

SO ORDERED




THOMAS J. CATLIOTA
U.S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)**

In re:	:	
	:	
The Sports Zone, Inc.,	:	Chapter 11
	:	Case No. 17-26758 (TJC)
	:	
Debtor.	:	Re: Docket No. 4, 47
	:	

**SECOND INTERIM ORDER AUTHORIZING
THE SPORTS ZONE INC. TO USE CASH COLLATERAL**

Upon consideration of the *Emergency Motion for Interim and Final Orders Authorizing the Debtor's Use of Cash Collateral* [Docket No. 4] (the "Motion") filed by The Sports Zone, Inc. (the "Debtor"), debtor-in-possession in the above-captioned bankruptcy case, the Court having entered the *Interim Order Authorizing The Sports Zone Inc. to Use Cash Collateral* [Docket No. 47], the Court finding that given the interim nature of this Order and the exigent circumstances justifying the relief sought herein, all required parties having been served with notice thereof and that the relief sought in the Motion should be, and hereby is, GRANTED. Accordingly, it is hereby found that:

1. On December 15, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), commencing the above-captioned bankruptcy case.

2. The Debtor continues to operate and manage its business as a “debtor in possession” pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in this chapter 11 case (the “Bankruptcy Case”) pursuant to section 1104 of the Bankruptcy Code.

4. This Court has jurisdiction over this Bankruptcy Case and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

5. Since 1985, the Debtor has operated sneaker and sporting apparel stores at shopping malls in Maryland, Virginia, and the District of Columbia. As recently as September 2017, the Debtor operated twenty-eight stores. In September 2017, the Debtor closed seventeen of its stores, leaving eleven stores open. The Debtor intends to close one more store in January 2018.

6. In the ordinary course of business, the Debtor requires cash-on-hand and cash flow from its operations to fund working capital and liquidity needs. The Debtor has an immediate and urgent need to use Cash Collateral, and absent the use of Cash Collateral, it cannot continue its business operations, and its ability to maximize the value of its estate would be in jeopardy. If the Debtor is forced to abruptly cease business operations, there may be little recovery for unsecured creditors.

7. As of the Petition Date, the Debtor was indebted and liable to Nike USA, Inc. (“Nike”) pursuant to the Security Agreement and Secured Promissory Note dated February 17,

2017 in the stated principal amount of \$3.7 million (the “First Note and Agreement”). The First Note and Agreement were amended by the First Amendment to Promissory Note and First Amendment to Security Agreement dated February 20, 2017 (with the First Note and Agreement, the “Pre-Petition Documents”), which increased the stated principal amount of the First Note and Agreement to \$3,900,965.00 (as amended, the “Pre-Petition Obligations”).

8. As is further described in the Pre-Petition Documents, Nike asserts that the Pre-Petition Obligations are secured by valid, perfected, first-priority enforceable liens and security interests granted by the Debtor against and in the Debtor’s property existing as of the Petition Date and as described in the Pre-Petition Documents (the “Existing Collateral”), including, without limitation, all fixtures and personal property of every kind and nature, including all accounts, goods, inventory, equipment, documents, instruments, promissory notes, chattel paper, letters of credit, letter-of-credit rights, securities and all other investment property, general intangibles, intellectual property, money, deposit accounts, contract rights or rights to the payment of money, and all proceeds and products of each of the foregoing.¹ Nike has filed UCC-1 financing statements with the Maryland Department of Assessments & Taxation and, on September 18, 2017, with the Commonwealth of Virginia State Corporation Commission.

9. All of the Debtor’s cash on hand as of the Petition Date and all cash and cash equivalents received by the Debtor after the Petition Date from the sale of inventory and Existing Collateral held by the Debtor on the Petition Date are proceeds of the Existing Collateral and are asserted to be cash collateral of Nike within the meaning of Section 363(a) of the Code (the “Cash Collateral”).

¹ This is a summary of the Existing Collateral set forth in the Pre-Petition Documents. To the extent there is a conflict between this description and the Existing Collateral in the Pre-Petition Documents, the Pre-Petition Documents control.

10. The Debtor requires the use of Nike's Cash Collateral to continue the operation of its stores and will suffer irreparable and immediate harm if the relief requested herein is not granted. An immediate and critical need exists for the Debtor to obtain funds in order to continue the operation of the Debtor's stores, and without such funds, the Debtor will not be able to pay payroll and other direct operating expenses and obtain goods and services needed to carry on the Debtor's business during this sensitive period in a manner that will avoid irreparable harm to the Debtor's estate. The Debtor's ability to use Cash Collateral is vital to the confidence of the Debtor's customers, employees, trade vendors, and suppliers of goods and services and to the preservation and maintenance of the going concern value of the Debtor's estate and the Debtor's brand.

11. The value of the Existing Collateral will diminish as the Debtor operates, obtains collections and receipts from Existing Collateral, and uses and expends Cash Collateral. The value of the Existing Collateral may also be diminished by the closing of stores. Finally, the value of the Existing Collateral will be diminished by the payment of funds pursuant to the Budget (as attached as **Exhibit A**). Nike is entitled to adequate protection of its interests in the Existing Collateral and for the Debtor's use of Cash Collateral.

12. On December 20, 2017, the Court entered the *Order Granting Emergency Motion of Debtor for Entry of an Order Pursuant to the 11 U.S.C 105(a), 363, 364, and 541(d) and Federal Rules of Bankruptcy Procedure 6003 and 6004(h) Authorizing the Debtor to Enter into and Perform Under Consignment Arrangements* [Docket No. 38] (the "Consignment Order"). In the Consignment Order, the Debtor grants consignment vendor(s) an administrative expense claim to the extent the consignment vendor(s) are entitled to payment of proceeds of consigned inventory, provided that the consignment vendor(s) are not granted any rights to collateral

superior to Nike. Nike has consented to the relief granted in the Consignment Order, and the adequate protection set forth in this Interim Order is intended to protect Nike against any concomitant reduction in the collateral available to be secured by Nike's replacement liens in light of the sale of inventory on consignment. Nike shall not have a lien on Consigned Inventory or Consignment Proceeds as described in the Consignment Order.

13. Good cause has been shown for the entry of this Order. The Court finds that the notice to the United States Trustee, Nike, and the Debtor's creditors was sufficient under the circumstances to support the entry of this Interim Order. Entry of this Order is justified and appropriate under the circumstances and is in the best interest of the estate.

IT IS THEREFORE ORDERED AND ADJUDGED as follows:

14. **Use of Cash Collateral.** The Debtor is hereby authorized to use Cash Collateral beginning January 10, 2018. The Debtor is authorized to use Cash Collateral only in the amounts and for the expenses and disbursements set forth in the Budget, and Cash Collateral shall not be used for any other purpose or in any other amount, subject to the Budget Variance as set forth below. The Debtor shall not incur expenses nor use Cash Collateral in an amount that exceeds by more than ten percent (10%) the total expenses provided in the Budget without first obtaining Nike's consent. The Budget has been thoroughly reviewed by the Debtor and its management. The Debtor represents that the Budget is achievable and will allow the Debtor to operate its business and otherwise conduct its Bankruptcy Case. Nike is relying upon the Debtor's compliance with the Budget in accordance with this Interim Order in determining to permit the use of its Cash Collateral.

15. **Liens in Post-Petition Collateral.** In addition to the adequate protection set forth

herein, Nike shall be entitled to post-petition liens in substantially all of the Debtor's assets as of the Petition Date, and proceeds thereof, to secure payment of the entirety of the Pre-Petition Obligations (the "Post-Petition Liens"). The Post-Petition Liens shall have the same extent and validity as Nike's liens arising from the Pre-Petition Obligations (the "Pre-Petition Liens"). Notwithstanding anything to the contrary set forth herein, the Post-Petition Liens shall be senior in priority to all other liens, claims, or encumbrances on the Debtor's assets, and shall be effective and perfected pursuant to the terms of this Order without the need for any further actions; provided, however, Nike consents to the use of its collateral to satisfy the obligations set forth in the Budget, subject to the terms and conditions of this Order. To the extent that the Debtor avoids the pre-petition lien of Nike pursuant to the adversary proceeding number 17-00496-TJC pending before this Court and styled as *The Sports Zone, Inc. v. Nike USA, Inc.* (the "Adversary Proceeding"), or otherwise, the Post-Petition Liens will also be deemed void.

16. **Replacement Liens.** As adequate protection to Nike, and except as otherwise provided herein, to the extent that the Debtor's use of Cash Collateral results in a decrease in the value of Nike's interest in such property (subject to the provisions hereof), Nike is hereby granted to secure the Pre-Petition Obligations of the Debtor a perfected replacement lien, security interest and claim ("Replacement Liens") against all of the Debtor's assets (the "Replacement Collateral"). Such Replacement Liens shall have the same extent and validity as the Pre-Petition Liens and shall be subordinate only the Carve-Out (as defined below). To the extent that the Debtor avoids the pre-petition lien of Nike pursuant to the adversary proceeding number 17-00496-TJC pending before this Court and styled as *The Sports Zone, Inc. v. Nike USA, Inc.* (the "Adversary Proceeding"), or otherwise, the Replacement Lien will also be deemed void.

17. **Consigned Inventory.** Notwithstanding any other provision of this Order, Nike shall not have a Post-Petition Lien or Replacement Lien on the Consigned Inventory or the Consigned Proceeds.

18. **507(b) Claim.** To the extent allowed by 11 U.S.C. 507(b), as additional adequate protection to Nike, Nike is hereby granted an allowed superpriority administrative claim (“507(b) Claim”) with priority senior to all other administrative and/or priority claims (whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment) as specified under Sections 364(c)(1) and 507(b) of the Code, which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Debtor and all proceeds thereof, subject to the payment of the Carve Out (as defined below). The 507(b) Claim shall be in an amount equal to the greater of the difference between (i) the value of the Existing Collateral as of the Petition Date, and (ii) the aggregate value, effective as of the date such 507(b) Claim is determined, of the Collateral. Notwithstanding anything to the contrary in this Order, the liens and superpriority claims granted to Nike herein are subject and subordinate to a carve-out of funds (the “Carve Out”) for the following administrative expenses: (a) all fees owed pursuant to Section 1930 of Title 28 of the United States Code (the “Trustee Fees”), and (b) all fees and expenses incurred by the Debtor’s professionals and the professionals of any statutory committee employed by Court order that are allowed by the court pursuant to the Bankruptcy Code (the “Professionals”), and neither the amounts actually paid for Trustee Fees or to the Professionals shall be subject to disgorgement in order to satisfy in whole or in part an administrative claim held by Nike (along with all other claims accrued and/or paid by the Debtor). To the extent that the Debtor avoids the pre-petition lien of Nike pursuant to the adversary proceeding number 17-00496-TJC pending before this Court and styled as *The Sports*

Zone, Inc. v. Nike USA, Inc. (the “Adversary Proceeding”), or otherwise, Nike shall not be entitled to the 507(b) Claim.

19. **INTENTIONALLY OMITTED**

20. **Priority of Replacement Liens.** The Replacement Liens shall be prior and senior to any other security interest, interest, encumbrance, right or lien in the Replacement Collateral, subject only to: (i) any valid and perfected pre-petition liens and security interests of Nike in such Replacement Collateral existing as of the Petition Date, (ii) the payment of the Carve Out.

21. **Perfection of Liens.** The Replacement Liens and the 507(b) Claim are, and shall be, valid, perfected, enforceable and effective as of the Petition Date without the need for any further action by the Debtor, Nike or the necessity of execution or filing of any instruments or agreements. This Order and the Replacement Liens, rights, 507(b) Claim, and other protections granted to Nike herein do not waive, restrict, or alter the validity, extent, priority, perfected status, or scope of the pre-petition liens, security interests, priorities, rights of set-off, remedies, or claims of Nike.

22. **Reporting.** Beginning four weeks after the entry of this Order, and every four weeks thereafter, The Debtor shall provide by e-mail to counsel to Nike reporting that shows: (i) actual payments made as compared to the amounts for any line item contained in the Budget (“Actual-to-Budget Analysis”); and (ii) a cash flow statement showing the sources and uses of cash for the given period.

23. **INTENTIONALLY OMITTED.**

24. **Term of Use of Cash Collateral.** The Debtor is authorized to use Cash Collateral in accordance with this Order until the earlier of the following (the “Termination Date”): (i) February 2, 2018; (ii) the entry of an Order, on a “final” basis approving the Debtor’s use of cash

collateral; (iii) five business days after notice by Nike to the Debtor of any “Termination Event” as described below, unless within such five business day period the Debtor has cured such Termination Event or unless waived by Nike, (iv) the date of the dismissal of the Debtor’s bankruptcy case or the conversion of the Debtor’s bankruptcy case to a case under Chapter 7 of the Code, (v) the date of appointment of a trustee in the Debtor’s bankruptcy case, and (vi) the date a sale of the Debtor’s assets is approved by this Court. Each of the following events constitute a “Termination Event”: (i) any material failure of the Debtor to comply with this Order; (ii) the failure by the Debtor to maintain property, casualty and liability insurance; (iii) the occurrence of the effective date or consummation date of a plan of reorganization for the Debtor; or (iv) the entry by this Court or any other court of an order reversing, staying, or vacating this Order or amending, supplementing, or otherwise modifying in any material manner the protections granted to the Debtor in this Order. Upon the Termination Date, the Debtor shall cease using Cash Collateral unless the Debtor obtains either written consent of Nike to further use or an order of the Court after notice and an opportunity for hearing.

25. **Protection of Existing Collateral.** Collateral, including Cash Collateral, shall not be used or sold other than in the ordinary course, unless Nike consents to such extraordinary use or sale or the Debtor obtains the approval of this Court. Neither the Replacement Lien, the Post-Petition Liens, nor the 507(b) Claim, nor any other provision of this Order may be asserted by Nike as a basis to assert that its lien is not subject to “bona fide dispute” pursuant to 11 U.S.C. § 363(f)(4).

26. **Good Faith.** The use of Cash Collateral as set forth herein, is fair, just and reasonable under the circumstances, ordinary and appropriate for debtors-in-possession, reflects the Debtor’s exercise of prudent business judgment consistent with its fiduciary duties and

constitutes reasonably equivalent value and fair consideration. The use of Cash Collateral and the terms this Interim Order have been negotiated in good faith and at arm's length among the Debtor and Nike, with all parties represented by counsel, and any credit extended and/or other financial accommodations extended to the Debtor by Nike shall be deemed to have been extended, issued, or made, as the case may be, in "good faith" as that term is used in Bankruptcy Code § 364(e) and in express reliance upon the protections afforded by Bankruptcy Code § 364(e) in the event that this Interim Order or any provision hereof is reversed or modified, on appeal or otherwise. Notwithstanding the above, to the extent that the Debtor avoids the pre-petition lien of Nike pursuant to the adversary proceeding number 17-00496-TJC pending before this Court and styled as *The Sports Zone, Inc. v. Nike USA, Inc.* (the "Adversary Proceeding"), or otherwise, Nike shall not be entitled to the 507(b) Claim, and any Post-Petition Lien or Replacement Lien granted pursuant to this Order shall be deemed void.

27. **Notice.** Within five business days after entry of this Order, Debtor's counsel shall serve a copy of this Order on all of the following parties: (a) the Office of the United States Trustee; (b) Nike; (c) all creditors known to the Debtor who have or may assert liens against the Debtor's assets; and (d) all parties-in interest who have filed a notice of appearance.

28. **Effect of this Order.** The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered converting the Debtor's Bankruptcy Case to a chapter 7 case, dismissing the Debtor's Bankruptcy Case (in the case of such dismissal, to the maximum extent permitted under the Bankruptcy Code and other applicable law) or any order which may be entered confirming or consummating any plan of reorganization of the Debtor; and the terms and provisions of this Interim Order as well as the priorities of payment, liens, and security interests granted pursuant to this Interim Order shall

continue in this or any superseding case under the Bankruptcy Code, and such priorities of payment, liens and security interests shall maintain their priority as provided by this Interim Order. The provisions of this Interim Order shall be binding upon and inure to the benefit of all parties-in-interest in this case, including, without limitation, the Debtor and the Creditors' Committee (if one is appointed), and their respective successors and assigns (including, to the fullest extent permitted by applicable law, any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the Debtor's estate, an examiner appointed pursuant to Bankruptcy Code § 1104 (subject to entry of a Final Order) or any other fiduciary hereafter appointed as a legal representative of the Debtor or with respect to the property of the Debtor's estate), and shall inure to the benefit of the Debtor, Nike, and the Creditors' Committee, and their respective successors and assigns; provided, however, that Nike shall have no obligation permit the use of its cash collateral by any chapter 7 trustee or similar responsible person appointed for the Debtor's estate.

29. **Limitation of Liability.** Nothing in this Interim Order shall in any way be construed or interpreted to impose, or allow the imposition upon Nike of any liability for any claims arising from the prepetition or post-petition activities by the Debtor in the operation of its business or in connection with their restructuring efforts.

30. **Final Hearing.** A final hearing on the Motion shall be held on **January 30, 2018 at 10:00 a.m.** The Debtor shall provide notice of such final hearing on all parties listed on the limited service list. Such notice shall be deemed sufficient pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure. No further notice of the Motion is necessary.

END OF ORDER

cc: All registered users of ECF who have entered their appearance in this case.

EXHIBIT A

				Wed	Thu	Fri	Sat	Total
				1/10/2018	1/11/2018	1/12/2018	1/13/2018	
Total				4,732	4,732	11,196	17,416	52,271
Cash								-
CC				2,602	2,602	6,158	9,579	28,749
Smartsafes				2,129	2,129	5,038	7,837	-
Pickups								
Cash				2,129	2,129	2,129		18,522
CC				2,602	2,602	2,602		22,637
Total				4,732	4,732	4,732	-	41,159
Payments				11,031	-	78,285	-	
Balance				112,894	117,626	44,073	44,073	44,073
Payroll						78,285		
ACH Utilities								
Outstanding Checks				1,002				
Consignment Payments								
Utilities								
Harford Mutual				10,029				
Exxon								
Corp. Acct. Analysis Fee								
PNC Fees								
PNC Duplicate Credit - Chgbk								
Revivals								

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
	1/14/2018	1/15/2018	1/16/2018	1/17/2018	1/18/2018	1/19/2018	1/20/2018	
Total	9,952	9,952	5,732	5,732	5,732	11,196	17,416	65,712
Cash								-
CC	5,474	5,474	3,153	3,153	3,153	6,158	12,579	39,142
Smartsafes	4,478	4,478	2,579	2,579	2,579	5,038	4,837	-
Pickups								
Cash		20,215	4,478	2,579	2,579	2,579		32,432
CC		5,474	5,474	3,153	3,153	3,153		20,405
Other income		8,000						
Total	-	33,689	9,952	5,732	5,732	5,732	-	60,837
Payments	-	37,444	45,000	-	-	18,257	-	
Balance	44,073	40,317	5,269	11,001	16,733	4,209	4,209	4,209
Payroll		33,504						
Utilities								
Harford Mutual								
Rent			45,000					
Kaiser/GIS						18,257		
Exxon								
Consignment Merchandise / payment		3,940						
Humboldt								
PNC Fees								
ACH Utilities								

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
	1/21/2018	1/22/2018	1/23/2018	1/24/2018	1/25/2018	1/26/2018	1/27/2018	
Total	12,952	5,732	5,732	5,732	5,732	11,196	17,416	64,492
Cash								-
CC	7,124	3,153	3,153	3,153	3,153	6,158	12,579	38,471
Smartsafes	5,828	2,579	2,579	2,579	2,579	5,038	4,837	-
Pickups								
Cash		15,704	2,579	2,579	2,579	2,579		26,021
CC		25,860	3,153	3,153	3,153	3,153		38,471
Total	-	41,564	5,732	5,732	5,732	5,732	-	64,492
Payments	-	25,000	3,217	-	-	-	-	
Balance	4,209	20,773	23,288	29,020	34,752	40,484	40,484	40,484
Payroll								
Sales and Use Tax		25,000						
ACH Utilities								
Rent								
Utilities								
400 LLC Filing Fee			1,717					
Advertising Of Sale			1,500					

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
	1/28/2018	1/29/2018	1/30/2018	1/31/2018	2/1/2018	2/2/2018	2/3/2018	
Total	9,952	5,732	5,732	5,732	5,732	11,196	17,416	61,492
Cash								-
CC	5,474	3,153	3,153	3,153	3,153	6,158	9,579	33,821
Smartsafes	4,478	2,579	2,579	2,579	2,579	5,038	7,837	-
Pickups								
Cash		14,354	2,579	2,579	2,579	2,579		24,671
CC		24,210	3,153	3,153	3,153	3,153		36,821
Total	-	38,564	5,732	5,732	5,732	5,732	-	61,492
Payments	-	45,000	35,000	-	10,000	-	-	
Balance	40,484	34,048	4,779.62	10,512	6,244	11,976	11,976	11,976
Payroll								
Sales and Use Tax								
401K								
Rent		45,000	35,000		10,000			
Utilities								