



SO ORDERED.

SIGNED this 11th day of August, 2017.



 BENJAMIN A. KAHN
 UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
 MIDDLE DISTRICT OF NORTH CAROLINA
 DURHAM DIVISION**

IN RE:
RFI Management, Inc.
DEBTOR

CHAPTER 11
CASE NO. 17-80247

**THIRD INTERIM CONSENT ORDER AUTHORIZING DEBTOR’S USE OF CASH
 COLLATERAL AND PROVIDING NOTICE OF FURTHER HEARING**

THIS CAUSE came before the Court upon the Debtor’s Motion for Authority to Use Cash Collateral. Swift Financial Corporation d/b/a Swift Capital (“Swift Capital”) contends that it is the owner of the Debtor’s Future Receivables (as that term is defined on the parties’ contract). It also contends that it has a security interest in Debtor’s present and future accounts, receivables, chattel paper, deposit accounts, personal property, assets and fixtures, general intangibles, instruments, equipment and inventory, which constitutes cash collateral as defined in Section 363 of the Bankruptcy Code.

This Court entered a Second Interim Consent Order Authorizing Debtor's Use of Cash Collateral and Providing Notice of Further Hearing (the “Second Cash Collateral Order”) on April 28, 2017. [Dkt # 58]. The Second Cash Collateral Order set a hearing for 11:00 AM on July 20, 2017 to consider the Debtor’s request to continue to use cash

collateral, and the hearing was continued to August 3, 2017 at 11:00AM. James C. White appeared at the hearing on behalf of the Debtor, James A. Beck II appeared on behalf of creditor Swift Capital and William P. Miller, Bankruptcy Administrator also appeared. The Debtor served the Second Cash Collateral Order as required and no party has objected to the Debtor's request to continue using cash collateral.

It appears to the Court that the terms and conditions set forth below are reasonable and appropriate, are in the best interest of the bankruptcy estate and all creditors and should be approved. It further appears to the Court that the notice of the Motion which the Debtor provided to creditors and parties in interest is adequate and proper.

THEREFORE, based upon the Debtor's Motion for Authority to Use Cash Collateral and the record in this case, the Court hereby makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The Debtor filed its petition pursuant to Chapter 11 of the United States Bankruptcy Code on March 29, 2017 (the "Petition Date") and operates as debtor-in-possession. A Committee of Unsecured Creditors has not been appointed.

3. On or about November 16, 2016 the Debtor entered into a document styled a "Future Receivables Sale Agreement" with Swift Financial Corporation ("Swift") (the "Agreement"). The Agreement refers to a dollar amount of receivables sold of \$176,850.00.

4. For the purposes of this Order only, the Debtor acknowledges and does not dispute the validity, priority and extent of the security interest asserted by Swift Capital.

5. It appears that Swift Capital is the only creditor who has a security interest against “cash collateral” as that term is defined in the Bankruptcy Code.

6. The Debtor asserts that the terms and conditions of this Order appear to provide adequate protection of the interests of Swift Capital in the Debtor’s use of cash collateral. Swift Capital reserves all rights with respect to adequate protection, including a right to seek further relief under 11 U.S.C. §§ 361, 362, and 363 and any other remedies available under applicable law.

7. The Debtor asserts that the terms, conditions, and limitations of this Order are reasonably tailored to protect the interests of all creditors of the bankruptcy estate.

8. The requirements of the Bankruptcy Rules and the Bankruptcy Code, including without limitation Bankruptcy Rule 4001(d), have been satisfied for the Debtor’s use of cash collateral and for the grant of adequate protection to Swift Capital upon the terms set forth in this Order.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law the Court hereby ORDERS:

1. The Debtor shall be authorized to use cash collateral in accordance with the terms of this Order.

2. Swift Capital shall have a continuing post-petition lien and security interest in all property and categories of property of the Debtor in which and of the same priority as it held a similar, unavoidable security interest as of the Petition Date, and the proceeds thereof, whether acquired pre-petition or post-petition (the “Post-petition Collateral”), equivalent to a lien granted under §§ 364(c)(2) and (3) of the Bankruptcy Code, but only to the extent of cash collateral used for purposes other than adequate protection payments to Swift Capital. The

validity, enforceability, and perfection of the aforesaid post-petition liens on the Post-petition Collateral shall not depend upon filing, recordation, or any other act required under applicable state or federal law, rule, or regulation.

3. The Debtor shall not use cash collateral except to pay its ordinary, necessary and reasonable post-petition operating expense and administrative expenses necessary for the administration of this estate, including the Debtor's reasonable attorneys' fees as approved by this Court and quarterly fees, as set forth in the budget attached as Exhibit "A."

4. The Debtor shall maintain Debtor-in-Possession bank accounts ("DIP Accounts") into which it shall deposit all income. The Debtor shall open and maintain a separate DIP Account for each project on which it is serving as a subcontractor, and all income and expenses for that project must be paid from the project's respective DIP Account. Transfers may only be made between DIP Accounts if those transfers are necessary to pay expenses set out in the budget attached as Exhibit "A" or if they are approved in writing by Swift Capital.

5. The Debtor may request in writing that Swift Capital approve an amended budget should it become apparent that there are valid expenses what were not foreseen at this time. To the extent Swift Capital declines any request by the Debtor to amend the budget, the Debtor reserves the right to file an additional motion to use cash collateral and seek an expedited hearing of it so long as all creditors in this proceeding receive at least five (5) business days' notice.

6. Upon reasonable prior notice, the Debtor shall provide to the Bankruptcy Administrator and representatives and/or employees of Swift Capital all such information as

they may reasonably request for the purpose of appraising or evaluating the cash collateral of the Debtor.

7. The Debtor shall pay as adequate protection to Swift Capital pursuant to 11 U.S.C. §§ 361, 362 and 363 the sum of six thousand eight hundred dollars (“\$6,800.00”) to be paid on August 17, 2017 and September 17, 2017.

8. Payment shall be mailed to Swift at the following address: 625 Ridge Pike, Building E, Conshohocken, PA 19428.

9. The terms and conditions of this Order do not necessarily constitute adequate protection of the interests of Swift Capital in its cash collateral. Nothing in this Order shall waive any of Swift Capital’s rights unless expressly provided for herein, including but not limited to the right to assert any claim pursuant to Section 507(b) of the Bankruptcy Code with priority over all other expenses of administration in this case and any ensuing Chapter 7 case. Swift Capital reserves the right to contend that the terms and conditions of this Order do not constitute adequate protection of their interests and reserve their right to seek further relief under 11 U.S.C. §§ 361, 362 and 363.

10. The Debtor expressly reserves its right to seek the use of cash collateral beyond the stated terms of this Order. Any party may seek further consideration of the relief granted in this Order or other cash collateral issues by filing a request with the Court; provided however that a hearing of such request shall not occur on less than five (5) business days’ notice to the Bankruptcy Administrator, the Debtor, and all creditors.

11. Subject to paragraphs 12 and 13 below, this Order shall be effective *nunc pro tunc* from July 20, 2017 and shall remain in full force and effect and the Debtor shall be authorized to use cash collateral until the earlier of (i) entry of an Order by the Court modifying

the terms of the use of cash collateral or the adequate protection provided to Swift Capital; (ii) entry of an order by the Court terminating this Order for cause, including but not limited to breach of its terms and conditions; (iii) upon filing of a notice of default as provided in this Order; or (iv) October 5, 2017.

12. The following shall constitute events of default:

- a. If the Debtor fails to make the adequate protection payments to Swift Capital as set forth in this Order;
- b. If any post-petition lender to the Debtor or any other creditor of the Debtor shall acquire a post-petition security interest in or lien upon the Post-petition Collateral having priority over the security interests and liens in such property held by Swift Capital unless Swift Capital expressly consents to such subordination in writing.
- c. If the Debtor fails to comply with any of the other terms and conditions of this Order;
- d. If the Debtor uses cash collateral in a manner other than as agreed in this Order;
- e. Conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code; or
- f. Appointment of a trustee or examiner.

13. Upon the occurrence of any one of the Events of Default enumerated above and thereafter upon the giving of notice of such Event of Default by Swift Capital to the Debtor and the Debtor's failure to effect a cure thereafter within five (5) days from the giving of such notice, then (i) the Debtor shall immediately cease using cash collateral, and (ii) Swift Capital

may seek relief from the automatic stay provided by Section 362(a) to enforce its rights and remedies with respect to the Post-petition Collateral upon not fewer than five (5) business days prior written notice to the Debtor, the Debtor's counsel, and to counsel for any committee (or if no committee has been appointed, the 20 largest unsecured creditors of the Debtor as reflected in the Debtor's Schedules), with a copy to the Office of the Bankruptcy Administrator.

14. Upon filing of a written notice of default with the Court by Swift Capital (which shall be served upon counsel for the Debtor by email and overnight courier and served upon the Bankruptcy Administrator by U.S. Mail) the Debtor may request a hearing to challenge the declaration of default. The parties shall have the right to seek an expedited hearing on any challenge by the Debtor, provided, however, that such hearing shall not occur on less than three (3) business days' notice to the other parties.

15. Nothing in this Order shall be deemed to authorize or direct the Debtor to pay any pre-petition debt.

16. The Debtor shall pay all state, federal and ad valorem taxes as they become due and will make all tax deposits and file all state and federal returns on a timely basis.

17. The Debtor shall not dispose of any assets except pursuant to Orders of this Court obtained after due notice and hearing.

18. If any or all of the provisions of this Order are hereafter modified, vacated or stayed by any subsequent order of this Court or any other court, such stay, modification or vacation shall not affect the validity or enforceability of any lien or priority authorized or created hereby prior to the effective date of such modification, stay, vacation or final order to the extent that said lien or priority is valid, perfected, enforceable and otherwise non-avoidable as of the Petition Date. The validity and enforceability of all liens and priorities authorized or

created in this Order shall survive the conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code or the dismissal of this proceeding.

19. The terms of this Order shall be binding upon any Committee (if formed), and upon any trustee subsequently appointed, including but not limited to a Chapter 7 trustee upon conversion of this case to a case under Chapter 7 of the Bankruptcy Code; provided however, the findings, conclusions, or orders set forth herein are made on an interim basis, shall not constitute a final decision 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.

20. A further hearing (which may be a final hearing) on this Motion will be held at 11:00 AM October 5, 2017 in the Courtroom, U.S. Bankruptcy Court, Durham, North Carolina at which time the Court will further consider the Motion for Authority to Use Cash Collateral.

21. The Debtor shall serve a copy of this Order upon the Bankruptcy Administrator, creditors asserting a lien on any property of the estate or an interest in cash collateral, and the creditors holding the 20 largest unsecured claims, and shall file a certificate of such service with the Clerk.

PARRY TYNDALL WHITE

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U.S. BANKRUPTCY ADMINISTRATOR

/s/ William P. Miller

William P. Miller

U.S. Bankruptcy Administrator

P.O. Box 1828

Greensboro, NC 27402

(336) 358-4170

END OF DOCUMENT

CASH FLOW AND FUTURE ESTIMATES COSTS BY PROJECT

	Actual April to July	August	September	October
TOTAL				
INCOME	\$ 236,102.04	\$ 169,428.07	\$ 113,112.62	\$ 69,846.87
EXPENSES	\$ 205,998.70	\$ 161,207.31	\$ 105,699.33	\$ 34,000.00
PROFIT/LOSS	\$ 30,103.34	\$ 38,324.10	\$ 45,737.39	\$ 81,584.26
#1 General Account				
<i>Retainage on Completed Protects</i>				
Income	\$ 38,513.31	\$ 32,500.00		\$ 19,000.00
Adequate Protection	\$ 22,400.00	\$ 6,800.00	\$ 6,800.00	\$ 6,800.00
Completed Jobs	\$ 14,474.28	\$ 5,199.00		
Draw/Per Diems/Mileage	\$ 31,127.00	\$ 11,000.00	\$ 11,000.00	\$ 11,000.00
Unallocated Job Supplies	\$ 15,889.93			
Overhead	\$ 7,771.90	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
Administrative Costs	\$ 8,862.97	\$ 20,000.00	\$ 10,000.00	\$ 7,000.00
#2 West Ashley				
Income	\$ 79,505.29	\$ 5,000.00	\$ 40,000.00	

Expenses	\$	60,431.17	\$	22,884.83	\$	22,884.83
#3 Pooler						
Income	\$	118,083.44	\$	-	\$	22,222.20
Expenses	\$	37,730.39		19,371.66		9,685.83
#4 Sneads Ferry						
Income	\$	-	\$	62,726.39	\$	44,412.74
Expenses	\$	6,334.53	\$	37,939.00	\$	18,640.67
#5 Hampton Inn Knightdale						
Income			\$	69,201.68	\$	28,699.88
Expenses	\$	976.53	\$	36,012.82	\$	24,688.00