

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
NORTHERN DISTRICT

In Re:

MILLER MARINE YACHT
SERVICE, INC.,

Case No.: 17-50113-KKS
Chapter 11

Debtor.

**FINAL ORDER GRANTING THE EMERGENCY MOTION FOR ORDER
AUTHORIZING THE DEBTOR IN POSSESSION TO USE CASH
COLLATERAL OF THE ESTATE OF E.A. DRUMMOND (Doc. 17)**

THIS CAUSE having come before the Court at the hearing on April 27, 2017 on the Debtor's Emergency Motion for Authority to Use Cash Collateral (Doc. 17) (the "Motion") and follows this Court's interim order on the same motion (Doc. 34). The Motion concerns cash collateral that secures an obligation owed by the Debtor to the Estate of E.A. Drummond (the "Estate"). The Debtor and the Estate have stipulated to the terms of this Order.

IT IS ORDERED:

1. The Debtor's Motion for Authority to Use Cash Collateral (Doc. 17) is GRANTED on the terms and conditions described in this order. The interim order on the same motion (Doc. 34) is VACATED and replaced by this final order.
2. The Debtor is authorized to use all Cash Collateral (as that term is defined in Section 363(a) of the Bankruptcy Code) including, without limitation,

cash, deposit accounts, and accounts receivable for reasonable and customary expenses necessary to operate the business of the Debtor.

3. The Debtor is required to maintain certain levels of equity in order to assure the Estate's adequate protection in cash collateral. Accordingly, this order and the authorization to use cash collateral shall terminate by operation of law upon the occurrence of any of the following conditions: (1) the sum of the Debtor's (a) aged accounts receivable of less than ninety days and (b) the Debtor's cash or cash equivalents (i.e., all categories represented by Part 1 of Schedule A) decrease below seventy-five percent (75%) of the sum of such value as of the Petition Date (\$238,603.69) for a period of time not less than three (3) consecutive calendar days; (2) any fire or other casualty insurance over any property of the Debtor (or insurance procured by the Debtor covering property for which the Debtor is a bailee) lapses for any period of time; or (3) the Debtor fails to pay any ad valorem or personal property taxes by the time that they are due to the relevant taxing authorities. This paragraph is without prejudice to the filing of a further motion for authority to use cash collateral, which may be filed on an emergency basis on the authority of this Order even if the motion could not otherwise satisfy the standards of Local Rule 9073-1.B.

4. Beginning the week of May 1, 2017, the Debtor shall provide a profit and loss statements on a cash basis and an accounts receivable aging report to

counsel for the Estate by email by 5:00 pm Eastern time on the 1st and 15th day of each month.

5. The Estate is granted as adequate protection post-petition replacement liens against the debtor's Cash Collateral to the same extent, validity, and priority as existed as of the Petition Date.

6. The Estate holds, by stipulation with the Debtor, a valid and perfected second-position lien on the Debtor's real property. The value of the Debtor's real property will be otherwise determined by the Debtor's Motion to Determine Secured Status (Doc. 39) that is currently pending, but is agreed for the purposes of this order to be valued at \$2,300,000.00.

7. The Estate holds, by stipulation with the Debtor, a valid and perfected first-position lien on the following personal property of the Debtor, as more particularly described in the UCC filing statement appended to the Estate's proof of claim:

- a. Accounts and Other Rights to Payment.
- b. Equipment.
- c. Instruments and Chattel Paper.
- d. General Intangibles.
- e. Documents.
- f. Deposit Accounts.

8. The Estate holds, and by stipulation the Debtor agrees, that the Estate's claim is equal to \$1,635,789.83, which is oversecured regardless of the ultimate value of the RO-MAC claim in light of the Debtor's property securing the Estate's claim equal to \$2,815,942.91. Accordingly, the Estate and the Debtor have stipulated that the Estate is entitled to post-petition attorney's fees and costs, as well as post-petition interest in the per diem amount of \$92.5918 (principal amount of \$1,420,000.00 at 2.38% interest) beginning on December 11, 2017 as provided in paragraph 1 of the December 11, 2012 promissory note that forms the basis of the estate's claim.

9. Except as provided in paragraph 3 above, the provisions of this Order shall remain in full force and effect unless modified or vacated by subsequent order of this Court.

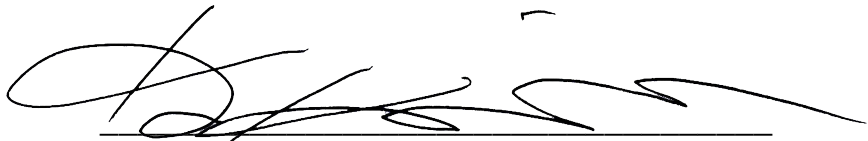
10. This Order is without prejudice to any party's right to move for modification or the order or to prohibit the further use of cash collateral. The moving party shall bear the burden of persuasion regarding the appropriate modifications to this Order.

11. 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.

12. The Debtor is not entitled to use Cash Collateral arising from insurance proceeds payable because of the destruction of any of the Estate's collateral. The Debtor and the Estate may agree on the appropriate characterization of and use of such insurance proceeds in writing and if not, the Debtor may file a motion to determine the appropriate disposition of such insurance funds.

13. The Debtor may not sell any of its equipment or inventory, except as in the ordinary course of business, without further order.

DONE AND ORDERED on April 27, 2017.



KAREN K. SPECIE
U.S. Bankruptcy Judge

Jointly prepared by: William E. Bond, Jr., Esq. and Charles M. Wynn, Esq.
(Amended in Chambers)

Attorney William E. Bond, Jr. is directed to serve a copy of this order on interested parties and file a proof of service within three (3) days of entry of the order.