

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

BIELLI & KLAUDER, LLC
Nella M. Bloom, Esquire (No. 017252006)
Thomas D. Bielli, Esquire
David M. Klauder, Esquire
1500 Walnut Street, Suite 900
Philadelphia, PA 19102
Telephone: 267-630-2466
Facsimile: 215-754-4177

In Re:

JKI IV, INC.,

Debtor.

Case No.: 17-31642-JNP

Chapter: 11

Judge: Jerrold N. Poslusny, Jr.

**APPLICATION IN SUPPORT OF DEBTOR'S MOTION FOR INTERIM AND
FINAL ORDERS AUTHORIZING USE OF CASH COLLATERAL**

JKI IV, Inc. (the "Debtor"), hereby submits this motion (the "Cash Collateral Motion") for entry of an interim order (the "Interim Order") and a final order (the "Final Order" and, together with the Interim Order, the "Cash Collateral Orders"), (i) authorizing the Debtor to use "cash collateral," (the "Cash Collateral") as such term is defined in section 363 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"); (ii) granting liens and superpriority administrative claims pursuant to section 364 of the Bankruptcy Code; (iii) scheduling a final hearing with respect to the relief requested herein pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and (iv) granting related relief. In support of the Cash Collateral Motion, the Debtor sets forth as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

3. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363, 507, and 552 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6004, and 9014.

Relief Requested

4. By this Cash Collateral Motion, the Debtor requests entry of the Interim Order, substantially in the form accompanying this motion, and the Final Order (together with the Interim Order, the “Cash Collateral Orders”) that, among other things:

- a. authorizes the Debtor to use Cash Collateral, including Cash Collateral in which one or more of the Debtor’s creditors may have a lien or other interest, in each case whether existing on the Petition Date, arising pursuant to the Interim Order, or otherwise;
- b. vacates the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the Interim Order;
- c. schedules a final hearing on the Cash Collateral Motion (the “Final Hearing”) to be held no later than 21 calendar days after the entry of the Interim Order to consider entry of the Final Order that grants all of the relief requested in this Cash Collateral Motion on a final basis and which Final Order shall be in form and substance (including with respect to any subsequent modifications to the form or substance made in response to objections of other creditors or this Court);
- d. provides for the immediate effectiveness of the Interim Order and waives any applicable stay (including under Bankruptcy Rule 6004) to permit such immediate effectiveness.

Background

5. On October 25, 2017 (the “Petition Date”), the Debtor files a voluntary petition with the Court for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

No trustee or examiner has been appointed in the Debtor's bankruptcy case. As of the date of the Cash Collateral Motion, no creditors' committee has been appointed.

6. In July of 2013, the Debtor began operating a Meineke franchise in Philadelphia, Pennsylvania. The Debtor's location employs three (3) mechanics that provide a variety of vehicle maintenance and automotive services at the nine (9) vehicle bays on site.

7. The Debtor's start-up expenses and equipment purchases were funded by a small business loan (the "Bancorp Loan") from The Bancorp Bank ("Bancorp") in the amount of \$475,000.00. The Bancorp loan was secured through a perfected security interest, with an UCC Financing Statement Amendment filed in New Jersey and dated July 22, 2015, in all then-existing and future assets of the Debtor (the "Bancorp Collateral").

8. The Debtor also received a loan to fund its operations from QuarterSpot, Inc. (the "QuarterSpot Loan"). DLI Assets Bravo, LLC ("DLI") is QuarterSpot, Inc.'s successor in interest with respect to the QuarterSpot Loan. A UCC Financing Statement attempting to perfect the security interest relating to the QuarterSpot Loan was filed in New Jersey and dated October 5, 2015, in all assets of the Debtor (the "DLI Collateral").

9. The Debtor also received a loan (the "TNK Loan") from Tomorrow Never Knows, LLC ("TNK"). A UCC Financing Statement attempting to perfect the security interest relating to the TNK Loan was filed in Pennsylvania and dated February 7, 2017, in all then-existing and future assets of the Debtor.

10. Over time, the payment of the Debtor's operating costs while also servicing the Debtor's debts became a financial strain on the Debtor. Despite the Debtor's efforts to pay down its debts to a manageable level, the Debtor was unable to remain current on its pre-petition liabilities and was forced to initiate this instant bankruptcy proceeding.

11. The Debtor is attempting to reorganize as a chapter 11 Debtor. In order to do so, the Debtor requires the use of the Bancorp Collateral, which meets the definition of “cash collateral” under the Bankruptcy Code, for the purpose of operating the Debtor’s business.

Basis for Relief Requested

I. THE DEBTOR SHOULD BE PERMITTED TO USE CASH COLLATERAL

12. Section 363 of the Bankruptcy Code governs the Debtor’s use of property of its estate. Section 363(c)(1) of the Bankruptcy Code provides that:

If the business of the debtor is authorized to be operated under Section . . . 1108 . . . of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

13. Section 363(c)(2) of the Bankruptcy Code, however, provides an exception with respect to “cash collateral” to the general grant of authority to use property of the estate in the ordinary course set forth in section 363 of the Bankruptcy Code. Specifically, a trustee or debtor in possession may not use, sell, or lease “cash collateral” under subsection (c)(1) unless:

- a. Each entity that has an interest in such collateral consents; or
- b. The court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2).

14. The Debtor needs the use of Cash Collateral in order to fund its ordinary course of business operations and administration. Cash Collateral is necessary for the Debtor to provide automotive services and repairs to the Debtor’s customers, thus permitting the Debtor to successfully reorganize. To avoid immediate and irreparable harm to the Debtor’s business operations and its estate, the Debtor has an immediate need for authority to use Cash Collateral.

15. The Debtor's primary concern at this early stage of its bankruptcy proceeding is to ensure that its business operations continue to move ahead as smoothly as possible. The continued use of cash collateral will allow the Debtor to continue operating so that it can continue with its reorganization by proposing a plan to satisfy the claims of its creditors.

16. The Debtor proposes to provide adequate protection to its only secured creditor, Bancorp, in the form of a replacement lien of the same extent, priority, and validity as existed pre-petition (to the extent that any lien existed).

17. Accordingly, Bancorp will be granted replacement liens in unencumbered assets, matching its pre-petition collateral, as adequate protection. These liens will correspond with the Debtor's utilization of Cash Collateral encumbered by Bancorp, allowing the Debtor to access the necessary funds to continue operating while preventing, to the extent possible, damage to Bancorp's positions as a secured creditor.

18. The Debtor represents that the replacement assets to be encumbered as described above will represent accounts receivable for product and/or services completed, cash generated through the Debtor's operations, and any inventory or equipment purchased for use by the Debtor in its operations.

19. Additionally, the Debtor is willing to make adequate protection payments to Bancorp in order to preserve Bancorp's position.

20. The structure of this proposed adequate protection, in the form of monthly cash payments and replacement liens, will prevent diminution to the Debtor's estate. It will protect the value of the Debtor's assets, not only for the benefit of Bancorp, but also for the benefit of the Debtor's other creditors, employees, and interested parties.

21. To the extent that TNK and/or DLI attempted to secure their respective debts owed by the Debtor, both TNK and DLI fall behind Bancorp in the order of priority. On the Petition Date, the Debtor's assets were valued at under \$70,000.00. Accordingly, Bancorp's claim against the Debtor is undersecured and TNK and DLI's claims are entirely unsecured.

22. Further, the UCC Financing Statement filed by TNK and relating to the TNK Loan was filed in Pennsylvania. The Debtor was incorporated in New Jersey and is currently a New Jersey corporation. Accordingly, any alleged security interest of TNK in the Debtor's assets is not perfected.

23. As TNK and DLI's claims against the Debtor are entirely unsecured, the Debtor is not required to supply any form of adequate protection to TNK or DLI.

24. The use of Cash Collateral, and an adequate replacement of security, is critical to the Debtor's success.

25. The Debtor submits that, under the circumstances here, its request to use Cash Collateral should be approved. Further, the proposed adequate protection is fair, reasonable, and sufficient to satisfy the requirements of sections 363(c)(2) and (3) of the Bankruptcy Code.

26. Attached hereto as Exhibit A is a Budget of the disbursements that will be necessary for the time period in the Interim Order.

II. INTERIM APPROVAL SHOULD BE GRANTED AND A FINAL HEARING SHOULD BE SCHEDULED

27. The Debtor requests that the Court hold and conduct an interim hearing immediately to consider entry of the proposed Interim Order authorizing the Debtor to use Cash Collateral as provided therein. This relief will enable the Debtor to operate its businesses in a manner that will permit it to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to its estate and all parties in interest pending the Final Hearing.

28. Additionally, the Interim Order provides for the protection of the position of the Debtor's secured creditor, Bancorp.

Final Hearing & Notice

29. The Debtor further respectfully request that the Court schedule the Final Hearing and authorize Debtor to serve a copy of the signed Interim Order, which fixes the time and date for the filing of objections, by first-class mail upon: (a) the United States Trustee, (b) the Internal Revenue Service, (c) the New Jersey Division of Taxation, (d) all known secured creditors and (e) counsel to any committee appointed under Section 1102 of the Bankruptcy Code, if one has been appointed and if not, to Debtor's twenty (20) largest Rule 1007(d) unsecured creditors; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor requests that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001.

No Prior Request

30. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter (i) the Interim Order granting the relief requested herein, (ii) schedule a Final Hearing, (iii) enter the Final Order following a Final Hearing, and (iv) grant such other relief as is just and proper.

BIELLI & KLAUDER, LLC

Dated: November 6, 2017

By: /s/ Nella M. Bloom
Nella M. Bloom, Esquire

Proposed Attorneys for the Debtor