IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

IN RE:	§	**Chapter 11**
	§	
HOUSTON GRANITE AND MARBLE CENTER LLC	§	**CASE NO. 19-35315**
		Judge David R. Jones
Debtor		

EMERGENCY MOTION FOR INTERIM AUTHORITY TO USE CASH COLLATERAL AND REQUEST FOR PRELIMINARY AND FINAL HEARINGS

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE OUR RESPONSE WITHIN 14 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 23 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Houston Granite and Marble Center LLC. (hereinafter "Debtor" or "Houston Granite"), debtor and debtor in possession, files this *Emergency Motion for Order Granting Interim Authority to Use Cash Collateral and for Preliminary and Final Hearings* (the "Motion") and in support thereof, respectfully states as follows:

I. Summary and Emergency Basis

1. This Chapter 11 case was filed on September 24, 2019 (the "Petition Date").[1]

2. The Debtor hereby seeks authorization to use cash collateral on an interim basis. Without such relief, the Debtor will suffer immediate and irreparable harm because the Debtor would be required to cease operations immediately, and the Debtor's ability to sell its business as a going concern would be eliminated. Millennial Capital Management LLC f/k/a Exemplar Capital Management LLC ("Millennial") asserts claims in the amount of approximately $275,000 and holds liens on substantially all of the Debtor's assets including accounts receivable. Additionally, Quicksilver Capital LLC ("Quicksilver) and Premier Capital Funding ("Premier") asserts claims in the amount of about $23,000 and $25,000, respectively, and either owns or holds liens on accounts receivable. Millennial, Quicksilver, and Premier will be given replacement liens on post-petition receivables for use of its cash collateral in accordance with the proposed budget attached hereto as **Exhibit A.**

II. Jurisdiction and Venue

3. This Court has jurisdiction over these cases pursuant to 28 U.S.C. § § 157, 1334.

4. This is a core proceeding under 28 U.S.C. § 157(b)(2)(D).

5. Venue of the Debtor's Chapter 11 case is proper in this district pursuant to 28 U.S.C. §§ 1409.

III. Introduction

6. The above captioned Chapter 11 bankruptcy case was filed on September 24, 2019, under Chapter 11 of Title 11 of the Bankruptcy Code, 11 U.S.C. §§101 et sq. (the

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[1] On April 16, 2016, Houston Granite previously filed a voluntary chapter 11 proceeding in Case No. 16-31994 (the "2016 Case"). In the 2016 Case, Houston Granite was represented by Mr. Matthew Louis Pepper. The 2016 Case was dismissed with prejudice soon thereafter, on motions filed by the Mahavir Irrevocable Trust ("the Mahavir Trust"), an alleged creditor, and the Office of the United States Trustee in May 2016. After dismissal of the 2016 Case, the Mahavir Trust released its alleged claims against Houston Granite and relinquished its membership interest in Houston Granite in settlement of pending state court proceedings.

"Bankruptcy Code"). The Debtor continues to manage its property as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

7. No trustee or examiner has been appointed in the Debtor's bankruptcy case. An official committee of unsecured creditors has not yet been established.

8. A detailed factual background of the Debtor's business and operations, as well as the commencement of this Chapter 11 case, is more fully set forth in the *Declaration of in Support of the Debtor's Chapter 11 Petition* by Debtor's principal, John Sykoudis[2], which is filed contemporaneously herewith and incorporated herein by reference.

IV. <u>Background</u>

A. Overview of Houston Granite

9. Houston Granite, which was formed as a Texas limited liability corporation in 2014, maintains its principal office and conducts its business operations on about 5.0 acres of land located on Hempstead Highway in Houston, Texas. It operates as a full service importer, wholesaler, and installer of natural stone, marble, and granite in its business for which it contracts with a team of designers, templaters, fabricators, and professional installers. Houston Granite's products, which are available in Houston and acquired internationally, include marble, granite, cambria quartz, travertine, soapstone, onyx, slate, and limestone.

10. Historically, Houston Granite has been successful in its business operations. In 2016, Houston Granite reported gross revenues in the amount of $1.8+ million and reported cost of goods sold totaling about $1.247 million. However, in 2017 Houston Granite's revenues dropped precipitously to about $1.766 million with cost of goods sold totaling about $2.527 million when it suffered unexpected damages and losses from the catastrophic flooding related to

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[2] Sykoudis and his wife, Aliona Sykoudis, have filed their chapter 13 petitions for relief in Case No. 19-43772; and they are represented by Mr. John Burger in their bankruptcy proceedings.

the Hurricane Harvey deluge in Houston and the surrounding Texas counties. Houston Granite also suffered losses relating to the contract default and filing of bankruptcy by a major customer. In 2018, Houston Granite reported increased gross revenues in the amount of $2.677 million and cost of goods sold in the amount of $2.221 million. However, its total debt had increased due to the significant losses sustained in 2017. Moreover, many of its property damage claims which were sustained in 2017 in the Hurricane Harvey event were wrongfully denied by its insurance carrier. As a consequence, Houston Granite was required to retain counsel and incur legal expenses to prosecute claims against its insurance carrier. As of the Petition Date, Houston Granite estimates that it will have reportable gross revenues in excess of $2.0+ million.

B. Hurricane Harvey Losses and Related Litigation

11. Prior to the Hurricane Harvey event, Houston Granite had purchased an insurance policy from certain underwriters at Lloyd's of London (the "Policy"). The Policy had been purchased to insure its property, building, and business personal property (the "Property")

12. On or about August 26, 2017, Houston Granite sustained substantial damage to the Property. The Property's damage constituted a covered loss under the Policy issued by the underwriters of Lloyd's of London. Houston Granite subsequently opened a claim on August 31, 2017, and the underwriters at Lloyd's of London assigned an adjuster to adjust the claim.

13. Thereafter, the underwriters at Lloyd's of London wrongfully underpaid Houston Granite's claim and refused to issue a full and fair payment for the covered loss as was owed under the Policy. Houston Granite asserts that the underwriters at Lloyd's of London made numerous errors in estimating the value of the claim and did not allow for adequate funds to cover the cost to replace the damaged items which were designed to minimize and underpay the loss incurred by Houston Granite.

14. In mid-2019, Houston Granite retained McClenny Moseley & Associates, PLLC as its counsel and filed its Cause No. 2019-48426 in the 113th District Court of Harris County, Texas (the "Lloyd's Lawsuit"), against the underwriters at Lloyd's of London seeking damages in excess of $1.0+ million relating to the denial of the Property damage claims (the "Lloyd's Insurance Claims"). Recently, the Lloyd's Lawsuit was removed to the U.S. Federal Court for the Southern District of Texas. The parties are awaiting entry of a Scheduling Order in the now removed Lloyd's Lawsuit.

C. Loan Financing

15. In mid-June 2016, Millennial advanced $270,000 to Sykoudis. Millennial was granted a security interest against certain items of inventory by Houston Granite. In 2019 Millennial sued Houston Granite in Cause No. 2019-43772 in the 125th District Court of Harris County (the "Millennial Lawsuit"). Subsequently, pursuant to a Forbearance Agreement and Agreed Judgment entered against Houston Granite and Sykoudis in the Millennial Lawsuit, Millenial was granted a security interest in July 2019, against all of its assets, including accounts receivable. In August 2019, Houston Granite paid its initial installment about two weeks after its due date along with its second installment as required by the Forbearance Agreement. About the time the initial and second payments were remitted to Millennial, Sykoudis was distracted with serious personal matters, including hospitalization for himself for medical treatment and for his adult son who had sustain serious bodily injuries in a motor vehicle accident in Houston, Texas. However, Millennial did not accept the late initial and second payments and, instead, sent notice of default and intent to execute on its $270,000 judgment and caused writ of

execution to be issued. [3] To protect its assets, including the Lloyd's Lawsuit, for the benefit of all of its creditors, Houston Granite has sought relief under chapter 11 of Title 11.

16. As of the Petition Date, Houston Granite also had outstanding accounts receivable factoring contracts with Quicksilver and Premier in the amount of about $23,000 and $25,000.00, respectively. In conjunction with these factoring contracts, Houston Granite executed a purchase and sale agreement on or about September 9, 2019, and on or about May 6, 2019, with Quicksilver and Premier, respectively. Quicksilver and Premier were granted a security interest in accounts receivable.

BASIS FOR REQUESTED RELIEF

A. Cash Collateral and Authority to Use

17. As stated above, prior to the Petition Date, the Debtor granted liens to Millennial against substantially all of its assets, including accounts receivable and cash proceeds, and to Quicksilver and Premier on its accounts receivable and cash proceeds.

18. The Debtor hereby seeks authority to use cash collateral in connection with this Bankruptcy Case to preserve the value of Debtor's business. Pursuant to the Bankruptcy Code, the Debtor is required to provide adequate protection to its lenders with respect to its use of cash Collateral.

19. The value of the lenders' collateral is greater than their outstanding loans. The Debtor expects that an agreed order for use of cash collateral on its initial 15-day budget will include, among others, the following:

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[3] Houston Granite and Millennial have negotiated terms on use of its cash collateral and will submit an appropriate Agreed Order to this Court for approval. Moreover, Houston Granite has invited Millennial and its counsel to its business premises to inspect and assess its inventory. Currently, Houston Granite's and Millennial's counsel are engaged in discussions for an orderly sale of selected items of inventory on a mutually agreeable time frame to satisfy Millennial's agreed judgment subject to this Court's approval.

A. Debtor may use cash collateral pursuant to an approved budget, with a 10-15% variance per line item so long as the amount of cash collateral used does not exceed the total amount for each weekly period in the budget. Unused amounts in one weekly period may be carried over to the subsequent periods.

B. Millennial's, Quicksilver's, and Premier's prepetition liens will be adequately protected by replacement liens on post petition liens on accounts receivable to the same extent and priority as its respective prepetition liens.

C. Millennial will be paid $2,000 during the term of the Debtor's initial 15-day budget which will be credited to its outstanding judgment against Houston Granite.

20. The only viable source of funding for post-petition operations is cash collateral made available to the Debtor.

21. Without the use of cash collateral on an interim basis, the Debtor would suffer immediate and irreparable harm pending a final hearing on the Motion and would likely be required to cease operations immediately, causing harm to the Debtor and its estate, customers, and employees.

22. The importance in cases like these of access to cash was recognized in *In re George Ruggieri Chrysler-Plymouth, Inc.*, 727 F.2d 1017 (11th Cir. 1984). The court in that case noted: "A debtor, attempting to reorganize in business under Chapter 11, clearly has a compelling need to use 'cash collateral' in its effort to rebuild." Id. at 1019. 31. The Debtor anticipates its lenders will consent to the proposed use of cash Collateral, subject to receiving replacement liens and perhaps other protections as provided in an agreed order. To the extent they do not consent, however, the Court may authorize the use of cash collateral by the Debtor provided that the Court determines that any objecting entity's interest is adequately protected. 11 U.S.C. § 363(c)(2)(B) and (e).

23. Section 361 sets forth three non-exclusive examples of what may constitute adequate protection. They include providing the secured creditor with "additional or replacement liens" and other relief that provides the secured creditor with the "indubitable equivalent" of the secured creditor's interest in the cash collateral. Legislative history indicates that Congress intended to provide courts with flexibility to grant relief on a case-by-case basis.

24. Pursuant to the Motion, the Debtor proposes to grant its lenders replacement liens on post-petition accounts receivable, a recognized method for providing adequate protection as specified under sections 361 and 363.

25. In exchange for the use of cash Collateral, as adequate protection for the use of the cash Collateral, but only to the extent of the actual diminution in value of the pre-petition Collateral, the Debtor proposes to grant to Millennial, Quicksilver, and Premier replacement liens in the form of security interests and liens upon the same types and kinds of assets upon which they held a prepetition lien, subject only to valid, perfected, and enforceable prepetition liens (if any) which are senior as of the Petition Date, as well as an additional lien upon the Debtor's post-petition accounts and accounts receivables. The grant of replacement liens will only apply to the extent that the pre-petition Collateral was encumbered by valid and perfected liens and security interests (collectively, the "Replacement Liens"). The Replacement Liens will not attach to any avoidance actions under Chapter 5 of the Bankruptcy Code.

26. Without access to cash Collateral, operations will cease. The going concern of the Debtor's assets will plummet, receivable collections will dry up and key employees will resign. From that standpoint, the overall value of Debtor's assets will deteriorate markedly.

27. Bankruptcy Rule 4001(c)(2) states that 14 days' notice must be given before final approval of such cash Collateral use is given. With this Motion, the Debtor is providing the

Millennial, Quicksilver, and Premier with 14 days' notice between the time of the filing of this Motion and request that the Court set a final hearing on this matter upon expiration of the 14-day notice period. The Debtor will suffer irreparable harm if the Motion is not immediately considered as it does not have the funds to continue operations. There is little harm to general unsecured creditors under this agreement since Millennial already has a first lien on substantially all of the Debtor's assets and Quicksilver and Premier have liens on accounts receivable. Thus, if the Debtor cannot fund operations, it will have to cease operating and Millennial may seek to execute on its writ to the detriment of all unsecured creditors. Accordingly, emergency consideration of this motion is required.

V. Conclusion

WHEREFORE, the Debtor respectfully requests that the Bankruptcy Court:

1) Set an emergency preliminary hearing on this Motion;

2) Enter a preliminary order authorizing the use of cash collateral pursuant to the attached budget for 14 days;

3) Schedule a final hearing on Debtor's use of cash collateral;

4) Granting all such other and further relief as is just and proper.

DATED: September 27, 2019

Respectfully submitted,

/s/ Theresa Mobley
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CERTIFICATE OF CONFERENCE

I hereby certify that the counsel for the Debtor has conferred with Brent Wells, counsel for Millennial, and an agreement on the interim use of cash collateral has been reached. Counsel for the Debtor has also conferred with an agent for Quicksilver; and although an agreement has not yet been reached the parties will continue to discuss the terms of an acceptable interim order. Counsel for the Debtor has also attempted unsuccessfully to reach an agent for Premier and will continue her efforts to contact such agent during the next week.

/s/ *Theresa Mobley*
Theresa Mobley

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2019, a true and correct copy of the Emergency Motion For Interim Authority to use Cash Collateral And Request For Preliminary And Final Hearings was served via Electronic Mail on counsel or agents for Millennial, Quicksilver, and Premier and by Electronic Case Filing system for the United States Bankruptcy Court for the Southern District of Texas or First Class Mail Postage Prepaid on the United States Trustee, all parties in interest and creditors as shown on the attached service list.

/s/ *Theresa Mobley*
Theresa Mobley