

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:) Chapter 11
)
MY-WAY TRADING, INC. dba) CASE NO. 16-09324-JMC-11
DIVERSIFIED GREEN SOLUTIONS,)
)
Debtor.)

**MOTION FOR ENTRY OF INTERIM ORDER AUTHORIZING DEBTOR
(A) TO UTILIZE CASH COLLATERAL
PURSUANT TO 11 U.S.C. §363, AND (B) GRANTING ADEQUATE
PROTECTION TO PREPETITION SECURED LENDER PURSUANT
TO 11 U.S.C. §361, NUNC PRO TUNC TO PETITION DATE**

My-Way Trading, Inc. dba Diversified Green Solutions, debtor-in-possession (“My-Way” or “Debtor”), by counsel, and for its *Motion for Entry of Interim Order (A) Authorizing Debtor to Use Cash Collateral Pursuant to 11 U.S.C. §363, and (B) Granting Adequate Protection to Pre-Petition Secured Lender Pursuant to 11 U.S.C. §361, Nunc Pro Tunc to Petition Date* (the “Cash Use Motion”), respectfully states as follows:

I. Jurisdiction

1. On December 9, 2016, (the “Petition Date”), My-Way filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101 *et seq.*, as amended (the “Bankruptcy Code”). My-Way continues to operate its businesses and manage its property as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§1157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409. This motion is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

3. The statutory bases for relief requested herein are §§ 105(a), 361, 363, 1107 and 1108 of the Bankruptcy Code.

4. No Trustee or examiner has been appointed in this chapter 11 case. No committee of unsecured creditors has yet been appointed in this chapter 11 case.

II. General Background

5. My-Way is a plastics recycling business located in Richmond, Indiana.

6. My-Way's customers pay with cash, personal checks, debit cards, and credit cards. The cash and personal checks are deposited into My-Way's bank accounts at First Bank Richmond, N.A. ("First Bank"), and My-Way's debit and credit card servicers wire funds every day into My-Way's bank accounts at First Bank.

7. As of the Petition Date, My-Way was indebted to First Bank. My-Way has performed a preliminary investigation and analysis of the related UCC filings, and based upon preliminary investigation believes, that without waiver of rights to challenge the validity, priority and extent of the liens, First Bank may have valid, enforceable and non-avoidable, first-priority liens and security interests in substantially all of the personal property as well as general intangibles owned by My-Way including cash collateral. My-Way is unaware of any other parties who may assert a lien on My-Way's cash collateral.

III. Relief Requested

8. My-Way has an immediate need to use cash collateral which is the subject of the liens in favor of First Bank, in order to permit, among other things, the orderly continuation of the operation of My-Way's business, to maintain business relationships with vendors and suppliers and to satisfy other working capital needs. Use of cash collateral is necessary to prevent the immediate and irreparable harm to My-Way and their respective estate that would otherwise result if My-Way is prevented from obtaining use of cash collateral for the foregoing purposes.

9. All of My-Way's cash, cash equivalents and cash on deposit as of the Petition Date and all proceeds of My-Way's personal property securing My-Way's obligation to First Bank, among other things, may constitute "cash collateral" (as that term is defined in Section 363(a) of the Bankruptcy Code) of Bank.

10. First Bank may be entitled to adequate protection of its interests in My-Way's personal property, including any cash collateral thereof, for any diminution in value of such property or cash collateral, including any diminution resulting from the use of cash collateral and the imposition of the automatic stay. My-Way believes, in an exercise of its prudent business judgment, that the adequate protection given by the proposed granting of replacement liens over cash collateral to the same extent, validity and priority of First Bank' pre-petition liens is fair, reasonable and necessary under the circumstances.

11. My-Way proposes to provide adequate protection to First Bank by maintaining the future Cash Collateral at the current level and by adhering to the budget attached hereto as Exhibit "A" and incorporated herein.

12. Further My-Way is making normal monthly payments to First Bank in the amount of \$5,000.00 pursuant to a re-negotiated workout agreement entered into pre-petition.

13. My-Way believes that the use of cash collateral is fair, reasonable and necessary under the circumstances, and reflects My-Way's exercise of prudent business judgment consistent with its fiduciary duties.

WHEREFORE, My-Way, by counsel, requests that the Court enter an Interim Order *nunc pro tunc* to the Petition Date providing for the following:

(a) Granting replacement liens over cash collateral in favor of First Bank pursuant to §361(2) of the Bankruptcy Code to the same extent, validity and priority of First Bank' pre-petition liens, and deem such liens as adequate protection to First Bank for use of the cash collateral;

(b) Authorizing My-Way to use cash collateral as provided in the projections or budget to be immediately provided by My-Way to First Bank, and which shall become part of any order issued by this Court approving this Motion; and

(c) All other appropriate relief under the circumstances.

Respectfully submitted,

HESTER BAKER KREBS LLC

By /s/ David R. Krebs

David R. Krebs
Hester Baker Krebs LLC
One Indiana Square, Suite 1600
Indianapolis, IN 46204
(317) 833-3030; Fax: (317) 833-3031
Email: dkrebs@hbkfirm.com
Proposed Attorneys for Debtor

My-Way Trading, Inc. - 45 day budget

| | | |
|-----------------------------|-------------|--------------------|
| Income: | | \$48,000.00 |
| Expenses: | | |
| Payroll (\$6,000/wk) | \$24,000.00 | |
| Payroll Taxes | \$2,800.00 | |
| Semi Lease | \$4,000.00 | |
| Trailer Lease | \$800.00 | |
| Semi Fuel | \$2,800.00 | |
| Scales | \$800.00 | |
| Forklift Lease | \$1,000.00 | |
| Forklift Fuel | \$450.00 | |
| Bank Payment | \$3,500.00 | |
| Bo's Truck Allowance | \$500.00 | |
| Internet Services | \$500.00 | |
| Office Phones | \$800.00 | |
| Cell Phones | \$500.00 | |
| Electric | \$1,250.00 | |
| Water | \$90.00 | |
| Sewer | \$90.00 | |
| Insurance - Truck & Trailer | \$410.00 | |
| Insurance - Property | \$865.00 | |
| Miscellaneous | \$1,000.00 | |
| | | <u>\$46,155.00</u> |
| Net Income: | | \$1,845.00 |

Exhibit "A"

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

- Ronald J. Moore Ronald.Moore@usdoj.gov
- U.S. Trustee ustpreion10.in.ecf@usdoj.gov

I further certify that on January 4, 2017, a copy of the foregoing was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

All creditors and parties in interest listed on Exhibit "B" attached hereto and made a part hereof.

/s/ David R. Krebs

David R. Krebs

Label Matrix for local noticing
0756-1
Case 16-09324-JMC-11
Southern District of Indiana
Indianapolis
Wed Jan 4 14:12:08 EST 2017

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530-0001

Best Environmental, LLC
c/o Bonahoom & Bobilya, LLC
110 W. Berry Street, Suite 1900
Fort Wayne, IN 46802-2358

Coyote Logistics LLC
960 North Point Parkway
Suite 150
Alpharetta, GA 30005-4123

Family Tradition, LLC
c/o Boston Bever Klinge Cross &Chidester
27 N. 8th Street
Richmond, IN 47374-3028

First Bank Richmond, N.A.
P.O. Box 937
Richmond, IN 47375-0937

Heritage Environmental Services, LLC
c/o Rubin & Levin, P.C.
135 N. Pennsylvania Street, Suite 1400
Indianapolis, IN 46204-2489

Indiana Department of Revenue
Bankruptcy Section, N-240
100 N. Senate Avenue
Indianapolis, IN 46204-2253

Indiana Dept. of Workforce Development
10 N. Senate Avenue
Room SE106
Indianapolis, IN 46204-2277

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

~~David R. Krebs
Hester Baker Krebs LLC
One Indiana Square, Suite 1600
211 N. Pennsylvania Street
Indianapolis, IN 46204-1959~~

Lori S. Smith
5429 C Rodenburg Road
Brownsville IN 47325-9725

Ronald J. Moore
Office of U.S. Trustee
101 W Ohio St Ste 1000
Indianapolis, IN 46204-1982

My-Way Trading, Inc.
308 NW "F" Street
Richmond, IN 47374-2230

Nolan Transportation Group, Inc.
c/o Kitchens Kelley Gaynes, P.C.
5555 Glenridge Connector, Suite 800
Atlanta, GA 30342-4728

Ray's Trash Service, Inc.
c/o Smith Amundsen, LLC
201 N. Illinois Street, Suite 1400
Indianapolis, IN 46204-4212

Seth A. Smith
5429 C Rodenburg Road
Brownsville IN 47325-9725

U.S. Attorney's Office
10 W Market St Ste 2100
Indianapolis, IN 46204-1986

U.S. Trustee
Office of U.S. Trustee
101 W. Ohio St.. Ste. 1000
Indianapolis, IN 46204-1982

End of Label Matrix
Mailable recipients 18
Bypassed recipients 0
Total 18

Exhibit "B"