

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

_____)	
In re:)	
)	Chapter 11
JAVE CAB, Inc.)	Case No. 16-11338-MSH
)	
Debtor.)	
_____)	

**ORDER ON DEBTOR’S MOTION FOR
CONTINUING USE OF CASH COLLATERAL
AND GRANT OF CONTINUING SECURITY INTEREST**

At Boston, in said District, on this 29th day of November, 2016.

Upon consideration of the Motion of the above Debtor-in-Possession herein, praying for an Order authorizing the use of cash collateral and granting to Radius Bank (“Radius”) first priority replacement liens on Debtor’s assets, notice having been given *inter alia* to Radius and the United States Trustee, a hearing having been held and good cause appearing thereof, **IT IS HEREBY ORDERED THAT:**

Certain terms of this Order vary from the requirements of Local Rule 4001-2 (c)

1. Subject to the terms and conditions of this Order, Jave Cab, Inc. (“Debtor”) is authorized to use such property of the estate as may constitute cash collateral to pay its ordinary and necessary business expenses as set forth in the budget (the “Budget”) affixed to the Motion. Debtor warrants and represents that the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in connection with the operation of the Debtor’s business for the period set forth in the Budget. Debtor shall not use any of Radius’s cash collateral to pay any

items not contained in the Budget without the prior written consent of Radius. Debtor shall not knowingly or intentionally incur any administrative expenses other than as set forth in the Budget, exclusive of professional fees approved by the Bankruptcy Court pursuant to 11 U.S.C. § 330, 331, or 503(b) and fees payable pursuant to 28 U.S.C. § 1930, without the prior written consent of Radius. Radius does not consent to any “carve-out” from its collateral to provide for the payment of any professional fees incurred by Debtor.

2. In consideration of and as adequate protection for any diminution in the value of Radius’s Cash Collateral and to secure the Radius claims, Radius is hereby granted replacement liens, pursuant to § 361(2) and § 552 of the Bankruptcy Code, in the proceeds and products from the sale or lease of the Debtor’s assets, including, but not limited to, accounts, cash, inventory, machinery, equipment, general intangibles, licenses, intellectual property, goods, and leasehold interests, as well as all products and proceeds thereof (collectively, the "Post-Petition Collateral"); provided, however, that the liens granted herein shall not attach to any avoidance actions pursuant to Chapter 5 of the Bankruptcy Code or the proceeds thereof. The liens granted herein shall be deemed valid and perfected notwithstanding the requirements of non-bankruptcy law with respect to perfection. The post-petition grant of liens shall be supplemental of, and in addition to, the lien and security interests that Radius possesses pursuant to its loan documents.

3. The post-petition lien(s) and/or security interests created herein shall continue in full force and effect until that portion of Radius’s claims that equals (i) the amount (if any) by which the value of the collateral diminishes after the Petition Date plus (ii) the amount of cash expended by Debtor from the Petition Date to the date that Radius’s claims have been indefeasibly paid in full, including all principal and, to the extent authorized by § 506(b) of the Bankruptcy Code, such post-petition interest, fees, costs and expenses, including attorneys’ fees,

whether currently existing or hereafter accrued and incurred..

4. Radius reserves all rights to object to any request by Debtor to incur indebtedness pursuant to § 364 of the Bankruptcy Code.

5. Debtor shall maintain all necessary insurance, including, without limitation, life, fire, hazard, comprehensive, public liability, and workers' compensation as may be currently in effect, naming Radius and Debtor as co-loss payees with respect thereto.

6. Radius shall have the right to inspect the collateral.

7. [intentionally deleted].

8. NOTICE. Any notice or correspondence required to be sent hereunder shall be forwarded by email or telecopier at the numbers set forth below, and by first class mail, and shall be deemed given upon the earlier of (i) successful email or facsimile transmission, or (ii) two (2) business days after being deposited in the United States Mail, postage pre-paid, and addressed as follows:

If to Radius:

Frank F. McGinn, Esq.
Hackett Feinberg P.C.
155 Federal Street, 9th Floor
Boston, MA 02110
ffm@bostonbusinesslaw.com
Fax no. 617-422-0383

If to Debtor:

Joseph P. Foley, Esq.
98 North Washington Street
Suite 104
Boston, Massachusetts 02114
bostonbankruptcyattorneys@gmail.com
(857) 265-2931

9. TERMINATION.

A. Debtor's right to use Radius's cash collateral shall terminate ("Termination") upon the earliest to occur of the following:

- i) January 13, 2017 (unless otherwise extended by Order of the Court); or
- ii) A Termination Event has occurred under Section 10 below. However, with respect to a Termination Event under Section 10(A) (i), 10(A) (ii) and 10(A) (iii), Debtor's right to use Cash Collateral shall not terminate until two business days after Radius's filing in this Case a Notice and supporting affidavit that a Termination Event has occurred under Section 10(A) (i), 10(A) (ii) or 10(A) (iii). However, if during such two-day period, Debtor (or the Committee or, if no Committee has been appointed, the United States Trustee) files with the Bankruptcy Court and serves on Radius's counsel a "Notice of Dispute Concerning Use of Cash Collateral and Adequate Protection" in the manner set forth in Section 10 below, then Debtor's right to use Cash Collateral shall not terminate until the Court's determination.

10. TERMINATION EVENTS.

A. The occurrence of any one or more of the following shall constitute a termination event (a "Termination Event") under this Preliminary Order:

- i. Debtor's failure to make any payment when due as set forth in this Order;
- ii. The failure of Debtor to comply with any of the terms of this Order, including without limitation, the adequate protection to be provided to Radius by Debtor;
- iii. Debtor fails to maintain all necessary insurance as required above or fails to procure such insurance within two (2) business days after notice from Radius.
- iv. Conversion of Debtor's case to Chapter 7 of the Bankruptcy Code;

v. The modification or reversal of the Order;

vi. The entry of an order of this Court dismissing this case; or

vii. The entry of an order of this Court terminating this Order or any provision of this Order.

B. This Order shall terminate, effective immediately, if Termination Event has occurred except that with respect to a Termination Event under Sections 10(A) (i), 10(A) (ii) or 10(A) (iii) this Stipulated Interim Order shall not terminate unless Debtor fails to cure the Termination Event within two (2) business days of notice of the Termination Event to Debtor as set forth in Paragraphs 8 and 9 above. Upon the failure of Debtor to cure a Termination Event after the expiration of the notice and cure period, authority to use the collateral, including all cash collateral, shall terminate effective immediately.

11. MISCELLANEOUS

A. Notwithstanding the expiration or termination of this Order, the terms and provisions of this Order with respect to the replacement liens and security interests granted herein shall continue for the duration of this Chapter 11 case and for the duration of this case under any other chapter of the Bankruptcy Code to which it may be converted, and the replacement liens and security interests shall maintain the priorities established by this Order until satisfied and discharged.

B. This Order shall be entered and be effective as of November 30, 2016.

C. Debtor shall, on or before December 1, 2016, file projections for the further use of cash collateral through February 28, 2017 and shall provide to Radius, the United States Trustee and the other interested parties monthly reports of actual income and expenses incurred within ten days of the end of the month.

D. The Debtor shall make monthly adequate protection payments to Radius in the amount of \$687.50 on or before the 15th day of each month, but in the event that gross monthly income exceeds the projected amount of \$1,200, such increase shall be paid over to Radius as additional adequate protection.

E. A further hearing on relief granted in this Order and on any request by Debtor's for its continuing use of cash collateral shall be heard before this Court, on January 12, 2017, at 10:15 a.m. (the "Continued Hearing Date").

F. Debtor serve by first class mail, postage prepaid, a copy of this Order on all creditors, the Office of the U.S. Trustee, and any party having filed an appearance in this case, by no later than December 2, 2016; and thereupon file its certificate of service.



Honorable Melvin S. Hoffman
Chief United States Bankruptcy Judge