

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:)
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Stacy's, Inc.)
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Debtor.)

CHAPTER 11
Case No. 13-03600-dd

ORDER AUTHORIZING THE DEBTOR'S USE OF CASH COLLATERAL

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT
08/14/2013**



Entered: 08/15/2013

David R. Duncan
Chief US Bankruptcy Judge
District of South Carolina

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Stacy’s, Inc.)	Case No. 13-03600-dd
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ORDER AUTHORIZING THE DEBTOR’S USE OF CASH COLLATERAL

This matter is before the Court on the motion (“Motion”) of Stacy’s, Inc. (“Debtor”) for the entry of an order authorizing the use of cash collateral consisting of the proceeds of inventory and accounts receivable (“Cash Collateral”). The Unsecured Creditors Committee (the “Committee”) filed a limited objection on to the Motion on July 15, 2013 (“Committee Objection”), and Bank of the West (“BOTW”) filed an objection to the Motion on July 26, 2013 (the “BOTW Objection”). A hearing on this matter was held on August 12, 2013 in Columbia, South Carolina. Upon consideration of the record in this case, and the hearing on the Motion (the “Hearing”), and the arguments and evidence presented in connection therewith, the Court makes the following findings of fact and conclusions of law:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157(a), and Local Civil Rule 83.IX.01, D.S.C.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M).
3. Venue of these proceedings and the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
4. Notice of the Motion was adequate and reasonable and no other or further notice need be given.
5. The Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on June 21, 2013 (the “Petition Date”).
6. The Debtor is operating its business as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made.
7. BOTW claims a lien on the following assets of the Debtor: (i) accounts; (ii) chattel paper; (iii) inventory; (iv) equipment; (v) fixtures; (vi) farm products; (vii) water rights; (viii)

instruments; (ix) investment property; (x) documents; (xi) commercial tort claims; (xii) deposit accounts; (xiii) letter-of-credit rights; (xiv) general intangibles; (xv) supporting obligations; and (xvi) records of, accession to and proceeds and products of the foregoing (the "Collateral").

8. On August 11, 2013, the Debtor filed an Adversary Proceeding No. 13-80135-dd (the "Adversary Proceeding") against BOTW, challenging the extent and validity of BOTW's claim and challenging many of BOTW's actions with regard to its relationship with the Debtor.

9. At the Hearing, BOTW consented to the Debtor's use of Cash Collateral through August 30, 2013, but reserved its right to object to professional fees relating to the Adversary Proceeding.

10. The Debtor is continuing operations as a debtor-in-possession and anticipates it will continue to generate accounts receivable post petition. The Debtor proposes to grant BOTW a security interest in the accounts receivable, inventory and cash collections generated post petition, should it be determined that BOTW holds a valid pre-petition claim.

11. The Debtor requests authorization to use the Cash Collateral in accordance with the budget attached to the Motion, under the conditions herein, through August 30, 2013, at which time it contemplates the sale of substantially all of its assets.

12. The Debtor represented to the Court that it would be unable to operate its business and to pay critical operating expenses without the ability to use Cash Collateral.

13. The Debtor asserted that it would suffer immediate and irreparable harm if the relief herein is not granted because the use of Cash Collateral is needed for continuing operations and the proposed sale requires continuing operations.

14. Assuming that BOTW is found to have a valid lien on the Collateral, the Debtor has represented to the Court that it is willing to provide additional adequate protection for BOTW in the form of a post-petition replacement lien on Collateral to the same extent as the validity and priority of the pre-petition collateral claims of BOTW, to the extent of any diminution in value of Collateral post-petition.

15. Pursuant to 11 U.S.C. § 363(e), the court may authorize the use of cash collateral if an objecting secured creditor is otherwise adequately protected.

16. The Court finds that the Debtor will suffer immediate and irreparable harm if the relief herein is not granted.

17. The Court finds that the use of the Cash Collateral is necessary in order to allow the continuing operation of the Debtor's business.

18. The Court finds that the use of Cash Collateral will benefit all parties, including BOTW which will receive a replacement lien as described below.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED AS FOLLOWS:

1. The Motion is granted according to the provisions herein.
2. In the event that BOTW is deemed to have a valid lien on the Collateral, BOTW is granted a replacement lien on post-petition Collateral in the same validity and priority as its pre-petition lien, to the extent of any diminution in its Collateral post-petition.
3. Subject to the terms and conditions hereof, and without prejudice to the right of the Debtor to make further application to this Court for use of Cash Collateral, Debtor is authorized to use the Cash Collateral to make payments consistent with the budget attached hereto. The Debtor may exceed the line item for any budgeted item by 10% provided the Debtor does not exceed the overall amount set forth in the budget.
4. Except as authorized by this Court, no portion of the Cash Collateral shall be used to pay any pre-petition expenses.
5. Notice of this Order will be provided to all parties entitled to notice pursuant to Fed. R. Bankr. P. 4001.
6. All parties retain the right to object to the fees of any professionals that are to be paid from estate assets.
7. Nothing contained in this Order shall limit the right of any party to seek further relief from this Court.

AND IT IS SO ORDERED.

EXHIBIT A

		TOTAL ACTUAL THRU 6/21/2013	TOTAL PROJECTED THRU 6/21/2013	TOTAL ACTUAL THRU 7/26/2013	TOTAL PROJECTED THRU 7/26/2013	TOTAL ACTUAL THRU 8/9/2013	TOTAL PROJECTED THRU 8/9/2013	PROJECTED	PROJECTED	PROJECTED	
	EXPLANATIONS FOR FLUCTUATIONS FROM BUDGET	THROUGH 7/12/2013	THROUGH 7/12/2013					Payroll Week		Payroll Week	
Budget Week Ending								8/16/2013	8/23/2013	8/30/2013	
								wk 33	wk 34	wk 35	
Projected Cash Receipts											
	Collection of Pre-Petition Accounts Receivable	1	6,401,592	6,656,677	9,445,928	9,366,367	9,545,076	9,596,228	123,468	303,200	107,016
	Collection of Post Petition Accounts receivable		-	-	209,939	331,200	1,495,734	1,260,363	589,696	467,011	181,759
	Total Collections		6,401,592	6,656,677	9,655,867	9,697,567	11,040,810	10,856,591	713,164	770,211	288,775
Projected Cost of Production - Cash Basis											
	Product Purchases Production	2	342,380	448,013	407,022	526,466	494,297	641,468	55,750	67,280	104,143
	Finished purchases									10,000	63,000
	Propagation Purchases - propagation	2	224,648	91,636	311,371	155,245	548,611	377,649	43,042	52,800	51,000
	503 B Reclamation Claims	9									
	Hardgoods - not yet ordered - currently not in System	2	-	75,000	-	100,000	-	80,000	40,000	40,000	25,000
	Soil - Pre- Petition		-	-	-	-	-	-	-	-	-
	Soil - Post petition Payments		167,492	163,534	236,613	231,877	323,368	354,416	6,070	9,412	20,849
	Total Projected Cost of Production - Cash Basis		734,520	778,183	955,007	1,013,588	1,366,277	1,453,534	144,862	179,492	263,992
Projected Operating Expenses											
Payroll Including all payroll taxes											
	President		15,000	15,000	28,500	28,500	40,500	40,500	12,000		12,000
	Salaried Family Members		12,900	12,900	24,510	24,510	34,830	34,830	10,320		10,320
	Hourly Family Member		720	635	1,440	1,355	2,160	2,160	720		720
	Others		647,276	635,465	1,043,370	1,031,312	1,490,897	1,492,330	455,560		528,609
Employee Benefits											
	401(k) - Week 6/26 Represents Pre-Petition Amounts Withheld - \$900 Withheld For Officers and Insiders Per Payroll	1	9,400	18,800	9,400	28,200	9,400	28,200	9,400	-	
	401(k) - Week 6/26 Represents Pre-Petition Employer Match		-	-	-	-	-	-	-		
	Blue Cross- Blue Shield		44,240	44,000	44,240	44,000	97,517	88,240		44,000	
	Colonial Life - Withholdings From Employees		3,420	3,500	3,420	3,500	6,528	6,920		3,500	
	American General - Withholdings From Employees		5,248	5,500	5,248	5,500	15,816	10,748		5,500	
	Sun Life - Withholdings From Employees	3	4,076	-	4,076	-	6,059	8,176		4,100	
Insurance											
	Worker's Comp	1	11,638	32,844	44,948	62,342	59,439	55,275		10,478	
	Business Insurance		10,109	10,763	19,240	19,895	19,240	21,369		2,129	
Rents & Equipment rentals											
	Rent PPP/Aris - Pendleton Propagation Facility		20,000	20,000	20,000	20,000	40,000	40,000			
	Rent to Resource Plus - Required for Lowes Facilities		800	800	800	800	1,600	1,600			
	Rental Equipment				2,174	-	6,139	2,174	1,790		2,175
	Peak 10 - Server Barn		5,389	5,400	12,268	5,400	17,657	17,657			
	Utilities	1	43,460	22,000	70,106	28,272	93,920	92,106	20,450		
	Communciations	1	2,933	15,824	29,948	40,530	33,508	29,948	15,824		
	Freight & Fuel	1	444,298	642,000	654,594	883,423	827,934	902,594	129,000	128,000	203,000
	Travel-Merchandisers etc		20,516	16,500	35,277	26,448	44,915	44,476	4,599	4,599	4,599
	Professional Fees		-	-	-	-	-	-			
	Repair, Maintenance & Supplies / Records		23,934	22,714	50,967	46,511	72,714	63,910	8,403	5,903	5,903
	Executory Contract - First Citizens	4	10,968	-	21,542	-	21,542	21,542			
	Royalty Payments - Pre- Petition	6	-	-	43,169	175,000	43,169	222,169	179,000	-	
	Software Payments	1	20,066	-	32,230	12,164	32,230	32,230	17,565	19,891	
	Property Tax		194	-	194	-	429	194			
	Garden Center Purchases	1	1,130	28,580	7,360	41,117	8,545	16,835		9,475	
	Rents to LOS Trust - Paid Pursuant to Lease		25,000	25,000	25,000	25,000	50,000	50,000			
	Total Expenses		1,382,714	1,578,225	2,234,023	2,553,779	3,076,690	3,326,184	864,631	237,575	767,326
	Advances on BOW Line of Credit	8							101,800		
	Payments on BOW Line of Credit	8					101,800				
	Interest & Principal payments on non-BOW debt										
Projected Restructuring Expenses											
	Barton				141,792	137,375	216,792	216,792	125,000		79,500
	SOG				75,000	75,000	75,000	75,000	75,000		
	Ouzts				25,000	25,000	25,000	25,000	25,000		
	Ogletree				4,417	4,417	4,417	4,417			
	Faulkner				7,500	7,500	7,500	7,500			4,500
	Wofford										
	Creditor Committee Counsel	5					75,000	75,000			75,000
	Quarterly Fees To US Trustee				4,875	4,875	4,875	4,875			
	NET CASH SURPLUS/(DEFICIT)		4,284,358	4,300,269	6,325,045	5,992,825	6,482,850	5,860,081	(421,329)	353,144	(822,043)
Projected Cash Rollforward											
	Beginning Balance		22,712	22,712	22,712	22,712	22,712	22,712	6,301,962	5,982,433	6,335,577
	Projected Cash Receipts		6,401,592	6,656,677	9,655,867	9,697,567	11,040,810	10,856,591	713,164	770,211	288,775
	Projected Cash Disbursements		(2,117,234)	(2,356,408)	(3,330,822)	(3,704,742)	(4,761,560)	(4,996,510)	(1,032,693)	(417,067)	(1,110,818)
	Ending Balance	7	4,307,070	4,322,981	6,347,757	6,015,537	6,301,962	5,882,793	5,982,433	6,335,577	5,513,534

1 TIMING FOR COLLECTIONS AND DISBURSEMENTS HAVE BEEN ESTIMATED AS ACCURATELY AS POSSIBLE - HOWEVER EXACT TIMING OF PAYMENTS FROM CUSTOMERS

		STACY'S INC.		STACY'S INC.		STACY'S INC.		STACY'S INC.		STACY'S INC.		STACY'S INC.	
		TOTAL ACTUAL	TOTAL PROJECTED	TOTAL ACTUAL	TOTAL PROJECTED	TOTAL ACTUAL	TOTAL PROJECTED	TOTAL ACTUAL	TOTAL PROJECTED	PROJECTED	PROJECTED	PROJECTED	PROJECTED
		THRU 6/21/2013	THRU 6/21/2013	THRU 7/26/2013	THRU 7/26/2013	THRU 8/9/2013	THRU 8/9/2013	THRU 8/9/2013	THRU 8/9/2013	Payroll Week			Payroll Week
		THROUGH 7/12/2013	THROUGH 7/12/2013							wk 33	wk 34	wk 35	
Budget Week Ending		FROM BUDGET 7/12/2013	7/12/2013							8/16/2013	8/23/2013	8/30/2013	
AND PAYMENTS TO SUPPLIERS AS THEY ADJUST TO THE BANKRUPTCY PROCESS HAVE CAUSED TIMING DIFFERENCES TO OCCUR - TOTAL AMOUNTS FOR THE ENTIRE PROJECTED PERIOD ARE AT THIS TIME TO BE HIGHER DUE TO INCREASED SALES TO THE HOME DEPOT.													
2 THE LINE ITEMS HARDGOODS NOT YET ORDERED REPRESENTS ESTIMATED PURCHASES THAT MOVES INTO THE TWO CATEGORIES OF PRODUCT PURCHASES AND PROPAGATION PURCHASES SO THIS CATEGORY WILL ALWAYS BE 0 FOR ACTUAL AND THE TOTAL FOR PURCHASES FOR ALL CATEGORIES SHOULD REMAIN APPROXIMATELY AS BUDGETED HOWEVER DEMANDS FOR UP-FRONT PAYMENTS FROM SUPPLIERS HAVE CAUSED TIMING DIFFERENCES TO OCCUR - TOTAL AMOUNTS FOR THE ENTIRE PERIOD SHOULD BE APPROXIMATELY THE SAME AS BUDGETED HOWEVER DIFFERENCES AS TO WHICH WEEKS THE PAYMENTS OCCUR WILL FLUCTUATE													
3 SUN LIFE REPRESENTS ITEMS WITHHELD FROM EMPLOYEES FOR INSURANCE WHICH WAS INADVERTENTLY OMITTED FROM PREVIOUS CASH COLLATERAL BUDGET													
4 FIRST CITIZENS WAS BEING PAID AS AN EXECUTORY CONTRACT FOR ONE PAYMENT													
5 AN ATTORNEY FOR UNSECURED CREDITORS COMMITTEE HAS BEEN APPOINTED AND FEES AS ESTIMATED BY THEIR COUNSEL HAVE BEEN PROVIDED FOR IN BUDGET													
6 ACTUAL ROYALTIES ARE ANTICIPATED TO BE HIGHER THAN PROJECTED BECAUSE ACTUAL SALES SUBJECT TO ROYALTIES WERE HIGHER THAN PREVIOUSLY PROJECTED													
7 CURRENT CASH COLLATERAL BUDGET ANTICIPATES A CASH BALANCE OF \$5,925,072 AT AUGUST 16, 2013 AND PRIOR BUDGET ANTICIPATED \$4,816,989 AT THIS DATE THE DIFFERENCE IS PRINCIPALLY TIMING FOR PRE PETITION ACCOUNTS RECEIVABLE AND HIGHER SALES POST PETITION THAN ANTICIPATED. TOTAL AMOUNTS FOR EXPENSES SHOULD BE APPROXIMATELY THE SAME AS BUDGETED HOWEVER DIFFERENCES AS TO WHICH WEEKS THE PAYMENTS OCCUR WILL FLUCTUATE													
8 AMOUNTS REPRESENT A TRANSFER MADE TO BANK OF THE WEST BY STACY'S PAYROLL PROECESSOR INCORRECTLY - AMOUNT IS ASSUME TO BE RETURNED TO ESTATE BY BANK													
9 THESE CLAIMS ARE ESTIMATED TO RANGE FROM \$290,000 TO \$662,000 - AMOUNT USED ABOVE WAS HIGHEST OF RANGE TO SHOW CONSERVATIVE VIEW OF CASH REMAINING													