


Randal S. Mashburn
U.S. Bankruptcy Judge



Dated: 11/14/2016

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COOKEVILLE DIVISION**

In Re:)	
)	
S&S SCREW MACHINE COMPANY, LLC)	Chapter 11
)	Case No. 2:16-bk-06829
)	Judge Mashburn
Debtor.)	

**THIRD INTERIM AGREED ORDER (I) AUTHORIZING THE USE OF CASH
COLLATERAL AND (II) GRANTING ADEQUATE PROTECTION**

Upon the Motion¹ of the above-captioned Debtor and Debtor in possession (the “Debtor”), pursuant to Sections 363 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) to use Cash Collateral in the above Chapter 11 case; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and notice of the Motion having been adequate and appropriate under the circumstances; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors,

¹ Any capitalized terms not defined herein shall have the meaning attributed to them in the Motion.

and all parties in interest; and upon the Motion and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED:

A. Commencement of Case. On September 24, 2016 (the “Petition Date”), the Debtor commenced this case (the “Chapter 11 Case”) by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued in the possession, management, and operation of its assets and business in accordance with Sections 1107 and 1108 of the Bankruptcy Code.

B. No Trustee, Statutory Committee. As of the date of this Interim Order, no trustee has been appointed herein, and no official committee of unsecured creditors (the “Committee”) has been appointed in this case.

C. Jurisdiction. This Court has jurisdiction over this Chapter 11 Case and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a “core” proceeding as defined in 28 U.S.C. § 157(b)(2).

D. Regions Loan. Pursuant to (i) that certain Business Loan Agreement dated November 15, 2013, in the original principal amount of \$2,367,520.00, (ii) that certain Promissory Note dated December 23, 2014, in the original principal amount of \$600,000.00, (iii) that certain Promissory Note dated December 23, 2015, in the original principal amount of \$280,000.00, and (iv) that certain Promissory Note dated June 15, 2016, in the original principal amount of \$1,000,000.00 (collectively, and with all amendments and extension thereto, the “Loan Documents”), by and between the Debtor, as borrower, and Regions Bank (“Regions”), Regions asserts a lien on the assets of the Debtor (the “Collateral”) to secure obligations totaling approximately \$3,364,485.00 (the “Regions Loan”). Regions further asserts that all of the Debtor’s cash and cash equivalents, including all cash that constitutes proceeds of the Collateral,

are part of the Collateral and, therefore, are “cash collateral” of Regions within the meaning of § 363(a) of the Bankruptcy Code (the “Cash Collateral”).

E. IRS Debt. The Internal Revenue Service also has a tax lien, recorded on or about August 11, 2016, in the alleged amount of \$2,209,089.76 (the “IRS Debt”). The IRS Debt is subordinate to the Regions Loan and is undersecured or unsecured.

F. Notice of Interim Hearing Sufficient. The Court considered the evidence submitted at an expedited interim hearing held before the Court on September 28, 2016, October 6, 2016 and November 10, 2016 (collectively, the “Interim Hearing”) and granted this Order (the “Interim Order”). Notice of the Interim Hearing was given in accordance with Bankruptcy Rules 4001 and 9014 and has been deemed sufficient under the circumstances; and all objections, if any, to the relief requested in this Interim Order were either withdrawn, resolved, or overruled by the Court as set forth herein.

G. Cash Collateral Need. The Debtor’s need to use Cash Collateral is immediate and critical to enable the Debtor to administer its Chapter 11 Case generally, continue to operate its business in the normal course, and preserve the value of its estate for all stakeholders. The ability of the Debtor to pay employees requires the availability of working capital from the use of Cash Collateral, the absence of which would immediately and irreparably harm the Debtor, its estate, and its stakeholders. The Debtor does not have sufficient available sources of working capital and financing to pay employees in the ordinary course of business without the authorized use of Cash Collateral.

H. Motion Granted. Based upon the foregoing findings and conclusions, the record made before this Court by the Debtor at the Interim Hearing and good and sufficient cause appearing therefor,

IT IS THEREFORE ORDERED:

1. Cash Collateral Authorization.

(a) The Debtor is authorized to continue its use of the Cash Collateral through February 9, 2017 (the “Cash Collateral Period”), solely on the terms, for the purposes, and in the amounts set forth in the Budget attached hereto and made a part hereof as Exhibit A (as modified and as it may be extended from time to time in accordance with this Interim Order, the “Budget”). In furtherance of the Debtor’s authorization to use the Cash Collateral subject to the limitations contained in the Budget and this Interim Order, the Debtor shall not in any event be authorized to use Cash Collateral in excess of 110% of the aggregate amount shown on the Budget during the Cash Collateral Period.

(b) Unless sooner terminated in accordance with the terms of this Interim Order, the Debtor’s right to use the Cash Collateral shall terminate (“Termination”) on February 9, 2017. Upon Termination, the Debtor shall immediately cease using the Cash Collateral; however, nothing herein shall be deemed a waiver of (i) the Debtor’s right to seek authority to continue its use of the Cash Collateral beyond Termination, in accordance with §§ 361 and 363 of the Bankruptcy Code, or (ii) the right of the Secured Creditors to object thereto.

2. Adequate Protection. In consideration of the Debtor’s use of the Collateral and Cash Collateral in accordance with the Budget and the other terms and provisions of this Interim Order, Regions and the Internal Revenue Service shall be granted the following “adequate protection” pursuant to Section 361 of the Bankruptcy Code (collectively, the “Adequate Protection”) in consideration for the use of their Collateral and Cash Collateral from and after the Petition Date, including any diminution in the value thereof:

(a) Regions and the Internal Revenue Service are hereby granted replacement liens

(collectively, the “Adequate Protection Liens”), which shall attach to the same extent and with the same priority as enjoyed prior to the Petition Date, to the extent of any diminution in value of the Collateral and Cash Collateral in all of the Debtor’s post-petition assets of the same kind and description as the Collateral (“Post-Petition Collateral”). The Adequate Protection Liens shall be supplemental to the security interest which Regions possesses pursuant to its Loan Documents, if any, and the Internal Revenue Service possesses pursuant to its tax lien, if any, it being the intent of the parties to grant the Bank a continuous and uninterrupted lien pursuant to 11 U.S.C. § 552 in the Post-Petition Collateral. Regions, by agreeing to the terms of this Interim Order, does not consent to and is not bound by the terms of this Interim Order with respect to the issue as to whether the Internal Revenue Service has a perfected lien on any Pre- or Post-Petition Collateral or Cash Collateral, and the Internal Revenue Service, by agreeing to the terms of this Interim Order, does not consent to and is not bound by the terms of this Interim Order with respect to the issue as to whether Regions has a perfected lien on any Pre- or Post-Petition Collateral or Cash Collateral.

(b) The Adequate Protection Liens granted pursuant to this Interim Order shall constitute valid and duly perfected security interests and liens, subject to the stated objections and reservations of Regions, and neither Regions nor the Internal Revenue Service shall be required to file or serve financing statements, notices of lien or similar instruments which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect such security interests and liens; and the failure by the Debtor to take any action or execute any documentation relating to the Adequate Protection Liens shall in no way affect the validity, perfection, or priority of such replacement liens.

(c) The Adequate Protection Liens shall continue in full force and effect until Regions

and/or the Internal Revenue Service receives payment in full of their allowed secured claims to the extent authorized by the Court pursuant to § 506(b) of the Bankruptcy Court, and as further may be allowed by such section any such interest, fees, costs, and expenses, including reasonable attorneys' fees, whether currently existing or hereafter accrued and incurred, as provided for by the applicable loan documents.

(d) Unless an objection is timely filed and sustained as provided herein, the Debtor shall pay to Regions \$10,000.00 per month as additional adequate protection for the use of Regions' collateral through the Cash Collateral Period, beginning on December 15 and continuing from month to month on the 15th of each month during the term of this Order. Each monthly payment shall be applied to the secured claim of Regions. Any party in interest objecting to the monthly payment to Regions must file a written objection with the Court by no later than December 1, 2016. Upon receipt of a timely-filed, written objection, the Court will hold a hearing to determine the necessity of such monthly payment on December 10, 2016 at 9:30 a.m. at L. McClure Morton Post Office and Courthouse, 9 East Broad St., Cookeville, Tennessee.

3. Insurance. The Debtor shall maintain all necessary insurance (including, without limitation, fire, hazard, comprehensive, public liability, and workmen's compensation) for its business and assets including, but not limited to, the Collateral and Post-Petition Collateral, in accordance with the obligations under the Regions Loan and as may be required under any applicable operating guidelines of the United States Trustee, naming Regions as loss payees and additional insureds with respect thereto.

4. Termination of Cash Collateral Usage. Upon Termination, the Debtor shall be prohibited from using the Cash Collateral, absent further order of this Court.

5. Without Prejudice. This Interim Order is without prejudice to: (a) any subsequent

request by a party in interest (including, but not limited to Regions or the Internal Revenue Service) for modified adequate protection or restrictions on use of Cash Collateral; or (b) any other right or remedy which may be available to Regions.

6. Miscellaneous.

(a) The provisions of this Interim Order, and any actions taken pursuant hereto, shall survive entry of any order which may be entered (a) confirming any plan of reorganization in the Chapter 11 Case, (b) converting the Chapter 11 Case to a Chapter 7 case, or (c) dismissing the Chapter 11 Case, and the terms and provisions of this Interim Order as well as the Adequate Protection and the Adequate Protection Liens, granted pursuant to this Interim Order shall continue in full force and effect notwithstanding the entry of such order.

(b) The Debtors are authorized to perform all acts that are deemed reasonably necessary by the Debtors to effectuate the terms and conditions of this Interim Order.

7. Notice. Any notice or correspondence required to be sent hereunder shall be forwarded by email at the addresses set forth below, and by first class mail, and shall be deemed given upon the earlier of (a) successful email transmission or (b) two days after being deposited in the United States Mail, postage pre-paid, and addressed as follows:

If to Regions:

With a copy to:

Walter N. Winchester
Winchester, Sellers, Foster & Steele, PC
Suite 1000, First Tennessee Plaza
Knoxville, TN 37929
wwinchester@wsfs-law.com

If to the Internal Revenue Service:

With a copy to:

If to the Debtor:

S&S Machine Screw Company, LLC
ATTN: Larry Battle
1500 McMinnville Highway
Sparta, Tennessee 38583
lbattle@s-and-s-usa.com

With a copy to:

Phillip G. Young, Jr.
Thompson Burton, PLLC
6100 Tower Circle, Suite 200
Franklin, TN 37067
phillip@thompsonburton.com

8. That the terms and provisions of this Interim Order are on an interim basis and neither the Debtor, the Internal Revenue Service, nor Regions shall be prejudiced by the terms and provisions of this Order with respect to any Plan submitted by the Debtor or the Bank in this Proceeding.

9. That Regions reserves the rights to request additional adequate protection or to take any action authorized by the Bankruptcy Code to protect its interest.

10. Final Hearing. A final hearing on the approval of the Motion is scheduled for February 9, 2017, at 9:30 a.m. before this Court, L. Clure Morton Post Office and Courthouse, 9 East Broad Street, Cookeville, Tennessee. The Debtor shall serve this Interim Order (which shall constitute adequate notice of the Final Hearing) within three business days from the date of entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(1)(C), plus any other party that has filed a request for notices with the Court and to the Office of the United States Trustee. Any party in

interest objecting to the relief sought in the Motion shall submit any objection in writing no later than February 2, 2017.

THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY
AS INDICATED AT THE TOP OF THE FIRST PAGE

APPROVED FOR ENTRY:

THOMPSON BURTON PLLC

/s/ Phillip G. Young, Jr.
Phillip Young (021087)
Ronald G. Steen, Jr. (020536)
David Canas (016623)
6100 Tower Circle, Suite 200
Franklin, TN 37067
Phone: (615) 465-6000
Email: phillip@thompsonburton.com
ronn.steen@thompsonburton.com
david@thompsonburton.com

Counsel to Debtor

By: /s/ Walter N. Winchester
Walter N. Winchester, BPR #014530
Attorney for Regions Bank
Winchester, Sellers, Foster & Steele, P.C.
Suite 1000, First Tennessee Plaza
800 South Gay Street
Knoxville, TN 37929
Phone: (865) 637-1980
E-mail: wwinchester@wsfs-law.com

Cash Forecast

Case S&S Screw Machine Co., LLC

Case # 2:16-bk-06829

Week of	10/31/16	11/7/16	11/14/16	11/21/16	11/28/16	12/5/16	12/12/16	12/19/16	12/26/16	1/2/17	1/9/17	1/16/17	1/23/17
Receipts													
PACCAR	48	28	16	16	5								
Others	9	9	9	10	12	12	15	17	20	22	25	25	25
Total Cash In	57	37	25	26	17	12	15	17	20	22	25	25	25
Outlays													
Payroll	23	21	6	6	6	6	7	7	8	8	9	9	9
Payroll Taxes	7	7	2	2	2	2	3	3	3	3	3	3	3
Temp Agencies	3	1											
Material	19	6	6	6	6	6	7	8	9	10	11	11	11
Legal Fees		13				5				5			
Rent	18					5				5			
Health Ins			20				5					5	
Utilities		4	1	1	1	4	2	2	2	2	2	2	2
Outside Processes	2		1	1	1	1	1	1	1	1	1	1	1
Insurance				1	1	1	1	1		1		1	
Total Outlays	72	52	36	17	17	30	26	22	23	35	26	32	26
Net Cash	- 15	- 15	11	9	- -	18	- 11	- 5	- 3	- 13	- 1	- 7	1
Ending Cash	154	139	124	113	122	122	104	93	88	85	72	71	64

This Order has been electronically signed. The judge's signature and court's seal appear at the top of the first page.
 United States Bankruptcy Court.