



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 26, 2017


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: §
Valuepart, Incorporated, § **Chapter 11**
§
Debtor. § **Case No.: 16-34169**
§

**SEVENTH INTERIM ORDER AUTHORIZING DEBTOR'S USE OF CASH
COLLATERAL AND GRANTING ADEQUATE PROTECTION AND RELATED RELIEF**
(Docket No. 14)

THIS MATTER came to be heard on the *Amended Emergency Motion for Interim and Final Orders Authorizing Use of Cash Collateral and Scheduling Final Hearing* (the “**Motion**”) filed by Valuepart, Incorporated, the debtor and debtor-in-possession in the above-captioned bankruptcy case (“**Debtor**”); the Court having determined that: proper notice under the circumstances and as required by Rule 4001(b) of the Federal Rules of Bankruptcy Procedure was provided; the Debtor's use of cash collateral to cover the expenditures set forth on Exhibit A attached hereto is necessary to avoid immediate and irreparable harm to Debtor's estate pending a final hearing on the Motion; and that the adequate protection proposed by the Debtor to be provided to the Debtor’s lenders is sufficient to cover any projected diminution in value during the Budget period; and the Court having considered

the representations and acknowledgements of the Debtor, as set forth below, along with the pleadings, arguments of counsel, and the evidence on the record for this matter;

THE COURT HEREBY FINDS THE FOLLOWING:

A. On October 27, 2016 (the “**Petition Date**”), the Debtor filed its voluntary petition under chapter 11 of the United States Bankruptcy Code.

B. The Debtor is in possession of its property and continues to operate and manage its business as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

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

D. Based on the nature and the interim relief granted herein, due and adequate notice of the Motion and the hearing was served on all parties-in-interest requiring notice under these circumstances in accordance with Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.

E. The proposed adequate protection to ACF FinCo I LP (“**Senior Lender**”) and Skokie Investrade, Inc. (“**Junior Lender**”)¹ is proposed in good faith and sufficient to cover any projected diminution in value to the Lenders’ pre-Petition Date collateral, if any, during the Budget period (as defined below).

F. The value of the Senior Lender’s collateral, the stability of the Debtor’s operations, and the adequate protection payments described in paragraph 3(a) hereinbelow all provide the Senior Lender with adequate protection.

G. On December 9, 2016, Senior Lender filed its proof of claim as Claim No. 18-1 in the Claims Register (“**Proof of Claim**”).

H. The operating expenses proposed to be paid by the Debtor, as represented in the Budget (defined below), are reasonable and necessary to prevent irreparable injury, loss, or damage to

¹ The Senior Lender and the Junior Lender are collectively referred to herein as the “**Lenders**.”

Debtor's estate. This Court concludes that entry of this Interim Order is in the best interests of the estate at this time because its implementation will, among other things, allow for the continued operation of the Debtor's existing business and preservation of value for all constituents.

I. At the present time, Debtor has a need of cash in order to fund working capital, operating expenses, capital expenditures, fixed charges, payroll, and other general corporate purposes arising in the Debtor's ordinary course of business, each as necessary for the orderly maintenance and operation of the Debtor's business as a going concern.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. **Use of Cash Collateral.** The Debtor is authorized to use the Lenders' cash collateral in accordance with the budget attached hereto as **Exhibit A** (the "**Budget**"); *provided, however*, total disbursements under the Budget may not exceed 5% on a total-disbursements cumulative basis and 10% on a line-item cumulative basis (the "**Budget Variance**"). The Debtor is authorized to use the Lenders' cash collateral to fund working capital, operating expenses, capital expenditures, fixed charges, payroll, and all other general corporate purposes arising in the Debtor's ordinary course of business only as shown on the Budget, specifically including, without limitation, professional fees authorized under any orders of the Bankruptcy Court, including, without limitation, the terms of the Court's *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Pursuant to Sections 105(a), 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, and Local Rule 2016-1* [Docket No. 39]. Unless otherwise authorized by the Court, the Debtor shall not make any payments or sales on inventory to any customers, suppliers or vendors other than ValuePart Changtai Machinery Production Co. and Florida Track & Power, Inc. ("**FTP**")² that are

² Debtor's inventory sales to FTP are permitted only to the extent that (i) the balance of receivables due and owing from FTP to the Debtor does not exceed \$403,887, which is the amount of outstanding accounts receivable owed by FTP as of January 28, 2017 (*see* Debtor's Monthly Operating Report for January 2017 (Docket No. 272) ("**January 2017 MOR**"), at 13); (ii) FTP pays in full and on time all payments due under the note payable owed by FTP to the Debtor (*see id.*), without any postpetition modifications thereto; and (iii) with the exception of inventory sales on ordinary course terms, the Debtor and FTP do not engage in any new postpetition debt transactions. Except for the waiver provided in paragraph 4 below, all parties expressly reserve all rights with respect to all business transactions between the Debtor and FTP.

directly or indirectly owned or controlled by any shareholders, officers, directors, members, insiders, employees, or principals of the Debtor without the prior written consent of the Senior Lender. Nothing in this Order prevents the Lenders from consenting to the use of cash collateral for the payment of ordinary-course postpetition expenses of the estate.

2. The Debtor agrees to provide information reasonably requested by the Senior Lender concerning its collateral. Subject to (i) the entry of this Order by the Court and (ii) the Debtor's receipt of written consent from the proposed financing parties, which the Debtor shall endeavor to use its best efforts in good faith to procure such written consent from the proposed financing parties, the Debtor shall promptly deliver to the Senior Lender copies of all letters of intent and/or term sheets for postpetition financing received to date (which may be redacted to protect the identity of the potential postpetition lender) (collectively, "**LOIs**"). The Debtor agrees to provide the Senior Lender and the Official Unsecured Creditors Committee ("**Committee**") borrowing-base reports for each preceding week to be delivered on Wednesday of the week following the reporting-period week. The Debtor shall provide to Senior Lender and the Committee on a weekly basis to be delivered no later than Wednesday of the week following the reporting-week period a variance report comparing the actual sales and cash collections and expenditures to budgeted sales and cash collections and expenditures. By no later than Thursday of each week, the Debtor shall provide the Senior Lender and the Committee with a status report by FocalPoint Securities, LLC ("**FocalPoint**") regarding the progress of postpetition financing efforts. The Debtor shall also (a) reasonably cooperate with the field examiner hired by the Senior Lender to accommodate a field examination at all of the Debtor's locations within a 48-hour period, subject to reasonable notice given by the field examiner and further subject to such examination not conflicting with any third party due diligence efforts; (b) reasonably cooperate with the financial advisor hired by the Senior Lender and the financial advisor hired by the Committee; (c) respond to reasonable requests for information made by the Senior Lender and/or the Committee (including any professionals acting on their behalf); and (d) provide the Senior Lender

and the Committee reasonable access to Ms. Isa Passini during normal business hours. Reasonable access will not be more than 10 hours a week. If Ms. Passini is not comfortable answering a question asked by the field examiner or the financial advisor hired by the Senior Lender or the financial advisor hired by the Committee, then Ms. Passini is allowed to consult with the Debtor's counsel prior to answering questions. The Senior Lender agrees that its financial advisor's review is to evaluate the Senior Lender's collateral position at this time, and the Senior Lender's financial advisor will not disclose any of the Debtor's information to the marketplace. The Debtor shall concurrently send to the Committee copies of all financial and other information provided to the Senior Lender, pursuant to this Order or otherwise, including, but not limited to LOIs, budget-to-actual reports, financial statements, and postpetition financing status reports by FocalPoint.

3. **Adequate Protection**. In addition to the equity cushion (described *supra* in Paragraph F of the factual findings to this Order), the adequate protection provided to the Lenders in this Order is only to the extent that the Lenders' asserted liens and security interests in the Debtor's pre-Petition Date property are perfected, valid, and not avoidable as of the Petition Date. Subject to the Court so finding, the following adequate protection ("**Adequate Protection**") is provided to the Lenders as adequate protection of the Lenders' asserted pre-Petition Date security interests in the Debtor's pre-Petition Date collateral.

a. The Debtor shall pay to the Senior Lender: (i) by no later than the first business day of each month with the first payment due June 1, 2017, timely and current monthly payments of accrued interest at the non-default rate in the amount approximated in the Budget as "Interest Accrual" for Ares; plus (ii) by no later than the twentieth calendar day of each month with the first payment due May 22,³ 2017, \$100,000 to be applied by the Senior Lender only to outstanding unpaid principal, irrespective of whether such amount is included in the Budget. The Senior Lender reserves its right to accrue interest at the default rate and assert a claim for

³ May 20, 2017, falls on a non-Banking Day. The \$100,000 adequate protection payment shall be due on the first Banking Day following the May 20, 2017, payment deadline.

payment for such amounts. All parties, including the Committee, reserve all rights related to the \$100,000 monthly payment to the Senior Lender and the calculation of accrued interest at the non-default rate.

b. Lenders are each hereby granted, from and after the Petition Date, replacement liens and security interests in all of the Debtor's assets, including, without limitation, all accounts and inventory acquired by the Debtor after the Petition Date, specifically including all cash proceeds arising from such accounts and inventory acquired by the Debtor after the Petition Date, in the same nature, extent, priority, and validity that such liens, if any, existed on the Petition Date in the amount equal to the aggregate diminution, if any, in value of the prepetition collateral to the extent of their interests therein (the "**Replacement Liens**").

c. As of the date of this Interim Order, the Replacement Liens shall be valid, perfected, enforceable and effective against the Debtor and its successors and assigns, including any trustee or receiver in this or any superseding chapter 7 case, without any further action by the Debtor or the Lenders and without the execution, delivery, filing or recordation of any promissory notes, financing statements, security agreements or other documents. Notwithstanding the foregoing, this Interim Order shall be deemed a security agreement and may be filed as a financing statement and the Debtor shall execute and deliver such notes, security agreements, assignments, financing statements and other documents that the Lenders shall reasonably request to further evidence the liens and security interests granted hereby.

d. The Replacement Liens in favor of the Senior Lender shall constitute a paramount and perfected first priority liens and security interests in such property. In addition to such liens, the Lenders shall be entitled to a superpriority administrative expense claim under Sections 503 and 507 of the Bankruptcy Code to the extent that the adequate protection provided therein proves inadequate.

e. The Lenders shall each have all the rights and remedies of a secured creditor in

connection with the liens and security interests granted by this Order, except to the extent that such rights and remedies may be affected by the Bankruptcy Code, or otherwise.

4. **Events of Default.** The following shall constitute events of default under this Interim Order (“**Events of Default**”):

a. If the Debtor fails to timely deliver to the Senior Lender the adequate-protection payments described above in Paragraph 3a;

b. If the Debtor exceeds the Budget Variance without the prior written consent of the Lenders or further authority from the Court;

c. If the Debtor pays obligations not shown on the Budget without the prior written consent of the Senior Lender or further authority from the Court;

d. If any representation made by the Debtor after the commencement of this chapter 11 case in any report or financial statement delivered to the Lenders proves to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty or statement not misleading);

e. The Debtor fails to provide any reasonably requested report or accounting information when due or access to its books and records within a reasonable time after such access is requested by the Lenders;

f. If a trustee or examiner, with authority to affect the operation of the Debtor's business, is appointed in the Debtor's chapter 11 proceedings without the Lenders' consent;

g. If this case is converted to a case under chapter 7; or

h. If this case is dismissed.

Without waiving any other rights, the Senior Lender expressly waives any Event of Default that may have occurred as a result of (i) the Debtor exceeding the Budget Variance for the expense

line item entitled “Insurances” as of the week ending February 18, 2017; (ii) the Debtor’s unauthorized sales of inventory to FTP occurring prior to the date of the entry of the *Agreed Sixth Interim Order Authorizing Debtor’s Use of Cash Collateral and Granting Adequate Protection and Related Relief* [Docket No. 310]; and (iii) the Debtor’s unauthorized payment of \$10,000 to Gordon Brothers, reflected as a payment for “Inventory Valuation” in the January 2017 MOR at page 10.

5. **Remedies Upon Default.** Upon the occurrence of any Event of Default, the Debtor is entitled to written notice, which shall be copied to the Committee, and three (3) business days to cure such Event of Default. In the event the Debtor fails to timely cure any Event of Default, the Senior Lender shall be entitled to an expedited hearing (subject to the Court’s availability) regarding the existence and continuation of an Event of Default (“**Notice of Default**”). The purpose of such expedited hearing is for the Court to decide whether or not such an Event of Default exists and constitutes “cause” within the meaning of Section 362(d)(1) of the Bankruptcy Code. The Senior Lender’s Notice of Default shall describe with particularity the nature of the alleged Event of Default. At such hearing, the Senior Lender shall be entitled to seek any of the following relief with respect to the Debtor:

- a. the immediate termination of the Debtor’s use of the requesting Senior Lender’s cash collateral;
- b. the lifting of the automatic stay under 11 U.S.C. § 362 permitting the requesting Senior Lender to take possession of all or any part of the requesting Senior Lender’s collateral;
- c. the entry of an order prohibiting or limiting the Debtor’s further use of the requesting Senior Lender’s cash collateral;
- d. the appointment of a trustee or examiner in this chapter 11 proceeding or the entry of an order converting this case to chapter 7; and

e. such further or other relief as provided in the Bankruptcy Code, this Interim Order or applicable non-bankruptcy law.

6. **Term.** Unless otherwise ordered by the Court or extended by written agreement between the Debtor and each / either of the Lenders, the Debtor's right to use the Lender(s)' cash collateral hereunder shall commence on the Petition Date and expire at the earlier of 5:00 p.m. (CST) on the last day of the time period set forth in the Budget or a final hearing on the Debtor's motion to use cash collateral. Notwithstanding such expiration or other termination, or modification hereof, the Lenders are entitled to the liens, priorities and other rights provided herein.

7. **Notice and Hearing; Reservation of Rights to Object.** A hearing to consider further relief shall be scheduled for June 27, 2017, at 9:00 a.m. (prevailing Central Time) before the Honorable Harlin D. Hale, Bankruptcy Judge for the Northern District of Texas, Dallas Division, at Earle Cabell Federal Building, 1100 Commerce St., 14th Floor, Dallas, TX 75242-1496. This Interim Order shall be binding on, and inure to the benefit of the Lenders, the Debtor, any official committee(s) or officer that may be appointed and their respective successors and assigns including, without limitation, any trustee appointed in this chapter 11 case or any superseding chapter 7 case.

8. **Challenge Deadline.** By no later than May 15, 2017, (the "**Challenge Deadline**"), the Debtor and the Committee will file their objection, if any, to the Proof of Claim and any action, objection or challenge to the validity, priority, and enforceability, of the Senior Lender's liens in the collateral securing the obligations set forth in the Proof of Claim. The Committee is hereby granted standing for all purposes to file, prosecute, and otherwise pursue any and all matters subject to the Challenge Deadline without further motion or order of the Court. The failure to timely file such action, objection or challenge will result in the estate having irrevocably waived any argument to the allowance of the Senior Lender's claim to the extent of the dollar amounts set forth in the Proof of Claim and any lien right asserted by the Senior Lender. For the avoidance of doubt, the Replacement

Liens are subject to this paragraph 8. Notwithstanding anything to the contrary herein or otherwise, the Challenge Deadline shall only apply to the Senior Lender and shall not apply to the Junior Lender.

9. **Notices.** All notices delivered to the Debtor shall be concurrently delivered to the Committee. Except as otherwise stated herein, all notices and demands hereunder shall be in writing and shall be deemed given when addressed as follows: on the earlier of (a) when they are actually delivered to the addressees by hand delivery, facsimile transmission, e-mail or otherwise, or (b) at 11:00 a.m. prevailing Central Time on the Banking Day next following the deposit thereof with any recognized national overnight delivery service properly addressed to the addressees.

If to Debtor:

Marcus A. Helt
Thomas Scannell
Gardere Wynne Sewell LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Fax: (214) 999-4667
[Email: mhelt@gardere.com](mailto:mhelt@gardere.com)
[Email: tscannell@gardere.com](mailto:tscannell@gardere.com)

If to the Committee:

Joseph Coleman
John Kane
Kane, Russell, Coleman & Logan, PC
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Email: jcoleman@krcl.com
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If to Senior Lender:

Keith Aurzada
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Jay.krystinik@bryancave.com
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If to Junior Lender:

Matthew T. Gensburg
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10. The findings of fact and conclusions of law of this Court pursuant to this Interim Order shall be deemed effective upon the entry of this Order. To the extent that such findings may

constitute conclusions, and vice versa, they hereby are deemed such.

11. This Interim Order is immediately valid and fully effective upon its entry by the Court.

End of Order

Prepared and submitted by:

/s/ Marcus A. Helt

Marcus A. Helt (TX 24052187)

Thomas C. Scannell (TX 24070559)

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COUNSEL TO THE DEBTOR

Exhibit A

Valuepart, Inc.
7th Interim Cash Collateral Period

	29	30	31	32	33	34	35	36	37
WEEK ENDING	05/13/17	05/20/17	05/27/17	06/03/17	06/10/17	06/17/17	06/24/17	07/01/17	07/08/17
	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected
Net Sales									
+ Deere	402,500	402,500	402,500	498,750	498,750	498,750	498,750	638,750	638,750
+ Other Other OEM	747,500	747,500	747,500	926,250	926,250	926,250	926,250	1,186,250	1,186,250
Total Net Sales	1,150,000	1,150,000	1,150,000	1,425,000	1,425,000	1,425,000	1,425,000	1,825,000	1,825,000
Receipts									
+ AR Collections- Deere			1,586,876				1,610,000		
+ AR Collections- Other Other OEM	734,063	734,063	734,063	734,063	747,500	747,500	747,500	747,500	747,500
- AR Collections (Misc. Collections)	(11,092)	(11,092)	(11,092)	(11,092)	(11,092)	(11,092)	(11,092)	(11,092)	(11,092)
- AR Promissory Note Collections MG Parts, Cypress, Florida Track and Power	45,000					45,000			
Total Receipts	767,971	722,971	2,309,847	722,971	736,408	781,408	2,346,408	736,408	736,408
Operating Disbursements									
- Payroll (incl. Benefits and Expenses Reimbursements)		175,835		180,835		175,835		180,835	
- Part Supplies	800,000	800,000	900,000	800,000	800,000	800,000	1,000,000	800,000	800,000
- Freight	175,000	175,000	175,000	175,000	175,000	175,000	175,000	175,000	175,000
- Real Property Leases				146,092					146,092
- Non-Real Property Leases			576	4,788				576	4,788
- Insurances		5,000	19,000	49,945			5,000		49,945
- Utilities	34,971			34,971					34,971
- Taxes				41,600					41,600
- John Deere - US									
- John Deere - Canada									
- Case Commissions									
- Other - SG&A	65,763	32,430	32,430	32,430	65,763	32,430	32,430	32,430	32,430
Total Operating Disbursements	1,075,734	1,188,265	1,127,006	1,465,661	1,040,763	1,183,265	1,212,430	1,188,841	1,284,826
Operating Cash Generated/(Used)	(307,763)	(465,294)	1,182,841	(742,690)	(304,355)	(401,857)	1,133,978	(452,433)	(548,418)
Non-Operating Cash Disbursements									
- Restructuring Professional Fees (Accrued)	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
- U.S. Trustee Fees									
- Post-Petition Accounts Payable/Critical Vendors									
- Adequate Protection & Interest Accrual for Ares			100,000	92,000			100,000		92,000
Total Non-Operating Disbursements	75,000	75,000	175,000	167,000	75,000	75,000	175,000	75,000	167,000
Grand Total Disbursements	1,150,734	1,263,265	1,302,006	1,632,661	1,115,763	1,258,265	1,387,430	1,263,841	1,451,826
Operating & Non-Operating Cash Generated/(Used)	(382,763)	(540,294)	1,007,841	(909,690)	(379,355)	(476,857)	958,978	(527,433)	(715,418)