

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

In re:

Tanner Companies, LLC,

Debtor.

Case Number: 17-40029

Chapter 11

EMERGENCY MOTION TO USE CASH COLLATERAL

The motion of Tanner Companies, LLC, the above-named Debtor (“Tanner” or the “Debtor”), pursuant to Sections 105, 361 and 363 of the Bankruptcy Code and Rules 2002, 4001 and 6004 of the Federal Rules of Bankruptcy Procedure, respectfully represents that:

1. On January 27, 2017, Tanner filed its petition under Chapter 11 of the Bankruptcy Code in this court (this “Reorganization Proceeding”). The Debtor continues in possession of its assets and operates its business as a debtor-in-possession.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. The Debtor is headquartered in Rutherfordton, NC with a secondary office in Jersey City, NJ. The Debtor also has eight retail outlets located in the southeast region of the United States and approximately 115 employees, plus a multitude of non-employee sales stylists.

4. In summary, the Debtor’s business consists of the design and direct sales of high-end seasonal women’s luxury apparel and accessories, under the *Doncaster* label, through independently-contracted sales stylists, which, in some instances, include agencies that incorporate more than one individual sales stylist (“Stylists”) nationwide. Inventory which does

not sell during a particular season is placed in one of the Debtor's retail outlets for approximately a year. After a year, inventory which does not sell in the retail outlets is placed in the Debtor's warehouse and subsequently liquidated.

5. The Debtor's business, recognized as one of the first primarily female-driven entrepreneurship, began in Charlotte, North Carolina approximately eighty-five (85) years ago with Millie Tanner. Descendants of Millie Tanner still hold equity interests in the Debtor. Some of the Stylists have worked for the Debtor for more than twenty (20) years.

6. The Debtor has eight wholly owned subsidiaries: (a) Claridge Resources Limited, which maintains an office in Hong Kong used primarily to outsource production of apparel inventory; (b) Tanner Companies Italia, SRL, which assists in the sourcing of fabric and accessories; (c) Ningbo Tanner Garment Co., Ltd., which is a woven apparel production facility in Ningbo, China; (d) Tanner International, LLC; (e) Tanner Retail, LLC, (f) Tanner Holdings, LLC; (g) Tanner Designs, LLC; and (h) Tanner Ventures, LLC.

Pre-Petition Financing

7. Prior to the commencement of this Reorganization Proceeding, the Debtor was financed through various lending agreements with Salem Investment Partners III, LP ("Salem").

8. The financial arrangements referred to in paragraph 6 above are evidenced and defined in the following agreements: (a) that certain Loan Agreement dated as of June 22, 2011 by and between the Debtor and Salem, as successor by assignment to First Tennessee Bank National Association (as amended or otherwise modified from time to time) (the "2011 Loan Agreement"); and (b) that certain Amended and Restated Loan and Purchase Agreement dated as of January 4, 2013 by and among, among others, the Debtor and Salem ("the 2013 Loan Agreement") and other related agreements (hereinafter all such agreements are collectively

referred to as the “Financing Agreements”). Pursuant to the Financing Agreements, Salem asserts a security interest in substantially all of the Debtor’s tangible and intangible assets located in the United States, including without limitation real estate, deposit accounts, inventory, accounts receivable, general intangibles, and the proceeds thereof. Upon information and belief, Salem is owed, as of the petition date, the approximate sum of \$9,950,000.

Use of Cash Collateral

9. The Debtor has listed in its schedules as assets accounts receivable, inventory, and bank accounts. Pursuant to the terms of the Financing Agreements, proceeds from these assets may constitute the “cash collateral” of Salem as defined in 11 U.S.C. § 363(a) (“Salem’s Cash Collateral”).

10. The Debtor does not believe that any other creditors have or assert liens upon or security interests in the Debtor’s accounts receivable, inventory, or bank accounts.

11. Over the last several years, the Debtor’s total revenue has decreased, from approximately \$51 million in 2012 to approximately \$35 million in 2015 and just under \$29 million in 2016. Effective October 1, 2015, Salem purported to exercise its right under the 2011 Loan Agreement to require Debtor to engage a Chief Restructuring Officer (“CRO”) acceptable to Salem and instructed the Debtor to designate Manfred Leong of Anderson Bauman Tourtellot Vos & Company as CRO, allegedly with authority to operate the Debtor on a day to day basis. At the request of Salem, the Debtor retained Manfred Leong as its CRO. Because of continuing declining revenues and other failures, the Debtor believed its operations had reached a critical point and replaced Mr. Leong with Elaine Rudisill of The Finley Group effective November 15, 2016. Since Ms. Rudisill assumed the role of CRO, the Debtor’s operations have stabilized and the Debtor’s cash position and overall sales have improved over the prior year.

12. Salem has informed the Debtor that Salem is unable or unwilling to provide additional capital to the Debtor.

13. The Debtor intends to propose a chapter 11 plan of reorganization (the “Plan”).

14. In order to facilitate the transition from the Debtor’s current financial and operational structure to that contemplated by the Plan and maximize Salem’s realization of value from its collateral, pending Plan confirmation, the Debtor intends to continue its operations, including the design of apparel and accessories for upcoming seasons and the sale, both through its Stylists and its retail outlets, pursuant to the 13-week budget attached hereto as Exhibit A (the “Budget”).

15. When Ms. Rudisill assumed the role of CRO on November 15, 2016, the existing budget from Mr. Leong anticipated a need for “overline” financing from Salem of \$1,388,629 as of January 27, 2017. Under Ms. Rudisill’s operations, which include changes to the pricing of spring merchandise and careful cash management, the Debtor’s revenues have increased, the Debtor had \$42,349 in cash on January 27, 2017 and was meeting current expenses, without the “overline” financing contemplated by Mr. Leong. The Debtor believes it will be able to finance its post-petition operations, during the next 13-week period, using Salem’s Cash Collateral, but without an infusion of any additional cash.

16. Under the Debtor’s proposed post-petition operations, the value of the collateral of Salem will not decrease, thus providing adequate protection to Salem. To the extent not automatically provided by § 552(b)(1) of the Bankruptcy Code, the Debtor proposes to provide Salem with replacement liens in post-petition assets acquired using Salem’s Cash Collateral to the same extent and priority as existed pre-petition.

17. The Debtor believes that the continued operations described herein and the use of Salem's Cash Collateral will provide a number of benefits, including:

- (a) preservation of the value of the Debtor's business as an ongoing enterprise;
- (b) transition from the Debtor's current operations to operations contemplated by the Plan;
- (c) incentive to the Debtor's Stylists to remain with the reorganized Debtor;
- (d) increased recovery for Salem over forced liquidation value with respect to the Salem inventory; and
- (e) continued employment to the Debtor's employees and Stylists.

18. Without the use of Salem's Cash Collateral, the Debtor will not be able to continue its sales, the value of the Debtor's inventory will deteriorate rapidly, and the Debtor's ability to fashion an effective plan will be irreparably impaired.

WHEREFORE, the Debtor prays that the court:

- A. Conduct a preliminary hearing on this motion so that the court may authorize the use of funds constituting cash collateral for the purposes set forth herein pursuant to 11 U.S.C. § 363(c);
- B. Schedule a final hearing on the use of cash collateral, providing such notice as is required by Rule 4001 of the Federal Rules of Bankruptcy Procedure;
- C. Upon conclusion of the final hearing, enter a final order approving the use of cash collateral as requested herein; and
- D. Grant such other relief as the court may deem necessary and proper.

Dated this 27th day of January, 2017.

/s/ Michael L. Martinez

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