

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:)	
)	
THE TREND COMPANIES OF)	
KENTUCKY, INC. d/b/a THE TREND)	
APPLIANCE COMPANY)	CHAPTER 11
)	
Debtor)	CASE NO. 16-30258-acsc
)	
)	

**FIFTH INTERIM ORDER GRANTING
MOTION FOR AUTHORITY TO USE CASH COLLATERAL AND
TO PROVIDE ADEQUATE PROTECTION**

This matter comes before the Court on the Motion for Authority to Use Cash Collateral and to Provide Adequate Protection (the “**Motion**”) filed by Debtor, The Trend Companies of Kentucky, Inc. d/b/a The Trend Appliance Company (the “**Debtor**”), seeking, inter alia, pursuant to Sections 105, 361, and 363(c) of Title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the following:

- (i) use of the Cash Collateral¹ on the terms provided herein;
- (ii) granting First Financial Bank, N.A., the (“**Cash Collateral Creditor**”): (a) adequate protection, including, without limitation, adequate protection against the diminution in the value or amount of the Pre-Petition Collateral (as defined herein) on the terms set forth herein; (b) Replacement Liens (as defined herein);
- (iii) granting any further and related relief as the Court deems just and equitable.

¹ Capitalized terms used herein but not defined herein have the same meaning as given them in the Motion, or if not defined therein, in the Bankruptcy Code.

In connection with this request, **IT IS HEREBY FOUND**, on an interim basis for purposes of entering this interim order, that:

(a) On February 3, 2016 (the “**Petition Date**”), Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107(a) and 1108² of the Bankruptcy Code, Debtor continues to operate its business and manage its property as a debtor in possession.

(b) The entry of this Order (a) will minimize the disruption to Debtor’s business that would otherwise result from the filing of the petition commencing Debtor’s Chapter 11 case.

(c) Counsel to Debtor has certified that notice of the Motion was given to (1) all secured creditors who are not represented by counsel; (2) all counsel of record for parties in interest; (3) the U.S. Trustee; (4) the Debtor’s 20 Largest Unsecured Creditors as designated in the Debtor’s Petition; (5) all governmental units having claims; and (6) all persons who filed a request to receive such notices.

(d) Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001. The permission granted herein is necessary to avoid immediate and irreparable harm to Debtor pending a final hearing. Entry of this Order is in the best interests of Debtor and its estate and creditors.

(e) The Debtor admits, stipulates, acknowledges and agrees that (collectively, paragraphs (e)(i) through (e)(iv) hereof shall be referred to herein as the “**Debtor’s Stipulations**”):

(i) The Senior Secured Loan Indebtedness. Prior to the commencement of the Case, Debtor’s primary lender was Cash Collateral Creditor. Debtor’s

² All statutes cited herein refer to the Bankruptcy Code unless otherwise specified.

obligations (“**Senior Secured Obligations**”) to Cash Collateral Creditor were evidenced, in part by the following: (1) Promissory Note dated as of July 13, 2015 in the face amount of \$117,205.60 (“Note 1”); (2) Note dated as of May 26, 2006 in the face amount of \$722,000.00 (“Note 2”), together with all such other loan documents executed in connection therewith or relating thereto, as amended (collectively the “**Senior Secured Loan Documents**”). The total indebtedness claimed to be owing to Lender, under the Senior Secured Loan Documents is in the following amounts: (1) on Note 1, the sum of \$63,097.88; (2) on Note 2, the sum of \$116,886.37. The foregoing obligations, together with, as of the Petition Date, all fees, costs and expenses (including, but not limited to, attorneys’ fees and expenses), and other charges, amounts and costs owing, accrued, accruing or chargeable in respect thereof, of any kind or nature, whether existing or contingent, payable to or for the benefit of any person or entity, pursuant to any of the foregoing agreements, instruments or documents, is herein referred to as the “**Senior Secured Indebtedness.**” Debtor’s obligations owing to Cash Collateral Creditor under the Senior Secured Loan Documents, including the Senior Secured Indebtedness, are secured by security interests created under the Senior Secured Loan Documents (the “**Pre-Petition Senior Liens**”) in essentially all assets of Debtor, including Accounts, Equipment, Inventory and other Goods, Documents of Title, General Intangibles, Investment Property, and Other Collateral, all as defined in the Senior Secured Loan Documents, (collectively, the “**Pre-Petition Collateral**”).

(ii) Related Transactions. Related to the Senior Secured Loan Documents, Cash Collateral Creditor is a party to a Promissory Note dated as of May 26, 2006 in the face amount of \$694,000.00 with LLJ Investments, LLC together with all such other loan documents executed in connection therewith or relating thereto (the “**Related Loan Documents**”).

(iii) Validity and Priority of Pre-Petition Senior Liens and Senior Secured Indebtedness. (a) The Pre-Petition Senior Liens are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code, (b) the Senior Secured Obligations constitute legal, valid, binding and non-avoidable obligations of the Debtor that, except for the stay of enforcement arising from section 362 of the Bankruptcy Code, are enforceable in accordance with the terms of the Senior Secured Loan Documents, (c) no offsets, defenses, challenges, claims, or counterclaims of any kind or nature to any of the Senior Secured Indebtedness exist, and no portion of the Senior Secured Indebtedness is subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (d) the Debtor and its estate have no offsets, defenses, claims, objections, challenges, causes of action, and/or choses in action, including without limitation claims under chapter 5 of the Bankruptcy Code, against the Cash Collateral Creditor and/or their agents, attorneys, advisors, professionals, officers, directors or employees. Provided, however, any creditors committee or Trustee (under any Chapter of the Bankruptcy Code), however, shall have forty-five (45) days from their

appointment to review and object to the validity, enforceability, perfection or extent of Cash Collateral Creditor's lien.

(iv) Cash Collateral. All of the Debtor's cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, whether original collateral or proceeds, products, rents or profits of other Pre-Petition Collateral or the proceeds thereof (the "**Cash Collateral**"), constitutes "cash collateral," as such term is defined in Bankruptcy Code section 363(a), of the Cash Collateral Creditor.

Based upon the pleadings, evidence, and representations of counsel, the Court hereby grants the relief requested herein effective as of the Petition Date, *nunc pro tunc*, and

IT IS HEREBY ORDERED that:

Jurisdiction

1. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. §§157(b)(2)(A), (D), (G), (K), (M) and (O).

Notice

2. Sufficient and adequate notice of the Motion and the hearing with respect thereto has been given to prevent immediate and irreparable harm pursuant to Bankruptcy Rules 2002, 4001(b), and 9006, and as required by Section 102, 361, and 363 of the Bankruptcy Code.

Authorization to Use Cash Collateral

3. For the purpose of the resolution of the issues, on an interim basis, of the Debtor's use of Cash Collateral, and only for this purpose, this court finds it necessary that the Cash Collateral Creditor be provided adequate protection of its claim of security, which adequate protection shall consist of the following:

a. Cash Collateral Creditor's Collateral and Priority. Pursuant to Bankruptcy Code sections 362 and 363(e) as security for the prompt payment and performance of any and all obligations incurred by the Debtor to the Cash Collateral Creditor, of whatever nature or description, the Debtor is hereby authorized to grant to the Cash Collateral Creditor, and upon the entry of this Interim Order shall be deemed hereby to have granted to the Cash Collateral Creditor, valid, binding, enforceable and perfected first priority liens, mortgages and security interests, superior to the liens, mortgages, security interests or other interests or rights of all other creditors of the Debtor's estate on property owned or leased by the Debtor, in and upon (i) all of the Pre-Petition Collateral and all proceeds thereof, and (ii) all of the Debtor's property and assets acquired by the Debtor on or after the Petition Date, of any kind or nature, whether real or personal, tangible or intangible, wherever located, and all proceeds of any and all of the foregoing (the property and assets referred to in clause (ii) is referred to as the "**Post-Petition Collateral**," and together with the property and assets in clause (i), the "**Collateral**"), and all proceeds of the Collateral, to the same extent, validity and priority as its pre-petition security interest. Nothing in this Order shall be deemed to grant Cash Collateral Creditor a security interest in the Debtor's claims under chapter 5 of the Bankruptcy Code or the proceeds thereof.

b. Adequate Protection of Lender's Interests. As adequate protection for any post-petition diminution in value of the Cash Collateral Creditor's interests in the Pre-Petition Collateral, including without limitation for any diminution in value resulting from the use of Cash Collateral, the use, sale or lease of any other Pre-Petition Collateral, or the imposition of the automatic stay, the Cash Collateral Creditor is hereby granted a post-petition claim (the "**Adequate Protection Claim**") against the Debtor's estate. In order to secure the Adequate Protection Claim, the Cash Collateral Creditor is hereby granted a lien, mortgage and security interest (the "**Replacement Lien**") in and upon (a) the Pre-Petition Collateral and all post-

petition proceeds of the Pre-Petition Collateral, and (b) the Post-Petition Collateral and all proceeds thereof to the same extent, validity and priority as its pre-petition security interest and Debtor shall pay to Cash Collateral Creditor the sum of \$200.00 per month on Note 1 and \$600.00 per month on Note 2 beginning on April 15, 2016 and continuing each month until a Final Order is entered or until an Order of Confirmation is entered by this Court. Nothing in this Order shall be deemed to grant Cash Collateral Creditor a security interest in the Debtor's claims under chapter 5 of the Bankruptcy Code or the proceeds thereof. In addition, Debtor agrees to make an adequate protection payment to GE Appliances on or before October 20, 2016 and continuing on the 20th day of each successive month until further Order of the Court in the amount of \$2,000.00 as adequate protection for the purchase money security interest held by GE Appliances.

4. The adequate protection, as set forth in paragraph 3 above, provided to Cash Collateral Creditor and the use of the pre-and postpetition accounts receivable by the debtor in possession, will not prejudice the debtor, the Cash Collateral Creditor or any creditor or other party in interest in this chapter 11 case.

5. All Cash Collateral must be used strictly in accordance with the terms of the Budget. The Debtor shall not, without the prior written consent of the Lender, use Cash Collateral with respect to any one "Expenses" line item in the Budget in excess of 5% of the amount identified in the Budget for that line item, or in excess of 5% of the amount identified in the Budget for the "Total Expenses", in either case measured on a cumulative four-week basis. Any extension or other modification of the Budget shall be subject to the prior written approval of the Lender.

6. The Debtor and debtor in possession, be and it is hereby authorized to continue to use, on the terms set forth herein, in its ordinary course of business, all of the prepetition accounts

receivable of the Debtor and any post-petition accounts receivable generated by the debtor in possession in this proceeding, pending further order of this Court.

7. The Debtor is further authorized to pay Debtor's counsel and Debtor's accountant for any Court approved fees and expenses provided however that the aggregate amount of all Approved Professional Fees and Expenses to be paid out of Cash Collateral during the Agreement Period shall not exceed \$35,000.00, exclusive of amounts presently held in escrow by Debtor's counsel. The Approved Professional Fees and Expenses shall be deemed to be a carveout from the Debtor's Cash Collateral. It is expressly agreed that the Debtor is allowed to pay U.S. Trustee fees in addition to the Approved Operating Expenses and Approved Professional Fees and Expenses outlined hereinabove with said payment not included in the \$35,000.00 carveout referred hereinabove.

8. This Order shall be an interim order providing for the use of Cash Collateral and a final hearing on the use of Cash Collateral shall be held November 1, 2016. If any or all of the provisions of this Order hereafter are stayed, modified, or vacated, or a final order is not requested or granted with respect to the relief requested herein, such stay, modification, or vacation or lack of final order shall not affect (a) the validity of any indebtedness, obligation, or liability incurred by Debtor prior to the effective date of such stay, modification, or vacation, or (b) the validity and enforceability of any security interest, assignment, lien, or priority authorized or created hereby.

9. The Debtor, at its expense, shall (a) continue to at all times keep the Collateral fully insured against all loss, peril and hazard and make the Cash Collateral Creditor and any other secured creditors co-insured and loss payee as its interests appear under such policies, and (b) pay any and all post-petition taxes, assessments and governmental charges with respect to the Collateral, whether or not the Debtor is obligated to do so under the Pre-Petition Senior Loan

Documents, and will provide the Cash Collateral Creditor and any other secured creditors with proof thereof upon written demand and will give the Cash Collateral Creditor and any other secured creditors access to its records in this regard.

10. The automatic stay provisions of Bankruptcy Code section 362 are hereby modified to permit (a) the Debtor to grant the Replacement Liens as adequate protection to the Cash Collateral Creditor, and (b) the Debtor to create, and the Lender to perfect, any and all liens, mortgagees and security interests granted to it hereunder; *provided, however*, that the Cash Collateral Creditor shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect any lien, mortgage or security interest granted by this Interim Order or take any other action to perfect such liens, mortgages and security interests, and such liens, mortgages and security interests are hereby deemed perfected; *provided however*, that if the Cash Collateral Creditor shall, in its sole discretion, elect for any reason to file, record or serve any such financing statements or other documents with respect to such liens and security interests, the Debtor shall execute the same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time and on the date required to implement the priority of such liens and security interests as provided in this Interim Order.

11. The occurrence of any one or more of the following events shall constitute an “**Event of Default**” under this Interim Order:

- (i) the Case is either dismissed or converted to a case under chapter 7 of the Bankruptcy Code;
- (ii) a: (a) trustee; or, (b) an examiner with expanded powers is appointed in the Case;

(iii) the Debtor ceases operation of its business or takes any material action for the purpose of effecting such cessation without the prior written consent of the Cash Collateral Creditor;

(iv) this Interim Order is reversed, vacated, stayed, amended, supplemented or otherwise modified in a manner which shall materially and adversely affect the rights of the Cash Collateral Creditor hereunder or shall materially and adversely affect the priority of any or all of the Cash Collateral Creditor's claims, liens or security interests and which is not acceptable to the Cash Collateral Creditor;

(v) the Final Order is not entered on or before November 1, 2016;

(vi) the Debtor's failure to comply with or perform the terms and provisions of this Interim Order, including, without limitation, using Cash Collateral other than in accordance with the provisions of the Budget, attached hereto;

(vii) any sale or other disposition of Collateral or Cash Collateral is approved without the consent of the Cash Collateral Creditor;

(viii) the automatic stay of Bankruptcy Code section 362 is lifted so as to allow a party other than the Cash Collateral Creditor to proceed against any material asset of the Debtor.

12. Upon the occurrence of an Event of Default and the giving of the Remedies Notice (as defined below):

(a) any and all Post-Petition Obligations shall be immediately due and payable, and the Debtor's authorization to use Cash Collateral shall terminate (subject to the provisions of paragraph 11(b) and (c) hereof);

(b) the Debtor shall immediately segregate all Cash Collateral, and shall not be permitted to use Cash Collateral unless the Cash Collateral Creditor shall have given its prior

written consent or the Court shall have entered an order, after a hearing upon notice to the Cash Collateral Creditor, authorizing such use; and

(c) the Cash Collateral Creditor shall have the right, free of the restrictions of Bankruptcy Code section 362, (i) to take immediate reasonable action to protect and preserve the Collateral, and (ii) after giving five (5) Business Days' prior written notice of an Event of Default to the Debtor, the Office of the U.S. Trustee, Haier US Appliance Solutions Inc d/b/a GE Appliances successor to General Electric Company by and through its GE Appliances business unit ("GE Appliances"), and any Committee (the "**Remedies Notice**"), to exercise their rights and remedies pursuant to the Pre-Petition Senior Loan Documents and/or applicable law, including, without limitation, to foreclose on all or any portion of the Collateral, collect accounts receivable and other monies owing to the Debtor and apply the proceeds thereof in satisfaction of the Post-Petition Obligations and the Senior Secured Indebtedness unless, prior to the passage of such five (5) Business Days, the Debtor, the Office of the U.S. Trustee, GE Appliances, or any Committee shall have requested a hearing to contest the Event of Default Notice or the Court shall have entered an order, after a hearing upon notice to the Cash Collateral Creditor limiting or restraining the Cash Collateral Creditor from exercising any or all such rights and remedies. In either case, Cash Collateral Creditor shall forbear until the Court issues an order addressing the Event of Default Notice.

13. Nothing in this Interim Order shall limit the rights of the Cash Collateral Creditor, GE Appliances, or Whirlpool Corporation to seek further relief (including additional adequate protection), or modification or termination of the automatic stay in accordance with Bankruptcy Code section 362(d).

14 Without limiting the Debtor's reporting or other obligations under the Pre-Petition Senior Loan Documents:

(a) the Debtor shall deliver to the Cash Collateral Creditor, GE Appliances, and Whirlpool Corporation no later than the close of business on the 15th and 30th of each month, a breakdown by line-item, in the same format as the Budget, of the Debtor's actual cash receipts and disbursements for the immediately preceding period, and cumulatively for all preceding periods after the Petition Date, which shows such actual receipts and disbursements for the applicable period compared to such receipts and disbursements for the applicable period as projected in the Budget, such report to be certified by the chief financial officer of the Debtor to be accurate to the best of his/her knowledge, information and belief;

(b) the Debtor shall deliver to the Cash Collateral Creditor, GE Appliances, and Whirlpool Corporation no later than twenty (20) calendar days after the end of each month a copy of the Debtor's monthly operating report for such month as filed with the Court and with the office of the U.S. Trustee;

(c) the Debtor shall deliver to the Cash Collateral Creditor, and GE Appliances, and Whirlpool Corporation within five (5) calendar days of the Debtor's receipt thereof, copies of all audited financial statements or other similar financial statements which reflect the Debtor's assets and liabilities and results of operations; and

(d) the Debtor shall permit representatives, agents and/or employees of the Cash Collateral Creditor, GE Appliances, or Whirlpool Corporation to visit, inspect and have access to the Debtor's premises and books and records upon three (3) Business Day notice, and shall cooperate and consult with, and provide to such representatives, agents and/or employees all such information as they may reasonably request, and the Cash Collateral Creditor, GE Appliances, or Whirlpool Corporation shall have the right to inspect, audit, examine, check, make copies of or extracts from the books, accounts, checks, orders, invoices, bills of lading,

correspondence and other records of the Debtor, and the Debtor shall make all of same available to the Cash Collateral Creditor and its representatives for such purposes.

15. The Debtor is directed to keep its books and records of original entry current and updated, so that all business activity is posted to them in the ordinary course of the Debtor's business.

16. The provisions of this Interim Order and any actions taken pursuant thereto shall survive entry of any orders which may be entered confirming any plan of reorganization; *provided, further*, that the terms and provisions of this Interim Order, as well as the liens, mortgages and security interests granted thereunder, shall continue in this Case or any Successor Case and such liens, mortgages and security interests and the Adequate Protection Claim shall maintain their priority as provided by this Interim Order.

17. Nothing in this Interim Order shall limit any parties' rights to seek modification of this Interim Order before it becomes final.

18. Nothing in this Interim Order shall in any way (a) prejudice or compromise any rights that the Cash Collateral Creditor may have against parties other than the Debtor; or (b) alter the perfection, priority, or rights of any secured creditor, including Cash Collateral Creditor, in any Pre-Petition Collateral or proceeds of Pre-Petition Collateral, including any Cash Collateral; or (c) grant Cash Collateral Creditor lien rights in Post-Petition Collateral except to the same extent, validity, and priority as Cash Collateral Creditor's prepetition security interest. Notwithstanding any provision of this Order to the contrary, any dispute between and among the Debtor's creditors that claim to be secured, including but not limited to Cash Collateral Creditor and GE Appliances, including any disputes as to the priority, validity, secured status, or other matter affecting any creditor claim, remain unaffected by this Order and are reserved for future

proceedings. None of Debtor's Stipulations herein shall be deemed to be binding on GE Appliances, which shall be free to address any such matters in future proceedings.

19. Until the Adequate Protection Claim is satisfied indefeasibly in full, unless the Cash Collateral Creditor shall have given their prior written consent, or this Court enters an order, upon proper notice to the Cash Collateral Creditor and after hearing, requiring that all the Debtor's obligations to the Cash Collateral Creditor and the Adequate Protection Claim be immediately satisfied in full, the Debtor shall neither seek any further orders in the Case, nor support any applications therefor, which authorize under Bankruptcy Code section 363, the use of Cash Collateral or the sale, use, or lease, other than in the ordinary course of business, of other property of the Debtor in which the Cash Collateral Creditor has an interest. The foregoing provision shall not apply to a request by GE Appliances or Whirlpool Corporation related to any security interest held by either GE Appliances or Whirlpool Corporation that is determined to be superior to the Senior Secured Indebtedness, if any.

20. The Cash Collateral Creditor shall be entitled to assess the Debtor's accounts for all of the Cash Collateral Creditor's reasonable fees and expenses, its attorneys' reasonable fees and expenses, and its other advisors' or professionals' reasonable fees and expenses, all such reasonable fees and expenses arising from or related to any actions taken in connection with the Case, including, without limitation, the negotiating, closing, documenting and obtaining of Court approval thereof, and all proceedings in connection with the interpretation, amendment, modification, enforcement or carrying out of this Interim Order at any time, and all reasonable expenses, costs and charges in any way or respect arising in connection therewith or related thereto, and all such foregoing reasonable fees and expenses shall constitute a part of the Post-Petition Obligations.

21. The Related Loan Documents are not subject to this bankruptcy proceeding and the Cash Collateral Creditor is entitled to proceed as to the Related Loan Documents in accordance with its rights under applicable non-bankruptcy law.

22. Debtor's counsel shall serve the Motion and a copy of this Order on all of the following parties: (1) all secured creditors who are not represented by counsel; (2) all counsel of record for parties in interest; (3) the U.S. Trustee; (4) the Debtor's 20 Largest Unsecured Creditors as designated in the Debtor's Petition; (5) all governmental units having claims; and (6) all persons who filed a request to receive such notices.

23. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Cash Collateral Creditor, the Debtor, the Debtor's estate and their respective successors and assigns (including any trustee appointed as a representative of the Debtor's estate or in any Successor Case).

24. To the extent that any provision of this Interim Order conflicts with any provision of any of the Pre-Petition Senior Loan Documents, which shall remain in full force and effect, this Interim Order is deemed to control and shall supersede the conflicting provision(s).

SO ORDERED

HAVE SEEN AND AGREED:

/s/ Neil C. Bordy

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HAVE SEEN:

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/s/ Charles Merrill

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