

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re

Kallstrand, LLC,

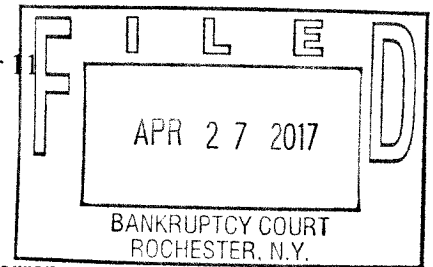
Debtor.

Proceedings Under Chapter 11

Tax I.D. No. 46-1644209

Case No.: 17-20008-PRW

Assigned Judge: Paul R. Warren



**STIPULATION AUTHORIZING DEBTOR'S INTERIM USE OF  
CASH COLLATERAL AND AUTHORIZING ADEQUATE PROTECTION  
OF INTERESTS OF CAN CAPITAL MERCHANT SERVICE, INC.**

This Stipulation is entered into by and between Kallstrand, LLC d/b/a Fazool's Casual Italian Kitchen a/k/a Fazools., debtor-in-possession in the above-captioned Chapter 11 bankruptcy case ("Fazools" or "Debtor"), and Can Capital Merchant Service, Inc. ("CCMS"), a secured creditor in the Debtor's bankruptcy case. Pursuant to this Stipulation, the Debtor and CCMS agree to the Debtor's utilization of the cash collateral of CCMS and the settlement of CCMS's secured claim against the Debtor in the manner set forth below.

Whereas, on January 6, 2017 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code.

Whereas, the Debtor owns and operates a business known as Fazool's Casual Italian Kitchen.

Whereas, CCMS is a company that provides working capital to small and medium-sized businesses through purchases of future credit card, debit card, and other payment card receivables ("Card Receivables").

Whereas, on or about July 26, 2016, in the ordinary course of its business, Fazool's entered into a Future Receivables Agreement (the "July 26, 2016 Agreement") with CCMS, whereby CCMS purchased \$54,485.03 worth of future Card Receivables (the "July 26, 2016 Specified Amount") from Debtor in consideration for an immediate lump-sum cash payment of \$41,783.00 (the "July 26, 2016 Purchase Price") from CCMS.

Whereas, on or about September 19, 2016, in the ordinary course of its business, Fazool's entered into a Future Receivables Agreement (the "September 19, 2016 Agreement") with CCMS, whereby CCMS purchased \$34,767.23 worth of future Card Receivables (the "September 19, 2016 Specified Amount") from Debtor in consideration for an immediate lump-sum cash payment of \$29,290.00 (the "September 19, 2016 Purchase Price") from CCMS.

Whereas, to secure the Debtor's obligations under the July 26, 2016 Agreement, and September 19, 2016 Agreement (Collectively referred to as, the "Agreements") CCMS filed UCC Financing Statements with the New York Secretary of State's office.

Whereas, CCMS tendered to, and the Debtor accepted, the July 26, 2016 Purchase Price and the September 19, 2016 Purchase Price (Collectively referred to as, the "Purchase Price") and CCMS

obtained sole right, title and interest in and to the July 26, 2016 Specified Amount and the September 19, 2016 Specified Amount (Collectively referred to as, the "Specified Amount") of Card Receivables.

Whereas, pursuant to the terms of the Agreements, the Debtor was obligated to process all of its Card Receivables with a card processor acceptable to CCMS, and to cause that processor to remit twenty percent (20%) of Debtor's Card Receivables (the "Specified Percentage") directly to CCMS until the Specified Amount was remitted to CCMS.

Whereas, to secure the Debtor's performance under the Agreements, the Agreements granted CCMS a priority lien and security interest in all of the Debtor's personal property, including accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory, liquor licenses, trademarks, trade names, and service marks, wherever located and whenever acquired (the "Collateral") until the Specified Amount was remitted in full.

Whereas, CCMS holds a valid, and perfected lien and security interest in all of the Collateral, including all assets and proceeds which are "cash collateral" within the meaning of Bankruptcy Code § 363(a).

Whereas, on the Petition Date, there remained a Specified Amount balance of \$58,399.32 of Card Receivables not yet remitted by the Debtor to CCMS pursuant to the Agreements.

It is hereby Stipulated and Agreed as follows:

1. The foregoing whereas paragraphs are incorporated into this Section.
2. In lieu of certain concession by CCMS, the Debtor proposes to pay the entire claim in equal installments, to wit: as adequate protection, the Debtor shall pay CCMS the outstanding liability at five (5%) interest in equal installment payments in the amount of \$1,102.07 per month between or about April 1, 2017 and March 31, 2022. The debtor represents that this amount is fair in light of the circumstances. Payments will be made on the 15th day of each month with the first payment due on April 15, 2017 and shall continue each month thereafter until confirmation, except that all adequate protection payments that come due before the adequate protection contemplated in this Stipulation is authorized by the Court, shall be paid to Debtor's counsel, as escrow agent (and timely remitted to CCMS upon Court approval). Checks shall be made payable to the "Can Capital Merchant Service, Inc." and payments to CCMS shall be sent to:

Can Capital Merchant Service, Inc.  
2015 Vaughn Road  
Building 500,  
Kennesaw, Georgia 30144

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3. Upon full remittance of CCMS's secured claim of \$58,399.32, the secured claim of CCMS will be deemed fully satisfied, and CCMS will no longer possess a security interest in any assets of the Debtor.

4. The Debtor has determined, in its business judgment, that this Stipulation is in its best interest.

5. Debtor shall file a motion for approval of this Stipulation and Agreements promptly after it has been fully executed.

6. This Stipulation shall be binding on any successor of the Debtor, on any Chapter 7 or Chapter 11 trustee, and on the parties hereto in the event the above-captioned bankruptcy case is dismissed.

7. CCMS consents to the Debtor's utilization of cash collateral subject to approval of the United States Bankruptcy Court.

Dated: March 23, 2017

Gleichenhaus, Marchese & Weishaar, PC

Can Capital Merchant Service, Inc

/s/ Michael A. Weishaar  
Michael A. Weishaar, Esq.  
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/s/ James Holder  
James Holder  
Collections Manager  
2015 Vaughn Road  
Building 500,  
Kennesaw, Georgia 30144  
Phone: 866-901-4118

/s/ Alan Kallstrand  
Alan Kallstrand  
Managing Member Kallstrand, LLC

**SO ORDERED:**

**DATED:** Apr. 27, 2017

  
Paul R. Blum  
U.S. BANKRUPTCY JUDGE, WDNY

# Notice Recipients

District/Off: 0209-2  
Case: 2-17-20008-PRW

User: lawson  
Form ID: pdforder

Date Created: 4/27/2017  
Total: 6

## Recipients of Notice of Electronic Filing:

aty Louis J. Testa louis.testa@ag.ny.gov  
aty Robert B. Gleichenhaus RBG\_GMF@hotmail.com

TOTAL: 2

## Recipients submitted to the BNC (Bankruptcy Noticing Center):

db Kallstrand, LLC 16 Wood Trace Brockport, NY 14420  
pr Alan Kallstrand c/o Kallstrand, LLC 16 Wood Trace Brockport, NY 14420  
ntcapr New York State Department of Taxation and Finance Bankruptcy Unit PO Box 5300 Albany, NY  
12205-5300  
James Holder 2015 Vaughn Road Building 500 Kennesaw, Georgia 30144

TOTAL: 4