

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

In Re:	*	Chapter 11
	*	Case No. 18-10091
Ragged Mountain Equipment, Inc.	*	
	*	Hearing Date: None, Unless
	*	Required by Court
Debtor(s)	*	

EMERGENCY EX PARTE 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 (i) AUTHORIZING THE EMERGENCY USE OF CASH COLLATERAL (ii) GRANTING REPLACEMENT LIENS AND (iii) SCHEDULING A FINAL HEARING

Ragged Mountain Equipment, Inc. (“Debtor”), moves ex parte on an interim basis pursuant to 11 U.S.C. §§105, 363(a) and 552(b) as well as Federal Bankruptcy Rule 4001(b) and Local Bankruptcy Rule 4001-2(b), for an emergency order authorizing use of cash collateral, the granting of replacement lien(s), and the scheduling of a final hearing, to avoid immediate irreparable harm to the Debtor, as follows:

BRIEF STATEMENT

1. The Debtor seeks an interim order allowing it to use cash collateral on an interim immediate basis 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 immediate use of cash pending a final hearing. As stated below and in the attached Affidavit, the store and its manufacturing division regenerates receipts and

receivables each month and the lenders are certainly adequately protected until a final hearing can be held.

BACKGROUND

2. Debtor owns and operates a clothing and outdoor 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 LLBean through its manufacturing division. In recent years due to competition from Amazon and others, Debtor's retail business has suffered. The manufacturing division, however, is fairly robust and there are approximately \$500,000.00 in orders from LLBean at this time.

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. Debtor's record spring 2017 orders from LLBean have been disrupted by delivery and quality problems with Polartec, its fabric supplier. Polartec moved production from Lawrence MA to Cleveland TN. They are 12 to 14 weeks behind on deliveries and Debtor has only been able to make partial deliveries on its orders, totally disrupting its cash flow. As a result, Debtor has not able to service the debt built up over the years.

4. Debtor believes the LLBean orders can sustain it in the short term. Debtor manufactures a fleece blanket for LLBean which has been very successful. Debtor also manufactures other items under its own label, and other labels, with “Made in the USA” tags on them.

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 claim they are actually factors¹, but they are junior in priority to senior secured lenders. Debtor’s first lien holder is Eastern Bank (“Eastern”), is owed approximately \$330,000.00. Debtor’s inventory at retail totals \$397,597.77 (with an estimated value of 20% on the dollar or \$79,519.54) and receivables total \$40,470.20, and cash at \$34,655.84, a total “cash collateral” value of \$154,645.58. Debtor’s second all asset lien holder is Northway Bank, who is owed approximately \$100,000 on a line of credit. Debtor’s third all asset lien holder is Mount Washington Valley Economic Council, who is owed \$88,869.28. Debtor believes these are the only secured creditors whose liens could possibly attach to any assets since their claims total in the aggregate \$518,869.28 against a maximum value of \$154,645.58 to \$472,723.81 (100% value for inventory) of collateral value. 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

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

Mount Washington Valley Economic Council—all business assets

North Country Council, Inc.—all business assets

Black Diamond Equipment, LTD—goods of secured party

Bank of Lake Mills—all business assets

Cisco Systems-- phone

CHTD Company—Knight Capital—all assets

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

Swift may be a factor that purchased receivables and claims to have purchased future receivables. The problem is that Swift purchased receivables that have already been pledged to secured creditors. The Debtor believes this means Swift does not have any equity in any receivables and therefore is an unsecured creditor. Swift's rights in future receivables would be cut off on the Petition Date under §552(b), which limits Swift's claim to receivables that existed on the Petition Date. The Court may have to determine this issue at a future date.

7. Debtor has a good relationship with Eastern and believes an agreement will be reached on consensual use of cash collateral. Eastern wants the Debtor to file Chapter 11.

JURISDICTION

8. 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

9. The Debtor's assets are subject to the UCC liens listed above.

EMERGENCY USE OF CASH COLLATERAL

10. 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 emergency period. No payment requested herein on an emergency ex parte basis is for anything other than the direct operation and preservation of the business. Debtor proposes to use \$202,872.20 of cash collateral in January² and \$125,253.64 in February. The Debtor estimates cash at the beginning of January of \$34,017.88 and cash at the end of February of \$52,128.62. 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 emergency period.

11. Debtor has an investor and a cooperative first lender and liquidation would result in almost no recovery for creditors. Inventory, Debtor's main asset is worth near zero in liquidation.

12. If Debtor is not permitted emergency 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

² includes pre-petition periods

business that has no real liquidation value. There is every reason to allow the Debtor emergency use of cash collateral under the circumstances described in this motion and Affidavit as they demonstrate irreparable harm. There is no harm to the lenders if Debtor has emergency use of cash, which will be used to preserve their collateral.

PROPOSED USAGE OF CASH COLLATERAL AND ADEQUATE PROTECTION

13. Debtor has attached a budget as Exhibit A to the Affidavit of Robert Nadler, which provides for the use of cash collateral during the emergency period. The budget provides only for direct payments to preserve operations.

14. As further adequate protection, Debtor shall provide Eastern and all junior lienholders in the same order of priority and to the extent their claims attach to any equity under 11 U.S.C. §506(b), replacement liens in its assets consistent with each lender's pre-petition lien. As further adequate protection, Debtor will provide monthly reports that are provided to the U.S. Trustee's Office and other reports required by the Court.

15. 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.

NOTICE AND RESERVATION OF RIGHTS

16. Notice has been provided to the US Trustee and Eastern's counsel, Daniel Sklar 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, 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 on an emergency basis for a period of up to 30 days starting January 25, 2018 based upon the representations in the motion and attached Affidavit that the Debtor will suffer immediate, irreparable harm if the motion is not granted; and
- B. Grant adequate protection;
- C. Schedule a final hearing; and
- D. 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: 1/25/18

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 to the following parties via CM/ECF:

Via CM/ECF to the following parties:

Office of the U.S. Trustee
USTPRegion01.MR.ECF@usdoj.gov

Dated: January 25, 2018

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