UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
Elm Heating & Cooling, Incorporated,	)	Case No. 19-22960
	)	
Debtor and Debtor in Possession.	)	Hon. Jack B. Schmetterer

ORDER AUTHORIZING DEBTOR'S CONTINUED USE OF PREPETITION COLLATERAL, INCLUDING CASH COLLATERAL, & GRANTING ADEQUATE PROTECTION UNDER 11 U.S.C. §§ 361 AND 363

This matter came before the Court on the motion (the "***Motion***") of Elm Heating & Cooling, Incorporated, the debtor and debtor in possession in the above-captioned chapter 11 proceedings (the "***Debtor***"), under §§ 361 and 363 of title 11 of the United States Code (the "***Bankruptcy Code***"), for the entry of orders authorizing the Debtor to use the cash collateral of Randall Dellenbach (the "***Lender***") and providing adequate protection to the Lender; the Court having determined after a hearing on the Motion, that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties-in-interest; and it appearing that notice of the Motion was good and sufficient under the particular circumstances and that no other or further notice need be given; and upon the record in this case; and after due deliberation thereon and good and sufficient cause appearing therefore;

The Debtor and the Lender Represent to the Court that:

A. Prepetition Loans & Liens

(1) Prepetition Loan Documents. The Lender asserts that, before the Petition Date (defined below), all of the shareholders of the Debtor and the Lender were parties to (a) Stock Purchase Agreement dated as of November 17, 2017; (b) Stock Purchase Agreement Amendment, dated as of February 16, 2018; (c) Installment Promissory Note, dated as of February 15, 2018, in the principal amount of $1,200,000; (d) Installment Promissory Note, dated as of February 16, 2018, in the principal amount of $600,000 with a maturity date of February 1, 2025; and (e) Installment Promissory Note, dated as of February 16, 2018, in the principal amount of $600,000 with a maturity date of October 1, 2025; and (f) all documents, instruments, and agreements related to or entered into in connection with the foregoing (collectively referred to as the "***Prepetition Loan Documents***," as amended, modified, or supplemented and in effect).

(1) ***Prepetition Debt Amount.*** The Lender asserts that, as of the Petition Date, the Debtor was liable to the Lender under the Prepetition Loan Documents in the approximate aggregate principal amount of $2,439,229.26, *plus* interest, costs, expenses, and fees (including attorneys' fees and legal expenses) (collectively referred to as the "***Prepetition Debt***").

(2) ***Validity of Prepetition Debt.*** The Lender asserts that the Prepetition Debt is (a) legal, valid, binding, and enforceable against the Debtor; and (b) not subject to any contest, objection, recoupment, defense, counterclaim, offset, claim of subordination, claim of recharacterization, claim of avoidance of any nature, attack, or challenge under the Bankruptcy Code, other applicable nonbankruptcy law, or otherwise.

(3) ***Prepetition Liens & Collateral.*** The Lender asserts that, to secure the Prepetition Debt, the Debtor's shareholders granted continuing security interests and liens (collectively the "***Prepetition Liens***") to the Lender upon all of the equipment, vehicles, inventory, bank accounts, accounts receivable, furnishings, and shares of the Debtor (collectively, the "***Prepetition Collateral***"). The Prepetition Debt is fully secured by the assets of the Debtor, and the Prepetition Liens are legal, valid, enforceable, non-avoidable, and duly and properly perfected security interests in and liens upon the Prepetition Collateral and, as of the Petition Date and without giving effect to this Interim Order, the Debtor is not aware of any liens or security interests having priority over the Prepetition Liens. The Prepetition Liens on the Prepetition Collateral were granted to the Lender for fair consideration and reasonably equivalent value.

B. Interim Cash Collateral Need

The Debtor asserts that it does not have sufficient available sources of working capital and financing to operate its business in the ordinary course, or to maintain its business without the use of the Cash Collateral. Without the use of the Cash Collateral, the continued operation of the Debtor's business would not be possible, and immediate and irreparable harm will result to the Debtor, its bankruptcy estate, and creditors.

C. Adequacy of the Budget

The Lender and the Debtor have agreed that the budget, attached to this Order as **Exhibit 1** (as may be modified, supplemented, or updated from time to time consistent with the terms of this Interim Order, and upon its entry, a Final Order, the "***Budget***") is adequate, considering all available assets, to pay the administrative expenses due and accruing during the term of the Budget.

Based upon the foregoing, the Motion, and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefore,

It Is Hereby Ordered:

1. **Motion Granted**

   The Motion is granted, and the Debtor is authorized to use the Cash Collateral on an interim basis, subject to the provisions of this Interim Order. This Interim Order is valid and binding on all parties who received notice of the Motion, and effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062 and 9014. All objections to the relief granted in this Interim Order, to the extent not withdrawn or resolved, are hereby overruled.

2. **Cash Collateral**

   Subject to the Investigation Period (defined below) and paragraph 9 below:

   (a) All cash, cash proceeds, and all other cash collateral of the Debtor, wherever located and whether constituting original collateral, proceeds from advances or other loans, or proceeds of the Prepetition Collateral, are encumbered by the Prepetition Liens and constitute "cash collateral" of the Lender (as such term is defined in § 363(a) of the Bankruptcy Code) (all such cash, cash proceeds, and other "cash collateral," the "***Cash Collateral***" and together with the Prepetition Collateral, the "***Collateral***"). Without limiting the generality of the foregoing, the Cash Collateral includes all of the cash proceeds of the Prepetition Collateral in which the Lender has an interest, whether such interest existed as of the Petition Date or arises under this Interim Order, any other order of this Court, applicable law, or otherwise.

   (b) The Lender has a valid, duly perfected, first priority lien on and security interest in and to all of the cash of the Debtor derived from Prepetition Liens, whether obtained on, before, or after the Petition Date (which liens and security interests constitute and are included in the term "***Prepetition Liens***" as used in this Order).

3. **Use of Prepetition Collateral**

   The Debtor is authorized, under §§ 361 and 363 of the Bankruptcy Code, to use the Cash Collateral of the Lender only through October 31, 2019 (according to the attached Budget, plus no more than 10% of the total proposed expense payments), and may not be extended other than on the express written consent of the Lender or order of this Court.

4. Adequate Protection

(a) ***Use & Payments.*** As adequate protection for the Debtor's use of the Cash Collateral, the Debtor may only use the Cash Collateral according to paragraph 5 of this Order.

(b) ***Adequate Protection Lien.*** The Lender is granted, as adequate protection to the extent of the diminution in value of its perfected interests in the Cash Collateral, a replacement lien in the Prepetition Collateral and in the postpetition property of the Debtor, of the same nature and to the same extent, and in the same priority it had in the Prepetition Collateral, and to the extent such liens and security interests extend to property under § 552(b) of the Bankruptcy Code (the "***Adequate Protection Lien***"). In addition, the Lender is granted, as adequate protection to the extent of the diminution in value of its perfected interests in the Cash Collateral, a claim under § 507(b) of the Bankruptcy Code.

(c) ***Automatic Perfection.*** The Adequate Protection Lien is hereby deemed valid, binding, enforceable, and perfected upon entry of this Interim Order without the need to file any UCC-1 financing statements, mortgages, deeds of trust, security deeds, notices of lien, or any similar document or the need to take any other action (including possession of any of the collateral subject to the Adequate Protection Liens) to validate the perfection of any of the Adequate Protection Liens. If the Lender, in its discretion, chooses to file any such mortgages, deeds of trust, security deeds, or UCC-1 financing statements, or take any other action to validate the perfection of any part of the Adequate Protection Lien, the Debtor and its officers are directed to execute any documents or instruments as the Lender may reasonably request, and all such documents and instruments will be deemed to have been filed or recorded as of the Petition Date. The Lender may, in its discretion, file a certified copy of this Interim Order in any filing office in each jurisdiction in which the Debtor is organized, or has or maintains any collateral or an office, and each filing office is directed to accept such certified copy of this Interim Order for filing and recording.

(d) ***Reservations.*** The Lender reserves the right to argue for and demand, and the Debtor reserves its right to challenge the Lender's arguments and demands, additional adequate protection for periods not covered by this Interim Order, including, without limitation, in connection with the Final Hearing and any Final Order (each as defined below).

5. Termination of Cash Collateral Use

Notwithstanding anything to the contrary contained in this Order, the Debtor's right to use the Cash Collateral will expire on the earliest to occur of: (a)October 31, 2019; (b) the entry of an order by this Court terminating the use of Cash Collateral; (c) the dismissal or conversion of the Debtor's bankruptcy case to a case under chapter 7 of the Bankruptcy

Code; (d) the appointment of a trustee or examiner or other representative with expanded powers for the Debtor; (e) the occurrence of the effective date or consummation of a plan of reorganization; or (f) the Debtor's non-compliance with any term or provision of this Interim Order, after notice from the Lender to the Debtor's counsel of such non-compliance and the passage of a 7 calendar day period for the Debtor to cure (defined below) (the first such occurrence being referred to as the "***Termination Event***"). On and after the Termination Event, the Lender may terminate the Debtor's authority to use the Cash Collateral on 5 business days' notice to the Debtor, its counsel, counsel to any official committee of unsecured creditors that may be formed in this Case, and the U.S. Trustee (the last day of such 5 business day period, the "***Termination Date***"). From and after the Termination Date, the Debtor will no longer, pursuant to this Interim Order, the Prepetition Loan Documents, or otherwise, be authorized to use the Cash Collateral, unless authorized by the Court (and the limited consent in this Order to the use of the Cash Collateral shall be terminated).

6. Financial Reporting

The Debtor must furnish the Lender with a budget-to-actual report for the Month prior to October, 2019 by October 14, 2019; and reports as of the closing of the prior business day on the Tuesday and Friday of every week for accounts receivable aging and work-in-progress.

7. Investigation Period

The Debtor and any party in interest (other than the Debtor) is permitted up and through November 12, 2019 (the "***Investigation Period***") to investigate and challenge the Lender's assertions set forth above only by filing an adversary proceeding on or before the last day of the relevant Investigation Period. If no party files and serves the Lender's counsel with an adversary proceeding naming the Lender as defendant to determine the extent, validity, and priority of the Lender's liens or interest in the Debtor's assets before the conclusion of the Investigation Period: (i) the Debtor and all other parties in interest will be forever barred from taking any such action or asserting any objection to the validity, priority, extent, or perfection of the Lender's liens, security interests, mortgages, and any other interest of the Lender in the Debtor's assets; and (ii) the Lender's claim in the amount of the Prepetition Debt will be deemed allowed and fully secured.

8. Final Hearing; Notice; Objection Deadline

(a) ***Final Hearing***. The hearing to consider entry of a final order (the "***Final Order***") on the Motion will be held on Oct 24, 2019 at 10 a.m. (the "***Final Hearing***").

(b) ***Notice of Final Hearing***. Within 3 business days after the entry of this Interim Order, the Debtor must serve, by first class mail or electronic mail, a copy of this Interim Order and a notice of the Final Hearing (the "***Final Hearing Notice***") to: (a) the United States

Trustee; (b) the Lender's counsel; (c) all known secured creditors of the Debtor; (d) the Debtor's 20 largest unsecured creditors; and (d) any party who has filed a request for notices in this chapter 11 case under Bankruptcy Rule 2002 as of the date of this Interim Order.

(c) ***Objection Deadline***. The Final Hearing Notice must state that any party in interest objecting to the relief sought at the Final Hearing must be made in writing, setting forth with particularity all facts relied upon and all grounds for such objection, and must be filed with the Court no later than 5:00 p.m. CT on Oct 22d, 2019 (the "***Objection Deadline***"), and concurrently served so as to be actually received by the Objection Deadline by the following parties: (i) counsel for Debtor; (ii) counsel for the Lender, Sugar Felsenthal Grais & Helsinger, LLP, 30 N. LaSalle St., Ste. 3000, Chicago, IL 60602, Attn: Michael Brandess; and (iii) the U.S. Trustee.

Short notice is approved

Date: 9/26/19

Entered:

Honorable Jack B. Schmetterer
United States Bankruptcy Judge

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Counsel to the Lender

Exhibit 1

Budget

19-22960 Elm Heating Cooling, Incorporated

Amended Monthly Budget

Sales		
Gross Receipts	$	200,554.50
Returns	$	-
Total Income	**$**	**200,554.50**
Cost of Sales		
Matl / Fees / Vehicles/ o	$	83,423.25
Labor	$	40,583.75
Inventory Reduction	$	995.00
Total Costs	**$**	**125,002.25**
Gross Profit	**$**	**75,552.25**
Operating Expenses		
Salaries & Wages	$	14,668.25
Dvds/Captial Gain/ loss	$	-
Officer Compensation	$	5,208.25
Repairs & Maint	$	1,684.75
Bad Debts		
Rents	$	2,500.00
Taxes & Licenses	$	7,099.75
Depreciation	$	5,974.00
Advertising	$	6,016.75
Interest		
Education & training	$	4,240.00
Insurance	$	14,553.75
Professional Services	$	2,377.00
Office Exp	$	2,174.00
Profit Sharing / Pension		
Other deductions	$	1,593.50
Income Tax Estimate	$	927.83
Total Operating Expenses	**$**	**69,017.83**
Bankruptcy Expenses		
Adequate Protection to Dellenbach	$	2,500.00
Projected Trustee Fees	$	325.00
Net Income	$	3,709.42