

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)**

In re

CASHMAN EQUIPMENT CORP.,¹

Debtor

Chapter 11

Case No. 17-12205

Jointly-Administered

**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 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”) filed on June 12, 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. The Court having considered the Motion, the *Affidavit of James Cashman in Support of First Day Motions*, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on June 14, 2017 (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy

¹ Joint administration requested. The Debtors in these 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 MBLR 4001-2(b); and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable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 the Final Hearing, and otherwise is 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 Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. As of the date hereof, the United States Trustee for the District of Massachusetts (the "U.S. Trustee") has not yet appointed an official committee of unsecured creditors in the Cases pursuant to section 1102 of the Bankruptcy Code (the "Creditors' Committee").

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 Motion and the terms herein 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 MBLR 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 ("RTC"); (iii) Santander Bank, N.A.; (iv) Wells Fargo, N.A.; (v) Citizens Asset Finance, Inc.; (vi) Bank of America Leasing and Capital, LLC; (vii) U.S. Bank Equipment Finance; (viii) KeyBank N. A.; (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 Motion, the relief requested therein, and the Interim Hearing to be served by facsimile, email, overnight courier, or hand delivery on the following parties (collectively, 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, the relief requested therein, and of the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b), (c), and (d) and MBLR 4001-2(b).

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. Any objections to the Cash Collateral Motion to the extent not withdrawn or resolved are hereby overruled.
3. The Debtors are authorized to use Cash Collateral in accordance with the Budget through and including July 10, 2017 (the “Interim Period”). Commencing two weeks from the commencement of the Interim Period and continuing every two weeks thereafter, the Debtors shall deliver to each Lender and its counsel 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%).

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, the Lenders are granted replacement liens (the "Replacement Liens") on the same types of post-petition property of the Debtors' estates against which the Lenders held liens as of the Petition Date. The Replacement Liens shall maintain the same priority, validity and enforceability as the Lenders' respective pre-petition liens. The 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 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 July 7, 2017, and continuing thereafter on the fifteenth (15th) day of each successive month, the Debtors shall provide the following reporting to each Lender: (a) a report 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 month in question; 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) a copy of each Debtors' monthly operating report submitted to the Office of the United States Trustee.

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.

11. A continued hearing on the Debtors' request for entry of the Final Order is scheduled for July 10, 2017, at 2:00 p.m. (prevailing Eastern Time) before this Court. Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, by first class mail or other appropriate method of service, a copy of this Interim Order on the Notice Parties. Any responses or objections to the 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 July 7, 2017, at 12:00 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 and (c) those Parties requesting Notice. Not less than five (5) days before such deadline, the Debtors shall circulate to each Lender's counsel a proposed form of final order for relief under the Cash Collateral Motion.

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. Retention of Jurisdiction. 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


United States Bankruptcy Judge

Dated: June 14, 2017