

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

In Re:)
)
REPLOGLE ENTERPRISES, G.P.,) **Chapter 11**
) **Case No. 17-12173**
Debtor.) **Judge Croom**

**MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING THE USE OF CASH
COLLATERAL AND GRANTING ADEQUATE PROTECTION**

Replogle Enterprises (the “Debtor”), hereby submits this motion for entry of interim and final orders pursuant to sections 361 and 363 of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “Bankruptcy Code”), and Rules 2002, 4001, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing use of cash collateral and providing adequate protection. In support of this Motion, the Debtor states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On September 28, 2017 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).

3. The Debtor continues to operate its business and as a Debtor in possession

pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No creditors' committee, trustee or examiner has been appointed in this case at this time.

4. What is now known as Replogle Enterprises was founded in Martin, Tennessee in the 1950's as a logging and sawmill operation with Mr. Giles Nathan "Rip" Replogle and two mules. Today, Replogle Enterprises employs 42 full-time employees at its modern facility in Henry, Tennessee. Replogle Enterprises sells many different wood products from its sawmill, including round and square fencing post, shipping pallet materials and mulch, among others. Additionally, Replogle Enterprises supplies Replogle Hardwood Flooring Company, LLC with raw material for which they make hardwood flooring. Collective, Replogle Enterprises and Replogle Hardwood Flooring Company, LLC are the largest employer in the town of Henry, Tennessee.

5. The Debtor is a borrower under that certain Promissory Note dated April 15, 2010, in the original principal amount of \$4,800,000.00 (collectively, and with all amendments and extensions thereto, the "TN BIDCO Loan")¹ with Tennessee Business and Industrial Development Corporation ("TN BIDCO").

6. The TN BIDCO Loan is secured by Commercial Security Agreements dated as of November 15, 2013, December 23, 2015 and June 15, 2016, through which the Debtor pledged all assets. These interests were perfected a UCC filings on April 23, 2010 (which was followed by a continuation filing on April 8, 2015) and on May 17, 2010 (which was followed by a continuation filing on March 9, 2015). According to the UCC Statement filed to perfect security interests associated with the TN BIDCO Loan, the obligations thereunder are secured by all fixtures, equipment, office systems and equipment, machinery, furniture, furnishings, appliances,

¹ The current balance is believed to be \$3,514,467.29

inventory, goods, building and construction materials, supplies and articles of personal property, all accounts, permits, and licenses (the “Cash Collateral”).

7. Without the authorization by the Court to use Cash Collateral pursuant to the terms of an Interim Order, the Debtor will not be allowed to sell its inventory of lumber in the normal course of business in order to generate sufficient revenue to pay its expenses during this Chapter 11 Case.

USE OF CASH COLLATERAL

8. Subject to the terms of the proposed Interim Order, the Debtor proposes to use Cash Collateral during the Chapter 11 Case as follows:

(a) Use of Cash Collateral. Cash Collateral shall be used to (i) fund the working of capital requirements, operational expenses and other financial needs of the Debtor during the pendency of the Chapter 11 Case, and (ii) pay costs and expenses of the administration of the Chapter 11 Case. The Debtor shall comply with a Budget in the form as Exhibit A [to be supplemented in a later filing], which may be amended from time to time by delivery of a revised and updated Budget by the Debtor to TN BIDCO and which shall be effective and become the Budget referred to herein if no objection is expressed within three (3) business days following delivery of the Budget. The Debtor’s actual expenditures for any budgeted period may not exceed the monthly amount in the Budget by more than ten (10) percent for such budgeted period without prior written consent of TN BIDCO or Court order.

(b) Cash Collateral Account. The Debtor shall use its account at Commercial Bank & Trust or First Bank (as directed by the Office of the United States Trustee) for the deposit of revenues. The Debtor will be authorized to distribute these funds to pay expenses in the ordinary course of business, including payroll and employee benefits authorized by Court order, provided

such expenses are within the Budget as provided above.

(c) Adequate Protection Replacement Lien. As adequate protection for any Cash Collateral expended by the Debtors, TN BIDCO is hereby granted pursuant to 11 U.S.C. §§ 361(2) and 363(e), a perfected replacement lien in all postpetition assets of the Debtor (other than avoidance actions and the proceeds thereof), which liens shall have the same priority to TN BIDCO that existed as of the filing of the Petition.

BASIS FOR RELIEF

9. Pursuant to 11 U.S.C. § 363(c)(2), the Debtor in possession may not use cash collateral without the consent of the secured creditors unless the Court, after notice and hearing, authorizes such use. Due to the expedited nature of the request, the Debtor does not have consent as of the filing of this Motion with TN BIDCO.

10. Whether or not consent is received, the Debtor asserts that the Court has grounds for authorization for the Debtor's use of Cash Collateral pursuant to the terms of the Motion. By granting a replacement lien on post-petition assets that would become free and clear of liens pursuant to § 552(a), TN BIDCO will be adequately protected pursuant to § 363(e) and § 361(2).

WHEREFORE, the Debtor respectfully requests that the Court hold an expedited hearing on or about October 12, 2017 and grant the Debtor's use of cash collateral pursuant to the terms of this Motion.

DATED: October 2, 2017

Respectfully submitted,

THOMPSON BURTON PLLC

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Certificate of Service

The undersigned hereby certifies that a copy of the preceding pleading was electronically filed and served via the Court's ECF system this 2nd day of October, 2017, and served via United States Mail on the parties on the service list attached hereto on October 2, 2017.

/s/ Phillip G. Young, Jr.
Phillip G. Young, Jr.