

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re

CASHMAN EQUIPMENT CORP.,¹

Debtor

Chapter 11

Case No. 17-12205-MSH

Jointly-Administered

SEVENTH INTERIM ORDER GRANTING
MOTION FOR AN ORDER (1) AUTHORIZING THE USE OF
CASH COLLATERAL, (2) GRANTING REPLACEMENT
LIENS, (3) SCHEDULING A HEARING ON THE FURTHER USE
OF CASH COLLATERAL, AND (4) GRANTING OTHER RELIEF

This matter having come before the Court on the *Motion for an Order (1) Authorizing the Continued Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the "Cash Collateral Motion") [doc. no. 370] filed on September 1, 2017, by Cashman Equipment Corp. ("CEC"), Cashman Scrap & Salvage, LLC ("CSS"), Servicio Marina Superior, LLC ("SMS"), Cashman Canada, Inc. ("CCI"), and Mystic Adventure Sails, LLC ("Mystic"), and together with CEC, CSS, SMS and CCI the "Debtors"), the debtors and debtors-in-possession in the above captioned cases; and the Court having considered the Cash Collateral Motion, the *Affidavit of James Cashman in Support of First Day Motions* [doc. no. 12], the objections to the use of Cash Collateral, the evidence submitted, and the arguments of counsel made at the interim hearings held on October 11, 2017 (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy

¹ The Debtors in these jointly administered Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Cashman Equipment Corp. (7969), Cashman Scrap & Salvage, LLC (6088), Servicio Marina Superior, LLC (6919), Mystic Adventure Sails, LLC (2137) and Cashman Canada, Inc. (1296).

Rules 2002, 4001(b), (c), and (d), and 9014 and MLBR 4001-2(b); and the Interim Hearing having been held and concluded; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estate pending a final hearing on the use of cash collateral, and is otherwise fair and reasonable, in the best interests of the Debtors, their estates, and their creditors, and equity holders, and essential for the maximization of the assets of the Debtors' business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING PRELIMINARY FINDINGS:

A. On June 9, 2017 (the "Petition Date"), the Debtors filed voluntary petitions with this Court for relief under chapter 11 of the Bankruptcy Code. The chapter 11 cases filed by the Debtors are referred to herein as the "Cases."

B. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. This Court has jurisdiction over these proceedings, and the persons and properties affected hereby, pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and the standing order of reference codified in LR D, Mass. 201. The Cash Collateral Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. On June 28, 2017, the United States Trustee for the District of Massachusetts (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors' Committee") in the Cases pursuant to Section 1102 of the Bankruptcy Code.

E. The Debtors requested entry of this interim order pursuant to Bankruptcy Rule 4001(b)(2). The Debtors have an immediate need to use the Cash Collateral to, among other

things, preserve and maximize the value of the Debtors' assets, absent which immediate and irreparable harm will result to the Debtors, their estates, and their creditors. The preservation and maintenance of the Debtors' assets and business is necessary to maximize values available for distribution to creditors. Absent the Debtors' ability to use Cash Collateral, the Debtors would not have sufficient available sources of working capital or financing and would be unable to pay their operating expenses (including, without limitation, fuel, port fees, insurance cost, crew and repairs) or maintain their assets (including, without limitation, their fleet of vessels), to the severe detriment of the Debtors' estates and creditors. Accordingly, the relief requested in the Cash Collateral Motion and the terms of this order are (i) critical to the Debtors' ability to maximize the value of their chapter 11 estates, (ii) in the best interests of the Debtors and their estates, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors and their assets. This Order and all of its terms meet the standard for interim relief set forth in MLBR 4001-2(e)(2).

F. The following entities (collectively the "Lenders") may assert liens on the Debtors' property and may have an interest in the Debtors' Cash Collateral: (i) U.S. Secretary of Transportation acting through the U.S. Maritime Administration; (ii) Rockland Trust Company; (iii) Santander Bank, N.A.; (iv) Wells Fargo Equipment Finance, Inc.; (v) Citizens Asset Finance, Inc.; (vi) Banc of America Leasing and Capital, LLC; (vii) U.S. Bank National Association acting through its division U.S. Bank Equipment Finance; (viii) Key Equipment Finance, a division of KeyBank, National Association; (ix) Fifth Third Bank; (x) Radius Bank; (xi) Pacific Western Bank; and (xii) Equitable Bank.

G. Attached to the Cash Collateral Motion is a budget (the "Budget") for the use of Cash Collateral.

H. The Debtors have caused notice of the Cash Collateral Motion and the Interim Hearing to be served by facsimile, email, overnight courier, or hand delivery on the following parties (together with counsel for the Creditors' Committee the "Notice Parties"): (i) the U.S. Trustee; (ii) holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (iii) the Lenders; (iv) the Internal Revenue Service; (v) any other taxing authority with a claim against any Debtor; (vi) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Under the circumstances, the notice given by the Debtors of the Motion and of the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b), (c), and (d) and MLBR 4001-2(b).

I. On June 14, 2017, the Court entered its *Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the "First Interim Order") [doc. no. 56].

J. On July 12, 2017, the Court entered its *Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the "Second Interim Order") [doc. no. 217].

K. On August 14, 2017, the Court entered its *Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the "Third Interim Order") [doc. no. 326].

L. On August 30, 2017, the Court entered its *Fourth Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3)*

Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief (the “Fourth Interim Order”) [doc. no. 364].

M. On September 13, 2017, the Court entered its *Fifth Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the “Fifth Interim Order”) [doc. no. 407].

N. On October 6, 2017, the Court entered its *Sixth Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the “Sixth Interim Order”) [doc. no. 496].

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Cash Collateral Motion.
2. The Cash Collateral Motion is GRANTED on an interim basis as set forth in this order. All objections of any entity to the Cash Collateral Motion in respect of final use or further interim use of cash collateral are preserved in full.
3. The Debtors are authorized to use Cash Collateral in accordance with the Budget through and including October 24, 2017 (the “Interim Period”). Commencing on October 19, 2017, and continuing every two weeks thereafter, the Debtors shall deliver to each Lender and its counsel not later than noon a variance report from the previous two-week period comparing the actual receipts and disbursements of the Debtors with the receipts and disbursements in the Budget. The actual disbursements of the Debtors shall not exceed the aggregate of the total disbursements set forth in the Budget for the Interim Period by more than fifteen percent (15%). No

compensation or reimbursement of expenses for professionals of the Debtors or Committee are authorized to be paid from Cash Collateral absent further order of this Court.

4. For the purposes of Sections 361, 363(e) and 507(b) of the Bankruptcy Code, and as adequate protection to the Lenders for the Debtors' use of Cash Collateral, each Lender is hereby granted a replacement lien (each, a "Primary Replacement Lien") on the same type of post-petition property of the Debtors' estates against which such Lender held a lien as of the Petition Date. Primary Replacement Liens shall maintain the same priority, validity and enforceability as the Lenders' respective pre-petition liens. To the extent that the diminution of any Lender's interest in Cash Collateral after the Petition Date exceeds the value of such Lender's Primary Replacement Lien (including such liens granted pursuant to the First Interim Order, the Second Interim Order, the Third Interim Order, the Fourth Interim Order, the Fifth Interim Order and the Sixth Interim Order), such Lender is granted a lien (a "Supplemental Replacement Lien") on Cash Collateral junior to (a) existing liens as of the Petition Date, (b) Replacement Liens and Primary Replacement Liens granted pursuant to the First Interim Order, the Second Interim Order, the Third Interim Order, the Fourth Interim Order the Fifth Interim Order and the Sixth Interim Order, and (c) Primary Replacement Liens granted pursuant to this Order. Supplemental Replacement Liens granted pursuant to the Second Interim Order, the Third Interim Order, the Fourth Interim Order, the Fifth Interim Order, the Sixth Interim Order and this order shall be *pari passu*. Primary Replacement Liens and Supplemental Replacement Liens shall be recognized only to the extent of the post-petition diminution in value of the Lenders' pre-petition collateral resulting from the Debtors' use of the Cash Collateral.

5. The Replacement Liens and the Supplemental Replacement Liens shall not attach to any avoidance powers held by any of the Debtors or any trustee for the Debtors, including those

avoidance powers set forth in Sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, or to the proceeds of any claims under or actions commenced pursuant to such powers.

6. Commencing on October 19, 2017, and continuing every two (2) weeks thereafter, the Debtors shall provide not later than noon the following reporting to each Lender and counsel for the Creditors' Committee: (a) a report, for the period from October 2, 2017, to October 15, 2017 (and thereafter for each succeeding two (2) week period), on the collection of accounts receivable and charter hire based on which each Lender asserts liens on the collected accounts receivable, (b) a report identifying: which vessel generated accounts receivable during the period from October 2, 2017, to October 15 (and thereafter for each succeeding two (2) week period); which Lender, if any, asserts a lien on such vessel; the operating status of each such vessel; the status of insurances in respect of each such vessel; and (c) if not previously provided, a copy of each Debtors' last monthly operating report submitted to the Office of the United States Trustee. On October 19, 2017, 2017, at 3:00 p.m., and continuing every two (2) weeks thereafter, the Debtors and their advisors shall conduct a case status call with the Committee, the Lenders who wish to participate, and their respective counsel.

7. The Debtors shall account for transfers and accruals among Debtors and with non-Debtor affiliates. No funds shall be transferred by any Debtor to or for the benefit of Debtor James M. Cashman, except amounts in payment of his salary and benefits and reimbursement of reasonable expenses in connection with his employment, that may accrue in the ordinary course after the Petition Date.

8. Nothing in this order shall constitute a waiver by or restrict the right of any Debtor to seek the further use of Cash Collateral.

9. This Court has not been asked to find, and it does not find, that any asserted security interest or lien is valid or perfected. Nothing contained in this order is intended, or shall be deemed, to be a ruling on the extent or validation of any creditor's asserted security interest or lien.

10. The entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) each Lender's right to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection; (b) the rights of each Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of each Lender to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of the Cases, conversion of the Cases to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of each Lender. Any Lender's consent to this Order shall not be deemed an admission of any fact or a waiver of any right. It is acknowledged that each Lender reserves all of its rights under Section 507(b) of the Bankruptcy Code.

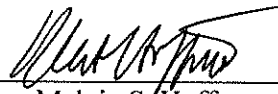
11. A continued hearing on the Debtors' request for entry of an interim order on the use of Cash Collateral is scheduled for October 23, 2017, at 10:00 .m. (prevailing Eastern Time) before this Court (the "Continued Hearing"). Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, by the Court's CM/ECF system, first class mail or other appropriate method of service, a copy of this Interim Order on the Notice Parties. Any further responses or objections to the Cash Collateral Motion shall be made in writing, conform to the applicable Bankruptcy Rules and the local rules of this Court, be filed with

the Bankruptcy Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor, and be served so as to be actually received no later than October 20, 2017, at 4:00 p.m. (prevailing Eastern time) by the following parties: (a) counsel for the Debtors, Harold B. Murphy, Esquire and D. Ethan Jeffrey, Esquire, Murphy & King Professional Corporation, 1 Beacon Street, Boston, Massachusetts; (b) U.S. Trustee (c) counsel for the Creditors' Committee; and (d) those Parties requesting Notice. Parties previously filing a response or objection to the Cash Collateral Motion shall be required to file an additional response or objection pursuant to the preceding sentence only if they wish to state, and solely for the purpose of stating, any new grounds for response or objection.

12. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

13. The Court has and will retain jurisdiction and power to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

BY THE COURT



Hon. Melvin S. Hoffman
Chief United States Bankruptcy Judge

Dated: October 11, 2017