


Randal S. Mashburn
U.S. Bankruptcy Judge



Dated: 1/29/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:)
) Case No. 3:19-bk-00278
LINTON VETERINARY SERVICES, PLLC,) Chapter 11
) Judge Randal S. Mashburn
Debtor.)
)

**INTERIM EXPEDITED ORDER (I) AUTHORIZING USE OF CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION, AND (III) SCHEDULING A SECOND
INTERIM HEARING**

This matter came before the Court for hearing on the *Expedited Motion for Entry of Order (I) Authorizing the Debtor to Use Cash Collateral, (II) Granting Adequate Protection, and (III) Scheduling a Final Hearing* (the “Cash Collateral Motion”) filed by the above-captioned debtor and debtor-in-possession (collectively, the “Debtor”). The Court, having reviewed the Cash Collateral Motion, and following appearances and statements of Debtor’s counsel and counsel for the U.S. Trustee at the hearing on Debtor’s First Day Motions, and considering the sworn testimony of the Debtor’s principal, Ashley Manos, and having determined that the relief requested in the Cash Collateral Motion, as conditioned herein on an interim basis, is in the best interest of the Debtor and its estate and creditors, and further having set forth its findings on the record pursuant to Fed. R. Bankr. P. 7052, hereby finds and ORDERS as follows:

1. The Cash Collateral Motion is GRANTED on an interim and conditional basis.
2. **Notice**: Pursuant to Fed. R. Bankr. P. 4001, notice of the Motion and the hearing on the Motion has been given to the Office of the United States Trustee, the 20 largest unsecured

creditors, and has also been sent to the known creditors alleging to have a perfected security interest in the Debtor's cash collateral (Bank of America and TBON/Synovus) by email to Rafael Michel and Nancy George, for Bank of America, and Jason White, for TBON/Synovus, and such notice is appropriate under the circumstances.

3. **Jurisdiction**: This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157, 11 U.S.C. § 363, and Fed. R. Bankr. P. 4001. Venue is proper in this Court pursuant to 28 U.S.C. § 1408. The Court possesses the requisite authority to grant the relief requested herein pursuant to 11 U.S.C. §§ 105, 363, and 1107.

4. **Purpose and Necessity**: The Court finds that good cause has been shown for the entry of this Interim Order (I) Authorizing the Debtor to Use Cash Collateral, (II) Granting Adequate Protection, and (III) Scheduling a Second Interim Hearing (the "First Interim Order"). The Debtor has demonstrated that it requires the immediate use of cash in which Bank of America and TBON/Synovus claim an interest to, among other things, fund interim cash requirements, including, without limitation, payroll, supplies and materials, and other customary operating expenses.

5. **Bank of America**: Bank of America asserts a lien on the Debtor's cash collateral (as that term is defined in 11 U.S.C. § 363(a)). On December 14, 2012, Bank of America filed a UCC financing statement, Document No. 212081439, with the Tennessee Secretary of State, asserting a lien on all of the business assets of Ashley Manos (principal of the Debtor). On August 28, 2013, Bank of America filed an amendment to the UCC financing statement, Document No. 42034661, increasing the stated amount of the indebtedness. On August 29, 2013, Bank of America filed a second amendment to the UCC financing statement adding the Debtor's name into the optional filer reference data. Later, on June 22, 2017, Bank of America filed a continuation

statement amendment to the UCC financing statement, Document No. 427060914. The lien of Bank of America is presently believed to be junior only to certain purchase-money-security-interest liens, or leases, held by another lender on specific equipment (the “Equipment Lender”). Bank of America is hereinafter referred to as either the “Secured Creditor” or Bank of America.

6. The Secured Creditor asserts a valid, perfected first-position security interest in the Debtor’s property, including its cash collateral (collectively, the “Collateral”), which would entitle it to adequate protection for any diminution in the value of its respective collateral arising from the Debtor’s post-petition use thereof. Based on the asserted existence of the security interests of the Secured Creditor, in the interim period pending the Court’s final determination of any lien validity or priority, the Debtor requires immediate use of cash collateral in order to continue its business operations without interruption, and to avoid immediate and irreparable harm to the estate pending a Second Interim Hearing on the Motion. In the absence of the use of cash collateral, the continued operation of the Debtor’s business would not be possible, and serious and irreparable harm to the Debtor and its estate would occur.

7. **TBON/Synovus**: TBON/Synovus may assert a lien on the Debtor’s cash collateral (as that term is defined in 11 U.S.C. § 363(a)). On June 13, 2016, TBON/Synovus filed a UCC financing statement, Document No. 425162237, with the Tennessee Secretary of State, asserting a lien on all of the Debtor’s assets. Bank of America is not believed to have subordinated its senior position to TBON/Synovus with respect to any of Debtor’s assets and, therefore, based on the timing of the UCC filings and applicable laws of perfection, any security interest in the Debtor’s cash collateral is junior to Bank of America’s interest therein. Furthermore, TBON/Synovus’s interests are junior to the Equipment Lender’s lien(s).

8. Nothing in this Order shall be construed to limit or expand any interested party's rights, including the Debtor's, to challenge the validity, perfection and enforceability of the prepetition liens and any prepetition obligations.

9. The Debtor is hereby immediately authorized to spend up to a maximum of 115% of the total amount set forth on the budget attached hereto as **Exhibit A** (the "Budget") to pay the expenses reflected on the Budget, which represent the "First Interim Period." The First Interim Period shall be the Petition Date through February 15, 2019. The Debtor may seek advance permission, in writing, from the Secured Creditor to spend in excess of this allowed amount, but nothing herein shall require the Secured Creditor to permit such use of its cash collateral. In the event such permission is obtained, the Debtor shall file a Notice of such change with the Court within forty-eight (48) hours of obtaining such permission.

10. The Debtor is further authorized to use cash collateral to pay amounts and/or any fees payable to the Clerk of the Court and to the United States Trustee.

11. Nothing herein shall be deemed to be a waiver by Secured Creditor, on prior notice to the Debtor, of its right to request additional or further protection of its interests, to move for relief from the automatic stay, to seek the appointment of a trustee or examiner or the conversion or dismissal of this Chapter 11 case, or to request any other relief in this case; nor shall anything herein constitute a finding of adequate protection with respect to the interests of Secured Creditor in any pre-petition collateral.

12. Nothing included herein shall prejudice, impair, or otherwise affect Secured Creditor's rights to seek any other or supplemental relief or additional adequate protection, or the Debtor's right to oppose the same.

13. **Adequate Protection:** Subject to the provisions of Paragraph 14 hereof, and pending a final hearing on the Motion, as interim adequate protection for the use of, and any diminution in the value of, the collateral, the Secured Creditor is granted the following:

a. *Replacement Liens.* The Secured Creditor shall receive a replacement security interest under Section 361(2) of the Bankruptcy Code in the Debtor's post-petition property and proceeds thereof (excluding the Debtor's rights under Sections 544, 545, 546, 547, 548, 549, and 550 of the Bankruptcy Code), to the same extent and priority as its respective purported security interest in the Debtor's pre-petition property and the proceeds thereof.

b. *Automatic Perfection.* For the limited purpose of this First Interim Order, the replacement lien and security interest granted herein shall be deemed perfected upon entry of this First Interim Order without the necessity of the Secured Creditor taking possession of any collateral or filing financing statements or other documents.

c. *Conditional Draw to Ashley Manos.* In addition to the above assurances for adequate protection, the Debtor offered, and the Court accepted as a condition of this relief to limit the second \$3,000 draw anticipated to principal of the Debtor (Ashley Manos), shown on the Budget for week ending February 15, 2019, to only be authorized if the Debtor maintains a balance in the debtor-in-possession bank account of at least \$13,000 *before* such draw is made, and such draw should be made, if at all, *after* the other expenses on the Budget have been paid.

14. **Insurance:** The Debtor shall keep its assets insured by reasonable and sufficient insurance coverage as required by the terms of the loan documents executed by the Debtor in favor of the Secured Creditor.

15. In no event shall Secured Creditor have any obligation to consent to the use of Cash Collateral to any Chapter 7 or Chapter 11 trustee appointed or elected for the estate of Debtor.

16. If this Chapter 11 case is dismissed, converted or substantively consolidated with another case, then neither the entry of this Interim Order nor the dismissal, conversion or substantive consolidation of this Chapter 11 Case shall affect the rights or remedies of Secured Creditor under this Interim Order, and all of the respective rights and remedies thereunder of Secured Creditor shall remain in full force and effect as if this Chapter 11 case had not been dismissed, converted, or substantively consolidated. The provisions of this Interim Order, and any actions taken pursuant thereto, shall survive the entry of and shall govern with respect to any conflict with any order that may be entered confirming any plan of reorganization or converting this Chapter 11 case from Chapter 11 to Chapter 7.

17. **Default:** Any of the following events or occurrences shall constitute an event of default (“Default”) hereunder:

- a. Any failure to comply with any of the terms of this First Interim Order or any agreement executed in connection therewith;
- b. The Debtor seeks or if there is entered, any order dismissing this Chapter 11 case; or
- c. The Debtor submits any materially inaccurate information to Secured Creditor or to the Court.

18. Upon the occurrence of a Default, the Secured Creditor shall be entitled to file a Notice of Default with the Court. Unless the Notice of Default is withdrawn by the Secured Creditor or stayed or overruled by the Court, the Debtor’s authority to use cash collateral shall terminate twenty-four (24) hours after the Secured Creditor files the Notice of Default. Upon

declaring and noticing a Default, the Secured Creditor may immediately seek an expedited termination of the automatic stay provided for in 11 U.S.C. § 362 and may additionally seek an expedited declaration from the Court that the Collateral be deemed abandoned from the Debtor's estate.

19. **Interim Order.** This is an interim order. The Cash Collateral Motion is set for a Second Interim Hearing at 9:00 a.m., February 12, 2019, in Courtroom 1, 2nd Floor, Customs House, 701 Broadway, Nashville, Tennessee (the "Second Interim Hearing").

20. **Parties' Continuing Right to Object to Relief or Modify Relief.** Due to the expedited nature of the requested relief and the conditional granting of the use of cash collateral without response from the Secured Creditor or TBON/Synovus, or any party in interest beyond the Debtor and the United States Trustee, any such party is hereby afforded the right and opportunity to object to the relief provided herein, on an expedited basis, and the Court will set the objection to be heard on the earliest available date.

a. *Modification of First Interim Order.* At the Second Interim Hearing, or any final hearing set thereafter, all of the provisions of this First Interim Order with respect to adequate protection may be hereafter modified or continued by the Court as a second interim order or final order based upon, without limitation, the terms and conditions of a future order determining any lien disputes, or as further determined by the Court at such Second Interim Hearing or Final Hearing on the Cash Collateral Motion. In addition to the right to object to the relief herein on an expedited basis, the Debtor reserves the right, and the secured creditors are hereby afforded the right, to seek to modify the terms and conditions of this First Interim Order with respect to adequate protection, or otherwise, in connection with the entry of a second interim order or final order.

b. *No Limitation.* Nothing contained herein shall be deemed or construed to (i) limit the Debtor or the Secured Creditor to the relief granted herein; (ii) bar the Debtor or the Secured Creditor from seeking other and further relief for cause shown on appropriate notice to parties-in-interest entitled to notice of same.

21. In the event that the Debtor and Secured Creditor have reached an agreement for the use of cash collateral beyond the First Interim Period prior to the Second Interim Hearing, the Debtor shall file and serve in accordance with Bankruptcy Rules 2002 and 4001 a *Notice of Filing Further Order Granting Authority to Use Cash Collateral* together with a copy of the proposed Order Granting Authority to Use Cash Collateral (the "Further Cash Collateral Order") and shall advise each party receiving notice that such party shall have fifteen (15) days to file objections to entry of the Further Cash Collateral Order. Any such objection shall be set for a future hearing.

22. The terms and conditions of this First Interim Order shall be immediately effective and enforceable upon its entry.

23. Upon entry of this First Interim Order, notice of this First Interim Order shall be sent to (i) Bank of America, (ii) The Bank of Nashville/Synovus, (iii) the Debtor's twenty largest unsecured creditors, (iv) the Office of the United States Trustee, and (v) the Debtor's secured creditors.

IT IS SO ORDERED.

THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY AS
INDICATED AT THE TOP OF THE FIRST PAGE

APPROVED FOR ENTRY:

/s/ Gray Waldron

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EXHIBIT A

Linton Veterinary Services, PLLC

	<i>Projected Budget for Interim Use of Cash Collateral</i>			
	<i>Week 1 (ending)</i>	<i>Week 2</i>	<i>Week 3</i>	<i>Week 4</i>
	1/25/2019	2/1/2019	2/8/2019	2/15/2019
Beginning Cash	\$9,856.89	\$12,027.34	\$3,660.95	\$12,763.87
Income				
Projected Revenue from Services Rendered	\$8,544.98	\$8,544.98	\$8,544.98	\$8,544.98
Projected Other Revenue from Product Sales	\$4,252.87	\$4,252.87	\$4,252.87	\$4,252.87
Total Revenue	\$12,797.85	\$12,797.85	\$12,797.85	\$12,797.85
Projected Disbursements				
Payroll - Member/ Owner (Ashley B. Manos)	\$0.00	(\$3,000.00)	\$0.00	(\$3,000.00)
Payroll - Non-Members	\$0.00	(\$7,200.00)	\$0.00	(\$7,200.00)
Payroll Taxes @ 7.65%	\$0.00	(\$780.30)	\$0.00	(\$780.30)
Rent	\$0.00	(\$5,299.00)	\$0.00	\$0.00
Drugs & Medical Supplies	(\$2,579.87)	(\$2,579.87)	(\$2,579.87)	(\$2,579.87)
Laboratory	(\$4,737.42)	(\$341.92)	\$0.00	\$0.00
Insurance	(\$95.33)	(\$272.79)	(\$119.63)	\$0.00
Office Supplies	(\$154.37)	(\$154.37)	(\$154.37)	(\$154.37)
Legal, Accounting and Bookkeeping	\$0.00	(\$250.00)	\$0.00	\$0.00
Advertising and Promotion	\$0.00	\$0.00	\$0.00	\$0.00
Outside Labor	(\$565.43)	(\$565.43)	(\$565.43)	(\$565.43)
Vehicles	\$0.00	\$0.00	\$0.00	\$0.00
Utilities (including phone & internet)	(\$236.57)	(\$389.97)	\$0.00	(\$836.18)
Licenses and Taxes (Including Sales Tax)	(\$1,592.00)	\$0.00	\$0.00	\$0.00
Repairs and Maintenance	(\$13.65)	(\$13.65)	(\$13.65)	(\$13.65)
Meals and Entertainment	(\$12.94)	(\$12.94)	(\$12.94)	(\$12.94)
Bank Charges	(\$25.00)	\$0.00	\$0.00	\$0.00
Office Expenses	(\$55.78)	(\$20.00)	(\$20.00)	(\$300.00)
Equipment Leases	\$0.00	\$0.00	\$0.00	\$0.00
Dues and Subscriptions	(\$330.00)	(\$284.00)	\$0.00	\$0.00
Uniforms	\$0.00	\$0.00	\$0.00	\$0.00
Payroll Service	(\$229.04)	\$0.00	(\$229.04)	\$0.00
Total Disbursements	(\$10,627.40)	(\$21,164.24)	(\$3,694.93)	(\$15,442.74)
Income/(Loss) from Operations	\$2,170.45	(\$8,366.39)	\$9,102.92	(\$2,644.89)
Bankruptcy Costs				
US Trustee Fees				
Projected Bankruptcy Legal Fees				
Estimated Effective Taxes at 0.0%	\$0.00	\$0.00	\$0.00	\$0.00
Change in Cash Balance	\$2,170.45	(\$8,366.39)	\$9,102.92	(\$2,644.89)
Ending Cash Balance	\$12,027.34	\$3,660.95	\$12,763.87	\$10,118.97

This Order has been electronically filed with the Court. The Judge's signature and the Court's seal appear at the top of the first page.
United States Bankruptcy Court.