

SO ORDERED.

SIGNED this 2nd day of August, 2017.



*Benjamin A. Kahn*  
BENJAMIN A. KAHN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

|                                 |   |                   |
|---------------------------------|---|-------------------|
| IN RE:                          | ) |                   |
|                                 | ) |                   |
| CAROLINA MOLD & MACHINING, INC. | ) | CASE NO. 17-10001 |
|                                 | ) | Chapter 11        |
| Debtor.                         | ) |                   |
|                                 | ) |                   |

FIFTH INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL AND  
PRESCRIBING NOTICE AND TIME FOR FURTHER HEARING

**THIS MATTER**, coming on for hearing before the Court on July 25, 2017, pursuant to §363 of the Bankruptcy Code and Bankruptcy Rules 4001 and 9014 with respect to the Emergency Motion for Order Authorizing Use of Cash Collateral and Request for an Order Authorizing Use of Cash Collateral and the Granting of Adequate Protection (the “Motion”) filed by Carolina Mold & Machining, Inc., Debtor-in-Possession (hereinafter “Carolina Mold”, “Debtor” or “Debtor Corporation”), on January 1, 2017. Dirk W. Siegmund appeared on behalf of the Debtor, Kimberly Marston appeared on behalf of Creditor Patsy Marion (“Patsy Marion”), Nathan Strup appeared on behalf of the Internal Revenue Service, and William P. Miller, appeared as the Bankruptcy Administrator.

Having considered the matter set forth in the Motion, the evidence presented at the hearing and all arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law:

1. The above captioned Debtor filed a voluntary petition under Title 11, Chapter 11 of the United States Bankruptcy Code on January 1, 2017 (the “Petition Date”). Since the filing, the Debtor has operated as a Debtor-in-possession.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, and 11 U.S.C. §§1107 and 1108. This is a core proceeding pursuant to 28 U.S.C. §157.

3. Carolina Mold and Machining was founded in 1994 by Rodney Marion and James Hoague. Originally Carolina Mold was a Mold Manufacturer, Mold Repair and Mold Modification facility. As the industry changed, most new molds are being built offshore. As such the business has changed to mostly service repairs and engineering changes, while still manufacturing some new molds. The company's financial situation stems from Rodney Marion turning over the day to day operations of the business to his son. This has caused the Company to fall significantly behind on taxes due to the Internal Revenue Service. Rodney Marion is currently in charge of all operations and as such the business is improving to the point necessary to be profitable.

4. The Debtor owns all the equipment that is being used in its operations. The Debtor also owns bank accounts, rights to accounts receivable, and inventory used in the business. These bank accounts, rights to accounts receivable, and inventory constitute Cash Collateral as that term is defined in 11 U.S.C. §363(a).

5. The Debtor owes approximately \$505,000 to Patsy Marion pursuant to a Promissory Note dated February 8, 2012 (the "Promissory Note"). Patsy Marion is the wife of the majority shareholder of the Debtor, Rodney Marion and as such is considered an insider pursuant to the Bankruptcy Code.

6. The Promissory Note is secured by the Debtor's inventory, equipment and accounts pursuant to a Security Agreement executed on even date. Patsy Marion has filed the requisite UCC Financing Statements for these Security Agreements, as well as all corresponding continuation statements, necessary to make these Security Agreements properly perfected first-priority securities in the Debtor's inventory and accounts.

7. Pre-petition the Debtor became delinquent in indebtedness owed to the Internal Revenue Service (the "IRS"), specifically incurring unpaid 1140 taxes for the tax years 2008, 2009 and 2014, unpaid 940 taxes for years and unpaid 941 taxes for years 2007 through 2014. The total amount owed to the IRS is not known at this time, however the Debtor estimates it to be approximately \$2,328,376, including penalties and interest.

8. Pre-petition, the IRS filed two (2) Notices of Liens with the North Carolina Secretary of State against the Debtor. Additionally, on December 12, 2016 PNC Bank, National Association ("PNC") Received a Notice of Levy from the IRS instructing them to turn over funds in the Debtor's account at the conclusion of 21 calendar days. At the time, the Debtor had approximately \$38,000 in accounts with PNC. The Notice of Liens against the Debtor states an indebtedness is owed to the IRS in the amount of \$885,880.83, and secures the indebtedness owed by the Debtor to the IRS against any personal property, including general intangibles, owned by the Debtor.

9. As of the Petition Date, the Debtor's bank account had an available balance of approximately \$38,214.40. As of the Petition Date, the Debtor's accounts receivable were worth approximately \$80,035.00. As of the Petition Date, the Debtor was holding approximately

\$185,504.00 worth of inventory. The Debtor's bank accounts, accounts receivable, and inventory have a collective value of approximately \$303,375.34 (the "Cash Collateral").

10. The Debtor has a lease with Direct Capital Corporation dated March 26, 2013 for an article of equipment used in the Debtor's business, more particularly described as a GF Agie Charmilless FO350, SP. The term of the lease is for 60 months with a monthly payment of \$2,965.02 and an end of lease purchase option of \$1. As such the Debtor contends that this a secured purchase. On July 18, 2013 Direct Capital filed a UCC-1 financing Statement with the Secretary of State asserting a secured interest in the equipment and among other items accounts and inventory. As of the Petition Date, the amount remaining owed under the terms of the lease is approximately \$55,000. The Debtor contends that the Fair Market Value of the Equipment is \$125,000.

11. The Debtor is not aware of any other valid security interests on any of the Cash Collateral owned or operated by the Debtor, except as set forth herein.

12. The Debtor is entitled to use the Cash Collateral for its ordinary and reasonable operating expenses, which shall include payment of reasonable and necessary payroll and all standard and reasonable operating expenses.

13. The secured creditors' interests in the Cash Collateral authorized to be used by the Debtor pursuant to the budget attached hereto and incorporated herein by referenced as Exhibit 1 (the "Budget") and will be adequately protected on an interim basis by the adequate protection payments afforded by the terms of this Order.

14. It is in the best interest of the Debtor, its secured creditors, the unsecured creditors, and all other parties in interest for the Court to authorize the immediate use of Cash Collateral by the Debtor for the purposes stated herein.

15. If the Debtor is not authorized to use the Cash Collateral there will be immediate and irreparable harm caused to the estate.

16. Without finding waiver or admission of any kind or nature as to any fact, claim, defense or other matter of any kind, Patsy Marion to the extent she has a valid and enforceable security interest in the property of the Debtor, has consented to the use of Cash Collateral by the Debtor on an interim basis without receiving adequate protection payments.

17. Without finding waiver or admission of any kind or nature as to any fact, claim, defense or other matter of any kind, the IRS to the extent it has a valid and enforceable security interest in the property of the Debtor, has consented to the use of Cash Collateral on an interim basis pursuant to the terms set forth herein.

18. Without finding waiver or admission of any kind or nature as to any fact, claim, defense or other matter of any kind, Direct Capital to the extent it has a valid and enforceable security interest in the property of the Debtor, has consented to the use of Cash Collateral on an interim basis pursuant to the terms set forth herein.

Now, upon the Motion, the record before the Court and sufficient cause appearing therefore, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:**

1. Pending further orders of this Court, the Cash Collateral Motion is GRANTED in part upon the terms and subject to the limitations set forth in this Order.

2. The Debtor shall be authorized to use the Cash Collateral in the ordinary course of Debtor's business pursuant to the Budget attached hereto as Exhibit "1" and incorporated herein by reference through the earliest of (i) the entry of a final order authorizing the use of Cash Collateral, (ii) the entry of a further interim order authorizing the use of Cash Collateral, (iii) September 26, 2017, (iv) the entry of an order denying or modifying the use of Cash Collateral, (v) an occurrence of default as provided herein, or (vi) the occurrence of a Termination Event, as defined below (the "Usage Period").

3. The Debtor shall only be authorized to use Cash Collateral for the actual and necessary expenses of operating the Debtor's business and maintaining the Cash Collateral pursuant to the Budget. The Debtor shall not voluntarily contract for any administrative expense claims other than as set forth in the Budget or authorized by Court order. Unless, otherwise authorized by order of this Court, the Debtor shall not use Cash Collateral for payment of any pre-petition indebtedness or obligations of, or pre-petition claims against, the Debtor. The Debtor shall submit to the Bankruptcy Administrator, the IRS and Counsel for Patsy Marion monthly reports of operations and cash flow. Such reports shall be due not later than the close of business on the 10<sup>th</sup> day for the activities during the previous calendar month.

4. To the extent the Debtor uses the Cash Collateral of Patsy Marion, pursuant to and consistent with 11 U.S.C. § 363(e) and § 361, Patsy Marion is hereby granted a post-petition replacement lien in Debtor's post-petition property of the same type which secured the indebtedness of Patsy Marion pre-petition, with such liens having the same validity, priority, and enforceability as Patsy Marion had against the same type of such collateral as of the Petition Date. The lien of Patsy Marion in post-petition collateral is and shall be, without any further action by Patsy Marion, deemed perfected to the extent the pre-petition liens and security interests were valid, perfected, enforceable, and non-avoidable as of the Petition Date; provided however, that nothing in this Order shall be deemed to grant Patsy Marion a post-petition lien on assets, if any, of the same type in which Patsy Marion did not possess a valid, perfected, enforceable, and otherwise unavoidable pre-petition lien. The post-petition liens and security interests provided for herein shall be subordinate to Trailing Expenses as defined below and shall survive the term of this Order to the extent the pre-petition lien was valid, perfected, enforceable, and non-avoidable as of the Petition Date.

5. The security interests and liens herein granted to Patsy Marion: (i) are and shall be in addition to all security interests, liens and rights of set-off existing in favor of Patsy Marion on the Petition Date, if any; and (ii) shall secure the payment of the indebtedness owing to Patsy Marion in an amount equal to the aggregate Cash Collateral used or consumed by the Debtor.

6. To the extent the Debtor uses the Cash Collateral of Direct Capital; pursuant to and consistent with 11 U.S.C. § 363(e) and § 361, Direct Capital is hereby granted a post-petition replacement lien in Debtor's post-petition property of the same type which secured the indebtedness of Direct Capital pre-petition, with such liens having the same validity, priority, and enforceability

as Direct Capital had against the same type of such collateral as of the Petition Date. The lien of Direct Capital in post-petition collateral is and shall be, without any further action by Direct Capital, deemed perfected to the extent the pre-petition liens and security interests were valid, perfected, enforceable, and non-avoidable as of the Petition Date; provided however, that nothing in this Order shall be deemed to grant Direct Capital a post-petition lien on assets, if any, of the same type in which it did not possess a valid, perfected, enforceable, and otherwise unavoidable pre-petition lien. The post-petition liens and security interests provided for herein shall be subordinate to Trailing Expenses as defined below and shall survive the term of this Order to the extent the pre-petition lien was valid, perfected, enforceable, and non-avoidable as of the Petition Date.

7. The security interests and liens herein granted to Direct Capital: (i) are and shall be in addition to all security interests, liens and rights of set-off existing in favor of Direct Capital on the Petition Date, if any; and (ii) shall secure the payment of the indebtedness owing to Direct Capital in an amount equal to the aggregate Cash Collateral used or consumed by the Debtor.

8. During the Usage Period the Debtor shall make monthly adequate protection payments to Direct Capital in the amount of \$1,400.00, with the first payment due on or before March 20, 2017. Subsequent payments would be due on the same day of each month thereafter during the Usage Period. The adequate protection payments shall be applied as provided in the Promissory Note.

9. Direct Capital shall be allowed \$4,000.00 in allowed expenses pursuant to 11 U.S.C. § 506(b). Said amount shall be added to the claim and shall cover all attorney fees incurred, or to be incurred, except any actions pursuant to objections to the confirmation of the plan of reorganization.

10. To the extent the Debtor uses the Cash Collateral of the IRS, pursuant to and consistent with 11 U.S.C. § 363(e) and § 361, the IRS is hereby granted a post-petition replacement lien in Debtor's post-petition property of the same type which secured the indebtedness of the IRS pre-petition, with such liens having the same validity, priority, and enforceability as the IRS had against the same type of such collateral as of the Petition Date. The lien of the IRS in post-petition collateral is and shall be, without any further action by the IRS, deemed perfected to the extent the pre-petition liens and security interests were valid, perfected, enforceable, and non-avoidable as of the Petition Date; provided however, that nothing in this Order shall be deemed to grant the IRS a post-petition lien on assets, if any, of the same type in which it did not possess a valid, perfected, enforceable, and otherwise unavoidable pre-petition lien. The post-petition liens and security interests provided for herein shall be subordinate to Trailing Expenses as defined below and shall survive the term of this Order to the extent the pre-petition lien was valid, perfected, enforceable, and non-avoidable as of the Petition Date.

11. The security interests and liens herein granted to the IRS: (i) are and shall be in addition to all security interests, liens and rights of set-off existing in favor of the IRS on the Petition Date, if any; and (ii) shall secure the payment of the indebtedness owing to the IRS in an amount equal to the aggregate Cash Collateral used or consumed by the Debtor.

12. During the Usage Period the Debtor shall make monthly adequate protection payments to the IRS in the amount of \$5,500 payments are due on the 1<sup>st</sup> day of each month during the Usage Period.

13. The Debtor shall preserve, protect, maintain and adequately insure the Cash Collateral. Such maintenance performed on the Cash Collateral, in addition to the Adequate Protection Payment described in Paragraphs 8 and 11 above, is sufficient to adequately protect the secured parties until a further hearing on the Cash Collateral Motion is held.

14. During the period this Interim Order Authorizing Limited Use of Cash Collateral is in effect, the Debtor is authorized to make expenditures for expenses as outlined in Exhibit "1". The Debtor is authorized to make additional expenditures on any one particular expense line item, not to exceed ten percent (10%) of such line item, should the need arise. However, the Debtor shall not exceed the aggregate amount of the Budget without the consent of the Bankruptcy Administrator, the IRS and Patsy Marion. The Debtor is not authorized to make expenditures on any expense line item exceeding ten percent (10%) of the budgeted amount without prior written approval from the Bankruptcy Administrator, the IRS and Patsy Marion. By the 10<sup>th</sup> of each month, the Debtor shall provide to the Bankruptcy Administrator, the IRS and Patsy Marion a budget to actual report, reflecting the actual income received and the expenses incurred during the previous month compared to the budget attached hereto. For the period from July 25, 2017 through September 26, 2017 or such time as the Court holds a further hearing on this matter, the Debtor is authorized to make expenditures on a pro-rata basis pursuant to the budget outline in Exhibit "1", however, the Debtor shall be authorized to make a full payment on rent, utilities and any recurring monthly expense accounted for in Exhibit "1" whose payment shall come due during said period.

15. As additional adequate protection, the Debtor shall keep all of the Debtor's personal property insured for no less than the amounts of the pre-petition insurance. The Debtor shall timely pay all insurance premiums related to any and all of the collateral.

16. Subject to the provisions which follow, this Order shall be binding on the parties hereto and upon any subsequently appointed Chapter 11 trustee or Chapter 7 trustee. Nothing contained herein shall prevent a creditor, the Bankruptcy Administrator, any official creditors' committee, or other party in interest from contesting the validity, perfection and enforceability, or priority liens or the amounts owing, or from raising any defenses, offsets, deductions or counterclaims thereto. The Debtor does not hereby waive, and expressly reserves for itself and the bankruptcy estate (including the Bankruptcy Administrator, any subsequently appointed Chapter 11 or Chapter 7 trustee, other creditors, other parties in interest and any Committee in this proceeding) the right to raise any defenses, offsets, deductions or counterclaims to, or to challenge the amount, validity, perfection, enforceability or priority of, the pre-petition liens and amounts owed which are asserted and, derivatively, any replacement lien provided for hereunder. Subject to the foregoing, the findings, conclusions, or orders set forth herein are made as to all parties are on an interim basis, shall not constitute the law of the case or final decisions of this Court on any legal or factual issue, and are without prejudice to the right of any party to raise, contest, or seek the same or a different outcome at any subsequent hearing.

17. All professional fees are subject to approval of the United States Bankruptcy Court.

18. A further hearing on the Cash Collateral Motion and any objections and responses to the Cash Collateral Motion, shall be heard at 9:30 a.m. on September 26, 2017, at the United States Bankruptcy Court in Greensboro, North Carolina.

19. These obligations of the Debtor are continuing in nature, shall survive the term of this Order, and shall remain in effect until the earlier of (collectively a “Termination Event”):

- (i) The effective date of any confirmed Chapter 11 plan in this proceeding;
- (ii) Conversion of this case to another Chapter of the Bankruptcy Code;
- (iii) The entry of further orders of the Court regarding the subject matter hereof; or
- (iii) Dismissal of this proceeding.

20. Debtor shall pay all applicable insurance premiums, taxes, and other governmental charges as they become due, and will make all tax deposits and file all applicable tax returns on a timely basis.

21. If any or all of the provisions of this Order are hereafter modified, vacated, or stayed by subsequent order of this Court, or by any other Court, or the use of Cash Collateral pursuant hereto is terminated, such stay, modification, vacation, or termination, shall not affect the validity and enforceability of any lien or priority authorized herein with respect to any indebtedness of Debtor.

22. If an event of default shall occur, or the Court terminates the Debtor’s right to use Cash Collateral, unless otherwise ordered by this Court, the Debtor shall pay all expenses of operation incurred by the Debtor in their normal course of business up through the time of the termination of the Debtor’s right to use Cash Collateral, provided that and solely to the extent that such payments are in compliance with the Budget attached and this Order, and the liens granted herein shall be subordinate to a carve out for such expenses, including all fees pursuant to 28 U.S.C. 1930 (the “Trailing Expenses”).

[END OF DOCUMENT]

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MSC Industrial Supply Co.  
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