

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re: Chapter 11
BOND AND COMPANY, JEWELERS, INC., Case No. 8:17-bk-6561
Debtor. *Emergency Hearing Requested*

**DEBTOR'S EMERGENCY MOTION FOR
AUTHORITY TO USE CASH COLLATERAL**

STATEMENT OF RELIEF REQUESTED

The Debtor seeks authority to use cash collateral to fund its operating expenses and the costs of administering this Chapter 11 case in accordance with a proposed budget which will be filed with the Court in advance of the hearing. The Debtor believes that the Lender, as described below, may assert perfected security interests in cash collateral. As adequate protection, the Debtor proposes to grant the Lender replacement liens to the same extent, validity, and priority as existed as of the Petition Date.

BOND AND COMPANY, JEWELERS, INC., as debtor and debtor in possession (the “Debtor”), respectfully requests the entry of an order granting the *Emergency Motion for Authority to Use Cash Collateral* (the “Motion”) and approving the proposed form of order which is attached hereto as **Exhibit B**. In support of its Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.
2. The statutory predicates for the relief sought herein are §§ 105(a), 361, 363, 541 and 552 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

Background

3. On July 27, 2017 (the “**Petition Date**”), the Debtor filed its Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).

4. The Debtor is a retail jeweler. The Debtor operates eight (8) jewelry stores, four of which are traditional jewelry stores operated as Bond Jewelers and Bond Diamonds stores, and four of which are operated as Pandora franchises.

Summary of Prepetition Secured Indebtedness

5. The Debtor’s primary secured creditor is Synovus Bank, N.A. (the “**Lender**”), which is owed approximately \$1,445,000 in connection with advances under a pre-petition loan facility.

6. The Debtor owes amounts to creditors (the “**Consignment Vendors**”) who supplied jewelry and other goods on a consignment basis. The value of the consignment goods on hand is approximately \$1.2 million. The Debtor will seek authorization to pay the Consignment Vendors for post-petition sales of consigned goods in connection with the relief requested in the Store Closing Motion (as defined below).

7. The Debtor believes that the Lender will assert liens on and security interests in all the Debtor’s assets, including accounts, deposit accounts, inventory, equipment, and all cash and noncash proceeds of the foregoing. Accordingly, the Lender may have an interest in the Debtor’s cash collateral within the meaning of 11 U.S.C. § 363(a) (the “**Cash Collateral**”).

8. The Debtor intends to use Cash Collateral to pay operating expenses and the costs of administering this Chapter 11 case.

Relief Requested and Grounds for Relief

9. By this motion, the Debtor respectfully requests the entry of an interim order

authorizing the use of Cash Collateral, in accordance with a budget attached hereto as **Exhibit A**, to fund its operating expenses and the costs of administering this Chapter 11 case to avoid immediate and irreparable harm to the estate pending a final hearing and the entry of a final order. Specifically, the Debtor intends to use Cash Collateral for:

- a. Payroll;
- b. Insurance, including worker's compensation, health insurance, and general liability insurance;
- c. Purchase of inventory;
- d. Payment of utilities;
- e. Payment of leases;
- f. Other payments necessary to sustain continued business operations;
- g. Payment of expenses authorized under the Store Closing Motion (as defined below);
- h. Care, maintenance, and preservation of the Debtor's assets;
- i. Creation of escrows for tax obligations; and
- j. Costs of administration in this Chapter 11 case.

Except as specifically authorized by law or court order, the Debtor will not use Cash Collateral to pay pre-petition obligations.

10. The Debtor's Emergency Motion for Entry of an Order Authorizing the Debtor to (A) Conduct Store Closing Sales at Certain Locations and Granting Related Relief; (B) Enter Into Consulting Agreement With Eaton Hudson, Inc.; (C) Sell Consigned Goods Pursuant to the Terms of the Consulting Agreement; and (D) Reject Certain Unexpired Leases and Abandon *De Minimis* Personal Property (the "**Store Closing Motion**") has also been filed. In addition to

operation of the Pandora Stores, the Debtor seeks to continue to use Cash Collateral to facilitate the store closing sales pursuant to the terms of the Store Closing Motion.

11. The Debtor requests authorization to use Cash Collateral immediately to fund operating expenses necessary to continue the operation of its business, to maintain the estate, to maximize the return on its assets, and to otherwise avoid irreparable harm and injury to its business and the estate.

12. There is insufficient time for a full hearing pursuant to Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedure to be held before the Debtor must use Cash Collateral. If this motion is not considered on an expedited basis and if the Debtor is denied the ability to immediately use Cash Collateral, there will be a direct and immediate material and adverse impact on the continuing operations of the Debtor's business and on the value of its assets. To continue its business activities in an effort to achieve a successful reorganization, the Debtor must use Cash Collateral in the ordinary course of business. The inability of the Debtor to meet its ordinary business expenses will require the Debtor to discontinue normal operations, which will result in irreparable injury to the Debtor and its chances for reorganization. Any such discontinuation would also materially and adversely impact the value of the Collateral. Indeed, it is in the best interest of the Lender that the Debtor use Cash Collateral, if such usage will preserve the value of the Collateral.

13. "Cash Collateral" is defined as "cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents in which the estate and an entity other than the estate have an interest." 11 U.S.C. § 363(a). Pursuant to section 363(c)(2) of the Bankruptcy Code, the Court may authorize the Debtor to use Cash Collateral as long as the applicable secured creditors consent or are adequately protected. *See, e.g., In re Mellor*, 734 F.2d 1396,

1400 (9th Cir. 1984); *see also In re McCormick*, 354 B.R. 246, 251 (Bankr. C.D. Ill. 2006) (to use the cash collateral of a secured creditor, the debtor must have the consent of the secured creditor or must establish to the court that the secured creditor's interest in the cash collateral is adequately protected).

14. In exchange for the Debtor's ability to use Cash Collateral in the operation of its business, the Debtor proposes to grant to the Lender, as adequate protection, replacement liens to the same extent, validity, and priority as existed on the Petition Date. In other words, the Debtor proposes that the Lender's "floating" liens on such assets continue to "float" to the same extent, validity, and priority as existed on the Petition Date, notwithstanding Section 552 of the Bankruptcy Code. The Debtor asserts that the interests of the Lender will be adequately protected by the replacement liens.

15. If allowed to use Cash Collateral, the Debtor believes that it can stabilize its business operations and maintain going concern value. Otherwise, the Debtor's business operations will cease and its assets will have only liquidation value.

16. The motion is without prejudice to the rights of the Debtor or any other party to contest the extent, validity and/or priority of the Lender' asserted liens.

WHEREFORE, the Debtor respectfully requests that this Court enter an order, the proposed form of which is attached hereto as **Exhibit B**: (a) granting the Motion; (b) authorizing the Debtor to use Cash Collateral on an interim basis pending a final hearing in accordance with the budget to be submitted at or prior to the hearing on this Motion; (c) authorizing the Debtor to

use Cash Collateral following a final hearing; and (d) providing such other and further relief as the Court may deem appropriate.

/s/ Scott A. Stichter

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Attorneys for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Debtor's Emergency Motion for Authority to Use Cash Collateral* has been furnished on this 28th day of July, 2017, by the Court's CM/ECF system to:

Office of the U.S. Trustee

20 Largest Unsecured Creditors

Synovus Bank
c/o Corporation Service Company, Registered Agent
1201 Hays Street
Tallahassee, Florida 32301-2525

/s/ Scott A. Stichter

Scott A. Stichter

10609.1884005v3

Bond & Company Jewelers, Inc.

Cash Budget & Projected Cash Balances

	For the Week Ending					For the Month Ending			
	7/28/2017	8/18/2017	8/11/2017	8/18/2017	8/25/2017	Sep-17	Oct-17	Nov-17	Dec-17
Beginning Cash	474,162	433,840	406,261	548,256	203,620	201,488	290,022	(49,921)	(286,862)
Operating Income									
Revenue for Store Sales	113,963	134,375	167,914.4	181,454.22	151,665.309	949,584	770,341	698,348	4,111,820
Total Operating Income:	113,963	134,375	167,914	181,454	151,665	949,584	770,341	698,348	4,111,820
Operating Expense									
Payroll	-	81,857	-	118,115	-	291,844	206,746	212,597	242,022
401k	-	3,150	-	3,400	-	9,700	6,550	6,300	6,550
Base Rents	115,566	-	-	-	114,307	114,149	115,888	113,841	48,749
Loans	11,500	38,019	-	-	11,500	49,519	38,019	38,019	38,019
Insurance	11,840	842	-	-	11,840	11,840	12,805	19,198	18,893
Utilities	1,005	1,566	4,478	2,891	456	10,904	9,357	11,533	12,030
Repairs & Maintenance	-	6,700	2,110	58	-	2,868	2,868	4,485	2,868
Merchant Svcs	-	8,429	-	-	-	14,912	-	9,480	14,289
Sales Tax	-	-	-	43,505	-	46,948	42,065	57,540	181,474
Pandora Advertising	-	3,000	3,000	3,000	3,000	34,500	26,500	51,500	105,000
Sale Advertising	10,300	6,800	1,800	1,800	1,800	23,500	19,500	23,500	51,000
Cosultant Fees	-	5,000	5,000	5,000	5,000	25,000	20,000	20,000	25,000
Consultant % of Sales	-	2,605	3,571	4,367	3,282	17,975	18,175	16,993	90,892
Consigned Merchandise	4,074	3,984	5,960	7,280	5,479	48,267	73,727	103,806	820,370
Passthrough Taxes Escrow	-	-	-	26,674	(2,866)	109,122	78,082	16,496	344,641
Pandora Inventory Purchases	-	-	-	310,000	-	50,000	440,000	230,000	10,000
Total Operating Expenses	154,285	161,954	25,919	526,090	153,798	861,049	1,110,284	935,289	2,011,796
Net Operating Revenue	(40,322)	(27,578)	141,995	(344,636)	(2,133)	88,535	(339,943)	(236,941)	2,100,024
Ending Cash	433,840	406,261	548,256	203,620	201,488	290,022	(49,921)	(286,862)	1,813,163

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
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In re: Chapter 11
BOND AND COMPANY, JEWELERS, INC., Case No. 8:17-bk-6561
Debtor.
_____ /

**INTERIM ORDER GRANTING DEBTOR'S EMERGENCY
MOTION FOR AUTHORITY TO USE CASH COLLATERAL**

THIS CASE came before the Court for hearing on _____, 2017 at _____ .m.
(the "**Hearing**") for consideration of the *Debtor's Emergency Motion for Authority to Use Cash Collateral* (Doc. No. _____) (the "**Motion**"). The Motion seeks the entry of interim and final orders authorizing the Debtor to use "Cash Collateral" as defined in Section 363(a) of the Bankruptcy Code.

The Court finds that due and sufficient notice of the Motion and the Hearing was provided to: (i) the Office of the United States Trustee for the Middle District of Florida; (ii) Synovus Bank, N.A.; (iii) all other known secured creditors of the Debtor; and (iv) the twenty (20) largest unsecured creditors of the Debtor, and that no other or further notice is necessary. The Court considered the Motion, together with the record and the arguments of counsel at the

Hearing, and it appearing that the use of Cash Collateral to the extent provided herein is necessary on an interim basis in order to avoid irreparable harm to the Debtor, and for the reasons announced on the record at the Hearing which shall constitute the decision of the Court, it is

ORDERED:

1. The Motion is granted on an interim basis pending a further hearing to be conducted by the Court on _____.

2. Except as set forth herein, all persons and entities owing monies to the Debtor are authorized and directed to pay the monies to the Debtor, without setoff, which sums shall upon collection by the Debtor constitute Cash Collateral (as that term is defined in Section 363(a) of the Bankruptcy Code).

3. The Debtor is authorized to use Cash Collateral including, without limitation, cash, deposit accounts, accounts receivable, and proceeds from the sale of inventory to pay ordinary and necessary expenses substantially in accordance with the budget (the “**Budget**”), a copy of which is attached hereto as **Exhibit A**, so long as the aggregate of all expenses for each week do not exceed the amount in the Budget by more than ten percent (10%) for any such week on a cumulative basis (the “**Variance**”). Notwithstanding the foregoing, subject to the provisions of this Order, expenditures in excess of the Variance or not on the Budget will not be deemed to be unauthorized use of Cash Collateral, unless the recipient cannot establish that the expense would be entitled to administrative expense priority if the recipient had extended credit for the expenditure.

4. The Debtor is authorized to provide adequate protection, pursuant to sections 363(c)(2)(A) and 363(e) of the Bankruptcy Code, to Synovus pursuant to the terms and

conditions of this Interim Order. As adequate protection with respect to Synovus' interests in the Cash Collateral, Synovus is granted a replacement lien (the "**Replacement Lien**") in and upon all of the categories and types of collateral in which it held a security interest and lien as of the Petition Date to the same extent, validity and priority that they held as of the Petition Date.

5. The Debtor shall maintain insurance coverage for the Collateral in accordance with the obligations under the loan and security documents.

6. Upon reasonable notice, Synovus shall have the right to inspect the collateral during normal business hours to verify the existence, condition, and location of the collateral in which said creditor holds a security interest, provided such inspection does not unreasonably interfere with Debtor's business operations.

7. This Order is not and shall not be construed as determinative as to whether or not any creditor has a valid lien on any property of the Debtor or its estate. This Order is not and shall not be construed as determinative as to the extent or amount of any secured claim associated with any such lien.

8. This Order is without prejudice to the rights of the Debtor or any party in interest to challenge the extent, validity, or priority of any lien or claim of any creditor, and is likewise without prejudice to the right of any creditor to seek additional relief concerning Cash Collateral by subsequent motion and nothing contained in this Order shall be deemed to constitute a waiver of any party's rights.

9. This Order is without prejudice to the Debtor's rights to seek authority by separate motion to pay monies in excess of the amounts set forth in the Budget.

10. It shall be an event of default if the Debtor exceeds the Variance without the prior written consent of Synovus, which consent shall not be unreasonably withheld; provided,

however, in the event of a default, the Debtor's authority to use Cash Collateral shall continue until Synovus obtains an order by appropriate motion after notice and hearing requiring the Debtor to cease using Cash Collateral.

11. In accordance with Rule 4001 of the Bankruptcy Rules, the Court finds that the Debtor's authorization to use Cash Collateral pursuant to this Order is necessary to avoid immediate and irreparable harm to the Debtor's estate.

12. The provisions of this Order shall remain in full force and effect unless modified or vacated by subsequent order of this Court.

Attorney Scott A. Stichter is directed to serve a copy of this order on interested parties who are non-CM/ECF users and to file a proof of service within 3 days of entry of the order.

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Norwood, MA 02062

China Pearl
CPI Luxury Group
Dept. LA 24585
Pasadena, CA 91185-4585

Citizen Watch Company
1000 W. 190th St.
Torrance, CA 90502

Diamour, Inc.
36 W. 44th St., #1303
New York, NY 10036

Ema Jewelry Inc
246 W. 38Th St Suite 600
New York, NY 10018

Florida Blue
P.O. Box 660299
Dallas, TX 75266-0299

Florida Department of Revenue
5050 W. Tennessee St.
Tallahassee, FL 32399

Frederick Goldman, Inc.
PO Box 1958
Old Chelsea Station
New York, NY 10113-1958

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98 Cutter Mill Rd., #284 N
Great Neck, NY 11021

IDD USA LLC
535 Fifth Ave., 20th Floor
New York, NY 10017

LE Vian Corp
235 Great Neck Rd.
Great Neck, NY 11021

Mercury Ring
580 Fifth Ave. #1512
New York, NY 10036

Pandora Jewelry
8681 Robert Fulton Dr., #C
Columbia, MD 21046

Pure Grown Diamonds, Inc.
517 Route 1 South, #1000
Iselin, NJ 08830-3023

Simon Capital GP
1361 Momentum Place
Chicago, IL 60689-5313

SK Diamonds
2909 Hillcroft St Suite 230
Houston, TX 77057

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Lafayette, LA 70598-7777

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