

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

)	
In re)	
H N HINCKLEY & SONS, INC.,)	Chapter 11
)	Case No. 18-10398-JNF
Debtor.)	
)	

DEBTOR’S EMERGENCY MOTION TO USE CASH COLLATERAL
(Emergency Hearing Requested on or before Thursday, February 8, 2018)

H N Hinckley & Sons, Inc., the debtor and debtor-in-possession herein (the “Debtor”), hereby moves, pursuant to § 363 of Title 11 of the United States Code (the “Bankruptcy Code”) and MLBR 4001-2, that this Court enter an order authorizing the Debtor to use cash collateral arising from the Debtor’s operation of its business through April 7, 2018, up to a maximum of \$142,600.00. In support of its motion, the Debtor states as follows:

1. On February 6, 2018 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code.
2. The Debtor continues to operate its business and manage its affairs as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.
3. Established in 1924, the Debtor is a retail supplier of lumber, hardware, and building materials on the Island of Martha’s Vineyard, Massachusetts. The Debtor operates its business at 61 Beach Road, Tisbury, MA (the “Real Estate”), and the Debtor is the owner of the Real Estate.
4. The Debtor has a seasonal business, both because of the time of year in which lumber and building material are usually sold and the time of year in which Martha’s Vineyard is most

populated. February is the worst month for sales. March is not much better. The Debtor can expect to do no better than essentially break even in February and March.

5. The Debtor has granted a lien on all of its personal property to Martha's Vineyard Savings Bank (the "Bank"). Thus its receipts from cash sales, credit card sales, collection of receivables, and contract rights all constitute cash collateral. As of November 15, 2017, the amount of the obligations secured by the Bank's lien, according to the Bank, was \$1,941,646.83. The Debtor has also granted a first mortgage on the Real Estate to the Bank. According to an appraisal obtained by the Debtor, as of July 11, 2017 the "as is" fair market value of the Real Estate was \$2,750,000.00.

6. The Massachusetts Department of Revenue (the "DOR") and the Internal Revenue Service (the "IRS") have recorded, junior to the Bank, notices of tax lien against the Debtor. The Debtor understands that as of January 19, 2018, the amount of tax liens asserted by the DOR totaled \$1,096,208.91 and the amount of tax liens asserted by the IRS totaled \$2,495,881.51. As a result the DOR and the IRS may assert liens in the Debtor's cash collateral junior to the lien of the Bank.

7. The obligations owed by the Debtor to the Bank also have been secured by a second mortgage on the residence of the Debtor's president Wayne M. Guyther III at 9 Tiffany Lane, Oak Bluffs, Massachusetts, which the Debtor believes has a fair market value of \$900,000 and is subject to a first mortgage of \$260,000. The obligations owed by the Debtor to the Bank have been further secured by a first mortgage on real estate owned by the estate of the late Wayne M. Guyther Jr. at West William Street, Tisbury, Massachusetts (the directors and shareholders of the Debtor constitute the heirs of Wayne M. Guyther, Jr.) that is currently under agreement to be sold

to the Town of Tisbury (subject to approval at a meeting scheduled in April) for \$675,000 (less unpaid property taxes of approximately \$40,000).

8. The foregoing demonstrates that, even without consideration of any cash collateral or indeed any personal property, and based only on its real estate collateral, the Bank is vastly oversecured. For that reason the Debtor asserts that no adequate protection payment to the Bank is necessary. As adequate protection for the use of cash collateral, the Debtor proposes that the Bank (and the DOR and the IRS) be granted replacement liens in all postpetition personal property of the Debtor, of the same scope, validity, and priority as the prepetition liens.

9. The cash collateral is to be used to permit the Debtor's business to continue to operate, on what is anticipated to be a break even basis, over the next nine weeks. Attached hereto as Exhibit A is a budget setting forth the anticipated amount of cash collateral to be used and the specific purposes for its use.

10. In order to avoid immediate and substantial harm to the Debtor's business, the Debtor seeks interim approval to use cash collateral on an emergency basis. The initial use of cash collateral by the Debtor will be almost exclusively for insurance, payroll, and taxes. First, the Debtor has general liability insurance but is in the process of getting property insurance and will need to pay this week to acquire such insurance. Second, the Debtor employs a total of 12 employees. The Debtor pays its employees every Friday for work performed the week ending on the previous Saturday. Thus the employees will be owed wages on February 9, 2018. Uninterrupted payment of the wages owed to its employees is necessary for the continued operation of the Debtor's retail business, and thus critical to the Debtor's effort to maintain the going concern value of its assets and business. A failure to make such payments would be catastrophic to the Debtor's relationship with its employees.

11. The Debtor submits that its proposed use of cash collateral is in the best interests of the Debtor, its creditors, and all parties in interest, and will enable the Debtor to continue to operate its business in the ordinary course and without disruption.

12. Because the first expenses that are the subject of this motion are an insurance binder and a payroll due to be paid on February 9, 2018, the Debtor requests an emergency hearing on or before February 8, 2018.

WHEREFORE, the Debtor respectfully requests that this Court issue an order:

1. Authorizing the Debtor to use cash collateral arising from the Debtor's operation of its business through April 7, 2018, up to a maximum of \$142,600.00;
2. Granting the Bank, the DOR, and the IRS replacement liens in all postpetition personal property of the Debtor, of the same scope, validity, and priority as the prepetition liens, as adequate protection for the use of cash collateral; and
3. Granting such other and further relief that this Court deems just and necessary.

Respectfully submitted,

H N HINCKLEY & SONS, INC.,

By its counsel,

/s/ Adam J. Ruttenberg

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Dated: February 6, 2018

CASH FLOW PROJECTIONS
2/10/18 to 4/7/18

WEEK ENDING DATE	<u>2/10/18</u>	<u>2/17/18</u>	<u>2/24/18</u>	<u>3/3/18</u>	<u>3/10/18</u>
<u>PROJECTED CASH RECEIPTS</u>					
RECEIPTS FROM CUSTOMERS (INCLUDES CASH SALES, NET CREDIT CARD RECEIPTS & CUSTOMER PAYMENTS ON ACCOUNT)	\$10,800.00	\$8,000.00	\$8,800.00	\$15,000.00	\$15,000.00
<u>PROJECTED CASH DISBURSEMENTS</u>					
SALARIES & WAGES	-\$5,061.60	-\$5,061.60	-\$5,061.60	-\$5,061.60	-\$5,061.60
TAXES - PAYROLL	-\$3,036.99	-\$3,036.99	-\$3,036.99	-\$3,036.99	-\$3,036.99
SALES TAX			-\$775.00		
MERCHANDISE PURCHASES				-\$3,500.00	-\$7,000.00
RUBISH DISPOSAL				-\$150.00	
OFFICE & STORE SUPPLIES				-\$200.00	
INSURANCE EXPENSE	-\$5,200.00			-\$1,500.00	
UTILITIES				-\$850.00	
TELECOMMUNICATIONS				-\$200.00	
POSTAGE				-\$200.00	
MISCELLANEOUS	<u>-\$100.00</u>	<u>-\$100.00</u>	<u>-\$100.00</u>	<u>-\$100.00</u>	<u>-\$100.00</u>
NET CASH FLOW	<u>-\$2,498.59</u>	<u>-\$98.59</u>	<u>-\$73.59</u>	<u>\$301.41</u>	<u>-\$98.59</u>

<u>3/17/18</u>	<u>3/24/18</u>	<u>3/31/18</u>	<u>4/7/18</u>	<u>TOTAL</u>
\$20,000.00	\$20,000.00	\$20,000.00	\$25,000.00	\$142,600.00
-\$5,061.60	-\$5,061.60	-\$5,061.60	-\$5,061.60	-\$45,554.40
-\$3,036.99	-\$3,036.99	-\$3,036.99	-\$3,036.99	-\$27,332.91
	-\$1,575.00			-\$2,350.00
-\$12,000.00	-\$10,000.00	-\$8,000.00	-\$16,000.00	-\$56,500.00
		-\$150.00		-\$300.00
		-\$200.00		-\$400.00
		-\$1,500.00		-\$8,200.00
		-\$850.00		-\$1,700.00
		-\$200.00		-\$400.00
		-\$200.00		-\$400.00
<u>-\$100.00</u>	<u>-\$100.00</u>	<u>-\$100.00</u>	<u>-\$100.00</u>	<u>-\$900.00</u>
<u>-\$98.59</u>	<u>\$326.41</u>	<u>\$801.41</u>	<u>\$901.41</u>	<u>-\$537.31</u>