

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)	
)	Case No. 18-12660-JGR
ARBORSCAPE, INC.)	
EIN: 38-3727380)	Chapter 11
)	
Debtor.)	

SECOND MOTION FOR CONTINUED AUTHORITY TO USE CASH COLLATERAL

The Debtor, ArborScape, Inc. (“Debtor”), by and through its attorneys, Kutner Brinen, P.C., moves the Court pursuant to 11 U.S.C. §§ 361 and 363 and Bankruptcy Rules 4001(b) and 9014 for entry of an order authorizing the Debtor’s continued use of cash collateral, and providing adequate protection to properly perfected secured creditors, and as grounds therefor states as follows:

1. The Debtor filed its voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code on April 3, 2018 (“Petition Date”). The Debtor remains a debtor-in-possession.

2. The Debtor is a Colorado corporation that provides tree services, landscaping and snow removal services in the Denver Metro area.

3. Pre-petition, in October 2005, the Debtor entered into a loan agreement with J.P. Morgan Chase Bank, NA (“Chase”). Pursuant to the loan agreement, Chase is secured by a first position lien on substantially all of the Debtor’s assets, including its equipment, accounts receivables, cash, and accounts. Chase filed a UCC-1 Financing Statement with the Colorado Secretary of State on October 25, 2005, and filed continuations on May 20, 2010 and April 30, 2015. As of the Petition Date, the Debtor’s books and records indicate that the total amount owed to Chase on account of its secured loans is \$16,788.86.

4. The Debtor’s assets, including its cash and accounts, are subject to a first priority statutory lien in favor of the Internal Revenue Service (“IRS”) as a result of the filing of tax liens with the Colorado Secretary of State. The IRS filed Proof of Claim No. 2-2 asserting a secured claim in the amount of \$246,209.52.

5. Upon information and belief, the Debtor’s assets, including its cash and accounts, are subject to a statutory lien in favor of the Colorado Department of Revenue (“CDR”) pursuant to C.R.S. § 39-22-604, which grants the CDR a “lien to secure the payment of any amounts withheld and not remitted as provided in this section upon all of the assets of the employer and all property.”

The Debtor's books and records reflect that the total amount owed to the CDR on the Petition Date is approximately \$8,000 for unpaid pre-petition payroll taxes.

6. As of the Petition Date, the Debtor had office equipment and supplies with a replacement value of approximately \$18,500, inventory with a replacement value of approximately \$11,000, and cash on hand and in accounts in the amount of approximately \$16,199.50, and accounts receivable in the amount of \$101,513.15. The Debtor also has a number of vehicles and machinery, a majority of which are subject to first-position purchase money security interests.

7. The Debtor is replacing its accounts and cash in the ordinary course of its operations on an ongoing basis. The Debtor's income is derived from payments for services provided to customers.

Relief Requested

8. The Debtor plans to continue operation of its business throughout the Chapter 11 case and propose a Plan of Reorganization which provides for the continuation of the Debtor's business. It is only through a Plan that unsecured creditors will see a recovery on account of their claims.

9. In order to pay necessary operating expenses, the Debtor must use cash collateral in which Chase, the IRS, and the CDR (together the "Secured Creditors") have an interest.

10. Without the use of cash collateral, the Debtor will have insufficient funding for business operations and will not be able to pay employees, rent, utilities, materials and other costs associated with providing services to its customers.

11. The Debtor therefore seeks authorization to continue its use of cash collateral through February 28, 2019 pursuant to the budget attached hereto as Exhibit A.

12. The Debtor will be replacing its accounts, cash, and cash equivalents in the course of its daily operations and therefore the collateral base will remain stable and will improve over time. As set forth on the budget, the Debtor's cash position is projected to be positive after meeting expenses during the term of the Chapter 11 case.

13. In order to provide adequate protection for the Debtor's use of cash collateral, the Debtor has proposed adequate protection for the Secured Creditors as set forth below. The proposal provides the following treatment on account of cash collateral:

- a. The Debtor will provide the Secured Creditors with post-petition liens on all post-petition inventory, accounts receivable, and income derived from the operation of the business and assets, to the extent that the use of the cash results in a

decrease in the value of the Secured Creditors' interests in the collateral pursuant to 11 U.S.C. § 361(2). All replacement liens will hold the same relative priority to assets as did the pre-petition liens;

b. The Debtor will only use cash collateral in accordance with the Budget attached to this Motion as Exhibit A subject to a deviation on line item expenses not to exceed 15% without the prior agreement of secured creditors or an order of the Court;

c. On or before the 15th of each month, the Debtor will pay the IRS adequate Protection in the amount of \$2,564.81 and will pay the CDR adequate protection in the amount of \$345.60;

d. The Debtor will keep all of the Secured Creditors' collateral fully insured;

e. The Debtor will provide the Secured Creditors with a complete accounting, on a monthly basis, of all revenue, expenditures, and collections through the filing of the Debtor's Monthly Operating Reports; and

f. The Debtor will maintain in good repair all of the Secured Creditors' collateral.

14. Should the Debtor default in the provision of adequate protection, the Debtor's approved use of cash collateral will cease and the secured creditors will have the opportunity to obtain further relief from this Court.

15. The Debtor's request to use cash collateral is made with a complete reservation of rights of secured creditors to their various claims and lien positions in and to the Debtor's assets.

16. Approval of the Debtor's use of cash collateral in accordance with this Motion is in the best interest of the Debtor, its creditors and the estate as it will allow the Debtor to maintain its ongoing business operations, allow the Debtor to generate revenue, and provide the Debtor with an opportunity to propose a meaningful Plan.

17. To ensure the Debtor's uninterrupted use of cash collateral, the Debtor further requests that the order approving the Debtor's use of cash collateral be entered *nunc pro tunc* to December 31, 2018.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, authorizing the Debtor's use of cash collateral in accordance with this Motion, authorize the Debtor to provide

adequate protection to any properly perfected secured party in the form of that set forth herein, and for such further and additional relief as to the Court may appear proper.

DATED: December 31, 2018

Respectfully submitted,

By: /s/ Keri L. Riley

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