

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

IN RE:	:	
	:	
DIAMOND CONTRACT FLOORING, LLC,	:	Bk. No. 17-16672-ELF
	:	
Debtors	:	
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MOTION OF THE DEBTOR AND DEBTOR-IN-POSSESSION FOR INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 361, 363 AND 105 TO: (I) PERMIT USE OF CASH COLLATERAL AND PROVIDE ADEQUATE PROTECTION TO PARTIES WITH INTERESTS IN CASH COLLATERAL; AND (II) REQUEST FOR EXPEDITED CONSIDERATION, SHORTENED TIME AND LIMITED NOTICE

Diamond Contract Flooring, LLC (the “Debtor”), by and through its proposed counsel, McDowell Posternock Apell & Detrick, PC, hereby requests authority to (i) Permit Use of Cash Collateral and Provide Adequate Protection to Parties with Interests in Cash Collateral pursuant to 11 U.S.C. §§ 361, 363 and 105; and (ii), for Expedited Hearing, Reduced Notice Period, and Limited Notice Pursuant to Local Bankruptcy Rule 5070-1(f) with respect to same (the “Motion”), and in support thereof, avers as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M).

2. Venue of the Debtor’s Chapter 11 case and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for this Motion are Sections 105, 361, and 363 of the

United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and Rules 5070-1(f) and 9014-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “L.B.R.”).

II. **BACKGROUND**

4. On September 29, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Bankruptcy Court”). The Debtor is operating its business and managing its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

5. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in this case.

6. The Debtor is a Pennsylvania limited liability company and maintains a principal place of business at 3161 State Road, Unit C, Bensalem, PA 19020.

7. The Debtor is a flooring company that primarily sells and installs carpeting, tile, hardwoods and other types of flooring for residential and commercial establishments.

8. The Debtor serves an area covering Bucks County and the surrounding counties in both Pennsylvania and New Jersey.

9. The Debtor has been responsible for over \$1.3 million dollars of sales to date in 2017 and the Debtor sells to high volume customers such as Toll Brothers, US Realty, and Cenlar Mortgage Services.

10. The Debtor employs seven (7) people (the “Employees”), the payment of such Employees being necessary and vital to the Debtor’s operations and cash flow.

11. On or about July 24, 2007, Hyperion Bank (the “Bank”) extended a line of credit in the amount of \$150,000 to the Debtor. On or about December 8, 2008, a Change In Terms Agreement was entered between the Bank and the Debtor increasing the line of credit to \$250,000 (the July 24, 2007 original loan agreement and all subsequent agreements modifying or changing the original loan collectively referred to as the “Loan Agreement”). A subsequent Change in Terms Agreement by and between the Debtor and the Bank, dated March 13, 2017, setting forth the original loan agreements referenced herein is attached as **“Exhibit A.”**

12. In consideration for the extension of credit to the Debtor, the Debtor granted a first priority security interest in the nature of a blanket lien on the Debtor’s assets as evidenced by the filing of a UCC-1 statement, a copy of which is attached hereto as **“Exhibit B.”**

13. As of the Petition Date, the Debtor owed the Bank a balance of approximately \$249,975 on the underlying Loan Agreement.

14. The Debtor requires use of its cash and accounts to continue operations.

15. The Debtor has payroll obligations which must be made. Additionally, the Debtor needs to pay the general operating expenses of the business so that the Debtor may continue to operate, generate cash flow, and fund a Chapter 11 Plan of Reorganization. A copy of the Debtor’s proposed budget is attached hereto as **“Exhibit C.”**

16. If the Debtor is not able to pay its employees and provide for the operational expenses of its business, its operations will be substantially injured.

17. Without an immediate and emergent use of its cash the Debtor’s prospects for reorganization are limited. With the use of its cash, the Debtor believes it can operate profitably and propose a well-funded Plan of Reorganization.

I. BASIS FOR THE RELIEF REQUESTED AND THE REASONS THEREFORE

A. Bankruptcy Rule 4001 Statement.

18. By this Motion, the Debtor seeks authority and requests the entry of an order authorizing the Debtor to, among other things: (i) obtain authority to use cash collateral and grant adequate protection to the Bank pursuant to §§ 361, 363, and 105 of the Bankruptcy Code on an interim and final basis; and, (ii) to obtain an order allowing the use of its cash and permitting the Debtor to use its cash under §§ 105, 361, and 363 (c) (1) of the Bankruptcy Code,

19. Under and pursuant to Bankruptcy Rule 4001(b)(1)(B)(i) through (v):

a) The Bank is the only party with a valid interest in cash collateral.

b) Cash collateral is to be used in accordance with the Debtor's budget for operational working capital, for the payment of the Debtor's ordinary and necessary expenses, including payroll and payroll withholdings, and expenses necessary to continue the operations of a flooring sales and installation agent who has produced over \$1,300,000 in sales at this time in 2017.

c) Cash collateral to extend ninety (90) days on an interim and then final basis.

d) The prepetition liens of the Bank are confirmed and post-petition liens granted in all of the Debtor's accounts receivable, and other assets.

B. The Request for Authority To Use Cash Collateral.

20. Section 363(c) of the Bankruptcy Code allows a debtor to use, sell or lease cash collateral if each entity that has an interest in cash collateral consents or the Court authorizes the use. See 11 U.S.C. § 363(c)(2).

21. The Debtor has prepared a budget (the “Budget”) for use at the cash collateral hearing and it is attached hereto as “**Exhibit C**” and incorporated herein. The Budget lists the Debtor’s monthly expenses and revenues.

22. The Budget includes payments to employees, payroll withholdings, for insurance, for office administrative support, and for expenses necessary to continue operations as a highly functioning carpet and flooring sales force.

23. The continued use of cash collateral will allow the Debtor to continue operating, so that the Debtor can continue with its reorganization by proposing a plan to sufficiently address the claims of creditors.

24. Approval of the Debtor’s request to use cash collateral is in the best interest of the Debtor and creditors of the Estate.

25. The Debtor proposes to provide adequate protection to the Bank in the form of (i) a first lien upon and security interest in all of the Debtor’s now existing and hereafter acquired accounts receivable of the same nature and extent as the Pre-Petition Liens and Collateral. The Debtor requests that the Cash Collateral Order reflect that, pursuant to § 552(b)(1) of the Bankruptcy Code, the Court recognize that the Bank’s lien extends both to prepetition collateral and the proceeds thereof.

26. The Debtor shall not use any Cash Collateral except as agreed to by the Debtor and the Bank.

27. The Debtor shall pay all current interest and principal payments to the Bank under the prepetition Loan Agreement between the parties.

28. Unless the Debtor can continue to use cash to operate, it will be unable to reorganize and enhance the collateral, all to the great detriment of its creditors.

29. The Debtor is operating appropriately and can operate profitably during the Debtor's Chapter 11 case.

30. The cessation of the Debtor's business would not only be injurious to creditors but would result in employee layoffs whose families depend on the income earned working for the Debtor.

31. Accordingly, the Debtor has an urgent and in fact critical need for the use of cash.

II. REQUEST FOR EXPEDITED RELIEF

32. In accordance with L.B.R. 5070-1(f), and 9014-1, the Debtor seeks expedited consideration of the Motion. The Debtor requests approval of the request for expedited consideration pursuant to L.B.R. 9014-2

33. Pursuant to L.B.R. 5070-1(f)(3), this request for expedited consideration may be stated as part of the Motion.

34. The Debtor respectfully submits that expedited consideration of the Motion is necessary to protect the interests of the Debtor. Without the immediate ability to use cash collateral, the Debtor will be unable to satisfy necessary and ongoing expenses and the Debtor's operations will cease thereby causing significant harm to the Debtor and its creditors, and the community.

35. The Debtor respectfully requests that an expedited hearing be scheduled on the Motion at the earliest date convenient to the Court's calendar, and further requests that the notice period be reduced accordingly. In order to meet timely payroll, a hearing before close of business on Friday, November 3, 2017 would ensure that the Debtor can pay its employees.

36. The Debtor further believes that an expedited hearing will not prejudice any of the Debtor's creditors, or any party in interest.

37. The undersigned has contacted the office of the United States Trustee as required by L.B.R. 5070-1(f)(1). The United States Trustee has no opposition to expedited consideration.

38. The undersigned has been in communications with the attorney for the Bank that has an interest in cash collateral, Daniel Pereira, Esquire, who consents to the expedited notice for a hearing on the matter. Mr. Pereira and the undersigned have been in communications exchanging drafts of the proposed cash collateral order to be in form substantially similar to the proposed order attached to this Motion.

39. Furthermore, the Debtor also requests (a) that this Court permit notice of the hearings to be served by next day mail, facsimile transmission or by electronic means upon (i) the Office of the United States Trustee; and (ii) all parties who have timely filed requests for notice under Bankruptcy Rule 2002, and (b) that this Court limit the notice period accordingly. The Debtor believes that such notice is sufficient under the circumstances for the expedited hearing.

40. Reduction of the time periods in question is not prohibited under Fed.R.Bankr.P. 9006(c)(2) and the rules listed therein.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order in the form attached hereto: (i) authorizing the Debtor's use of cash collateral pursuant to §§ 361 and 363 of the Bankruptcy Code on the terms and conditions provided for herein; (ii) confirming the Bank's liens; (iii) granting the Bank adequate protection; (iv) for a hearing on the Motion on expedited notice; and (v) providing for such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: November 1, 2017

/s/ Carrie J. Boyle
Carrie J. Boyle, Esquire
McDowell Posternock Apell &
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