

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT**

In Re:	:	Chapter 11
	:	
Cascella & Son Construction, Inc	:	Case No.: 14-50518
Debtor	:	
	:	
Cascella & Son Construction, Inc.	:	
Movant:	:	
v	:	
	:	
TD Bank f/k/a Hudson Bank; First	:	
Niagra Bank f/k/a New Alliance Bank;	:	
Internal Revenue Service; Town of	:	
Monroe	:	
Respondents	:	Re: Doc ID No. 19

**EIGHTEENTH ORDER AUTHORIZING THE DEBTOR  
TO USE COLLATERAL AND CASH COLLATERAL, GRANTING  
ADEQUATE PROTECTION AND SCHEDULING FURTHER  
HEARINGS WITH RESPECT THERETO**

UPON CONSIDERATION of the motion (the "Motion") of Cascella & Son Construction, Inc., debtor and debtor-in-possession ("Debtor"), for an order authorizing Debtor to use cash collateral on and to schedule a hearing thereon; and the Court having authority under 11 U.S.C. §§ 363 and 552 and Fed. R. Bankr. P. 4001 to authorize the Debtor to use cash collateral on a preliminary basis to the extent necessary to avoid immediate and irreparable harm to Debtor and to grant adequate protection to such creditors as may be necessary to Debtor's secured creditors; and upon notice to TD Bank f/k/a Hudson Valley Bank, First Niagra Bank f/k/a New Alliance Bank, the IRS and the Town of Monroe and after due notice and a hearing having been held on June 20, 2017; and the Court having considered this matter and the exigent circumstances herein; it is Found That

A. On April 7, 2014 (the "Petition Date"), the Debtor filed a voluntary

petition for reorganization under Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code) in the District of Connecticut. The Debtor has retained possession of its assets and is authorized to continue the operation and management of its business and properties as Debtor and Debtor-in-Possession, pursuant to §§1107 and 1108 of the Bankruptcy Code.

B. Consideration of the motion constitutes a core proceeding as defined in 28 U.S.C. §§ 157 (b)(2)(A) and (M) and, therefore, the Court has jurisdiction over this proceeding and the property affected hereby.

C. Debtor is engaged in the business of quarry operation. The Debtor's offices are located at 2 Easton Heights Lane, Easton, CT.

D. Prior to the Petition Date, the Debtor and Hudson Bank n/k/a TD Bank ("Hudson") and New Alliance Bank n/k/a First Niagra Bank were parties to Loan and Security Agreements pursuant to which, among other things, Hudson and New Alliance provided the Debtor with a loans and credit facilities (the "Hudson Facility" and the "New Alliance Facility") secured by liens and/or security interests in substantially all of the Debtor's assets (the "Pre-Petition Collateral"). As of the Petition Date, the Debtor was indebted to Hudson in the amount of \$250,000.00 and New Alliance Bank for \$230,000.00.

The IRS and the Town of Monroe also claim liens on the Debtor's assets by virtue of tax liens on file.

E. Substantially all of the Debtor's revenue is derived from contracts and receivables obtained from operating a quarry operation.

F. The Debtor has represented that it has an immediate and continuing need for the use of the pre-petition collateral and the proceeds thereof constituting "Cash Collateral" as

such term is defined in 11 U.S.C. §363(a) ("Cash Collateral") in order to continue the operation of, and avoid immediate and irreparable harm to its business, and to maintain and preserve going concern value. Accordingly, without the ability to use the Pre-Petition Collateral and the Cash Collateral, the Debtor contends that it will be unable to pay ongoing management, payroll, raw material, insurance, utilities and other necessary expenses related to the continued operation of the Debtor's business, to generate cash flow, and to maintain the value of Debtor's assets. In that event, 2 employees will be terminated.

G. The Debtor represents that it is in the best interest of all secured creditors holding valid, perfected, enforceable liens that the use by it of the Pre-Petition Collateral and the Cash Collateral on the terms and conditions set forth herein be approved and ordered by the Court; and therefore,

Based upon the foregoing, and upon the stipulation of the parties, the representations of counsel, and the arguments presented,

IT IS THEREFORE ORDERED THAT:

1. Subject to the terms and conditions of this Order, the Debtor is authorized, pursuant to 11 U.S.C. § 363(c)(2), to collect and use the Pre-Petition Collateral including without limitation the Cash Collateral from the date of this Order through July 31, 2014 to continue the usual and ordinary operations of the Debtor in the ordinary course of its business by paying those budgeted expenditures (the "Expenditures") set forth on the budget, annexed hereto as **Exhibit A** (the "Budget"), provided, however, that the Expenditures shall not be used for any other purpose, except the expense of administration of the Debtor's estate or otherwise, and no amount or expenses shall be paid, transferred or expended by the Debtor, except as set forth in the Budget

or except as may be due pursuant to 28 U.S.C. 1930, or by further order of this Court. The Debtor shall be allowed a 8% variance per line item for expenses and to that extent, it may transfer between line items but in no event shall the aggregate Expenditures for any Budget period exceed the total amount of Expenditures for such Budget period set forth on the Budget.

2. As adequate protection for any post-petition diminution in value of the Pre-Petition Collateral Post-Petition Collateral and the Cash Collateral arising out of the Debtor's use thereof and/or the continuance of the automatic stay, pursuant to 11 U.S.C. §§ 361, 362 and 363, TD Bank f/k/a Hudson Valley Bank, First Niagra Bank f/k/a New Alliance Bank, the IRS and the Town of Monroe are granted post-petition claims against the Debtor's estate (the "Adequate Protection Claim"), which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtor and over all administrative expenses or charges against property of the kind specified in 11 U.S.C. §§ 503(b), 507(a) and (b), subject only to the Carve-Out (as such term is defined below). As security for the Adequate Protection Claim, pursuant to 11 U.S.C. §§ 361, 362 and 363, the Debtor hereby grants to TD Bank f/k/a Hudson Valley Bank, First Niagra Bank f/k/a New Alliance Bank, the IRS and the Town of Monroe an enforceable and perfected replacement lien and/or security interest (the "Replacement Lien") in the post-petition assets of the Debtor's estate equivalent in nature, priority and extent to the liens and/or security interests of TD Bank f/k/a Hudson Valley Bank, First Niagra Bank f/k/a New Alliance Bank, the IRS and the Town of Monroe in the Pre-Petition Collateral and the proceeds and products thereof (the "Post-Petition Collateral"), subject to the Carve-Out. The Replacement Lien shall be deemed valid and perfected without the necessity for the execution, delivery and filing or recordation of any further documentation

otherwise required under non-bankruptcy law for the perfection of security interests and recordation of liens, with such perfection being binding upon any subsequently appointed Trustee, either in Chapter 11 or under any other Chapter of the Bankruptcy Code, and upon all creditors of the Debtor who have extended, or may hereafter extend, secured or unsecured credit to the Debtor; provided, however, that TD Bank f/k/a Hudson Valley Bank and First Niagra Bank f/k/a New Alliance Bank may, in its sole discretion, file such financing statements as it may require with respect to the Replacement Lien.

a) Excluded from the lien on post-petition assets will be bankruptcy causes of action under code §§ 544, 545, 547, 548, 549, 550, 551, and 553;

3. The Debtor shall, and is hereby authorized to, collect and deposit such Cash Collateral in a segregated bank account, subject to the replacement lien granted in this Order.

4. The entry of this Order does not constitute an admission or concession by any party effected by it and all parties reserve all claims, rights and defenses.

Except as otherwise specifically provided herein and under the Bankruptcy Code, nothing in this Order shall be deemed to be a waiver of any rights any party may have under the Hudson facility. The rights and obligations of the Debtor and the rights and security interests of the lien creditors arising under this Order are in addition to, and not intended as a waiver or substitution for any right, remedy, lien or security interest they previously had.

5. Regardless of the date and time that this Order is entered by the Clerk of the Court, the Order shall take affect and is binding upon the parties as of June 1, 2014 with respect to transactions on and after that time.

6. The Debtor's authority pursuant to this Order to use Cash Collateral, shall expire on the date which is the earlier of:

- a) August 31, 2017 or,
- b) The date on which the Debtor fails in any material respect to comply with the terms, conditions or provisions of this order.

7. Notwithstanding anything contained herein to the contrary, the following limited expenses of the Debtor's estate (Collectively the "Carve-Out") shall be deemed to have a lien prior in right to satisfaction from the Debtor's property generated post petition, including Cash Collateral, which lien shall be senior to the replacement liens or any other liens granted herein;

- a) the allowed administrative claims of attorneys and other professionals retained by the Debtor in this Case pursuant to Code §327 and 1103 in the aggregate amount of \$30,000.00;
- b) amounts payable to pursuant to 28 U.S.C. §1930(a)(6).

8. The Debtor shall continue to keep the Collateral fully insured against all loss, peril and hazard and make Hudson loss payee as its interests appear under such policies.

9. The terms and provisions of this Order, as well as the priorities, liens, security interests and assignments created hereunder, shall continue in this or any superseding case under the Bankruptcy Code, and such liens, security interests and assignments shall maintain their priority provided for by this Order until satisfied and discharged in full.

10. On the date this Order is signed by the Court, the Debtor shall mail copies of this Order to the U.S. Trustee, the Respondents named herein, and all parties who have

requested notice in this case pursuant to Fed. R. Bankr. P. 2002.

11. This Interim Order shall expire by its terms at 5:00 P.M. on **August 31, 2017.**

12. Any objection to the continued use of cash collateral must be filed and served no later than August 17, 2017 at 5:00 p.m.

13. A further hearing on the continued use of Cash Collateral shall be held on August 22, 2017, at 10:00 A.M. at the United States Bankruptcy Court, 915 Lafayette Boulevard, Bridgeport, Connecticut.

Dated: June 23, 2017

BY THE COURT

  
*Julie A. Manning*  
Chief United States Bankruptcy Judge  
District of Connecticut

# EXHIBIT A



**CASCELLA & SON CONSTRUCTION CO. INC.**  
**SITE DEVELOPERS & AGGREGATE SUPPLIER**  
**2 EASTON HEIGHTS LANE**  
**EASTON, CT. 06812**  
**CELL (203) 556-3546**

Budget Projection

JULY 2017

Insurance

1,815

Fuel

2,500

Labor

2,500

Misc., parts oil grease *BLASTING*

8,000

US Trustee Fee

650

Total: 15,465

**CASCELLA & SON CONSTRUCTION CO. INC.**  
**SITE DEVELOPERS & AGGREGATE SUPPLIER**  
**2 EASTON HEIGHTS LANE**  
**EASTON, CT. 06612**  
**CELL (203) 556-3546**

Budget Projection

AUGUST 2017

Insurance

1,815

Fuel

2,500

Labor

2,500

Misc., parts oil grease *BLASTING*

8,000

Total: 14,815