



FILED & JUDGMENT ENTERED
Steven T. Salata

February 3 2017

Clerk, U.S. Bankruptcy Court
Western District of North Carolina

J. Craig Whitley
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:) Chapter 11
)
MADISON CONSTRUCTION GROUP, INC.,) Case No. 16-32006
)
)
)
Debtor.)

SECOND INTERIM ORDER
AUTHORIZING DEBTOR’S USE OF CASH COLLATERAL

THIS MATTER came before the Court on the Emergency Motion of Madison Construction Group, Inc. (the “Debtor”) for interim authority to use cash collateral (the “Motion”)¹. Based upon a review of the record, the contents of the Motion, the statements of counsel, and the evidence offered at the hearing on the Motion, the Court finds and concludes that the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors; proper and adequate notice under the circumstances has been given to all interested parties; and good cause exists to grant the Motion herein. By entry of this Order, the Court makes the following:

¹ Terms not otherwise defined herein shall have the meanings set forth in the Motion.

FINDINGS OF FACT

1. On December 15, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Court. The Debtor is a debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 case.

2. The Debtor is a full service subcontractor that offers turnkey packages for carpentry, millwork, doors, hardware, and specialty installations. The Debtor’s operations are based in Charlotte, but its projects extend across North Carolina and into South Carolina and Tennessee.

3. Aquesta Bank (“Aquesta Bank”) and Yadkin Bank (“Yadkin Bank” and together with Aquesta Bank, the “Banks”) assert perfected security interests in the Debtor’s cash collateral.

4. For purposes of this Order, the Court has proceeded with the presumption that both Aquesta Bank and Yadkin Bank hold valid debts owed by the Debtor and that the Debtor’s cash collateral is subject to valid, perfected security interests securing the debts in favor of both Banks. The Debtor has reserved its right, as well as the right of any other party with standing, to challenge the same in a later proceeding.

5. On December 16, 2016, at 2:00 p.m., a hearing was held with respect to interim relief under the Motion on before this Court (the “First Hearing”). Present at the First Hearing were counsel for Debtor, counsel for the Bankruptcy Administrator, counsel for Aquesta Bank, and counsel for Yadkin Bank. At the First Hearing a second hearing was scheduled for January

17, 2017 at 9:30 a.m. (the “Second Hearing”), initially intended to be the final hearing on the Motion.

6. On January 10, 2017 at 9:30 a.m. the Second Hearing was held before this Court. Present at the First Hearing were counsel for Debtor, counsel for the Bankruptcy Administrator, counsel for Aquesta Bank, and counsel for Yadkin Bank. Among other requests and stipulations among the parties, which are incorporated herein, counsel for the Bankruptcy Administrator requested that the final hearing be continued and scheduled for February 7, 2017 at 9:30 a.m. (the “Final Hearing”), which request was granted.

7. This order approves and extends the Debtor’s interim authority to use cash collateral through February 7, 2017, the date of the Final Hearing.

CONCLUSIONS OF LAW

8. This is a “core” proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(M), among other provisions, and this Court has authority to enter this Order under 11 U.S.C. §§ 105, 361, and 363, among other sections.

9. Aquesta Bank’s interest in cash collateral is adequately protected pursuant to § 361 of the Bankruptcy Code.

10. Yadkin Bank’s interest in cash collateral is adequately protected pursuant to § 361 of the Bankruptcy Code.

11. Entry of this Order, granting the Debtor the authorization that follows, is in the best interests of the Debtor, its creditors and other parties in interest in this case.

In view of the foregoing, it is **THEREFORE ORDERED, ADJUDGED AND DECREED** as follows:

1. The Motion is granted on an interim basis.
2. This Order is entered without prejudice to any and all claims, rights, and defenses that the Debtor or any other party with standing may have to challenge the nature, validity, or extent of the liens asserted by Aquesta Bank and/or Yadkin Bank.
3. Pursuant to the stipulations of the parties at the Second Hearing, (i) the payment to Yadkin Bank for the month of January 2017 shall be adjusted from \$1,236.00 to \$1,377.00 and (ii) the Debtor shall highlight each line item of the proposed extended budget, which exceed the budgeted amount for the prior month by more than ten percent (10%).
4. Interim Authority to Use Cash Collateral. During the term of this order authorizing interim use of cash collateral, as long as Debtor fully complies with the provisions set forth herein, the Debtor is authorized to use cash collateral, on an interim basis, to operate in the ordinary course of business and to pay only those expenses which must be incurred on or before February 7, 2017. Because the amount of certain expenses or the timing of all expenses cannot be predicted exactly, the Debtor shall be considered in compliance with the Budget so long as (i) the Debtor does not exceed the Budget by more than 10% per line item or (ii) the Debtor exceeds the Budget due to "change orders" received during the relevant period, in the event of which, the Debtor shall provide notice of such "change orders" to counsel for Aquesta Bank, Yadkin Bank, and the Bankruptcy Administrator as soon as reasonably practicable. The Banks shall be granted with replacement liens in post-petition assets to the same extent and priority ultimately determined to have existed pre-petition for all cash collateral actually expended for the duration of the interim cash collateral order
5. Deadline for Authority. A final hearing on the use of cash collateral shall be held on February 7, 2017 at 9:30 a.m. (the "Final Hearing") before the Honorable J. Craig Whitley at

the United States Bankruptcy Court, Charles Jonas Federal Building, Courtroom 1-4, 401 W. Trade St., Charlotte, North Carolina. Any objection to the Debtor's use of cash collateral shall be filed and served no less than five (5) days prior to the Final Hearing.

6. Modifications to the Budget. The Debtor may also utilize cash collateral for expenses not set forth in the Budget without further order of this Court so long as the Debtor receives consent from Aquesta Bank, Yadkin Bank, and such other secured party with an interest in the cash collateral as they become known.

7. Service of Order. Counsel for Debtor shall ensure that a copy of this Order is served electronically or by first class mail (which, pursuant to the Bankruptcy Rules, will be deemed sufficient) upon (a) the Bankruptcy Administrator for the Western District of North Carolina, (b) the Internal Revenue Service, (c) the Debtor's twenty largest unsecured creditors, (d) Aquesta Bank, (e) Yadkin Bank, and (f) those parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, this Order confirms that no other or further notice need be given.

This order has been signed electronically. The Judge's signature and Court's seal appear at the top of this Order.	United States Bankruptcy Court
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