

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§	Chapter 11
	§	
MACK INDUSTRIES, LTD.,	§	Case No.: 17-9308
	§	Hearing: May 4, 2017
	§	10:30 a.m.
FEIN: 36-4429350,	§	
	§	
Debtor.	§	Hon. Carol A. Doyle

**MOTION FOR ORDER (I) AUTHORIZING THE DEBTOR TO
USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION;
(III) SCHEDULING A FINAL HEARING; AND (IV) GRANTING RELATED RELIEF**

Mack Industries, Ltd., debtor and debtor in possession herein (the “Debtor”), for its “Motion for Order (I) Authorizing The Debtor To Use Cash Collateral; (II) Granting Adequate Protection; (III) Scheduling A Final Hearing; and (IV) Granting Related Relief” (the “Motion”), respectfully states as follows.

1. The Debtor filed this voluntary chapter 11 case (the “Case”) on March 24, 2017 (the “Petition Date”).
2. The Debtor, in the ordinary course of its business, purchases single family homes and condominiums, rehabilitates them as needed, and then resells the properties to purchasers, most of whom intend to reside in the homes.
3. Amalgamated Bank of Chicago (“ABOC”) has a claim against the Debtor under five separate revolving lines of credit (the “Loans”) which, as of the Petition Date, were in the aggregate principal amount of Five Million, One Hundred Thirty-Four Thousand Nine Hundred Twenty-Three Dollars (\$5,134,923.00).

4. The principal amount of each Loan as of the Petition Date was:

Loan ending in -0101	\$ 424,800.00
Loan ending in -0201	\$ 3,414,925.00
Loan ending in -0301	\$ 600,000.00
Loan ending in -9004	\$ 516,687.00
Loan ending in -9005	<u>\$ 178,511.00</u>
Total:	\$ 5,134,923.00

5. The Debtor, for itself, and without binding any other present or future party in interest to this case, stipulates and agrees with ABOC that:

- a. Each Loan is secured by recorded mortgages and assignments of leases and rents (collectively, the “Mortgage Documents”) upon two or more individual residences or condominium units;
- b. Exhibit A attached hereto contains a summary of the properties (identified by address and by PIN number) which secure each Loan (collectively, the “Residences”);
- c. Except as otherwise stated in Exhibit A for the Loan ending in -0301, the Mortgage Documents confer on ABOC a perfected first priority mortgage lien in each of the Residences and a first priority assignment of any leases or rents generated by those properties; and
- d. ABOC’s liens on the Residences which secure the Loan ending in -0301, which are condominium properties, are junior only to the liens of Cook County (for general taxes) and a senior mortgage in the approximate principal amount of \$1,086,032.00.
- e. The aggregate value of the real properties which secure each of the Loans described in Exhibit A hereto, including without limitation the condominium

properties which secure the Loan ending in -0301, exceed by a comfortable margin the amount which is due to ABOC under each Loan.

6. Ordinarily, loan documentation which evidences and secures a lender's secured claim in a bankruptcy case is attached as exhibits to an adequate protection motion like this one. To do so in this case, where the Loans are evidenced by five notes and business loan agreements, 31 mortgages and 31 assignments of leases and rents would be impractical. However, ABOC has transferred true images of the notes, loan agreements, mortgages and assignments of leases and rents which evidence and secure its secured claim against the Debtor to a data disc which ABOC will make available to the Court (if requested) and the United States Trustee and any party in interest to this case who requests a copy in writing of ABOC's counsel: Bruce Dopke, Stahl Cowen Crowley Addis LLC, 55 W. Monroe Street, 12th Floor, Chicago, IL 60603.

7. The Debtor has asked ABOC for permission to sell the Residences and use part of the cash proceeds generated by those sales to pay costs of administration.

8. The Debtor has an obligation under 11 U.S.C. §363 and other provisions of the Bankruptcy Code and Rules to provide ABOC with adequate protection for the use of the Bank's collateral including its cash collateral.

9. The Debtor has offered to adequately protect the Bank's Claim, in the following form (the "Adequate Protection Offer"):

- a. The Debtor, on an interim basis, solely for itself, and after a final hearing on the Motion, for itself and the estate, stipulates and agrees that the liens which secure each of the Loans are valid and perfected and, with the sole exception of the liens which secure the Residences which secure the Loan ending in -0301, are first priority liens upon the real estate, leases and rents of those Residences identified in Exhibit A to this Motion.
- b. The Debtor, on an interim basis, solely for itself, after after a final hearing on the Motion, for itself and the estate, stipulates and agrees that the liens which secure the

Loan ending in -0301 are second priority liens upon the real estate, leases and rents of those Residences identified in Exhibit A to this Motion.

- c. Unless ABOC agrees otherwise in writing, the Debtor shall segregate any and all rents which are generated by the Residences, and promptly upon receipt thereof, the Debtor shall turnover any such rents to ABOC.
- d. The Debtor shall purchase and maintain in force insurance on each of the Residences of the type and coverage which are reasonably acceptable to ABOC, under policies of insurance which name ABOC as a loss payee for each such property, and shall provide proof of such insurance coverage to ABOC in a form which is reasonably satisfactory to ABOC.
- e. The Debtor shall maintain each of the Residences and maintain utility service for all such properties.
- f. The Debtor shall represent to the Court that prior to the Petition Date, the Debtor purchased and later resold properties such as the Residences in the ordinary course of its business.
- g. The Court, based on the Debtor's representations and other appropriate proof, shall find that the Debtor, consistent with the provisions of 11 U.S.C. §1108, may continue to sell the Residences in the ordinary course of its business ("Sales").
- h. From each Sale, ABOC shall receive an amount equal to (i) 100% of the principal amount due on the Loan which is secured by the Residence to be sold (unless ABOC agrees in writing to accept a lesser sum at closing); (ii) interest which has accrued on the Loan which is secured by the Residence which is to be sold; and (iii) an amount equal to the allowed amount of any allowance made to ABOC under 11 U.S.C. §506(b) for fees, expenses and costs (including professional fees and costs) which are due to the Bank under the terms of the agreements which evidence the Loans (collectively, the ABOC Payoff"). In addition, ABOC may make an application of the proceeds of the sale of one Residence which was subject to its mortgage in a manner similar to that described in the preceding paragraph.
- i. ABOC shall have the right to monitor all closings, and send officers/attorneys to the closings if it so chooses (and the Debtor agrees to provide ABOC with at least 5 business days advance notice of any future closings).
- j. The Debtor shall promptly provide ABOC with information concerning its operations and its maintenance of the Mortgaged Properties as the Bank may request.
- k. The Debtor shall request and the Court's Order approving the Motion shall specifically authorize title officers and companies (collectively, "Title Officers") to close future sales of each of the Residences which are identified in Exhibit A attached to this Motion.

- l. ABOC shall apply rents and sale proceeds of the Residences which it may receive from the Debtor first to the principal amount of the Loan secured by the Residence which is sold (or which generated the rents), and then to interest on that Loan, and then to other amounts allowable to ABOC with respect to that Loan under 11 U.S.C. §506(b). This paragraph shall apply to any rents or proceeds of sale which ABOC has, from and after the Petition Date, has received from the Debtor.
- m. Parties in interest shall have 90 days from the entry date of the Interim Order on the Motion to object to the validity, priority and extent of the Bank's claim and the liens which secure that claim, and absent such timely objections, the principal amount of the Bank's claim shall be allowed in the stipulated amount as of the commencement day of this Case (subject to reduction for proceeds received) as stated in Exhibit A to this Motion, and ABOC's liens on the Residences which secure each of the Loans except for the Loan ending in -0301 shall be deemed valid, first priority and fully enforceable (and the liens which secure the loan ending in -0301 shall be deemed a valid, second priority and fully enforceable lien upon the Residences which secure that Loan.
- n. The Debtor is authorized to use, as cash collateral (as defined in Section 363 of the Bankruptcy Code), the cash proceeds of the Sale of the Residences to pay or authorize Title Officers to pay to ABOC on the Debtor's behalf, the ABOC Payoff Amount for each such Sale, and the Debtor may use any remaining proceeds of such sales to pay any allowed claims for costs of administration.
- o. As adequate protection for any diminution in the value of the collateral which secures ABOC's claim which results from the Debtor's use thereof after the Petition Date ("Diminution"), and solely to the extent of any Diminution, ABOC shall have a valid, perfected, and enforceable replacement lien and security interest (the "Replacement Lien") in (i) all assets of the Debtor existing on or after the Petition Date of any kind or nature whatsoever within the meaning of Section 541 of the Bankruptcy Code, whether acquired or arising prepetition or postpetition, together with all proceeds, rents, products, and profits thereof (the "Supplemental Collateral") provided, however, for the purposes of this Interim Order, Supplemental Collateral shall not include causes of action under Chapter 5 of the Bankruptcy Code and proceeds thereof. The Replacement Lien granted to ABOC shall be junior to all existing liens on the Supplemental Collateral. Notwithstanding any other provision hereof, no Diminution shall occur or be deemed to occur as a result of a use of cash collateral which pays or satisfies (a) any lien on the Collateral which is senior to the Lien, including without limitation liens for general taxes due to Illinois counties; and (b) the payment of the statutory fees of the United States Trustee pursuant to 28 U.S.C. §1930 and the fees of the Clerk of this Court.
- p. The approval of the Adequate Protection Offer by the Court shall be sufficient and conclusive evidence of the validity, extent, enforceability, and perfection of the Replacement Lien granted to ABOC, whether or not ABOC elects to file or record

financing statements or any other documents that may otherwise be required under federal or state law in any jurisdiction, or to take such other steps as may otherwise be required to obtain, evidence, or perfect such liens under applicable law; provided, however, that upon the request of ABOC, the Debtor shall execute such other documents as may be reasonably requested to evidence and perfect such liens; that ABOC may, in its sole discretion, but shall not be required to, file a certified copy of the Final Order which approves this Motion in any filing or recording office in any jurisdiction in which the Debtor has real or personal property; that the Debtor is authorized and directed to execute, or cause to be executed, all such financing statements or other documents upon ABOC's reasonable request; and that such filing or recording shall be accepted and shall constitute further evidence of perfection of ABOC's liens and security interests. No obligation, payment, transfer, or grant of security under the interim or final orders which approve this Motion (other than by court order in an appeal from this Interim Order), shall be restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any otherwise applicable state law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

- q. As additional adequate protection of ABOC's security interests in the Residences and their proceeds, the Debtor shall allow ABOC and its professionals and designees reasonable access, during normal business hours and on not less than 24 hours' notice, to the premises of the Debtor in order to conduct appraisals, analyses, and/or audits of the Residences and the Debtor's accounts and records concerning the Residences, and shall otherwise reasonably cooperate in providing any other financial information reasonably requested by ABOC for this purpose. The Debtor shall provide to ABOC such other reports and information as the Bond Trustee may reasonably request from time to time.
- r. The Debtor's authority to use ABOC's cash collateral shall terminate without any further action by this Court, without prior notice, upon the occurrence of any of the following (also a "Termination Event"):
 - (i) the Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;
 - (ii) the earlier of (y) the date of the entry of an order of this Court appointing a Chapter 11 trustee or an examiner with enlarged powers (beyond those set forth in Sections 1104(c) and 1106(a)(3) and (4) of the Bankruptcy Code) for the Debtor; or (z) the date the Debtor files a motion, application, or other pleading consenting to or acquiescing in any such appointment;
 - (iii) this Court suspends the Case under Section 305 of the Bankruptcy Code;

- (iv) an order is entered in the Case over the objection of ABOC approving financing pursuant to Section 364 of the Bankruptcy Code that would grant an additional security interest or a lien on any Residence or the leases and rents of any Residence which is senior or equal to the liens of ABOC on such property;
- (v) an adversary proceeding or contested matter is commenced or joined by the Debtor challenging the amount, validity, enforceability, priority, or extent of ABOC's liens, security interests, or claims;
- (vi) the Court fails to enter a Final Order allowing the Motion, on terms acceptable to ABOC, on or before May 31, 2017.

Upon the occurrence of a Termination Event described in this paragraph, the Debtor's authority to use ABOC's cash collateral hereunder shall immediately and automatically terminate. ABOC shall have the power to waive any Termination Event set forth in this paragraph in its sole discretion without further order of the Court.

- s. Nothing herein shall constitute a waiver, release or modification of the rights of ABOC to assert a claim under Sections 364(c) and 507(b) of the Bankruptcy Code.
- t. The Motion shall be deemed to constitute a request as of the Petition Date by ABOC for relief from the automatic stay with respect to the Residences for purposes of any request for adequate protection granted hereunder.
- u. The automatic stay imposed by Section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit ABOC to take any action which the Court expressly authorizes it to take in any interim or final order entered with respect to the Motion.
- v. If any or all of the provisions of any interim or final order entered on the Motion are, at any time, modified, vacated or stayed, such stay, modification, or vacation shall not affect the validity, extent, priority, and enforceability of any lien, priority, or other benefit conferred under such orders prior to such stay, modification, or vacation.
- w. Nothing herein shall (i) preclude ABOC from seeking any other relief that it may deem appropriate, including relief from the automatic stay; or (ii) prevent ABOC from asserting at some later time that its liens and security interests in the Residences or the leases and rents of such properties are not being adequately protected.
- x. The rights and obligations of the parties under the Adequate Protection Offer and any order entered with respect thereto (i) shall be effective and enforceable as of

the Petition Date; and (ii) shall be deemed effective immediately and, for the avoidance of doubt, Bankruptcy Rule 6004(h) shall not apply hereto. If any or all of the provisions of an interim or final order which grants the Motion are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur, or stay shall not affect (i) the validity, extent, priority, or enforceability of any obligations incurred prior to the actual receipt of written notice by ABOC of the effective date of such reversal, modification, vacatur, or stay, or (ii) the validity, extent, or enforceability of the liens and claims granted hereunder.

- y. The Debtor shall, within two (2) business days after entry of the interim and final orders entered on the Motion, mail a notice of the entry of such orders, together with a copy of the Motion and notice of the Final Hearing, to: (i) the United States Trustee for the Northern District of Illinois; (ii) the United States Attorney for the Northern District of Illinois; (iii) counsel for ABOC; (iv) the Debtor's other secured creditors; (v) the Internal Revenue Service; (vi) the Illinois Department of Revenue; (vii) the holders of the twenty largest unsecured claims against the Debtor; and; and (viii) those who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002 (the "Notice Parties").
- z. A final hearing to consider the Motion will be held on May 24, 2017 at 10:30 a.m. before the Honorable Carol A. Doyle, Courtroom 742 in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois. Any party desiring to object to the relief sought in the Motion on a final basis shall file a written objection with the Court on or before Monday, May 22, 2017 at 4:30 p.m. prevailing Central Time and shall contemporaneously serve that objection on the Notice Parties so as to be received by such parties on or before such date. If no party in interest files an objection to this Order or, if objection(s) are filed but are overruled by the Court, then (a) the facts stipulated to by the Debtor as a part of the Adequate Protection Offer shall be deemed to be binding on all present and future parties in interest to this case; (b) the foregoing provisions of the Adequate Protection Offer shall be approved on a final basis; and (c) the relief requested by the Debtor in this Motion and granted by the Court on an interim basis or, after the final hearing on the Motion, on a final basis, shall likewise be approved and become immediately effective.

10. On an interim basis, and prior to the final hearing on the Motion, in order to prevent immediate and irreparable harm to the Debtor, the estate and those persons who have contracted to purchase Residences from the Debtor (which are identified below) for which the closings have been scheduled or are about to be scheduled, the Debtor requests that the Court authorize the Debtor and any Title Officers who may have responsibility for closing any such sale to close sales of those Residences identified below to consumers who have contracted to

purchase the Residences in the ordinary course. The Debtor further requests that the Debtor, Title Officers and ABOC be given leave by this Court (and corresponding relief from the automatic stay) to participate in such Sales and distribute or receive proceeds of sale as is usual and customary for transactions of that kind. The Debtor further requests that ABOC be granted leave (and relief from the automatic stay) to allow ABOC to participate in such closings and give payoff letters or information and other consents to facilitate the closings, and release ABOC's lien rights, as appropriate, and receive and apply any ABOC Payoff payments in a manner consistent with the Adequate Protection Offer.

Residences with offers which are ready to close in the next two weeks:

A) 19000 Hamlin, Flossmoor, Illinois.

B) 3304 Calwagner Street, Franklin Park, Illinois.

Debtor represents that none of these purchasers are related to the Debtor or anyone associated with the Debtor.

11. To the extent that any aspect of section 363(b) of the Bankruptcy Code applies to the relief requested in this Motion, the Debtor seeks waiver of the notice requirements of Bankruptcy Rule 6004(a), the restriction imposed by Bankruptcy Rule 6003(b), and the fourteen day stay established by 6004(h). For the reasons stated above, the requested relief should be granted in order to avoid immediate and irreparable harm to the Debtor, its estate, creditors and parties-in-interest.

WHEREFORE, Mack Industries, LTD respectfully requests that this Court enter an order authorizing:

(i) on an interim basis, the implementation of the Adequate Protection Offer to the extent contemplated by paragraph 10 above;

(ii) after notice to parties in interest, the implementation of the Adequate Protection Offer on a final basis;

(iii) the entry of an order which finds that the Debtor may, in the ordinary course of its business, contract to sell Residences and close sales of those Residences; and

(iv) granting such other relief as the Court deems appropriate under the circumstances.

MACK INDUSTRIES, LTD, Debtor and
Debtor In Possession

By: /s/ Eric Zelazny
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