

SO ORDERED



Thomas J. Catliota
THOMAS J. CATLIOTA
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

| | | |
|------------------------------------|---|-----------------------------|
| In re: | * | |
| THE HAGERSTOWN BLOCK COMPANY | * | Case No: 16-19880-TJC |
| HAGERSTOWN CONCRETE PRODUCTS, INC. | * | Case No: 16-19881-TJC |
| | * | (Chapter 11) |
| Debtors | * | (Jointly Administered under |
| | * | Case No: 16-19880-TJC) |
| * * * * * | | |

CONSENT ORDER AUTHORIZING USE OF CASH COLLATERAL
THROUGH JANUARY 31, 2017 AND GRANTING ADEQUATE PROTECTION

The Hagerstown Block Company (“HBC”) and Hagerstown Concrete Products, Inc. (“HCP”), the debtors and debtors in possession herein (the “Debtors”), filed a Motion for an Order (I) Authorizing the Debtors’ Interim and Final Use of Cash Collateral pursuant to 11 U.S.C. §§ 361, 363 and 552, (II) Granting Adequate Protection, and (III) Scheduling Final Hearing Pursuant to 11 U.S.C. § 363(c)(2) and Fed.R.Bankr.R. 4001 [Dkt. # 4] (the “Motion”)¹. Ameriserv Financial Bank (the “Bank”, together with the Debtors, the “Parties”) asserts a lien on the Debtors’ Cash Collateral and the Motion sought to use the Cash Collateral. On August 23, 2016, the Parties entered into a Consent Order Authorizing Use of Cash Collateral through October 31, 2016 and Granting Adequate Protection (“First Consent Order”) [Dkt. #38]. The Parties stipulate to the following and agree to the entry of this Consent Order Authorizing Use of Cash Collateral through January 31, 2017 and Granting Adequate Protection (the “Second Consent Order”):

¹ Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

1. On July 22, 2016, the Debtors each filed a Voluntary Petition under Chapter 11 of the Bankruptcy Code.

2. The Debtors are debtors in possession, and the United States Trustee has not appointed a creditors' committee in these cases.

3. On June 25, 2013, the Debtors entered into various loan agreements with the Bank including, but not limited to, the following: (a) \$998,000 Promissory Note made by the Debtors and payable to the Bank (the "\$998,000 Loan"); (b) \$300,000 Promissory Note made by the Debtors and payable to the Bank (the "\$300,000 Loan"); (c) Commercial Security Agreement by and among the Debtors and the Bank for the \$998,000 Loan; (d) Commercial Security Agreement by and among the Debtors and the Bank for the \$300,000 Loan; (e) Deed of Trust (the "Deed of Trust") dated June 25, 2013, recorded in the Land Records of Washington County, Maryland at Book 4574, page 264 (the "Deed of Trust"); and (f) Assignment of Rents dated June 25, 2013, recorded in Washington County, Maryland at Book 4574, page 274. Pursuant to the Deed of Trust, the Debtors granted the Bank a lien and security interest in certain real property as more fully described on Exhibit A to the Deed of Trust.

4. In connection with the \$998,000 Loan and the \$300,000 Loan, the Bank filed and perfected UCC-1 Financing Statements more particularly described as UCC-1 Financing Statement Nos. 0000000181480089 and 0000000181480090 recorded on August 16, 2013 with the Maryland Department of Assessments and Taxation listing the Debtors as the "Debtors" and the Bank as the "Secured Party" and describing the collateral as "All Inventory, Chattel Paper, Accounts, Equipment and General Intangibles; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds)".

5. The Bank consents to the use of its Cash Collateral pursuant to the terms of this Consent Order for the period of November 1, 2016 through and including 5:00 p.m. on January 31, 2017 (the "Cash Collateral Period") so long as the Debtors fully and timely perform in strict conformity with all provisions of this Consent Order.

6. The Parties have negotiated in good faith and at arm's length regarding the use of Cash Collateral during the Cash Collateral Period, and the Bank has agreed to permit the Debtors to use the Bank's Cash Collateral, but only upon the terms and conditions set forth herein, which terms include, but are not limited to, the protection afforded to a party acting in "good faith" pursuant to 11 U.S.C. § 363(m) and the Debtors' agreement to grant to the Bank replacement liens on the assets of the estate as adequate protection for the Debtors' use of Cash Collateral.

7. Nothing in this Consent Order shall prejudice the rights of the Parties from agreeing to continue the terms of this Consent Order for an additional period(s) (the "Supplemental Period"); provided that the Parties submit a stipulation to the Court stating that the Parties agree to continue this Consent Order for the duration of the Supplemental Period. In such an instance, this Consent Order shall continue without further notice or hearing.

NOW, THEREFORE, IT IS HEREBY FOUND AND ORDERED:

A. Use of Cash Collateral. The Debtors are authorized to use the Bank's Cash Collateral in the ordinary course for the purposes of paying the Debtors' necessary expenses set forth on the Budget attached as **Exhibit 1**. The Debtors may only use Cash Collateral to pay the expenses set forth on the Budget. The Budget (including income and expenses) is subject to a 15% line item variance and an overall 10% maximum variance. To the extent an operating expense is anticipated to exceed the variance, the Debtors shall require additional authority to use such Cash Collateral from Ameriserv or the Court.

B. Termination of Authority to Use Cash Collateral. The Debtors' authority to use the Bank's Cash Collateral terminates upon the earlier of (a) 5:00 p.m. on January 31, 2017, or (b) the occurrence of an Event of Default, as defined below.

C. Information Regarding Cash on Hand, Income, Expenses and Collateral. The Debtors must file all monthly operating reports on or before the 20th day of every month. Each monthly report must demonstrate that the Debtors are only using the Cash Collateral to pay authorized expenses. Each monthly report shall include an aging of accounts receivable and an aging of post-petition accounts payable.

D. Weekly Reports. By the close of business on November 7, 14, 21, and 28, 2016, December 5, 12, 19, 27, 2016 and January 3, 9, 16, 23 and 30, 2017, the Debtors shall deliver to the Bank a report of cash receipts and disbursements for the previous one-week period prepared in the same format as the Budget attached hereto. Upon request by Ameriserv, the Debtors shall provide supporting documentation of budget items and expenditures pursuant to this Consent Order.

E. Payment Escrow Account. The Debtors shall continue to maintain their payment escrow account at the Bank. The funds in the Debtors' payment escrow account (presently approximately \$72,000 maintained at Ameriserv in Account No. ****1193) shall not be subject to this Cash Collateral Order and shall remain in escrow without access to or use by the Debtors.

F. Deposit of Cash Collateral. The Debtors shall deposit all Cash Collateral into their debtor-in-possession accounts.

G. Grant of Replacement Liens. The Debtors shall grant the Bank replacement liens, to the extent that the Debtors' use of Cash Collateral results in a diminution of the Bank's collateral position as it existed on the date of the Debtors' bankruptcy filing, and as security for any and all indebtedness owed by the Debtors to the Bank, whether post or prepetition, but only to the extent that the Bank held a pre-petition first priority lien in such collateral.

H. Perfection of Replacement Liens. The security interests granted by the Debtors in favor of the Bank will be deemed perfected without the necessity for the filing or execution of documents which otherwise might be required under non-bankruptcy law for the perfection of security interests if the Bank's security interests were perfected under applicable state law before the bankruptcy filing. Such security interests and perfection shall be binding upon any subsequently appointed trustee either in Chapter 11 or any other Chapter of the Bankruptcy Code and upon all creditors of the Debtors who have extended or may hereafter extend credit to the Debtors or the Debtors in Possession.

I. Events of Default. The following shall constitute Events of Default (individually, an “Event of Default” and collectively, the “Events of Default”) under an Order on the Motion:

- (a) The Debtors, through and including January 31, 2017, fail to comply with any term, provision or condition of this Order;
- (b) The Order or any portion thereof, is vacated or reversed; or
- (c) The Debtors’ bankruptcy cases are converted to cases under Chapter 7 of the Bankruptcy Code or a trustee is appointed in the Debtors’ bankruptcy cases.

The Bank shall deliver written notice to the Debtors with a copy to the Debtors’ counsel of any Event of Default. The Debtors shall have five business days thereafter to cure the alleged default.

J. Adequate Protection. The terms of this Order do not constitute conclusive or presumptive evidence concerning the issue of adequate protection if any party raises such issue in the Debtors’ bankruptcy case.

K. Rights upon Uncured Default. Upon the earlier to occur of 5:00 p.m. on January 31, 2017 or the occurrence of an uncured Event of Default under this Order, the Debtors shall immediately cease and be prohibited from further using the Cash Collateral, without the written consent of the Bank or permission of the Court as provided in Section 363(c)(2) of the Bankruptcy Code. Additionally, upon the earlier to occur of 5:00 p.m. on January 31, 2017 or the occurrence of an uncured Event of Default under this Consent Order, the Bank shall be immediately entitled to exercise its rights and remedies under the Bankruptcy Code with respect to the Debtors and the Debtors’ real property including, without limitation, moving for relief from the automatic stay of 11 U.S.C. § 362.

L. Liens. The Debtors acknowledge that the Bank has valid, binding, perfected, enforceable liens on security interests in all of the Debtors’ assets and property including, *inter alia*, all accounts, deposit accounts, documents, equipment (including all accessories and additions thereto), general intangibles, inventory, and any and all cash proceeds and/or noncash proceeds of the foregoing, including, without limitation, insurance proceeds.

M. Allowance of Bank's Secured Claims. As a condition to the Bank's consent to the Debtor's use of Cash Collateral, the Bank required that a deadline be established in the First Consent Order by which any party in interest herein was required to interpose its objection to the allowance of the Bank's secured claims as first and prior liens upon the collateral described in the filed security documents evidencing the same. As requested by the Bank, the Court established said deadline in the First Consent Order and, notwithstanding due notice of the same provided to all parties in interest, no objections to the allowance of the Bank's secured claims were filed prior to that deadline. Therefore, the claims of the Bank hereby are ALLOWED in those amounts and with that collateral security described in Proofs of Claim Nos. 10 and 11 filed in Case No. 16-19880 and in Claim Nos. 2 and 3 filed in Case No. 16-19881. Such determination is binding upon any subsequently appointed Trustee and/or creditors committee, either in Chapter 11 or any other chapter of the Bankruptcy Code, and upon all creditors and other parties in interest herein.

N. Delay Not Waiver. Any failure or delay by the Bank to insist upon strict performance of any one or more of the provisions of this Order or to exercise any right, power, or remedy upon default under or breach of this Order shall not constitute a waiver of, or preclude the Bank from exercising, any right, power or remedy. The Bank specifically reserves all of its rights, remedies and recourse against the Debtors under the loan documents, applicable law and otherwise.

O. Miscellaneous. The parties acknowledge and agree that this Order shall only be binding upon the parties hereto if this Order, in its entirety, and without addendum or modification not otherwise approved, in writing, by the Bank and the Debtors, shall be approved by an order of the court in these proceedings and, upon such approval, shall be effective as of the bankruptcy filing, unless otherwise agreed to, in writing, by the parties.

P. Reliance on Order. The Bank and the Debtors may rely on the provisions of this Order in all respects and may conduct themselves in accordance therewith unless and until otherwise ordered by the court. If this Order is later modified for any reason, the rights of the Bank and the Debtors as provided for herein shall not be affected, impaired, modified or

terminated in any manner for the period of time from the date of entry of this Order until modification thereof.

Q. Debtors' Agreement Not to Contest Order; Objections by Creditors. By executing this Order, the Debtors agree that they will not challenge, appeal or otherwise contest this Order or any term or condition set forth herein and also agree to be bound by and to strictly comply with each and every term and condition of this Order. Nothing contained herein shall preclude any creditor from contesting the validity, priority or extent of the Bank's liens as described in this Order within the time allowed by law.

R. Notices. Any notices required or permitted by this Order shall be in writing and shall be deemed delivered if hand-delivered or delivered by first-class mail, postage prepaid, by express mail, or by telecopy or by e-mail as follows, unless such address is changed by written notice under this Order:

| | |
|-------------------|--|
| If to the Debtor: | James A. Vidmar, Esquire Lisa Yonka Stevens, Esquire Yumkas, Vidmar, Sweeney & Mulrenin, LLC 10211 Wincopin Circle, Suite 500 Columbia, Maryland 21044 jvidmar@yvslaw.com/lstevens@yvslaw.com |
|-------------------|--|

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|-----------------|---|
| If to the Bank: | Roger Schlossberg, Esquire Schlossberg, Mastro & Scanlan 18421 Henson Boulevard, Suite 201 Hagerstown, Maryland 21742 rschlossberg@schlosslaw.com |
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The effective date of notice shall be the day of delivery in the case of hand delivery, telecopy or e-mail, the next business day after delivery in the case of express mail, and three business days after delivery in the case of first-class mail.

S. Effective Date. This Order constitutes the court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052 and shall take effect immediately and be fully enforceable immediately upon entry. There shall be no stay of execution or effectiveness of this Order notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other applicable rule.

T. Hearing on Further Use of Cash Collateral. The Court has scheduled a further hearing on use of cash collateral on **Thursday, January 26, 2017, at 2:00 p.m.**, at which

the court will consider entry of a further order approving the use of cash collateral. The Debtors shall give notice of this Order and the further hearing pursuant to Bankruptcy Rules 2002 and 4001.

CONSENTED TO:

/s/ James A. Vidmar
James A. Vidmar, 00271
Lisa Yonka Stevens, 27728
Yumkas, Vidmar, Sweeney & Mulrenin, LLC
10211 Wincopin Circle, Suite 500
Columbia, Maryland 21044
(443) 569-5977
jvidmar@yvslaw.com

Counsel for Debtors

/s/ Roger Schlossberg
Roger Schlossberg
Schlossberg, Mastro & Scanlan
18421 Henson Boulevard, Suite 201
Hagerstown, Maryland 21742
(301) 739-8610
rschlossberg@schlosslaw.com

Counsel for Ameriserv Financial Bank

I HEREBY CERTIFY that the terms of the copy of the Consent Order submitted to the Court are identical to those set forth in the original; and the signatures represented by the /s/ on this copy reference the signatures of consenting parties on the original consent order.

/s/ James A. Vidmar
James A. Vidmar

cc: James A. Vidmar, Esquire
Lisa Yonka Stevens, Esquire
Yumkas, Vidmar, Sweeney & Mulrenin, LLC
10211 Wincopin Circle, Suite 500
Columbia, Maryland 21044

Attached Service List

END OF ORDER

American Dry Mix
16 Greenmeadow Drive, Suite 202
Timonium, Maryland 21093

Anchor Wall System, Inc.
5959 Baker Road, Suite 390
Minnetonka, Minnesota 55345-5996

City of Hagerstown
Office of the Treasurer
1 East Franklin Street
Hagerstown, Maryland 21740

Coddington Lumber Company, Inc.
19501 Shaft Road SW
Frostburg, Maryland 21532

Compressed Air Services Inc.
934 Sweeney Drive, Suite 4-5
Hagerstown, Maryland 21740

CST Products LLC
345 Route 130
Pedricktown, New Jersey 08067

Essroc Cement
3251 Bath Pike
Nazareth, Pennsylvania 18064

Federal White Cement Marketing Inc.
P. O. Box 742168
Atlanta, Georgia 30374-2168

F&M Supply, Inc.
2295 Molly Pitcher Highway South
Chambersburg, Pennsylvania 17202

GM Financial
P. O. Box 183593
Arlington, Texas 76096-3834

GreatAmerica Leasing Corporation
625 First Street, SE, Suite 800
Cedar Rapids, Iowa 52401-2030

Hohmann & Barnard Inc.
P. O. Box 3158
Boston, Massachusetts 02241-3158

Holcim US Inc.
P. O. Box 28425
New York, New York 10087-8425

Martin Marietta Materials
2710 Wycliff Road
Raleigh, North Carolina 27607

Motion Industries Inc.
P. O. Box 504606
Saint Louis, Missouri 63150

National Concrete Masonry Associates
13750 Sunrise Valley Drive
Herndon, Virginia 20171

Oldcastle Architectural
P. O. Box 281479
Atlanta, Georgia 30384-1479

Pennsy Supply, Inc.
P. O. Box 415396
Boston, Massachusetts 02241-5396

Petro Choice
P. O. Box 83256
Chicago, Illinois 60691-0256

Solomon Color Inc.
P. O. Box 8288
Springfield, Illinois 62791-8288

Superior Materials
585 Stewart Avenue, Suite 710
Garden City, New York 11530

Washington County Treasurer's Office
35 West Washington Street, Suite 102
Hagerstown, Maryland 21740-4868

Synchrony Bank
c/o Recovery Management Systems
Corporation
25 SE 2nd Avenue, Suite 1120
Miami, Florida 33131-1605

The following parties received
electronic notice of the filing:

Leander D. Barnhill, Esquire
Office of the U.S. Trustee
6305 Ivy Lane, Suite 600
Greenbelt, Maryland 20770

Keith R. Havens, Esquire
Counsel for Brenda K. Solomon and
Charlene R. West
Havens and Associates
2401 Research Boulevard, Suite 308
Rockville, Maryland 20850

Roger Schlossberg, Esquire
Counsel for Ameriserv Financial
Schlossberg & Mastro
18421 Henson Boulevard, Suite 201
Hagerstown, Maryland 21742

James A. Vidmar, Esquire
Lisa Yonka Stevens, Esquire
Counsel for Debtors
Yumkas, Vidmar, Sweeney & Mulrenin
10211 Wincopin Circle, Suite 500
Columbia, Maryland 21044

EXHIBIT 1

Hagerstown Block Co.
Hagerstown Concrete Products, Inc.
Consolidated Information

| Income Statement | Month of | Month of | Month of |
|--|---------------------|---------------------|---------------------|
| Sales | Nov-16 | Dec-16 | Jan-17 |
| 1 <u>Manufactured Items</u> | \$300,000.00 | \$300,000.00 | \$300,000.00 |
| 3 Resale Items | \$130,000.00 | \$100,000.00 | \$100,000.00 |
| 5 Concrete | \$65,000.00 | \$60,000.00 | \$40,000.00 |
| 9 Hauling Revenue | \$90,000.00 | \$70,000.00 | \$50,000.00 |
| <LOSS from Ch 11 Process in Sales> | \$0.00 | \$0.00 | \$0.00 |
| Total Sales | \$585,000.00 | \$530,000.00 | \$490,000.00 |
| 11 Less Returns & Allowances | -\$2,000.00 | -\$2,000.00 | -\$2,000.00 |
| Net Sales | \$583,000.00 | \$528,000.00 | \$488,000.00 |
| 13 Cost Of Goods Sold | \$250,000.00 | \$250,000.00 | \$250,000.00 |
| Gross Profit | \$333,000.00 | \$278,000.00 | \$238,000.00 |
| <u>Operating Expenses</u> | | | |
| 15 Management Fees | \$0.00 | \$0.00 | \$0.00 |
| 16 Advertising | \$2,000.00 | \$5,000.00 | \$2,500.00 |
| 18 Auto Expenses | \$1,743.00 | \$1,743.00 | \$1,743.00 |
| 22 Bad Debts | \$0.00 | \$0.00 | \$0.00 |
| 24 Directors Fees | \$0.00 | \$0.00 | \$0.00 |
| 26 Depreciation | \$1,979.55 | \$1,979.55 | \$1,979.55 |
| 28 Dues & Subscriptions | \$0.00 | \$0.00 | \$0.00 |
| 32 Fines & Penalties | \$500.00 | \$500.00 | \$500.00 |
| 34 Fuel | \$17,273.46 | \$17,273.46 | \$17,273.46 |
| 36 Group Insurance | \$11,227.12 | \$11,227.12 | \$11,227.12 |
| 38 Utilities | \$20,000.00 | \$20,000.00 | \$20,000.00 |
| 40 General Insurance | \$14,312.63 | \$14,312.63 | \$14,312.63 |
| 46 Interest | \$1,064.77 | \$1,064.77 | \$1,064.77 |
| 48 License & Permits | \$572.57 | \$572.57 | \$572.57 |
| 50 Meals & Entertainment | \$0.00 | \$0.00 | \$0.00 |
| 52 Operating Expense | \$0.00 | \$0.00 | \$0.00 |
| 58 Payroll | | | |
| HBC From Intuit Summary | \$70,000.00 | \$80,000.00 | \$70,000.00 |
| HCP From Intuit Summary | \$60,000.00 | \$65,000.00 | \$60,000.00 |
| 60 Pension Expense from Intuit | \$2,500.00 | \$2,500.00 | \$2,500.00 |
| 64 Postage | \$300.00 | \$300.00 | \$300.00 |
| 66 Professional Services | \$7,500.00 | \$10,000.00 | \$10,000.00 |
| 68 Rent | \$20,000.00 | \$20,000.00 | \$20,000.00 |
| 74 Repairs & Maint | \$20,000.00 | \$25,000.00 | \$25,000.00 |
| 75 Repairs & Maint Vehicles | \$14,000.00 | \$14,170.25 | \$14,170.25 |
| 76 Selling Expense | \$321.08 | \$321.08 | \$321.08 |
| 78 Supplies | \$676.27 | \$676.27 | \$676.27 |
| 80 Payroll Taxes | | | |
| HBC PR Taxes From Intuit Summary | \$5,500.00 | \$5,500.00 | \$5,500.00 |
| HCP PR Taxes From Intuit Summary | \$4,500.00 | \$4,500.00 | \$4,500.00 |
| 82 Other Taxes | \$40,000.00 | \$20,000.00 | \$540.00 |
| 86 Telephone | \$3,126.44 | \$3,126.44 | \$3,126.44 |
| 88 Travel & Education | \$0.00 | \$0.00 | \$0.00 |
| 90 Uniforms | \$1,171.01 | \$1,171.01 | \$1,171.01 |
| ** AMEX & CC to replace Lines of Credit Closed | \$0.00 | \$0.00 | \$0.00 |
| Total Operating Expenses | \$320,267.90 | \$325,938.15 | \$288,978.15 |
| Income (Loss) From Operations | \$12,732.10 | -\$47,938.15 | -\$50,978.15 |
| 95 Purchase Discounts Earned | \$100.00 | \$100.00 | \$100.00 |
| 96 Other Income | \$500.00 | \$500.00 | \$500.00 |
| Net Income (Loss) | \$13,332.10 | -\$47,338.15 | -\$50,378.15 |