




J. Craig Whitley
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

In re:

Tanner Companies, LLC,

Debtor.

Case Number: 17-40029

Chapter 11

FINAL ORDER AUTHORIZING DEBTOR'S USE OF CASH COLLATERAL

THIS MATTER came before the Court on the *Emergency Motion to Use Cash Collateral* (D.E. 11) (the "Motion") filed by Tanner Companies, LLC, the debtor and debtor-in-possession (the "Debtor"), through counsel, on January 27, 2017. Preliminary hearings on the Motion were held on an emergency basis on January 31, 2017 (the "First Interim Hearing") and again on February 8, 2017 (the "Second Interim Hearing"). A final hearing on the Motion was held on March 21–22, 2017 (the "Final Hearing"). It appears from the record that notice of the Motion was proper and that only one objection to the Motion was received, the *Objection to Debtor's Motion to Use Cash Collateral* filed by Salem Investment Partners III, Limited Partnership ("Salem") on March 6, 2017 (D.E. 52) (the "Objection"). The Court—based upon (i) a review of the record, (ii) the contents of the Motion and the Objection, and (iii) the presentations and arguments of counsel made, and evidence presented, at the First Interim Hearing, Second Interim Hearing, and Final Hearing—finds and concludes as follows:

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1409(a).

2. On January 27, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code in this Court. The Debtor continues in possession of the Debtor’s assets, and operates the Debtor’s business, as a debtor-in-possession.

3. Pursuant to § 1102 of the Code, the Court entered an Order (D.E. 35) appointing a committee of unsecured creditors in this Case on February 14, 2017 (the “Committee”). The Committee did not object to the relief requested in the Motion.

4. The Debtor attached a proposed budget for the thirteen (13) weeks following the Petition Date as Exhibit A to the Motion. The Debtor has provided various revised budgets to Salem over the course of this Case. An updated budget showing actuals since the Petition Date and projecting approximately thirteen (13) weeks after the date of this Order is attached hereto as Exhibit A (the “Budget”)

5. Salem asserts a security interest in substantially all of the Debtor’s tangible and intangible assets located in the United States, including without limitation real estate, deposit accounts, inventory, accounts receivable, general intangibles, and the proceeds thereof.

6. For purposes of this Order, the Court proceeds with the presumption that Salem holds valid debts owed by the Debtor and the entirety of the Debtor’s accounts receivable, inventory, bank accounts and / or proceeds therefrom (the “Cash Collateral”) is subject to valid, perfected, and otherwise enforceable security interests securing such debts in favor of Salem.

7. The Debtor believes that no other creditors have or assert liens upon, or security interests in, the Cash Collateral.

8. The Debtor intends to continue the Debtor's operations as going concern post-petition, including the design of apparel and accessories for upcoming seasons and the sale thereof, in accordance with the Budget, and intends to propose a chapter 11 plan of reorganization.

9. Without the use of the Cash Collateral, the Debtor will not be able to continue its sales, the value of the Debtor's inventory will deteriorate rapidly, and the Debtor's ability to fashion an effective plan will be irreparably impaired.

10. To the extent not automatically provided by 11 U.S.C. § 552(b)(1), the Debtor proposes to provide Salem with replacement liens in post-petition assets acquired using the Cash Collateral to the same extent and priority as existed pre-petition.

11. Good and sufficient cause has been shown for the entry of this Order. Among other things, the entry of this Order will enable the Debtor to continue the operation of its business, increase the possibility for a successful reorganization, and be in the best interest of the Debtor, the Debtor's creditors, and the Debtor's bankruptcy estates.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED as follows:

A. The Motion is GRANTED.

B. The Debtor may use the Cash Collateral to satisfy obligations or expenses due and payable during the period beginning on the Petition Date and continuing through 11:59 p.m. on June 16, 2017 in the ordinary course of the Debtor's business substantially consistent with the Budget; *provided, however*, that the Debtor may, without additional authority from the Court, adjust the exact timing or amounts of payments appearing in the Budget so long as the total of such payments for any given item are substantially consistent with the Budget. In the event the Debtor seeks to make total payments that are not substantially consistent with the Budget ("Non-Budget Payments"), the Debtor must provide prior notice to Salem and give Salem the

opportunity to consent or object to the Non-Budget Payments. If Salem does not consent to any proposed Non-Budget Payments, the Debtor may seek additional authority from the Court to make the Non-Budget Payments.

C. The Debtor shall provide Salem and the Committee with weekly reports showing the Debtor's expenditures of the Cash Collateral during the prior week, in substantially the same format as the Budget, along with an updated inventory roll-forward calculation based on actual sales receipts and purchases of inventory.

D. The Debtor shall not use, sell, or expend, directly or indirectly, the Cash Collateral, or any proceeds, products, or offspring thereof, except as authorized by this Order.

E. Salem is granted, as assurance of adequate protection, a valid, attached, choate, continuing, perfected, and otherwise enforceable security interest and replacement liens in post-petition assets acquired using the Cash Collateral to the same extent and priority as existed pre-petition. Such replacement liens are subject only to valid liens existing as of the Petition Date, and are deemed perfected without the need for any further action by Salem. 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. The terms of this Order do not necessarily constitute adequate protection of the interest of Salem in the Cash Collateral. Unless and until otherwise ordered by the Court, the Debtor is not required to make any adequate protection payments to Salem.

F. The relief ordered herein is entered without prejudice (1) to any and all claims, rights, and defenses that the Debtor, the Bankruptcy Administrator, any trustee, any committee, or any other party with standing may have to challenge the nature, validity, or extent of the liens asserted by Salem, or (2) to any claims, rights, and defenses that Salem may have to seek additional adequate protection or other relief in relation to the Cash Collateral, to otherwise

contest entry of a final order authorizing the use of Cash Collateral, or to take any other action including but not limited to, seeking relief from the automatic stay, seeking the appointment of a trustee or examiner in this proceeding, or the conversion of the case to a proceeding under Chapter 7 of the Bankruptcy Code, or the dismissal of this proceeding.

G. A status hearing on the use of Cash Collateral shall be held on Thursday, June 8, 2017 at 9:30 a.m. in Courtroom 1-4, 401 W. Trade St., Charlotte, NC.

H. This Order is without prejudice to the rights of Salem to seek a modification of this Order, including a request for additional adequate protection or the termination of the Debtor's right to use Cash Collateral, after notice and hearing.

I. Within three (3) days after entry of this Order, the Debtor shall serve a copy of this Order via U.S. Mail upon (1) the Bankruptcy Administrator's Office, (2) the Debtor's twenty (20) largest unsecured creditors, (3) Salem, and (4) those parties requesting notice pursuant to Bankruptcy Rule 2002.

This Order has been signed Electronically. The judge's signature and court's seal appear at the top of the Order.

United States Bankruptcy Court

TANNER COMPANIES, LLC WEEKLY CASH REPORT ACTUAL RESULTS Week Ending Date		POST ACTUAL 0 2/3/17	POST ACTUAL 1 2/10/17	POST ACTUAL 2 2/17/17	POST ACTUAL 3 2/24/17	POST ACTUAL 4 3/3/17	POST ACTUAL 5 3/10/17	POST ACTUAL 6 3/17/17	POST ACTUAL 7 3/24/17	POST FORECAST 8 3/31/17	POST FORECAST 9 4/7/17	POST FORECAST 10 4/14/17	POST FORECAST 11 4/21/17	POST FORECAST 12 4/28/17	POST FORECAST 13 5/5/17	POST FORECAST 14 5/12/17	POST FORECAST 15 5/19/17	POST FORECAST 16 5/26/17	POST FORECAST 17 6/2/17	POST FORECAST 18 6/9/17	POST FORECAST 19 6/16/17	POST FORECAST 20 6/23/17
Beginning Cash All Banks		42,349	190,122	234,900	89,435	229,390	87,070	192,864	33,385	65,981	42,159	405,786	240,444	399,507	377,956	688,408	705,264	768,109	801,884	834,819	572,296	605,058
PROJECTED CASH RECEIPTS		524,561	570,636	398,138	429,624	376,064	411,630	319,658	591,029	601,473	769,000	688,130	705,578	701,422	581,927	742,543	514,929	564,973	289,124	325,360	451,487	455,709
<i>sales tax collected</i>			30,691	27,110	24,389	21,334	24,250	22,318	42,122	38,999	37,908	46,147	42,959	40,725	34,012	32,381	32,583	25,816	19,441	20,917	32,341	28,451
<i>Retail</i>			57,742	54,042	76,115	70,352	39,097	34,788	68,485	58,000	65,000	98,000	72,000	61,000	52,000	65,000	102,000	68,000	45,000	42,500	45,000	90,000
<i>other Salescharges</i>			11,300	10,836	9,495	8,861	8,574	9,432	8,336	13,005	12,592	14,245	13,831	13,418	11,765	271,104	10,525	9,286	7,963	8,403	11,435	9,618
<i>direct sales for commission calc</i>			452,421	423,598	345,086	308,495	291,301	340,917	277,837	546,250	522,500	617,500	593,750	570,000	475,000	437,000	403,750	332,500	256,500	10,450	190,000	109,250
<i>samples for commission calc</i>			(4,164)	(1,971)	(548)	(375)	283	9	83	0	0	0	0	0	0	0	0	0	0	271,331	266,046	242,382
<i>Total Sales</i>			517,299	486,505	430,148	387,333	339,255	385,146	354,741	617,255	600,092	729,745	679,581	644,418	538,765	773,104	516,275	409,786	309,463	332,684	512,481	451,251
Required Cash Out																						
Payroll	2017 percentages	(64,095)	(68,862)	(66,352)	(65,730)	(66,344)	(66,965)	(69,365)	(64,929)	(69,000)	(70,000)	(71,000)	(70,000)	(69,000)	(70,000)	(71,000)	(70,000)	(69,000)	(69,000)	(70,000)	(70,000)	(68,000)
Commissions	27.64%	(161,164)		(261,967)		(223,890)	89	(167,052)		(164,333)		(330,977)		(345,585)		(303,572)		(211,144)		(217,183)		(78,016)
Commissions Sample Sales	17.011%			-		-						-		-		-		-		-		(46,156)
Sample, Agency, & Sponsorship/Referral Bonus			(228,467)		(17,096)							(5,000)										
Employee Reimbursements		-	(4,455)	-	(3,867)	(3,802)	(1,074)	(9,266)	(500)	(9,000)	(9,000)	(9,000)		(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)
Ningbo/Truman		(4,875)	(60,000)	(60,000)	(50,000)	(4,875)	(85,000)	(80,000)	-	(4,875)	(155,000)	(75,000)	(20,000)	-	(4,875)	(85,000)	(70,000)	(20,000)	(4,875)	(75,000)	(70,000)	(40,000)
Claridge		(41,728)	-	-	-	(56,534)	-	-	-	(59,306)	-	-	(40,930)	(41,825)	-	-	(24,007)	(41,825)	-	-	-	(13,104)
Italy Office		-	-	(9,245)	(7,573)	-	-	(7,114)	-	-	(12,000)	(18,018)	-	(9,600)	(12,000)	-	-	(9,600)	-	(18,000)	-	(12,000)
Healthcare		(25,153)	(19,744)	(17,416)	(3,804)	(5,768)	(25,635)	(4,307)	(8,721)	(9,600)	(40,000)	(9,600)	(22,323)	(9,600)	(9,600)	(9,600)	(22,323)	(9,600)	(9,600)	(9,600)	(22,323)	(9,600)
US Customs		-	-	-	(12,910)	(20,783)	(7,821)	(21,207)	(212,778)	(5,436)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)
UPS		(66,223)	(25,349)	(10,981)	-	(14,262)	(10,522)	(21,536)	(10,966)	(37,915)	(31,611)	(30,000)	(28,000)	(27,000)	(26,000)	(30,000)	(26,000)	(30,000)	(28,000)	(28,000)	(30,000)	(27,000)
Sales Tax		-	-	-	-	-	-	(124,423)	-	-	-	(97,361)	(17,104)	(17,104)	-	(146,403)	(21,876)	(21,876)	-	(104,407)	-	(36,684)
Insurance - Commercial & Life		-	(6,315)	-	(6,529)	-	(9,615)	-	(2,858)	(3,903)	(2,763)	(3,515)	(2,878)	(3,903)	-	(3,515)	(2,878)	(3,903)	-	(6,100)	(3,515)	(2,878)
Inventory		-	(20,789)	(64,600)	(59,871)	(59,710)	(80,305)	(59,403)	(82,443)	(190,000)	(30,000)	(150,000)	(118,000)	(88,000)	(85,000)	(155,000)	(50,000)	(50,000)	(20,000)	(100,000)	(50,000)	(50,000)
Critical Vendor			(34,441)		(40,212)	(7,000)																
Other General and Admin Expenses		(13,550)	(15,960)	(53,042)	(22,076)	(17,846)	(18,989)	(39,886)	(50,816)	(35,000)	(35,000)	(39,000)	(78,280)	(35,000)	(35,000)	(39,000)	(35,480)	(35,000)	(35,000)	(35,000)	(39,480)	(35,000)
Rent / Lease - w/ taxes, utilities, & CAM		-	(41,476)	-	-	(37,569)	-	-	-	(36,927)	-	-	-	(36,956)	-	-	-	(18,068)	(18,888)	-	-	-
Professional Fees		-	-	-	-	-	-	-	-	-	-	-	(115,000)		-	-	-	-	-	-	-	(150,000)
Court Fees														(10,400)								
		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL CASH OUT		(376,788)	(525,858)	(543,603)	(289,669)	(518,383)	(305,836)	(479,137)	(558,433)	(625,295)	(405,374)	(853,471)	(546,515)	(722,973)	(271,475)	(725,687)	(452,084)	(531,198)	(256,189)	(587,883)	(418,725)	(597,438)
Ending Cash in Bank		190,122	234,900	89,435	229,390	87,070	192,864	33,385	65,981	42,159	405,786	240,444	399,507	377,956	688,408	705,264	768,109	801,884	834,819	572,296	605,058	463,329

EXHIBIT A