

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

In Re: : Chapter 11
: :
Scott Swimming Pools Inc :
Debtor/Movant : Case No. 15-50094
: :
v. :
: :
Webster Bank :
Respondent : Re: Doc ID No. 252

**TWENTY-FIFTH ORDER AUTHORIZING THE DEBTOR TO USE COLLATERAL
AND
CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

UPON CONSIDERATION of the motion (the "Motion") of Scott Swimming Pools Inc, debtor and debtor-in-possession ("Debtor"), for an order authorizing Debtor to use cash collateral and to schedule a final 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 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 Webster Bank and after due notice and a hearing having been held; and the Court having considered this matter and the exigent circumstances herein; it is Found That

A. On January 22, 2015 (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 construction, sales of and servicing of pools. The Debtor's offices and property are located at 75 Washington Road, Woodbury, CT.

D. Prior to the Petition Date, the Debtor and Webster Bank were parties to Loan and Security Agreements pursuant to which, among other things, Webster Bank provided the Debtor with a loans and credit facilities (the "Webster 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 Webster in the amount of \$451,000.00.

E. Substantially all of the Debtor's revenue is derived from contracts and receivables obtained from operating its pool business.

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 submits 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, its 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 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, Webster Bank is 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 Webster Bank, 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 Webster Bank, 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 Webster may, in its sole discretion, file such financing statements as it may require with respect to the Replacement Lien.

As additional adequate protection, the Debtor will pay to Webster Bank monthly installments of interest on the loan pursuant to the terms of the parties' Note.

a) The Replacement Lien shall not apply to claims or causes of action pursuant to Chapter 5 of the Bankruptcy Code.

3. The Debtor shall, and is hereby authorized to, collect and deposit such Cash Collateral in a segregated DIP 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 Webster 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. This Order shall take affect and is binding upon the parties as of the date and time it is entered by the Court.

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

- a) February 28, 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 \$25,000.00;

- 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 Webster 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, fax or email copies of this Order to the U.S. Trustee, the Respondent(s) and all parties who have requested notice in this case pursuant to Fed. R. Bankr. P. 2002.

11. This Order shall expire by its terms at 5:00 P.M. on February 28, 2017.

12. Any objection to the continued use of cash collateral must be filed and served no later than February 24, 2017 at 5:00 p.m.

13. A further hearing on the continued use of Cash Collateral shall be held on February 28, 2017, at 12:00 p.m. at the U. S. Bankruptcy Court, 915 Lafayette Boulevard, Bridgeport, Connecticut.

DATED: February 10, 2017

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

EXHIBIT A

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Scott Swimming Pools, Inc.**BUDGET**
February 2017

Account	Description	FEB 2017 Budget
PAYROLL & TAXES	Net P/R+Taxes+C.U.+401K+Med.+Loans	80,250.00
219 · Citizens Automobile finance, In	Camaro monthly pmt.	663.13
261 · HCRA/DCRA	Health Savings Acct Disb.	1,000.00
501 · Materials-(no tax paid)	Materials-(no tax paid)	16,050.00
501A · Materials-(tax paid)	Materials-(tax paid)	16,050.00
502 · Pool Equipment-Purchases	Pool Equipment-Purchases	25,000.00
503 · Sub-Contractors	Sub-Contractor-Labor	16,050.00
504 · Supplies-Tools/Uniforms	Supplies-Tools/Uniforms	1,605.00
505 · Chemicals/Paint	Chemicals/Paint	2,675.00
507 · LEASE EXPENSE - BMW	BMW monthly pmt.	1,448.61
510 · Advertising	Advertising/Promotions	5,500.00
523 · Employee Welfare	Employee Welfare - i.e. training	2,500.00
524 · Employee Welfare-Insurance	Employee Welfare-Insurance	200.00
525 · 401 (k)-Administration	401 (k)-Admin (incl tax rtns)	1,000.00
529 · Gas/Oil	Gas/Oil	6,500.00
531 · Insurance-Medical	Insurance-Medical	9,000.00
533 · Insurance	Insurance-Pkg	23,000.00
535 · Interest Expense	Interest Expense	2,000.00
537 · Legal/Acctg	Legal/Acctg	15,000.00
539 · Utilities	Utilities	3,200.00
541 · Rep./Main. Bldgs	Rep./Main. Bldgs	550.00
543 · Rep./Main.-Grounds	Rep/Main.-Grounds	1,284.00
545 · Rep./Main.-Equip. & Trucks	Rep./Main.-Equip. & Trucks	10,700.00
549 · Expense/Misc	Misc Exp - PERMITS, LICENSES	2,000.00
551 · Office Expense	Office Expense	3,000.00
557 · Professional Services - Inhouse	Architect/Commissions	6,500.00
558 · Professional Services - Misc.	Other Professional Svcs.	10,000.00
559 · Registration	Registration	1,000.00
560 · Rental Expense	Rent (Morton Leasing, Bldg rent)	15,000.00
571 · Travel	Travel	5,000.00
572 · Meals/Entertainment	Meals/Entertainment	1,500.00
579 · Computer Expense	Computer Expense	7,000.00
		292,225.74