

**SO ORDERED**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND**

**IN RE:**

**JAZPAL, LLC  
Debtor**

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**Case No. 18-21681  
Chapter 11**

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**CONSENT ORDER AUTHORIZING USE OF CASH COLLATERAL**

Jazpal, LLC (the “Debtor”) filed a Motion for Authorization to Use of Cash Collateral and to Make Adequate Protection Payments (Doc. 15) (the “Motion”). Branch Banking and Trust Company (“BB&T”) asserts a lien on the Debtor’s cash collateral as defined under Section 363(a) of the Bankruptcy Code and which in this case means the rental income from the real property at 1827 Mountain Road, Joppa, Maryland (the “Property”) and filed an opposition to the Motion (Doc. 21). The Debtor and BB&T consent to the entry of this Consent Order and stipulate to the following:

1. On September 4, 2018 (the “Petition Date”), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code.
2. The Debtor is a debtor-in-possession and the United States Trustee has not appointed a creditors’ committee in this case.
3. The Debtor owns the Property and leases the Property to its affiliate, MBGC, LLC.

4. The Debtor's rental income from MBGC, LLC's use and occupancy of the Property is subject to a Deed of Trust dated August 31, 2012 by the Debtor in favor of trustees for the benefit of BB&T, successor to Susquehanna Bank, and recorded in the Harford County land records at Liber 9859, folio 115 and an Assignment of Leases and Rents dated August 31, 2012 by the Debtor in favor of BB&T, successor to Susquehanna Bank, recorded in the Harford County land records at Liber 9859, folio 150.

5. The Deed of Trust and the Assignment of Leases and Rents secure payment of a U.S. Small Business Administration Note dated August 31, 2012 in the original principal amount of \$2,950,000.00 (the "Note"). The Note, the Deed of Trust, the Assignment of Leases and Rents and any other documents evidencing or relating to the loan shall be referred to as the "Loan Documents". BB&T has additional collateral, including funds that were on deposit and were set off by BB&T - these funds were the property of non-debtor entities which are guarantors under the Note. These funds which were on deposit with BB&T are the subject of additional proceedings extraneous to this Bankruptcy case.

6. BB&T asserts that as of September 11, 2018, there was due under the Note approximately \$2,611,331.09 in principal, \$2,810.81 in interest, \$10,343.28 in bank fees and costs, and \$57,757.27 in legal fees and collection expenses. Interest accrues at the rate of \$562.16 per day. Interest and legal fees continue to accrue.

7. BB&T consents to the use of cash collateral ("Cash Collateral") pursuant to the terms of this Consent Order through and including December 31, 2018 so long as

the Debtor fully and timely performs in strict conformity with all provisions of this Consent Order.

8. BB&T has agreed to permit the Debtor to use Cash Collateral, but only upon the terms and conditions set forth herein, which terms include, but are not limited to, the protection afforded to a party acting in “good faith” pursuant to 11 U.S.C. § 363(m) and the Debtor’s agreement to grant to BB&T replacement liens as adequate protection for the Debtor’s use of cash collateral.

9. Nothing in this order shall prejudice the rights of BB&T and the Debtor (collectively, the “Parties”) from agreeing to continue the terms of this order for an additional period(s) (the “Supplemental Period”); provided that the Parties submit a stipulation to the Court stating that the Parties agree to continue this order for the duration of the Supplemental Period. In such an instance, this order shall continue without further notice or hearing.

**NOW, THEREFORE, IT IS HEREBY FOUND AND ORDERED:**

A. Use of Cash Collateral. The Debtor is authorized to retain all rental receipts, which receipts represent the Cash Collateral of BB&T, in its Debtor in Possession account for use in its reorganization, subject to order of this Court except as set forth below.

B. Termination of BB&T’s Consent to Use of Cash Collateral. BB&T’s consent to the use of Cash Collateral shall terminate at the earlier of (a) 5:00 p.m. on December 31, 2018, or (b) the occurrence of an uncured Event of Default under this Consent Order. The obligations and rights of the Parties under this order with respect to all

transactions which have occurred before such termination shall remain unimpaired and unaffected by any such termination and shall survive such termination.

C. Information Regarding Cash on Hand, Income, Expenses and Collateral. The Debtor shall file all monthly operating reports on or before the 20<sup>th</sup> day of the following month. Each monthly report shall demonstrate that the Debtor is only using Cash Collateral to pay expenses that are consistent with this Consent Order.

D. Deposit of Cash Collateral. The Debtor shall deposit all Cash Collateral into its debtor-in-possession account at M&T Bank.

E. Adequate Protection Payments. The Debtor shall make as adequate protection to BB&T monthly Principal and Interest payments of Twenty-One Thousand Nine Hundred Thirty-Eight Dollars and Twenty-Nine cents (\$21,938.29) (a "Payment") at the current interest rate of Seven and Three-Quarters Percent (7 3/4%) (which variable rate may change along with the prime rate), commencing on or before October 1, 2018 and continuing on the first of each month thereafter until such time as BB&T's allowed secured claim is paid in full or until such time a Plan of Reorganization ("Plan") is confirmed, and thereafter in accordance with such Plan. Said interest rate may change per the terms of the loan documents and each applicable monthly Payment shall be adjusted accordingly.

F. Additional Covenants.

1. The Debtor shall bring and keep current all real and personal and other property taxes on all of BB&T's collateral, including, but not limited to, the Property, as required by the loan documents, premiums for casualty and liability

insurance, obligations to the United States Trustee, and other administrative claims as permitted by this Court from Debtor's operations or current cash.

2. On or before December 31, 2018, the Debtor must file a Plan of Reorganization or Liquidation that has a reasonable possibility of being confirmed.

G. Grant of Replacement Liens. In order to provide adequate protection to BB&T for the Debtor's use of BB&T's pre-petition collateral and BB&T's Cash Collateral authorized to be used by the Debtor hereunder, the Debtor hereby grants to BB&T, and the Court hereby authorizes the Debtor to grant to BB&T, in the same priority and to the same extent as existed on the Petition Date, a valid and perfected lien on and security interest in, any and all of the Debtor's rights, title and interests in, (i) all assets in which a validly perfected lien existed in favor of BB&T as of the Petition Date, (ii) all cash and receivables attributable to the BB&T pre-petition collateral, and (iii) all profits, interests, proceeds, products, issues, rents and profits thereof, and accessions, accessories and improvements of or to the property or assets described above, and replacements thereof (the "BB&T Post-Petition Collateral"). Under the relief provided by this Order, BB&T will have a replacement lien on the BB&T Post-Petition Collateral. Further, BB&T shall have a replacement lien in any post-petition accounts receivable generated by the Debtor to the same extent and in the same priority as it had on the Petition Date. Notwithstanding the foregoing, the replacement lien shall not attach to causes of action arising under Chapter 5 of the Bankruptcy Code.

H. Perfect of Replacement Liens. All agreements, rights, licenses, security interests, mortgages, deeds to secure debt and liens contemplated or granted by this

Consent Order are effective, attach and are perfected as of the commencement of this case without the necessity of any further filing or recording by BB&T. Notwithstanding any otherwise applicable requirements under any state or federal law, BB&T shall not be required to file financing statements or any other documents or instruments in any jurisdiction or to take any other action in order to perfect its security interests and liens granted under or pursuant to this Consent Order. Notwithstanding the above, BB&T may, in its discretion, file such financing statements or other documents with respect to such security interests and liens, and the Debtor is authorized and directed to execute or cause to be executed all such financing statements or other documents upon BB&T's reasonable request.

I. Confirmation of Pre-Petition Liens. The Debtor agrees that BB&T has a first priority security interest and lien on and against the Property and all rental income generated therefrom, which were generated or received by the Debtor before the bankruptcy filing. The Debtor's agreement in this paragraph is without prejudice to the rights of the Debtor's creditors or any official committee or trustee appointed in this bankruptcy case.

J. Events of Default. The following shall constitute Events of Default under this Consent Order:

1. The Debtor fails to make any Payment as and when due.
2. The Debtor's fails to file a disclosure statement and plan of reorganization or liquidation on or before December 31, 2018.

3. The entry of an order sustaining BB&T's objection to either (i) any disclosure statement proposed by the Debtor; or (ii) any plan of liquidation or reorganization proposed by the Debtor.

4. The Debtor, through and including December 31, 2018, fails to comply with any term, provision or condition of this Consent Order.

5. This Consent Order, or any portion thereof, is vacated or reversed.

6. The Debtor's bankruptcy case is converted to a case under Chapter 7 of the Bankruptcy Code or a trustee is appointed in the Debtor's bankruptcy case.

BB&T shall deliver written notice to the Debtor with a copy to the Debtor's counsel of any Event of Default, and the Debtor shall have ten (10) days to cure such default.

K. Rights Upon Uncured Default. Upon the earlier to occur of December 31, 2018, or the occurrence of an uncured Event of Default under this Consent Order, the Debtor shall immediately cease and be prohibited from further using Cash Collateral, without the written consent of BB&T or permission of the court as provided in Section 363(c)(2) of the Bankruptcy Code.

L. Miscellaneous. This Consent Order shall only be binding upon the parties hereto if this order, in its entirety, and without addendum or modification not otherwise approved, in writing, by BB&T and the Debtor, shall be approved by an order of the court in these proceedings and, upon such approval, shall be effective as of the bankruptcy filing, unless otherwise agreed to, in writing, by the Parties.

M. Reliance on Order. BB&T and the Debtor may rely on the provisions of this Consent Order in all respects and may conduct themselves in accordance

therewith unless and until otherwise ordered by the court. If this Consent Order is later modified for any reason, the rights of BB&T and the Debtor as provided for herein shall not be affected, impaired, modified or terminated in any manner for the period of time from the date of entry of this order until modification thereof.

N. Debtor's Agreement Not to Contest Order; Objections by Creditors. By executing this Consent Order, the Debtor agrees that it will not challenge, appeal, or otherwise contest this Consent Order or any term or condition set forth herein, and also agrees to be bound by and to strictly comply with each and every term and condition of this order. Under no circumstances may the Debtor utilize or expend BB&T's Cash Collateral in connection with the assertion or prosecution of any claim or cause of action against BB&T, or its respective agents, whether arising under applicable state or federal law, or the Bankruptcy Code, whether arising in connection with the Loan Documents or otherwise. Nothing contained herein shall preclude any creditor from contesting the validity, priority or extent of BB&T's liens as described in this order within the time allowed by law.

O. No Waiver of Rights Under Pre-petition Agreements/No Liability/No Control. Except as otherwise specifically provided herein and under the Bankruptcy Code, BB&T does not waive any of its rights under the Loan Documents or under the Bankruptcy Code. In agreeing to the use of BB&T's Cash Collateral by the Debtor to make the expenditures set forth herein, and by taking any other actions pursuant to this Consent Order or the Loan Documents, BB&T shall not be deemed to have assumed any liability to any third person or party, and shall not be deemed to be in control of the



Debtor, the operations of the Debtor or to be acting as a “responsible person” with respect to the operation or management of the Debtor and its assets.

P. Notice. Any notice which may be required to be given by BB&T to the Debtor or vice versa shall be sufficient if notice is given by email, facsimile transmission, hand delivery, or regular, certified or registered United States mail to:

As to the Debtor: David Cohen, Esq.  
Law Offices of David W. Cohen  
1 North Charles Street, Suite 350  
Baltimore, Maryland 21201  
(410) 837-6340  
Dwcohen79@jhu.edu

As to BB&T: Bryan M. Mull, Esq.  
Gordon Feinblatt LLC  
233 East Redwood Street  
Baltimore, Maryland 21202  
(410) 576-4227  
bmull@gflaw.com

With a copy to: Douglas D. Ford, Esq.  
ddf@quirklaw.com  
Martin G. Quirk, Esq.  
mgq@quirklaw.com  
Quirk & Quirk, LLC  
6000 Lake Forrest Drive, NW, Suite 300  
Atlanta, Georgia 30080  
404-252-1425 (telephone)

Q. Books and Records: In addition to the inspection of records permitted by the above-described loan documents, the Debtor shall allow BB&T or its respective designated representatives to review and copy, upon prior written request, any and all books and records of the Debtor pertaining to the Debtor’s use of BB&T’s Cash Collateral.

R. Effective Date. This order constitutes the court’s findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, and shall

take effect immediately and be fully enforceable immediately upon entry. There shall be no stay of execution or effectiveness of this order notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other applicable rule.

S. Execution in Counterparts and by Facsimile. This Consent Order may be executed and delivered in counterparts. A facsimile counterpart bearing the signature of any party shall be binding upon that party with the same effect as a counterpart bearing an original signature.

T. Hearing on Further Use of Cash Collateral. The Court has scheduled a hearing on December 3, 2018 at 3:00 p.m. in Courtroom 9-D of the United States Bankruptcy Court, 101 W. Lombard Street, Baltimore, Maryland 21201, at which the court will consider entry of a further order approving the use of cash collateral. The Debtor shall give notice of this order and any further hearing pursuant to Bankruptcy Rules 2002 and 4001.

**CONSENTED TO:**

/s/ Bryan M. Mull

Bryan M. Mull (19415)  
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*Attorneys for BB&T*

/s/ David W. Cohen

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(410) 837-6340  
Email: dwcohen79@jhu.edu  
*Attorneys for Debtor/Debtor in Possession*

CERTIFICATE OF ORIGINAL SIGNATURE

I certify that the terms of the copy of the Consent Order submitted to the Court are identical to those set forth in the original; and the signatures represented by the /s/ on this copy reference the signatures of consenting parties on the original consent order.

/s/ Bryan M. Mull

Bryan M. Mull

cc: David W. Cohen, Esquire  
Law Offices of David W. Cohen  
(via CM/ECF)

Bryan M. Mull, Esquire  
Gordon Feinblatt LLC  
(via CM/ECF)

Katherine A. Levin, Esquire  
Office of the United States Trustee  
(via CM/ECF)

**END OF ORDER**