

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re: Bk. Nos. 18-10091-BAH
18-10092-BAH

Ragged Mountain Equipment, Inc., and Chapter 11
Hurricane Mountain Equipment, LLC Jointly Administered

Debtors.

Hearing Date: January 30, 2019
Hearing Time: 1:30 p.m.
Objection Deadline: January 23, 2019

* Check the box that applies to this Order [pleading]:

_____ This pleading concerns both jointly administered cases listed above.

XXX This pleading concerns *In Re Ragged Mountain Equipment, Inc.*,
Case No. 18-10091-BAH

_____ This pleading concerns *In Hurricane Mountain Equipment, LLC*,
Case No. 18-10092-BAH

**MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(a) and 552(b), FEDERAL
BANKRUPTCY RULE 4001(b) AND LOCAL BANKRUPTCY RULE
4001 FOR AN ORDER AUTHORIZING THE USE OF CASH COLLATERAL AND
GRANTING REPLACEMENT LIENS AND OTHER ADEQUATE PROTECTION FOR
THE FIFTH INTERIM PERIOD**

Ragged Mountain Equipment, Inc. (“Debtor”), pursuant to 11 U.S.C. §§ 105, 363(a) and 552(b), Federal Bankruptcy Rule 4001(b) and Local Bankruptcy Rule 1-4001 moves for an order authorizing the use of cash collateral, providing replacement liens and other adequate protection for the Fifth interim period from February 1, 2019 to April 30, 2019 (the “Fifth Interim Period”):

BRIEF STATEMENT

1. The Debtor seeks an order allowing it to use cash collateral for the Fifth Interim Period to avoid immediate and irreparable harm to its business. The business, a retail and

manufacturing outdoor store selling mostly clothing, would be forced to shut down if the business is not permitted use of cash during the Fifth Interim Period.

BACKGROUND

2. Debtor owns and operates a clothing and outdoor equipment store from its sole location in Intervale, New Hampshire. Debtor's affiliated company, Hurricane Mountain Equipment, LLC, owns the real estate and is an affiliated Debtor. Debtor has been in business since 1978. Debtor employs 20 people. In addition to a retail store and on-line store, Debtor manufactures products under its own label and also for other companies. In recent years due to competition from Amazon and others, Debtor's retail business has suffered.

3. Debtor's retail sales have been down due to several warm winters and a dramatic shift to online sales from consumers shopping for price. Debtor does not expect store sales to rebound. Going forward in retail, Debtor will put more effort into internet sales of its own made in USA products. In manufacturing, Debtor's sales dropped by over 50% in the last 15 years due to offshore price competition. The last 5 years Debtor's manufacturing sales have increased because of LLBean and others wanting "made in USA" sewn products. Overall, Debtor has not been able to service the debt built up over the years.

4. Debtor also manufactures other items under its own label, and other labels, with "Made in the USA" tags on them. Debtor's business is seasonal, the summer and winter being the best periods and the fall and particularly the spring being the worst.

5. Debtor has accumulated a significant amount of debt over the past several years which it needs to be compromised in the bankruptcy case. Most of the debt is unsecured debt.

6. Debtor does have several pre-petition secured creditors with liens on its assets. Some of these lenders have claimed they are actually factors¹, but they are junior in priority to senior secured lenders. Debtor's first lien holder Eastern Bank ("Eastern"), is owed approximately \$330,000.00. Debtor's second "all asset" lien holder is Northway Bank ("Northway"), which is owed approximately \$100,000 on a line of credit. Debtor believes these are the only secured creditors whose liens could possibly attach to any assets. Asset valuation for the fifth interim period, including inventory, cash and receivables is approximately \$430,000.00.

7. All the filed lienholders on Debtor's assets are as follows:

Eastern Bank—all business assets

Northway Bank— inventory, accounts, equipment, general intangibles

North Face a division of VF Outdoor, Inc.— items manufactured by secured party

Mount Washington Valley Economic Council—all business assets

North Country Council, Inc.—all business assets (Coos county)

Black Diamond Equipment, LTD—goods of secured party

Bank of Lake Mills—all business assets

Cisco Systems-- phone

CHTD Company—Knight Capital—all assets

¹ Factor's rights are cut off in future receivables under §552(b) and 506(b).

CT- Swift—all assets and all future receivables sold to Swift.

8. Debtor reached an agreement with Eastern and Northway for use of cash during the case so far. Debtor agreed to pay Eastern \$500/week and Northway \$1,000/month as well as comply with some reporting requirements. Proposed Stipulations for the fifth interim period through April 30, 2019 are attached as Exhibits (the “Stipulations”). Debtor performed its obligations during the prior interim periods. Debtor seeks to continue the terms of use of cash collateral with Northway and Eastern during the Fifth Interim Period on the same terms and conditions and has submitted identical stipulations attached to the proposed order for the Fifth Interim Period. Debtor does not yet have the agreement of Eastern and Northway for use of cash during the Fifth Interim Period.

JURISDICTION

9. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334(b). This matter is a core proceeding under 28 U.S.C. §157(b). The Debtor consents to the entry of a final order.

LIENS

10. The Debtor’s assets are subject to the UCC liens listed above, subject to lien stripping under §506(a).

APPROVAL OF THE USE OF CASH COLLATERAL

11. Section 363(a) of the Bankruptcy Code provides that cash, inventory and receivables constitute “cash collateral”. As a result, pursuant to Section 363(c)(2), a debtor may use such monies only with the consent of the secured creditor or with Court authorization.

Section 363(e) conditions use upon court approval “as necessary to provide adequate protection of such interest.” The Debtor only proposes to use cash collateral for direct benefit of preserving the business during the Fifth Interim Period. No payment requested herein is for anything other than the direct operation and preservation of the business. The inventory and receivables will be replaced dollar for dollar with new inventory and receivables so that the value of “cash collateral” will remain stable or increase during the Fifth Interim Period.

12. Inventory, Debtor’s main asset, is worth near zero in liquidation.

13. If Debtor is not permitted use of cash, Debtor will have to shut down. This will not only destroy Debtor’s value, and terminate employees, but leave creditors with a business that has no real liquidation value. There is every reason to allow the Debtor use of cash collateral under the circumstances described in this motion as they demonstrate irreparable harm. There is no harm to the lenders if Debtor has use of cash during the Fifth Interim Period, which will be used to preserve their collateral.

PROPOSED USAGE OF CASH COLLATERAL AND ADEQUATE PROTECTION

14. Debtor has attached a budget as Exhibit A, which provides for the use of cash collateral during the Fifth Interim Period. The budget provides only for direct payments to preserve operations.

15. As further adequate protection, Debtor shall provide Eastern and Northway the protections and payments provided in the attached Stipulations, Exhibits B and C, which are incorporated herein by reference.

16. Counsel has no retainer and requests the Court authorize a retainer post-petition of \$5,000.00 per month to be held by counsel until approval of fees. This is reflected in the budget.

PLAN

17. Debtor has filed a bootstrap Plan and Disclosure Statement which is currently up for confirmation on January 23, 2019.

18. Debtor has obtained post-petition financing in order to increase its ability to reorganize.

NOTICE AND RESERVATION OF RIGHTS

19. Notice has been provided to the US Trustee, Eastern's counsel, Daniel Sklar and Northway's counsel Greg Moffett by e mail and first-class mail, to all UCC record parties and to the 20 largest creditors by first class mail. All parties reserve all rights against each other except the Eastern loan and Northway loan can no longer be challenged, and nothing in this Motion shall be construed as a waiver of any rights.

WHEREFORE, Ragged Mountain Equipment, Inc., respectfully requests this Court:

- A. Grant this motion for the Fifth Interim Period; and
- B. Grant adequate protection;
- C. Grant such other and further relief as this Court deems just and equitable.

Respectfully submitted,
Ragged Mountain Equipment, Inc.

Chapter 11 Debtor-In-Possession
By its attorneys,
Notinger Law, PLLC

Dated: 1/16/19

By: /s/ Steven M. Notinger
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CERTIFICATE OF SERVICE

I, Steven M. Notinger, certify that I have as of this date forwarded the foregoing Motion in the manner described below:

Via CM/ECF to the following parties:

18-10091-BAH Notice will be electronically mailed to:

Geraldine Karonis on behalf of U.S. Trustee Office of the U.S. Trustee
Geraldine.L.Karonis@usdoj.gov

Gregory A. Moffett on behalf of Creditor Northway Bank
gmoффett@preti.com, sbarrington@preti.com

Deborah A. Notinger on behalf of Debtor Hurricane Mountain Equipment LLC
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Deborah A. Notinger on behalf of Debtor Ragged Mountain Equipment, Inc.
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Steven M. Notinger on behalf of Debtor Hurricane Mountain Equipment LLC
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Steven M. Notinger on behalf of Debtor Ragged Mountain Equipment, Inc.
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Office of the U.S. Trustee
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Daniel W. Sklar on behalf of Creditor Eastern Bank
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Dated: January 16, 2019

By: /s/ Steven M. Notinger
Steven M. Notinger (#03229)