



IT IS ORDERED as set forth below:

Date: February 14, 2018

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT GEORGIA
ATLANTA DIVISION**

In re:)	Chapter 11
)	
RIZVI & COMPANY, INC.)	Case No. 17-67908-MGD
)	
Debtor.)	
_____)	

**CONSENT ORDER AUTHORIZING
FINAL USE OF CASH COLLATERAL**

Rizvi & Company, Inc., (“Debtor”) having filed the *MOTION FOR AUTHORITY TO USE CASH COLLATERAL* in the above-captioned proceeding [Dkt. 6] (the “Motion”), and upon Signature Bank of Georgia’s (“Bank”) consent to the entry of this Order governing the use of cash collateral, the Court hereby enters the following STIPULATED FINDINGS OF FACT:

Debtor and the Bank hereby stipulate to the following which will become binding upon the Debtor in this chapter 11 case subject to the provisions of this Order:

1. On October 12, 2017 (the “Petition Date”), Debtor filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. Since the Petition Date, Debtor has operated as a debtor-in-possession.

2. Debtor owns and operates a bakery with three retail locations at 12850 Highway 9, Suite 1200, Alpharetta, GA 30004; 10800 Alpharetta Highway Suite 300, Roswell, GA 30076, and 320 Town Center Avenue, Suite C-9, Suwanee, GA 30024 (the “Business”).

3. As of October 12, 2017, the Debtor is indebted to the Bank in the approximate amount of \$155,636.50 including principal, accrued interest, late charges, and recording expenses, but not including allowable attorneys’ fees and expenses (the “Bank Claim”), pursuant to that certain U.S. Small Business Administration Note dated May 13, 2014, in the original amount of \$205,500.00 payable by Debtor to the Bank (the “Note”).

4. The Note is secured by virtue of, among other things, that certain (i) U.S. Small Business Administration Unconditional Guarantees from Maike Rizvi and Ali Rizvi (the “Mr. & Mrs. Rizvi”) to the Bank, dated May 13, 2014; (ii) Security Agreement dated May 13, 2014, from Debtor to the Bank (the “Security Agreement”), which grants the Bank a blanket security interest in all assets of Debtor, including fixtures; (iii) Deed to Secure Debt and Security Agreement from Ali Burair Rizvi and Maike Birthe Rizvi to the Bank, dated May 13, 2014, and recorded in Deed Book 52927, Page 0238, Gwinnett County real estate records (the “Pre-Petition Deed”); (iv) Assignment of Life Insurance Policy as Collateral dated April 28, 2014, from Maike Rizvi to the Bank regarding Principal Life Insurance Company Policy Number 4781472 (“Maike Policy”); (v) Assignment of Life Insurance Policy as Collateral dated April 28, 2014, from Ali Rizvi to the Bank regarding Principal Life Insurance Company Policy Number 4781473 (“Ali

Policy”); (vi) Personal Property Subordination Agreement by and between the Bank, Debtor, and Alpharetta Highway Investors LLC, dated May 7, 2014; (vii) Landlord’s Subordination Agreement by and Between Windward Common, LLC and the Bank, dated May 13, 2014; (viii) Assignment of C.D./Deposit/Share Account from Debtor to the Bank, dated May 13, 2014, regarding all deposit accounts as well as Certificate of Deposit # 3303 in the original amount of \$13,700.00 (the “C.D.”); (ix) Assignment of Certificate of Deposit/Share Certificate (Uncertificated) from Debtor Ali Burair Rizvi, and Maike Birthe Rizvi to the Bank, dated May 13, 2014, regarding all deposit accounts as well as the C.D.; (x) Deposit Account Control Agreement (“DACA”) by and among the Bank and Debtor, dated May 13, 2014, regarding the C.D.; and (xi) Georgia Certificate of Title No. 776736141760016 granting the Bank a first priority lien in a 2010 Ford Econoline Van, VIN No. 1 FTNE1ELXADA10190 (collectively, the “Collateral”).

5. The pre-petition liens created by the Security Agreement in all assets of Debtor (the “Pre-Petition Lien”), including but not limited to, accounts, deposit accounts, inventory, equipment, fixtures, and general intangibles and the proceeds and products thereof, were perfected by virtue of that certain (i) UCC Financing Statement filed by the Bank against Debtor, UCC. No. 067-2014-003018, Fulton County, Georgia UCC records; (ii) UCC Financing Statement filed by the Bank against the Debtor in Deed Book 53831, Page 454, Fulton County, Georgia real estate records; (iii) UCC Financing Statement filed by the Bank against the Debtor in Deed Book 53831, Page 458, Fulton County, Georgia real estate records (collectively, the “UCC”); and (iv) DACA.

6. The Pre-Petition Deed granted the Bank a lien (the “Real Property Lien”) in certain real property commonly known as 1280 Bridgewater Walk, Snellville, GA and further described in the Pre-Petition Deed (the “Real Property”).

7. Pursuant to the above-referenced Security Agreement, UCC, DACA, and all above-referenced loan documents, the Bank and the Debtor stipulate and agree the Bank’s Pre-Petition Lien is a valid, binding on the Debtor, enforceable, properly perfected, first-priority security interest in the applicable Collateral, the proceeds of which constitute cash collateral within the provisions of 11 U.S.C. § 363.

8. Pursuant to the above-referenced Pre-Petition Deed, and all above-referenced loan documents, the Bank and the Debtor stipulate and agree the Bank’s Real Property Lien is a valid, binding on the Debtor, enforceable, properly perfected, second-priority security interest in the Real Property, the proceeds of which constitute cash collateral within the provisions of 11 U.S.C. § 363.

9. The Bank and the Debtor stipulate and agree the Prepetition Lien and the Real Property Lien are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

10. The Debtor and the Bank further stipulate and agree that as of the Petition Date (i) the Bank Claim constitutes legal, valid, and binding obligations of the Debtor, enforceable in accordance with the terms of the Note, Security Agreement, Pre-Petition Deed, and any other loan documents evidencing the Bank Claim, (ii) no offsets, defenses, or counterclaims to any of the Bank Claim exists, and (iii) no portion of the Bank Claim is subject to avoidance,

recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law and (iv) the Bank Claim constitutes an allowed secured claim.

11. Pursuant to the above-referenced documents, the Bank is entitled to adequate protection of its interests in the Collateral and the proceeds thereof as provided for herein.

12. The Bank and the Debtor agree that the Bank is entitled to an administrative claim pursuant to § 507(b) of the Bankruptcy Code to the extent, if any, that the adequate protection for Debtor's use of the Collateral and Bank Cash Collateral provided herein proves to be inadequate.

13. The Bank and the Debtor agree that as further adequate protection for the allowance of Debtor's use of Cash Collateral, the Debtor will takes steps as necessary to ensure that the Maike Policy and Ali Policy remain in full force and effect and name the Bank as the sole beneficiary to the full extent of its claim.

14. On October 19, 2017, this Court entered Interim Order Authorizing Debtor to Use Cash Collateral; and Notice of Final Hearing on Motion for Authority to Use Cash Collateral [Dkt. 17] which allowed Debtor to use the Bank Cash Collateral on an interim basis.

NOW, THEREFORE, in consideration of the foregoing stipulations of Debtor and the Bank, this Court ORDERS, ADJUDGES, AND DECREES, as follows:

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334, this matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (M) and (O) involving matters under, *inter alia*, 11 U.S.C. § 363, and venue is proper in this Court pursuant to 28 U.S.C. § 1409.

2. Adequate notice of Debtor's Motion and hearing with respect thereto has been given pursuant the Federal Rules of Bankruptcy and 11 U.S.C. § 102.

3. Debtor is granted limited use of cash collateral as follows:
 - a. All the following which Debtor had on hand as of the Petition Date or has received since the Petition Date, including all products and proceeds of (i) all proceeds from Collateral (as that term is defined above) and (ii) all funds in all bank accounts, all of which constitute cash collateral, which shall be deposited into the operating accounts maintained at SunTrust Bank (*****1152) and Bank of America (*****0919), (the "Operating Account"). The property described in the preceding subparagraphs (i) and (ii) and all proceeds thereof shall hereafter be referred to collectively as "Bank Cash Collateral." All Bank Cash Collateral which Debtor receives subsequent to the entry of this Order shall also be deposited into the Operating Account. No money shall be withdrawn by Debtor from the Operating Account except as expressly provided hereinafter in this Order.
 - b. The Bank is hereby authorized and directed to liquidate the C.D. and apply the closing balance of the C.D. towards the Bank Claim.
 - c. Unless an extension is otherwise agreed to in writing by Debtor and the Bank, Debtor is authorized to use Bank Cash Collateral pursuant to the terms of this Order during the period of October 2, 2017, and ending on the earliest to occur of (i) any order of this court modifying said authority;(ii) a Default; or (ii) the close of business on March 31, 2018.

- d. Absent the prior express consent of the Bank, the use of any Bank Cash Collateral shall be restricted to payment, from the Operating Account, in the ordinary course of business, only of the expenses specified in the budget attached hereto as Exhibit A (the “Budget”); provided, however, Debtor is permitted to exceed any line item in the Budget by no more than fifteen (15%) percent without prior approval of the Bank. To exceed any line item in the Budget by more than fifteen (15%) percent or pay an expense not previously specified in the Budget, Debtor is required to submit to the Bank a request in writing (a “Variance Request”) specifying the amount, identifying the payee, and reason for incurring the expense. Unless objected to in writing within five (5) business days from Debtor’s delivery of a Variance Request, Debtor shall be allowed to pay for the expense specified in the Variance Request.
- e. Debtor has represented that the Budget represents only post-petition expenses that must be paid to avoid immediate and irreparable harm and to assist Debtor with its restructuring efforts.
- f. For purposes of the Order, under no circumstance shall Debtor:
 - i. use any Bank Cash Collateral for any purpose other than those authorized by this Order and as outlined in the Budget without the written consent of the Bank;
 - ii. use Bank Cash Collateral to the extent that expenses listed in the Budget are not actually incurred; or

- iii. unless specifically allowed by the Budget, pay any money representing Bank Cash Collateral to, or for the benefit of, any attorney, accountant, affiliate of Debtor or Debtor's estate without prior written consent of Bank and upon motion and order of the Court.
4. Unless otherwise agreed by the Debtor and the Bank, Debtor shall:
 - a. Every month until March 2018, Debtor shall furnish to the Bank and counsel for the Bank,: (i) a rolling income and expense statement broken down in the same categories as the Budget, comparing actual income and expenses received and paid to date to the projected income and expenses.
5. Debtor shall not be allowed to use the Bank's Cash Collateral to challenge the validity or priority of the Bank's liens or claims, or, otherwise, sue the Bank during the pendency of the case.
6. Each of the following shall be a Default under this Order:
 - a. Failure of Debtor to abide by the terms, covenants, and conditions of this Order or the Budget;
 - b. The use of Bank Cash Collateral for any purpose not authorized by this Order;
 - c. Failure of Debtor to pay fees of the U.S. Trustee;
 - d. Appointment of a Chapter 11 trustee;
 - e. Conversion of this case to Chapter 7;

- f. Failure of Debtor to have the Maike Policy and Ali Policy maintained in full force and effect, naming the Bank as a primary beneficiary to the extent and amount owed by the Debtor to the Bank; or
- g. Failure of the Debtor to consent to and support the entry of an order on the Bank's motion to lift the automatic stay to allow enforcement of the Bank's security interest in excess Collateral.

7. If a Default under this Order exists or occurs, Debtor is prohibited from using the Bank Cash Collateral until further order of this Court or written consent by the Bank.

8. As a condition of Debtor's use of the Bank Cash Collateral and to the same extent of the validity and priority of the pre-petition liens granted to Bank, Debtor is authorized to grant and by this Order shall be deemed to have granted to Bank, as of the Petition Date, a continuing, additional first-priority replacement lien (and a second-priority replacement lien for the Real Property) and security interest in and to all of the now existing or hereafter arising or after-acquired assets of Debtor relating to the Collateral or Bank Cash Collateral, and in the Operating Account, to secure Debtor's obligations to Bank in accordance with section 361 of the Bankruptcy Code.

9. In addition to the liens and security interests granted to the Bank pursuant to this Order, the Bank shall be entitled to an administrative claim pursuant to § 507(b) of the Bankruptcy Code to the extent, if any, that the adequate protection for Debtor's use of the Collateral and Bank Cash Collateral provided herein proves to be inadequate.

10. The Bank shall have the full protection of section 363(m) of the Bankruptcy Code with respect to the debts, obligations, liens, and security interests created or authorized by this

Order in the event that this Order or any other authority contained or created herein is vacated, reversed, or modified on appeal or otherwise by any court.

11. The Bank shall have the right to inspect Debtor's books and records, including, without limitation, checks, drafts, and wire transfers reflecting receipt and disposition of the Bank Cash Collateral, at Debtor's offices or wherever Debtor's records are maintained. The Bank or its agents shall also have the right to inspect the Collateral, Debtor's business operations and place of business and conduct any appraisals thereof.

12. Where required, notice shall be provided to Debtor and Debtor's counsel via email, facsimile, U.S. Mail or overnight delivery service as follows, and shall be effective when deposited or transmitted:

Debtor:

Rizvi & Company, Inc,
1280 Bridgewater Walk
Snellville, GA 30078

with a copy to:

William A. Rountree, Esq.
Rountree & Leitman LLC
Building B Suite 100
2800 North Druid Hills Road
Atlanta, GA 30329

13. Bank's consent to this Order shall not constitute a waiver of any of the Bank's rights whatsoever and nothing contained herein shall be deemed a waiver of the right of the Bank to:

- a. Consent or decline to consent to any extension of the use of Bank Cash Collateral; or

- b. Pursue any other right or remedy available to Bank under the Bankruptcy Code or otherwise, including, without limitation, the right to seek, or to oppose, relief from the automatic stay, the right to seek, or to oppose, adequate protection, or any rights on account of any prior or prospective unauthorized uses of Bank Cash Collateral.

14. The Bank does not consent to and the Debtor shall not charge, lien, assess or claim against the Collateral under Section 506(c) of the Code or otherwise and no such consent shall be implied from any other action, inaction, or acquiescence by the Bank.

15. Any interested party may move for a modification or reconsideration of this Order at any time, provided however, the reversal or modification on reconsideration or on appeal of any provision of this Order shall not affect the validity of any priority or lien granted to the Bank hereunder, unless the Bank expressly consents to such modifications. The consent of the Bank to Debtor's use of Bank Cash Collateral after the effective date of such modifications shall be deemed withdrawn and no Bank Cash Collateral may thereafter be used by Debtor unless otherwise authorized by the Court pursuant to 11 U.S.C. § 363(c)(2) after notice and a hearing and the provision of adequate protection to the Bank.

16. Notwithstanding Bankruptcy Rule 4001(a), this Order is not stayed and shall be effective upon the date of its entry on the docket.

17. The automatic stay of section 362 of the Bankruptcy Code is hereby modified to permit the performance of each and every right and obligation set forth in this Order.

18. Debtor's ability to use Bank Cash Collateral under this Order shall terminate on March 31, 2018 at 5:00 p.m., unless otherwise consented to in writing by the Bank, or entry of

additional order regarding cash collateral.

19. Debtor is authorized, and hereby ordered, to pay quarterly fees to the United States Trustee.

20. This Order shall be effective and final as to the Debtor immediately upon entry.

[END OF ORDER]

Prepared, submitted and consented to:

By: /s/ J. William Boone
J. William Boone
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Doroteya N. Wozniak
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Counsel for Signature Bank of Georgia.

By: /s/ William A. Rountree
William A. Rountree
Georgia Bar No. 616503
Rountree & Leitman LLC
Building B Suite 100
2800 North Druid Hills Road
Atlanta, GA 30329
Counsel for Debtor

See attached Distribution List

Exhibit A

Rizvi & Company Inc.
6 Month Budget

	Growth					
	Oct-17*	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18
Sales	\$25,778	\$25,113	\$23,964	\$22,898	\$24,955	\$26,668
COGS	\$5,108	\$4,826	\$5,010	\$4,351	\$5,338	\$5,698
GM	80.2%	80.8%	79.1%	81.0%	78.6%	78.6%
kitchen	\$3,629	\$3,137	\$3,852	\$3,452	\$3,852	\$4,112
labor hr	\$6,262	\$4,000	\$1,292	\$1,342	\$1,342	\$1,942
labor mgmt	\$3,000	\$2,833	\$3,333	\$3,333	\$3,333	\$3,333
Payroll tax	\$1,547	\$1,097	\$933	\$894	\$938	\$1,126
Total labor	\$14,438	\$11,067	\$9,410	\$9,021	\$9,465	\$10,514
Rent	\$3,900	\$5,000	\$3,900	\$3,900	\$3,900	\$3,900
Repairs	\$204	\$152	\$165	\$156	\$173	\$220
Utilities	\$623	\$800	\$800	\$800	\$800	\$800
Delivery	\$800	\$700	\$900	\$900	\$1,247	\$1,364
supplies	\$235	\$226	\$237	\$221	\$250	\$267
subscription	\$0	\$250	\$250	\$250	\$250	\$250
fees & lns	\$142	\$125	\$125	\$125	\$125	\$125
Marketing	\$327	\$100	\$200	\$200	\$390	\$399
Misc	\$0	\$100	\$237	\$228	\$250	\$267
Opex	\$20,668	\$18,520	\$16,223	\$15,801	\$16,849	\$18,105
Op Margin	80.2%	73.7%	67.7%	69.0%	67.5%	67.9%
GA Dept of Rev and IRS	\$2	\$1,767	\$2,732	\$2,746	\$2,768	\$2,866
US trustee fees	\$1,214	\$1,214	\$1,714	\$1,714	\$1,714	\$1,714
Legal Fees	\$0	\$215	\$215	\$215	\$215	\$215
SB loan	\$0	\$300	\$800	\$800	\$800	\$800
Net income	\$2	\$38	\$3	\$17	\$39	\$137
	0.0%	0.1%	0.0%	0.1%	0.2%	0.5%

Monthly FB orders 150
 FB AUR \$58.00
 weekly bakery sale 3500

170
 \$58.00
 3800

170
 \$58.00
 3600

170
 \$58.00
 4100

200
 \$58.00
 4200

* prorated for 17 days as of 10/13/2017

DISTRIBUTION LIST

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