

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division**

**DEBTORS' MOTION FOR ENTRY
OF INTERIM AND FINAL ORDERS AUTHORIZING
USE OF CASH COLLATERAL AND GRANTING
REPLACEMENT LIENS PURSUANT TO SECTIONS 105(a),
361, 363, 541 AND 552 OF THE BANKRUPTCY CODE AND RULE
4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

STATEMENT OF RELIEF REQUESTED

The Debtor seek authority to use cash collateral to fund its operating expenses and the costs of administering these Chapter 11 cases in accordance with a proposed budget attached hereto and to provide replacement liens as described below as adequate protection for the interests in the cash collateral. The Debtor believes that the parties listed herein may assert a valid and perfected security interest in the Cash Collateral. As adequate protection, the Debtors propose to grant to those parties replacement liens to the same extent, validity, and priority as the security interests held by the parties as of the Petition Date.

NOW COMES The Debtor, Stone Place International, LLC, by and through its undersigned attorney, files its Motion for Entry of Interim and Final Orders Authorizing use of Cash Collateral and Granting Replacement Liens Pursuant to Sections 105(a), 361, 363, 541 and 552 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure (“**Motion**”) and request the entry of interim and final orders approving the Debtors’ use of cash collateral. In support of the Motion, the Debtor respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§157 and 1334.

2. The subject matter of this Motion is a core matter pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.

3. The statutory predicates for the relief requested herein are Sections 361 and 363 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

Summary of Relief Requested

4. As further set forth below, prior to the Petition Date, the Debtor executed certain loan agreements and mortgages in favor of certain lenders pursuant to which the Debtors granted security interests in accounts receivable; granted a security interest in its accounts, inventory, fixtures and equipment to three (3) creditors: CapCall, LLC, Orange Advance, LLC, and WMI (Amax Leasing Source) and that they therefore have an interest in the Debtors' cash collateral within the meaning of 11 U.S.C. § 363(a) ("**Cash Collateral**").

5. The Debtor intends to use the Cash Collateral in the continued operation of its business and in accordance with the budgets ("**Budget**") attached as Exhibit "1" and by reference incorporated herein.

6. Accordingly, the Debtors seek the entry of an interim order authorizing the use of Cash Collateral ("**Interim Order**") to avoid immediate and irreparable harm to the estates pending a final hearing and the entry of a final order.

7. The significant provisions of the Interim Order are as follows:

(a) Interim Relief. The Order shall be granted on an interim basis, pending a final hearing on the Motion.

(b) Budget. The Debtors' use of cash collateral will be materially consistent with the Budget, subject to a 10% variance on a cumulative basis ("Variance"). The Budget initially covers the month of October, 2018 – March, 2018; and

(c) Adequate Protection. The following shall constitute good and sufficient adequate protection to the Lenders for the Debtors' use of the Cash Collateral:

- i. Adequate Protection Liens. The Debtors shall provide the Lenders with replacement liens identical in extent, validity and priority as such liens existed on the Petition Date - Order at ¶ 4 and
- ii. Reporting Requirements. The Debtors shall provide on a monthly basis profit and loss statements on a cash basis to counsel for each of the Lenders - Order at ¶ 3.

(d) Event of Default: It shall be an event of default if the Debtors exceed the Variance, provided for in the Interim Order; provided, however, in the event of a default, the Debtors' authority to use Cash Collateral shall continue until the Lenders obtain an order by appropriate motion after notice and a hearing requiring the Debtors to cease using Cash Collateral.

Background

8. On May 16, 2018 , ("Petition Date"), the Debtor filed with this Court its Voluntary Petitions for relief under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code").

9. The Debtor continues to operate its business and manage its properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.
10. No previous application for the relief sought herein has been made by the Debtors to this Court or any other court.
11. No trustee or examiner has been appointed in these cases and no official committees have yet been appointed pursuant to Section 1102 of the Bankruptcy Code.

A. *Description of Debtors' Business*

The Debtor is engaged in the wholesale granite business. Stone Place International purchases Stone and Granite from all over the world. The primary customers are fabricators and contractors. The Debtor does not sell directly to the public at large.

Summary of Prepetition Secured Indebtedness

14. Lender: Prior to the Petition Date, the Debtors executed promissory notes, mortgages, and/or security agreements in favor of Creditors CapCall, LLC, Orange Advance, LLC and WMI (Amax Leasing Source)
15. The Debtor believes that these Lender will assert liens on the Debtor's Inventory, Accounts, Equipment, and Fixtures . On information and belief, the Lender may assert that such revenue is Cash Collateral within the meaning of Section 363(a) of the Bankruptcy Code. The Debtors reserve their rights to contest the validity and priority of the Lender's liens. The Debtor files this Motion and seek entry of an order authorizing the use of Cash Collateral generally and for purposes which include the following:
 - (a) care, maintenance, and preservation of the Debtors' assets;
 - (b) payment of necessary , repairs, suppliers, utilities, and other business expenses;

- (c) other payments necessary to sustain continued business operations; and
- (d) costs of administration in these Chapter 11 cases.

16. The Debtor requests authority to use Cash Collateral immediately to pay the operating expenses set forth on the Budget attached hereto as Exhibit “1” and incorporated herein by reference, which are necessary to continue the operation of the Debtor’s business, to maximize the return on its assets, and to otherwise avoid irreparable harm and injury to its business and the estate.

17. “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).

18. In the event that a Lender asserts a lien on Cash Collateral, in exchange for the Debtor’s ability to use Cash Collateral in the operation of its business, the Debtors propose to grant, as adequate protection, to the petitioning Lender a replacement lien equal in extent, validity, and priority to the lien held by the Lender as of the Petition Date. The Debtor asserts that any interests of the Lenders will be adequately protected by replacement liens.

19. If allowed to use Cash Collateral, the Debtor believes that it can stabilize its business operations and maintain going concern value. Otherwise, the Debtors' business operations will cease and their assets will have only liquidation value.
20. There is insufficient time for a final evidentiary hearing, as required by Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedure, to be held before the Debtor must arguably 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 direct and immediate harm to the continuing operation of the Debtor's businesses. In order to continue their business activity in an effort to achieve successful reorganization, the Debtor needs to use Cash Collateral in its ordinary business operations. 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 adversely impact upon the value of any secured party's collateral. Indeed, it is in the best interests of all creditor and the Debtor that the Debtor use its Cash Collateral since such usage will preserve the value of any secured party's collateral. Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedure authorizes this Court to hold an immediate preliminary hearing on this Motion.

Notice

- 20 Notice of this Motion has been given by: (i) the Court's CM/ECF system to the U.S. Trustee, and (ii) United States first class mail, email or facsimile to all creditors of the Debtors, and certain other parties listed on the attached Certificate of Service. The Debtor

submit that, given the urgent nature of the relief requested herein, no other or further notice need be given.

WHEREFORE, the Debtor respectfully request that this Court: (a) enter the Interim Order granting the instant Motion and authorizing the interim use of Cash Collateral, the proposed form of which is attached as Exhibit “2”, (b) schedule a preliminary hearing on the Motion at the earliest possible time, (c) schedule a final cash collateral hearing in accordance with Bankruptcy Rule 4001(b)(2), (d) authorize the Debtor to use the Cash Collateral in the operation of its business, and (e) grant such other and further relief as may be just and proper.

Certificate of Service

I HEREBY CERTIFY that a true and accurate copy of the forgoing Motion has been served upon the parties listed on the attached Exhibit by the Court CM/ECF system or by first class mail with first class postage affixed to all parties listed on the attached exhibit on September 18, 2018

By: /s/ Paul DeCailly

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