	<u>2,165</u>	<u>9,308</u>

EXHIBIT 1

Fixed Costs	Weekly
Pest Control	46.15
Fire Prevention	8.65
Exhaust Hood Cleaning	17.30
Telephone	30.74
Trash Removal	98.23
Grease Trap Cleaning	10.16
Window Cleaning	17.31
Water Softener	17.31
Sewer	37.50
GoDaddy	2.68
Hostway	3.68
Radiant GC	11.54
Health Insurance	198.18
Dish Machine	63.46
ASCAP	10.84
Auto	131.77
Chamber Dues	4.81
Grease Trap Cleaning	10.16
Liability Insurance	117.55
Workers Comp insurance	126.92
Life Insurance	88.05
Comcast Internet	18.44
Pandora Music	5.76
Cable TV	43.84
Health Dept License	16.35
CH Liquor License	48.08
State Liquor License	9.62
Knife Sharpening	12.50
CO2	15.00
Gift Card Processing	11.54
Fire Inspection	5.77
Knife Sharpening	12.50
	<u>1,252.34</u>