



Laura T. Beyer

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United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA**

IN RE

TAMPA WAREHOUSE, LLC,

Debtor.

Case No. 13-32547

Chapter 11

**AGREED OMNIBUS ORDER (A) DENYING VENUE
MOTION, (B) GRANTING BANK CASH COLLATERAL
MOTION, (C) GRANTING DEBTOR CASH COLLATERAL MOTION,
(D) GRANTING OTHER RELATED RELIEF, AND (E) PROVIDING
TWENTY-ONE (21) DAY OBJECTION PERIOD FOR PARTIES IN INTEREST**

THIS CAUSE came on for consideration before this Court on December 11, 2013, of the following:

- a. "Regions Bank's Motion to Change Venue and Transfer Case to Tampa Division of the Middle District of Florida and Request for an Expedited Hearing" (the "Venue Motion") [Docket No. 14] filed on December 6, 2013, by Regions Bank, an Alabama state chartered bank, as successor in interest to AmSouth Bank (the "Bank");
- b. "Debtor's Response and Objection to Motion to Transfer Venue filed by Regions Bank" (the "Venue Objection") [Docket No. 38], filed on

December 10, 2013, filed by Tampa Warehouse, LLC (the “Debtor”);

- c. “Regions Bank’s Verified Motion to Prohibit or Condition Use of Cash Collateral” (the “Bank Cash Collateral Motion”) [Docket No. 15], filed on December 6, 2013, with respect to rents, issues, profits, and related cash collateral (the “Cash Collateral”) securing a debt (the “Obligation”) of the Debtor, that is in all respects governed by an set of loan, security, perfection and guaranty documents (collectively, the “Loan Documents”), true and correct copies of which are attached as exhibits to the Bank Cash Collateral Motion; and
- d. “Motion of the Debtor for Emergency and Final Authority to Use Cash Collateral Pursuant to Sections 361 and 363 of the Bankruptcy Code” (the “Debtor Cash Collateral Motion”) [Docket No. 19], filed December 9, 2013, by the Debtor.

For purposes of this Order, the Venue Motion, the Venue Objection, the Bank Cash Collateral Motion, and the Debtor Cash Collateral Motion are collectively referred to sometimes herein as the “Contested Matters.”

In the Venue Motion, the Bank does not dispute the proposition that the Debtor has initiated this chapter 11 reorganization (this “Reorganization”) in a “proper” forum for purposes of 28 U.C.S. § 1408(a)(1); however, the Bank has sought to transfer venue to the United States Bankruptcy Court for the Middle District of Florida, Tampa Division, pursuant to Federal Rule of Bankruptcy Procedure 1014(a)(1) and 28 U.S.C. § 1412 based upon the alleged “interests of justice” and “convenience of the parties” prongs of 28 U.S.C. § 1412. In the Venue Objection, the Debtor contends that the Bank cannot meet its burden of proof regarding the transfer of this

Reorganization from its admittedly proper venue before this Court.

In the Bank Cash Collateral Motion, the Bank seeks the order of this Court prohibiting or conditioning the Debtor's authority to use Cash Collateral, as that term is utilized in Bankruptcy Code § 363(a), all of which is derived from rents, issues, and profits earned by the Debtor in its ordinary course of its business. It is noted in all the foregoing regards that the Bank not only claims the Cash Collateral as collateral securing the Obligation, but also a 30.45 acre tract of land, together with improvements including a 681,770 square foot industrial storage facility, all located at 6422 Harney Road, Tampa, Florida 33610 (the "Mortgaged Property"). The Mortgaged Property and the Cash Collateral are collectively referred to as the "Collateral," and the Cash Collateral is derived from tenants occupying units within the Mortgaged Property (the "Tenants"). In the Debtor Cash Collateral Motion, the Debtor seeks authority to utilize the Cash Collateral and other related relief, and offers adequate protection under Bankruptcy Code § 361. One issue arising at hearing involves a specific account (the "Pledged Account"), that contained Cash Collateral of the Bank in the undisputed amount of \$510,333.07 as of the date of hearing, that is a portion of the Cash Collateral at issue in the Bank Cash Collateral Motion and the Debtor Cash Collateral Motion (together, the "Cash Collateral Motions").

The Bank and the Debtor stipulate to the following facts (the "Stipulated Facts") that provide the basis for relief set forth herein:

- a. The Obligation is in the principal amount of \$17,729,766.92, with interest accruing at a default rate of eight (8%) percent per annum from its contractual maturity date of September 15, 2013, but with a contract non-default rate of five (5%) percent per annum as reflected in the Loan Documents.

- b. The Tax Collector for Hillsborough County, Florida, is owed ad valorem taxes on the Mortgaged Property for 2013 in the amount of \$256,701.20, which remains unpaid (the “Current Tax Liability”), which amount will increase if not satisfied before January 1, 2013.
- c. Subject only to the ad valorem tax liability referenced above, the Bank’s security interests and liens attach as a matter of Florida law to all of the Collateral, the value of which has not been adjudicated by this Court or agreed upon by the Debtor and the Bank (together, the “Parties”).
- d. The Bank asserts a common law possessory lien, contractual set off rights as a depository institution, and a security interest under the Loan Documents in the proceeds of the Pledged Account, and the Debtor does not dispute the same. Additionally, the Debtor does not dispute the propriety of the post-petition administrative hold placed by the Bank upon the Pledged Account pursuant to Citizens Bank of Maryland v. Strumpf, 116 S. Ct. 286 (1995).
- e. There are no counterclaims or defenses with respect to the Obligation, except to the extent that the Debtor reserves the right to object to certain late fees, attorneys’ fees, and costs that have not yet been agreed upon or liquidated by the Parties or ordered by this Court.
- f. The Debtor is a “Single Asset Real Estate” debtor as that term is defined pursuant to Bankruptcy Code § 101(51)(B).
- g. The Debtor prefers to retain the venue that it has selected for initiating this Reorganization, and the Bank will incur additional fees and costs for its

counsel, officers, and potential experts and witnesses, as a result of the Debtor's forum selection.

At hearing, the Debtor was represented by Joshua B. Farmer, Esquire, and the principal of Debtor, Fred D. Godley (the "Principal"), was present as member and manager. The Principal agrees and stipulates to all of the facts and relief set forth herein to the same extent as the Debtor. The Bank was represented by John A. Anthony, Esquire, and Jimmy R. Summerlin, Jr., Esquire. Linda W. Simpson, Esquire, appeared as the U.S. Bankruptcy Administrator. No other "parties in interest" appeared of record, as that term is defined in Bankruptcy Code § 1109(b). For the reasons stated in open Court, that shall constitute the findings, holding, and decision of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, the Court has determined that the following relief should be afforded to the Bank and the Debtor with respect to the Contested Matters, and that other parties in interest shall be afforded twenty-one (21) days' notice and opportunity to object to the relief granted herein as agreed to by the Debtor and Bank. All other parties shall retain their rights with respect to the provisions of this Order without the necessity to object within the twenty-one (21) days' notice period. Accordingly, it is

ORDERED, ADJUDGED, and DECREED as follows:

1. **Denial of Venue Motion**: Subject to all other provisions of this Order, the Venue Motion is hereby denied, and the Venue Objection is hereby overruled as moot. This Court's ruling in these regards is without prejudice to all rights, whatever they may be, of other parties to seek to transfer venue of this Reorganization pursuant to Federal Rule of Bankruptcy Procedure 1014(a)(1) and 28 U.S.C. § 1412; however, as agreed by the Parties, the Bank shall refrain from taking a position with respect to any such motion hereafter filed. The Debtor shall interpose no

objection to travel time and charges actually and reasonably expended for Florida counsel, Bank officers, and Florida-based witnesses for hearings before this Court.

2. **Allowance of Bank Claim:** The Obligation is hereby allowed in the amounts set forth above, and the Bank's claim is allowed as set forth in the Bank Cash Collateral Motion, and as consistent with the Stipulated Facts. There is no right of recovery as against the Bank pursuant to any "strong-arm" powers, avoidability and recovery powers, or otherwise with respect to the Obligation or the Collateral. However, notwithstanding the terms of this Order, and the Debtor's agreement to all provisions hereto, this is without prejudice to all rights, whatever they may be, of other parties to assert any claims or objections they may have in their own right. Moreover, as set out above, the provisions of this Order are not binding on other parties.

3. **Accrued Interest:** From the Pledged Account, the Bank shall be entitled upon entry of this Order to debit no less than \$290,000 (currently believed to be \$300,421.05), that shall be applied as a credit to all interest accrued through December 15, 2013, on the Obligation at the non-default rate of five (5%) percent per annum. Upon timely receiving the same, the Bank shall be deemed to have waived its right to any entitlement to default rate interest for the same time period pursuant to Bankruptcy Code § 506(c), that being the three (3%) percent margin between the non-default and default rates set forth in the Loan Documents.

4. **Current Tax Obligation:** After debiting an amount from the Pledged Account to address the payment required under decretal 3 above, the Parties shall dedicate the residual balance of the Pledged Account to satisfy the Current Tax Liability, on or before December 27, 2013. Moreover, it is agreed that if funds are not sufficient in the Pledged Account to satisfy the full balance of the Current Tax Liability by this date, then the Debtor shall directly fund the full

residual arrearage from funds on hand as necessary to satisfy this indebtedness on or before said date. The Bank consents to this expenditure to the extent that funds from the Debtor constitute the Bank's Cash Collateral. If funds are not available to timely make payment, then the Principal will fund directly.

5. **Monthly Adequate Protection Payment:** On January 15, 2014, February 15, 2014, and March 15, 2014, the Debtor shall make three (3) consecutive monthly payments of accrued interest at the non-default rate of five (5%) percent per annum in the amount of approximately \$74,000 to the Bank, in care of Robert Korte, SVP, Regions Bank, 8182 Maryland Avenue, Saint Louis, MO 63105, by jointly agreed authorized debit from the debtor-in-possession account referenced in decretal 13 below. Additionally, it is noted that upon receiving each of the same, the Bank shall be deemed to have waived its right to any entitlement to default rate interest for the same time period pursuant to Bankruptcy Code § 506(c), that being the three (3%) percent margin between the non-default and default rates set forth in the Loan Documents.

6. **Valuation Rights Preserved:** Notwithstanding any other provision of this Order, each of the Parties has expressly reserved its respective rights to seek valuation of the Collateral for all purposes, except for those that relate to the Contested Matters and the funds indefeasibly paid and received by the Bank on account of the Obligation pursuant to this Order, including for purposes of application of Bankruptcy Code §§ 506(c), 1111(b), 1129(b) and other applicable law.

7. **Plan Deadline:** The Debtor agrees that under no circumstances will it seek to extend its exclusive period within which to file a plan of reorganization and disclosure statement past March 5, 2014.

8. **Tenant Letters:** Upon entry of this Order, the Bank shall direct a letter to each of the Tenants that advises them of the pendency of this Reorganization, and their duty to remit rent and related payments directly to the Debtor, at an address to be provided by the Debtor in connection with the preparation and transmission of said tenant letters.

9. **Mortgaged Property Management:** The Mortgaged Property is currently being leased and listed for sale with CB Richard Ellis (“CBRE”), that also is competent to act as the management company for the Mortgaged Property in the estimation of the Parties. On or before December 27, 2013, the Parties shall (a) determine whether or not CBRE is willing to act as management company for the Mortgaged Property, (b) whether the Debtor agrees that business terms presented by CBRE for management of the Mortgaged Property are acceptable as a business proposition, (c) whether the Bank is agreeable to CBRE’s business terms presented, and (d) whether some other qualified management company can be agreed upon by the Parties as a preferable alternative. Accordingly, by December 27, 2013, the Debtor will be required to have selected with the approval of the Bank a qualified Tampa-based management company for the Mortgaged Property; either CBRE or another qualified firm (the “Management Company”). The employment of the Management Company is subject to Court approval and the Debtor shall file within 10 (ten) days an application for employment of the Management Company. Absent a material change of circumstances, the selection of a Management Company for the Mortgaged Property shall moot any motion for relief pursuant to Bankruptcy Code § 1104. The Parties further agree that although the Management Company shall be retained to represent the Debtor with respect to the operational management of the Mortgaged Property, but the Debtor shall remain responsible for the debtor-in-possession account, including handling the receipts and disbursements related to the Mortgaged Property.

10. **Cash Collateral**: The Cash Collateral Motions are both granted to the extent provided herein, on a temporary basis, with all relief set forth in this Order being deemed adequate protection under Bankruptcy Code § 361. The Debtor is hereby authorized to utilize the Cash Collateral, pursuant to the terms of an agreed budget (the "Agreed Budget"), a copy of which is attached hereto as Exhibit "A"; however, the Agreed Budget is hereby modified instanter to the extent necessary to address payments specifically contemplated herein, as well as any other management fee contemplated pursuant to decretal 9 of this Order, but is otherwise approved through the close of business on March 15, 2014 (the "Current Deadline"). All agreed upon modifications shall be filed with the court and served upon the Bankruptcy Administrator. The Debtor is not authorized and directed to utilize the Cash Collateral outside of the ordinary course of operation of its business. The Debtor shall be entitled to use the Cash Collateral subject to the terms and conditions contained in this order for so long as it continues to provide the Bank with the adequate protection. No Cash Collateral shall be utilized to make any form of remuneration to the Principal or an "insider" as that term is defined in Bankruptcy Code § 101(31). Recognizing that certain operational expenses of the Mortgaged Property are variable, the Debtor is allowed to exceed the line item amounts listed in the Agreed Budget by not more than ten (10%) percent of such line item on a monthly basis so long as the Debtor's expenditures remain within the Agreed Budget when viewed cumulatively for the life of the case, with advance notice and consent from the Bank. Any expenditure in excess of those allowed herein shall require the consent of the Bank or further order of this Court. The Debtor's authorization to utilize Cash Collateral, in a manner consistent with the Agreed Budget, in the ordinary course of business pursuant to Bankruptcy Code § 1107 and any other applicable orders of this Court, shall be nunc pro tunc from the petition date of December 5, 2013.

11. **Replacement Lien:** The Bank shall receive a replacement security interest in the Cash Collateral, including Cash Collateral generated post-petition, to the same extent and priority as the Bank held as of the commencement of this Reorganization. No further action or filing pursuant to the Uniform Commercial Code, Florida Statutes § 697.07, or other applicable law need be made to perfect the Bank's replacement lien other than as specifically provided by order of this Court.

12. **Financial Reporting:** Simultaneously with the preparation and filing of monthly operating reports pursuant to Federal Rule of Bankruptcy Procedure 2015 and other applicable guidelines, or the twentieth (20) day of each month, the Debtor shall provide such reports and relevant back up to the Bank and the Bankruptcy Administrator as they related to the prior month, including the following without limitation:

- a. CBRE's standard monthly sales report, including information on all advertising efforts, all contracts. LOIs, expressions of interest and inquiries form purchasers.
- b. For any contemplated repairs, all bids, contracts, and communications for contractors, subcontractors, and materials men, with applicable line item by line item pro forma/project budget.
- c. The current rent roll.
- d. Common area maintenance records and reconciliation.
- e. All other documentation not specifically referenced above relating to property maintenance, management, and improvement.
- f. Any documentation tending to reflect the need for maintenance or repair of all or any other portion of the Mortgaged Property.

- g. Detailed GAAP accrual method profit and loss report, balance sheet, account receivable aging, and accounts payable aging.

13. **Debtor In Possession Account:** The Debtor shall open a debtor-in-possession bank account at the Bank (the "DIP Account"), and shall regularly transfer all cash deposits to the Bank's debtor-in-possession account to fund disbursements in a manner consistent with the Agreed Budget. Upon entry of this Order, and upon the opening of the DIP Account, the Bank shall deposit any residual funds remaining in the Pledged Account. The DIP Account is to be the sole account to be used for concentration of Cash Collateral after December 27, 2013. Prior to this date, the Debtor may utilize its existing Debtor-in-Possession account at Fifth Third Bank to concentrate Cash Collateral pending opening of the DIP Account.

14. **Insurance Coverage:** The Debtor shall maintain hazard and casualty insurance coverage on all of its assets, including the Mortgaged Property, to the extent that they continue to house/constitute components of the Bank's alleged collateral, as required pursuant to the Loan Documents; shall name the Bank as an additional loss payee on such insurance coverage; and shall furnish to the Bank an appropriate certificate evidencing such insurance coverage. In no event should insurance coverage be less favorable than that existing on the Mortgaged Property pre-petition.

15. **Inspection:** During regular business hours, and upon forty-eight (48) hours' telephonic notice to Debtor's counsel, the Bank (through its authorized officer, employee, or other agent) shall be entitled to reasonably: (a) inspect records pertaining to the Cash Collateral; and (b) examine the Mortgaged Property. However, that any such inspection or examination shall not in any way interfere with the normal operation of the Debtor's business.

16. **Continued Cash Collateral Hearing:** The Cash Collateral Motion is hereby granted to the extent provided herein, through the Current Deadline, but with all rights reserved with respect to the time after the Current Deadline, including the rights of the Debtor to seek use of Cash Collateral on other or different grounds, and the right of the Bank to seek other terms and to seek default-rate interest accrual after the Current Deadline. However, all matters relating to venue are not subject to reconsideration as to the Bank. With respect to use of Cash Collateral after the Current Deadline, this Court will conduct a continued hearing (the “Continued Cash Collateral Hearing”), to be noticed by the Debtor, and to occur on March 15, 2014 at 9:30 a.m. If the Parties are in agreement that the terms of this Order should simply be extended at the time of the Continued Cash Collateral Hearing, then on notice from the Parties the Continued Cash Collateral Hearing may be canceled if timely notice (no shorter than three (3) business days) can be provided to other parties in interest.

17. **Opportunity for Parties in Interest to Object and Be Heard:** Because the relief provided herein is the product of acquiescence by the Parties, it is binding upon them; however, all other parties in interest are entitled to twenty-one (21) days’ notice and opportunity to object to the relief set forth herein. All objections to the relief afforded in this Order as between the Debtor and the Bank, if any, shall be considered at a hearing (the “Objection Hearing”), to occur on **January 15, 2014 at 9:30 a.m.** To be considered at the Objection Hearing, objections must be filed of record and served upon all parties in interest, including without limitation the Debtor, the Debtor’s counsel, the Bank’s counsel of record, and the Bankruptcy Administrator, no later than January 6, 2014.

DONE AND ORDERED in chambers, at Charlotte, North Carolina.

This Order has been signed electronically.

United States Bankruptcy Court

*The Judge's signature and Court's seal
Appear at the top of the Order.*

Conformed Copies to:

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