



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed November 22, 2016

  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
SAN ANGELO DIVISION

IN RE:

THE TERRILL MANUFACTURING  
COMPANY, INC.

*Debtor.*

Chapter 11

Case No. 16-60105-rlj11

**AGREED INTERIM ORDER FOR USE OF CASH COLLATERAL  
BETWEEN DEBTOR, THE TERRILL MANUFACTURING COMPANY,  
INC. AND CREDITOR, FIRST FINANCIAL BANK, N.A.  
REGARDING INTERIM AUTHORITY TO USE CASH COLLATERAL**

Came on for consideration the Debtor, THE TERRILL MANUFACTURING COMPANY, INC.'s Expedited Motion, Pursuant to 11 U.S.C. § 363 for an Interim Order Approving Use of Cash Collateral (the "*Motion*") (Doc 50), filed by THE TERRILL MANUFACTURING COMPANY, INC. (the "*DEBTOR*"). Pursuant to the Motion and the Bankruptcy Code, the DEBTOR requests that the Court enter an Order authorizing the

DEBTOR's interim use of Cash Collateral, as that term is defined in § 363(a) of the Bankruptcy Code. FIRST FINANCIAL BANK, N.A., (the "*BANK*") filed a written response and objection (Doc 80). Now, DEBTOR and BANK have agreed to the terms of this Interim Order subject to the terms and conditions set forth herein, including (i) grant of security interests, liens and claims for the benefit of BANK, post-petition which are co-extensive with its pre-petition liens (to the extent of such liens) and (ii) grant of security interests, liens and claims in order to provide adequate protection to BANK as more fully set forth herein, and upon the proceedings held before the Court and good and sufficient cause during therefore,

THE COURT HEREBY FINDS:

The parties agree and the Court finds as follows:

1. On September 20, 2016 (the "*Petition Date*"), the DEBTOR filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. The DEBTOR is continuing its operations as debtor-in-possession, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 156(b) and 1334. The Motion presents a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue of the Chapter 11 case and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
4. At the date of filing the DEBTOR was in the manufacturing business in San Angelo, Texas.
5. The BANK is the first lien holder on DEBTOR's accounts, inventory, and equipment.
6. Proceeds from the disposition of the DEBTOR's "accounts" and "inventory" constitute Cash Collateral of the BANK, in which Cash Collateral the BANK holds an interest.

7. The underlying loan and security agreements establishing the BANK's underlying interests include, but are not limited to: (1) that certain Secured Promissory Note (the "Note") dated April 1, 2015 as renewed by the DEBTOR in favor of the BANK in the original principal amount of \$1,250,000.00 (2) that certain Commercial Security Agreement (the "Security Agreement") dated April 1, 2015; and (3) various related and predecessor documents that grant assign and transfer rights and a security interest in DEBTOR's accounts, inventory and equipment (collectively, the "Loan Documents").

8. Without the availability of Cash Collateral, the DEBTOR lacks sufficient funds to continue its business. The DEBTOR has no source of cash other than the Cash Collateral.

9. Subject to (i) a full reservation of its rights with respect to any final hearing and (ii) the granting of post-petition replacement liens, and the other terms and restrictions of this Order, the BANK consents to use of its Cash Collateral on an interim basis until December 6, 2016, pursuant to the Interim Budget, attached to this Order as ***Exhibit A***, to pay expenses critical to the preservation of the DEBTOR and its estate only.

10. Good cause has been shown for entry of this Order. Among other things, entry of this Order will serve to provide the DEBTOR an opportunity to collect upon accounts receivable, conduct business critical to the possibility of a successful reorganization, and is in the best interest of the DEBTOR, its creditors, and any other parties in interest.

11. This Court concludes that immediate entry of this Order is in the best interests of the DEBTOR's estate and creditors.

12. Accordingly, based on the foregoing, the record of this bankruptcy case, and for good and sufficient cause, it is:

ORDERED that the Motion is GRANTED on an interim basis as provided for herein; it is

further;

ORDERED that the DEBTOR is authorized to use the Cash Collateral solely for the DEBTOR's business for the period of November 7, 2016 through December 1, 2016 (the "Interim Period") only in the amounts, and only for the purposes specified in the interim budget attached hereto as ***Exhibit A*** and incorporated herein (the "*Interim Budget*"). For the avoidance of doubt, the Cash Collateral may be used solely and exclusively for those expenses that relate directly to or arise from the operations of the Business as set forth in ***Exhibit A***; it is further,

ORDERED that, during the Interim Period, the DEBTOR shall not exceed the budgeted amount for any line item in the Interim Budget by more than five (5) percent unless the BANK agrees in writing to a greater variance. The DEBTOR is authorized to collect and receive all cash funds; it is further

ORDERED that, during the Interim Period, the only employees of the DEBTOR who are authorized to be paid salaries are Gary Rushin, Solomon Omidiji, Amber Sowell and Rocky Saucedo; it is further

ORDERED that the DEBTOR shall not expend any funds for the personal debts of any employee, past or present; it is further

ORDERED that the BANK is hereby granted, without the need for any further filing, instrument, recording, or otherwise, an automatically perfected, valid, and binding replacement lien (the "Adequate Protection Liens"), with the same priority and validity as existed on the Petition Date, in and to the same property of the DEBTOR the BANK would have had liens against pursuant to the Loan Documents or applicable law, to the extent of any diminution in the value of the BANK's Collateral resulting from the DEBTOR's use of the Cash Collateral. Such Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security

interest heretofore or hereinafter in this case or any successor case and shall be in all respects valid and enforceable against any trustee appointed in this case or any successor case, or upon dismissal of this case or any successor case. The Adequate Protection Liens shall not be subject to Sections 506(c), 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Adequate Protection Liens ; it is further

ORDERED that the Interim Period, and operation of this Order, may only be extended by agreement of the DEBTOR and the written consent of the BANK, in their sole and absolute discretion, by filing a stipulation executed by the BANK in this case, in which case all provisions, dictates, and protections of this Order will apply to any such extended term, which term shall be considered within the meaning of the Interim Period as defined and applied in this Order; and further

ORDERED that the DEBTOR shall maintain a segregated Cash Collateral account and a separate operating account at Bank of America, and all Cash Collateral will be promptly deposited into the segregated Cash Collateral and transfers made to the operating account only in a manner consistent with the Interim Budget, with all Cash Collateral otherwise remaining in the segregated Cash Collateral account; and further

ORDERED that from the segregated Cash Collateral account, any excess over \$100,000 will be promptly and regularly delivered by the DEBTOR to the BANK for application to its claim in this case; and it is further

ORDERED that the stay is lifted to allow the BANK to apply to its claim the total sum of \$15,465.46 representing a deposit of \$6,352.21 and checks received of \$9,113.25 in Cash Collateral presently in the possession of BANK; and

ORDERED that the DEBTOR shall promptly provide to the BANK and the United States Trustee the following by the deadline indicated.

**By November 11, 2016:**

- A. A complete, detailed accounting of all receipts and expenditures from date of filing (September 20, 2016) through the date of this order, along with supporting documents, including bank statements, copies of accounts receivable checks received, both front and back, and checks disbursed; and
- B. Copies of all contracts related to outstanding accounts receivable.

**By November 11, 2016, and weekly on each Friday thereafter,** the following:

- C. Copies of all correspondence dated, created or received on or after September 1, 2016 related to DEBTOR's accounts receivable;
- D. Detailed accounting of post-petition receipts and expenditures with supporting documents since each last post-petition accounting utilizing each Friday at 3:00 p.m. as a cutoff/closing time;
- E. Weekly cutoff bank statements with copies of all related items, credits and debits, including front and back copies of all accounts receivable checks; and
- F. Current list of aged accounts receivable with an explanation of the DEBTOR's collection efforts to date, and the account DEBTOR's response to the collection efforts.

And on a continuing basis, all other financial information reasonably requested by the BANK or its counsel, and all information which is required to be provided by the DEBTOR to the BANK under the Loan Documents; it is further

ORDERED that the DEBTOR shall submit any collected accounts receivable checks

made jointly payable to the DEBTOR and BANK to BANK's representative, Lindy Jordan, for endorsement; it is further

ORDERED that during the period of this Interim Order, DEBTOR shall maintain insurance coverage required by BANK's loan documents on BANK's equipment and inventory collateral; it is further

ORDERED that to the extent the adequate protection provided for hereby proves insufficient to protect BANK's interest in and to the cash collateral, BANK shall have a super-priority administrative expense claim pursuant to § 507(b) of the Bankruptcy Code, senior to any and all claims against the DEBTOR under § 507(a) of the Bankruptcy Code, whether in this proceeding or any superseding proceeding. The replacement lien and security interests granted herein is automatically deemed perfected upon entry of this Order without the necessity of BANK taking possession, filing financial statements, security agreements or other documents; it is further

ORDERED that upon reasonable notice by BANK, DEBTOR shall permit BANK and any of its agents, reasonable and free access to DEBTOR's records and place of business during normal business hours to verify the existence, condition, and location of collateral in which BANK holds a security interest and to verify DEBTOR's cash receipts and disbursements; it is further

ORDERED that the provisions of this Order shall be binding upon and inure to the benefit of the BANK and the DEBTOR. However, nothing herein shall prevent the BANK or the DEBTOR from seeking any further relief under the Bankruptcy Code and this Order shall not prejudice the rights of third parties relative to the stipulation between the DEBTOR and the BANK for the existence, validity, and priority of the BANK's perfected and prior security

interest in the cash collateral; it is further

ORDERED that a hearing to consider this Motion on a final basis is hereby set before this Court on *December 1, 2016 at 1:30 p.m. in Room 216 (VIDEO), 33 East Twohig, San Angelo, Texas*; it is further

ORDERED that nothing herein shall impair or modify the application of Section 507(b) of the Bankruptcy Code in the event that the Adequate Protection Liens or other adequate protection as may be provided to the BANK are insufficient to compensate the BANK for any diminution in its cash collateral during this case or any successor case; it is further

ORDERED that the automatic stay imposed under Section 362 of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the DEBTOR to grant the Adequate Protection Liens, (b) permit the DEBTOR to perform such acts as the BANK may request in its sole discretion to assure the perfection and priority of the liens granted herein, and (c) authorize the DEBTOR to pay, and the BANK to retain and apply toward any of DEBTOR's loan obligations, in its sole and absolute discretion, all payments made in accordance with the terms of this Interim Order and the Interim Budget; it is further

ORDERED that this Order is without prejudice to any claims in favor of the BANK arising out of the DEBTOR's actions in connection with the collection and disposition of the Pre-Order Collateral; it is further

ORDERED that any person or entity owing the DEBTOR money may rely upon this order in making disbursements to the DEBTOR directly as an indication of the DEBTOR's authority to collect such amounts; it is further

ORDERED that the Court shall maintain jurisdiction to interpret and enforce this Order



to the maximum extent possible notwithstanding any potential dismissal of this case; it is further

ORDERED that the DEBTOR shall serve by U.S. Mail, First Class Postage Prepaid, copies of this Order and the Notice of Hearing (the Final Hearing Notice) as set by the Court to consider the use of cash collateral and the entry of this proposed Interim Order on (a) the Office of the United States Trustee; (b) Counsel to First Financial Bank, N.A.; (c) all Creditors in this case on the matrix; (d) the Official Unsecured Creditors Committee and (e) all parties requesting notice in this case. Copies of this Order and the Final Hearing Notice shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by U.S. Mail, First Class Postage Prepaid, within one (1) business day following receipt of such request. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Interim Order shall file a written objection as allowed by relevant bankruptcy rules and Federal Rules of Procedure, which objections shall be served so that the same are received on or before such date by *Reedy Macque Spigner, Spigner & Associates, P.C., 555 Republic Drive, Suite 430, Plano, Texas 75074.*

***### End of Order ###***

**AGREED AS TO FORM AND SUBSTANCE:**

DATED: November 22, 2016.

***Spigner & Associates, P.C.***

555 Republic, Suite 430

Plano, Texas 75074

(972) 881-0581

(972) 424-1309 (Fax)

By:           /s/ Reedy Macque Spigner          

REEDY MACQUE SPIGNER

Texas State Bar No.: 18934800

***Email: [spigner@glocktech.net](mailto:spigner@glocktech.net)***

DENISE TURNBULL

Texas State Bar No. 24067913

ATTORNEY FOR DEBTOR, TERRILL  
MANUFACTURING COMPANY, INC.

DATED: November 22, 2016.

***Shannon Porter & Johnson***

P.O. Box 1272  
San Angelo, Texas 76902-1272  
(325) 653-4274  
(325) 657-0787 (Fax)

By: /s/ Jonathan R. Davis  
JONATHAN R. DAVIS  
Texas State Bar No. 05519190  
***Email:*** [jrd@shannonporter.com](mailto:jrd@shannonporter.com)  
BRANDON S. ARCHER  
Texas State Bar No. 240599392  
***Email:*** [archer@shannonporter.com](mailto:archer@shannonporter.com)

CO-COUNSEL FOR CREDITOR,  
FIRST FINANCIAL BANK, N.A.

DATED: November 22, 2016.

***McMahon Surovik Suttle P.C.***

Post Office Box 3679  
Abilene, Texas 79604-3679  
(325) 676-9183  
(325) 676-8836 (Fax)

By: /s/ Kelly Gill  
KELLY GILL  
Texas State Bar No. 07921350  
***Email:*** [kgill@mcmahonlawtx.com](mailto:kgill@mcmahonlawtx.com)  
JESSICA L. HAILE  
Texas State Bar No. 24071580  
***Email:*** [jhaile@mcmahonlawtx.com](mailto:jhaile@mcmahonlawtx.com)

CO-COUNSEL FOR CREDITOR,  
FIRST FINANCIAL BANK, N.A.

EXHIBIT "A"