

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

IN RE:)
)
DENTON HARDWOODS, INC.,) CASE NO. 17-10510 C-11G
)
)
Debtor.)

**EMERGENCY MOTION FOR ORDER AUTHORIZING USE OF CASH
COLLATERAL AND REQUESTING AN ORDER AUTHORIZING EMERGENCY USE
OF CASH COLLATERAL TO THE EXTENT REQUIRED AND GRANTING ADEQUATE
PROTECTION AND APPROVAL OF OPERATING BUDGET**

NOW COMES Denton Hardwoods, Inc., Debtor-In-Possession (hereinafter "Denton Hardwoods", "Debtor" or "Debtor Corporation"), by and through counsel, and respectfully requests authorization to use cash collateral pursuant to 11 U.S.C. §364, Bankruptcy Rules 401 and 914, and other applicable sections of Title 11 of the United States Code, and the United States Bankruptcy Rules; and, in support thereof, show unto the Court the following:

1. The above captioned Debtor filed a voluntary petition under Title 11, Chapter 11 of the United States Bankruptcy Code on April 28, 2017. 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, 1108, and other applicable sections of the United States Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. §157.

3. Denton Hardwoods is in the business of drying, grading and preparing untreated timber. The Debtor has been in business since 2001 and through September 2015 of this year has had gross sales in excess of \$300,000.00. Denton Hardwoods owns real property located in Denton, North Carolina, commonly know as 8811 New Hope Road, Denton, North Carolina (the "Property"). The Property consists of a parcel of land with three kilns for drying wood, work space for finishing wood and space for storage. The Debtor uses the Property for its production.

4. On or about March 20, 2001, Denton Hardwoods executed a Promissory Note in the original principal amount of One Hundred Ninety Two Thousand Dollars (\$192,000.00) in favor of Branch Banking and Trust Company ("BB&T"). The Debtor entered into four additional notes between that date and October 8, 2010 with BB&T. The final two notes entered was for Seven Hundred Thousand Dollars (\$700,000.00) total. The Debtor estimates that approximately Six Hundred Seventy Eight Thousand Dollars (\$678,000.00) is currently owed under the last two Promissory Notes.

5. The April 23, 2001, Denton Hardwoods secured by all of the Debtor's inventory and accounts pursuant to a Security Agreement dated March 20, 2001. BB&T has filed the requisite UCC Financing Statements for these Security Agreements properly perfected first-priority securities in the Debtor's inventory and accounts. Attached hereto and incorporated herein by reference, identified as **Exhibit A** is a true and accurate copy of the requisite UCC Financing Statements for these Security Agreements and the continuation statements.

6. On October 8, 2010, Denton Hardwoods executed a deed of trust securing the last two Promissory Notes by the real estate of approximately 7.58 acres located at 8811 New Hope Road, Denton, NC. Attached hereto and incorporated herein by reference, identified as **EXHIBIT B** is a true and accurate copy of the Deed of Trust.

7. As of the Petition Date, Denton Hardwoods' bank accounts had an available balance of approximately \$105.00. As of the Petition Date, Denton Hardwoods' accounts receivable was worth approximately \$0.00. As of the Petition Date, Denton Hardwoods was holding less than \$100 worth of inventory. Collectively, the Debtor's bank accounts, accounts receivable, and inventory have a collective value of approximately \$205.00. The Debtor's bank accounts, accounts receivable, and inventory constitutes cash collateral as defined by the Bankruptcy Code.

8. Upon information and belief, there are no other valid security interests on any of the cash collateral owned or operated by the Debtor, except as set forth herein.

9. If the Court finds that BB&T has a valid and enforceable security interests in the property of the Debtor, the Debtor is seeking a Court Order finding that the secured party is adequately protected, and authorizing the Debtor's use of Case Collateral pursuant to the remaining terms of this Motion.

10. At the time of filing, the Debtor does not have in place any credit facility which would allow for it to borrow funds for the purpose of operation thereby requiring them to use the cash generated from their pre-petition and post petition operations to pay all expenses incurred in the ordinary course of business. If the cash on hand, cash generated from accounts receivable through the operation of the Debtor's business, cash generated from the use of the Debtor's inventory, and income from the Debtor's business are "Cash Collateral" as that term is defined in 11 U.S.C. §363(a), then the Debtor is restricted from using the same without either the consent of those parties claiming a secured interest on such cash collateral or Court approval.

11. The Debtor is in need of authority to use cash collateral after the filing of the petition herein. The cash collateral the Debtor seeks to use are funds currently held in the Debtor's bank account, and any sales of existing inventory based upon the continued operation of the business. If the authority is not granted to use cash collateral to operate the Debtor's business in the ordinary course, it will result in a detrimental impact on the continued viability of the business, would interfere with the prospects of reorganization of the Debtor, would likely impair the value of the collateral secured by BB&T and, in all likelihood, would result in the Debtor being unable to operate and therefore forced into liquidation. The forced liquidation of the assets of the Debtor would be adverse to the interest of secured creditors, unsecured creditors, and all other creditors and parties in interest in this proceeding.

12. The use of cash collateral will be necessary to allow the Debtor to pay its operational needs which include the cost of maintaining the business, payment of wages, salaries, and other normal expenses incurred in the ordinary course of the Debtor's business and as a result of the filing of the Chapter 11 proceeding. At this time, the Debtor is unable to obtain unsecured credit to enable it to properly obtain the necessary funds for operation of the business and further anticipate it will be on a C.O.D. or cash only basis in the Chapter 11 proceeding with its suppliers. The Debtor has been unable to secure post petition secured financing from any alternative source which would allow for the viable operations of the Debtor. As a result, unless the Court authorizes the immediate use of cash collateral, irreparable damage and injury will be caused to the Debtor, its creditors and all other parties in interest.

13. If any party claiming a secured interest is found to have a valid security interest in the collateral described above, then such secured creditor(s) can be adequately protected as the result of the following:

a. BB&T shall be adequately protected by continuing to allow it to maintain a security interest in the real and personal property which was held pre-petition having the same priority and rights in the collateral as it had pre-petition. The use of the pre and post petition cash will assist in the Debtor preserving the ability to collect post petition profits, thereby allowing the Debtor to continue to maintain the business.

b. Pursuant to Section 361(2), 363(c), 364(d)(1), BB&T shall be granted a post-petition security interest and lien (of the same validity, extent and priority as the pre-petition security interest in the Pre-Petition Collateral) in and to: (i) all proceeds from the disposition of any of the Pre-Petition Collateral, including Cash Collateral, and (ii) any assets or properties acquired by the Debtor after the Petition Date and the proceeds thereof (i) and (ii) above being herein called the "Post Petition Collateral" and together with the Pre-Petition Collateral, the same are herein called the "Collateral." The liens and security interests granted to BB&T hereunder shall be limited in an amount to the sum of the aggregate diminution subsequent to the Petition Date in the value of the interest of BB&T in the Pre-Petition Collateral (including Cash Collateral) resulting from such utilization or the consumption of Pre-Petition Collateral. Subject to the foregoing, the security interests and liens granted herein shall be valid, perfected and enforceable security interests and liens on the property of the Debtor's estate without further filing or recording of any document or instrument or any other action. The validity, perfection and priority shall be the same status as any security interest held pre-petition. This Collateral, as defined herein, shall not include a lien on any proceeds created by avoidance actions or a lien on any avoidance actions of the Debtor as such avoidance action may exist for the benefit of the estate pursuant to 11 U.S.C. §§510, 542, 543, 544, 545, 547, 548, 549, 550, 553 or 724(a). Furthermore, this Collateral, as defined herein, would not include a lien on any of the petition retainers to professional and/or any funds distributed to professionals in accordance with the budget as approved by the Court or other order of the Court.

14. The requested use of cash collateral will allow the Debtor to maintain its viability as a business. Attached hereto and incorporated herein by reference, identified as **Exhibit C** is a monthly breakdown of income and expenses for April 2017, as well as projections for May and June 2017.

15. It would be 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. The entry of such Order should be allowed with a preliminary hearing on the same and with notice of a hearing on final use of cash collateral pursuant to Bankruptcy Rule 4001(b). The hearing concerning the use of cash collateral and the relief requested herein is further necessary so as to allow the Debtor to maintain its viability pending any further rulings on issues related to the continued use of cash collateral.

16. If the Debtor is not authorized to use cash collateral there may be irreparable damage caused to BB&T's collateral and the estate.

17. The Debtor is requesting authorization for the emergency use of cash collateral for a period of thirty (30) days until such time as the Court is able to hold an interim hearing on further use of cash collateral in return for the Debtor agreeing to the continuation of BB&T's lien on existing and future collateral as provided above.

WHEREFORE, the Debtor respectfully requests:

1. Authorization of emergency use of cash collateral for the purposes stated herein, by and through the hearing by this Court to consider a preliminary Order Authorizing Use of Cash Collateral;

2. That notice and hearing on the preliminary hearing on the use of cash collateral be given by the Court with notice of the same to be given for such shortened notice as deemed necessary by the Court with further notice and hearing being set on this matter for final hearing, as required pursuant to Bankruptcy Rule 4001;

3. Such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED, this the 1st day of May, 2017.

/s/Phillip E. Bolton
Phillip E. Bolton
Attorneys for Debtor
NCSB #12326

OF COUNSEL:

Bolton Law Group, PA
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Greensboro, NC 27409
(336) 294-7777

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned has served a copy of the foregoing via the CM/ECF System as applicable or by depositing the same, enclosed in a postage paid wrapper, properly addressed to the following parties in interest, at their last known address as shown below, in a post office or official depository under the exclusive care and custody of the United States Post Office, in a manner prescribed by law:

William P. Miller, US Bankruptcy Administrator

Electronic Service

BB&T
PO Box 1847
Wilson, NC

James E. Vaughan
Blanco Tackabery et al.
PO Box 25008
Winston-Salem, NC 27114

VIA mail and email

Kenneth Ray Gammons
1077 Gammons Rd.
Stuart, VA 24171

American Express
PO Box 1270
Newark, NJ 07101

American Express
PO Box 650448
Dallas, TX 75265

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

North Carolina Dept. Of Revenue
PO Box 1168
Raleigh, NC 27640

Randolph County Tax Dept.
725 McDowell Rd.
Asheboro, NC 27203

This the 1st day of May. 2017.

/s/ Phillip E. Bolton
Phillip E. Bolton