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IT IS SO ORDERED.

Dated: September 27, 2018



ALAN M. KOSCHIK
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:)	CASE NO. 18-52271
)	
DAN MAZZOLA, INC.)	CHAPTER 11
)	
Debtor)	HON. ALAN M. KOSCHIK
)	BANKRUPTCY JUDGE
_____)	

AGREED ORDER PROVIDING FOR DEBTOR’S INTERIM USE OF CASH COLLATERAL AND GRANTING OF POST-PETITION LIEN

THIS MATTER came on for preliminary hearing pursuant to 11 U.S.C. §363(c)(2) and Bankruptcy Rule 4001(b)(2) upon the Debtor’s Motion to Use Cash Collateral and Grant Post-Petition Lien (the “Cash Collateral Motion”) (Doc. 5), due notice having been given to the United States Bankruptcy Court, Northern District of Ohio, Eastern Division, the U.S. Trustee, the twenty (20) largest unsecured creditors of the Debtor’s estate, First Commonwealth Bank (“Lender”), the holder of a security interest in the Cash Collateral, and taxing authorities; and

IT APPEARING TO THE COURT that the Debtor filed a Petition under Chapter 11 of Title 11 on September 21, 2018, and that pursuant to §363(c)(2), and Bankruptcy Rule

4001(b)(2), the Debtor is seeking authority for the interim use of Cash Collateral as is necessary to avoid immediate and irreparable harm to the Debtor's estate pending a final hearing on the Cash Collateral Motion; and

IT FURTHER APPEARING that Debtor executed loan documents with Lender's predecessor in interest FirstMerit Bank, N.A., whereby 16532, Inc. borrowed \$928,000.00 on or about June 26, 2013 which was guaranteed by Debtor and known as First Commonwealth Note No. 03137170409 (the "Strongsville Loan"), and Debtor borrowed \$345,500.00 on or about July 5, 2013 and known as First Commonwealth Loan No. 03137322809 (the "Stow Loan") (hereinafter, collectively with all other related documents, the "Loans"); and

IT FURTHER APPEARING that the principal balance due on the Strongsville Loan as of the Petition Date was \$430,028.68 and that the principal balance due on the Stow Loan as of the Petition Date was \$126,786.80; and

IT FURTHER APPEARING that the Loans were secured by substantially all of the Debtor's assets, cash, accounts, accounts receivables, inventory, furniture, fixtures and equipment (the "Cash Collateral"); and

IT FURTHER APPEARING that good cause has been shown for the Debtor's immediate use of the Cash Collateral pending a final hearing on this matter for purposes including, but not limited to, the payment of payroll and other normal and necessary expenses in the operation of the Debtor's business; and

IT FURTHER APPEARING that absent an Order allowing for the Debtor's interim use of Cash Collateral that the Debtor is likely to suffer immediate and irreparable harm to the Debtor's estate pending a final hearing on this matter; and

IT FURTHER APPEARING that in order to provide adequate protection for the Lender's interest in the Cash Collateral, the Lender shall be granted security interests ("Replacement Liens") in all of the personal property assets of the Debtor which are or have been acquired, generated, or

received by Debtor subsequent to the filing of the above-captioned bankruptcy case, including without limitation all of Debtor's accounts, chattel paper, deposit accounts, contract rights, documents, fixtures, general intangibles, goods, instruments, inventory, leasehold improvements, machinery, receivables, and all cash and non-cash proceeds thereof to the extent of the diminution of the value of the Lender's collateral securing the indebtedness. The Replacement Liens shall have the same validity, priority and extent (if any) as the lien(s) on Cash Collateral that existed at the time of the commencement of the above-captioned bankruptcy case. The Replacement Liens granted in this Order are deemed perfected without the necessity for filing or execution of documents which might otherwise be required under non-bankruptcy law for the perfection of security interests. Such security interests and perfection shall be binding upon any subsequently appointed trustee either in Chapter 11 or any other Chapter of the Bankruptcy Code and upon all creditors of the Debtor who have extended or who may hereafter extend credit to it. Not included among said personal property assets is the Debtor's or the Estate's interest in any claim(s) under Chapter 5 of the United States Bankruptcy Code that have not been waived pursuant to this Order.

IT FURTHER APPEARING that the Debtor and Lender have agreed that the Debtor shall make all required post-petition monthly payments at the pre-default contractual rate of interest to Lender on the Strongsville Loan in the amount of \$3,500.00 per month beginning September 26, 2018 with payments to follow on the 26th day of each month thereafter and on the Stow Loan in the approximate amount of \$2,895.65 per month, subject to monthly interest fluctuations, beginning October 5, 2018 with payments to follow on the 5th day of each month thereafter. Debtor and Lender stipulate and agree that Debtor shall cure any post-petition defaults within ten (10) days after receipt of written notice thereof. Debtor and Lender further stipulate and agree that there are no pre-petition arrearages and that Debtor was current in its obligations on the Petition Date.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED for the reasons set forth herein that the Debtor is authorized to use Cash Collateral as is necessary to avoid immediate and irreparable harm to the Debtor's estate pending a final hearing on this matter for normal business purposes including, but not limited to, the Debtor's payment of payroll to its employees in the normal course of its operations and other necessary expenses of the Debtor.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lender is hereby granted security interests ("Replacement Liens") in all of the personal property assets of the Debtor which are or have been acquired, generated, or received by Debtor subsequent to the filing of the above-captioned bankruptcy case, including without limitation all of Debtor's accounts, chattel paper, deposit accounts, contract rights, documents, fixtures, general intangibles, goods, instruments, inventory, leasehold improvements, machinery, receivables, and all cash and non-cash proceeds thereof to the extent of the diminution of the value of the Lender's collateral securing the indebtedness. The Replacement Liens shall have the same validity, priority and extent (if any) as the lien(s) on Cash Collateral that existed at the time of the commencement of the above-captioned bankruptcy case. The Replacement Liens granted in this Order are deemed perfected without the necessity for filing or execution of documents which might otherwise be required under non-bankruptcy law for the perfection of security interests. Such security interests and perfection shall be binding upon any subsequently appointed trustee either in Chapter 11 or any other Chapter of the Bankruptcy Code and upon all creditors of the Debtor who have extended or who may hereafter extend credit to it. Not included among said personal property assets is the Debtor's or the Estate's interest in any claim(s) under Chapter 5 of the United States Bankruptcy Code that have not been waived pursuant to this Order

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Debtor's usage of Cash Collateral is limited to the payment of necessary expenses incurred in the ordinary course of the Debtor's business operations pursuant to the detailed operating budget covering the period from September 24, 2018 through December 16, 2018 (the "Budget") that was prepared by the Debtor and its professionals and attached to the Motion as Exhibit 1. The Budget represents a projection of revenue and ordinary and necessary operating expenses for the business operated by the Debtor. During the Term of this Order, no advance permission to use Cash Collateral to pay any expenses set forth in the Budget shall be required, provided, however, that during any calendar month the Debtor may not use Cash Collateral in any amount that exceeds 110% of budgeted expenses for that month without the prior written consent of the Bank, which consent shall not be unreasonably withheld. Furthermore, the inclusion of any expense in the Budget shall not constitute authority to pay any prepetition claim without further Order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Debtor shall make all required post-petition monthly payments at the pre-default contractual rate of interest to Lender on the Strongsville Loan beginning September 26, 2018 with payments to follow on the 26th day of each month thereafter and on the Stow Loan beginning October 5, 2018 with payments to follow on the 5th day of each month. On a post-petition basis, Lender is hereby authorized to send monthly statements for the Strongsville Loan and the Stow Loan directly to the Debtor setting forth the payment amount, due date and payment address for each loan. In the event that Debtor fails to strictly comply with any of the terms of this Order, the Lender may give written notice of default to the Debtor and its undersigned bankruptcy counsel. Written notice shall be by email addressed to Debtor at mazzola_dan@yahoo.com, with copy (also by email) to the Debtor's undersigned bankruptcy counsel. If Debtor fails to cure any default(s) within ten (10) calendar days following receipt of the notice, Debtor's authority to use Cash Collateral pursuant to this Order will be terminated immediately and without further notice or hearing, unless the Court authorizes usage

of cash collateral by separate Order, or the Lender consents in writing, to continued usage notwithstanding the default. Notice shall be deemed "received" on the date the notice is transmitted via email if the notice is transmitted before 5:00 p.m. EST. Any notice(s) emailed after 5:00 p.m. EST shall be considered received on the following day. Except as otherwise provided in this Order, all of the rights granted to the Lender hereunder, including without limitation the Replacement Liens, shall remain in full force and effect notwithstanding the expiration or termination of Debtor's authorization to utilize the Cash Collateral.

IT IS FURTHER ORDREED, ADJUDGED AND DECREED that Debtor shall submit written bi-weekly informational reports to Lender which shall include, at a minimum, the beginning cash balance actual revenue collected, itemized list of expenses paid, a certification that no unauthorized payments were made on account of a prepetition claim owed to an unsecured creditor, post-petition accounts payable (with aging summary) and ending cash balance for each bi-weekly period.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Debtor's authority to use Cash Collateral pursuant to this Order began nunc pro tunc from the Petition Date and shall expire at the end of the day on December 16, 2018, unless extended on the same terms and conditions set forth herein by Stipulation of the parties or further Order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Tuesday October 9, 2018 at 10:00 a.m. is set as the date for an additional hearing on the continued use of Cash Collateral.

IT IS SO ORDERED.

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Submitted By:

/s/ Peter G. Tsarnas

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No Objection By:

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CERTIFICATE

Via ECF:

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List of 20 Largest Unsecured Creditors