IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re	)	Chapter 11
	)	
ROYAL AUTOMOTIVE COMPANY, et al.,	)	Case No. 18-20218
	)	
Debtors.	)	(Jointly Administered)

DEBTORS' MOTION FOR ENTRY OF A SECOND ORDER AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE

The Debtors move for entry of a second order authorizing them to use cash collateral pursuant to Section 363 of the Bankruptcy Code and respectfully state:

BACKGROUND

1. On May 2, 2018, the Debtors filed voluntary petitions for relief with the Court under Chapter 11 of the Bankruptcy Code.

2. The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 cases.

4. On the commencement of the Debtors' Chapter 11 cases, Royal Automotive Company ("Royal") owned and operated a Subaru franchise dealership at 1901 Patrick Street Plaza in Charleston, West Virginia, and Royal Real Estate, LLC owned and leased to Royal the premises on which Royal operated the dealership.

5. Pursuant to this Court's Order of June 13, 2018 [Doc 199], the Debtors sold the

dealership and substantially all their related properties and assets to Dutch Miller Subaru, Inc. on June 14, 2018. *See* Doc 206.

6. In accordance with this Court's further Order of June 13, 2018 [Doc 200], the Debtors effectively paid all their secured, first-priority debt to United Bank, subject to an agreement between United Bank and the Pension Benefit Guaranty Corporation to hold the Debtors' payment of $57,800 due United Bank pending the resolution of issues between those two creditors. *See* Doc 208 at Exs. 1 & 2.

7. Immediately following the sale and the payments to United Bank and other authorized expenditures relating thereto, the Debtors were left with roughly $2.5 million in cash (the "Cash Collateral"),[1] all of which the Debtors believe is subject to the potentially competing liens and security interests asserted by United Bank (to the extent of its $57,800 in unpaid prepetition attorneys' fees),[2] Subaru Acceptance Corporation,[3] GreatAmerica Financial,[4] the Pension Benefit Guaranty Corporation, and the Internal Revenue Service. *See generally* Schedule D, Doc 106 at *46.

8. With the sale of their assets behind them, the Debtors immediately turned to winding down their businesses and the development of a Chapter 11 plan(s).

9. In connection therewith, the Debtors continue actively to pursue a standard termination of Royal's pension plan as a means for satisfying the entirety PBGC's secured claim

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[1] The Debtors are continuing to reconcile due-to and due-from amounts with respect to both Dutch Miller Subaru and Subaru of America, all of which may increase or decrease the Debtors' total net cash proceeds of sale.

[2] *See* Doc 200 at *2.

[3] *See* Claim 6.

[4] Royal filed a motion for authority to settle and pay GreatAmerica Financial's fully secured claim for a reduced amount. *See* Doc 276. That motion remains pending as of the date hereof.

as the Debtors' necessary first step in both winding down their businesses and developing a Chapter 11 plan(s)

10. After initially concluding on a preliminary basis in early August that the Debtors may not have sufficient assets to complete a standard termination as reported to the Court at the hearing on the Debtors' prior cash collateral motion, Royal, working with its pension plan administrator and in close consultation with the PBGC, has worked the cost of a standard termination down such that the Debtors may well have sufficient assets to complete a standard termination after all. The Debtors and their professionals are continuing to analyze that issue and hope to reach a resolution, one way or the other, in the next couple of weeks.

11. Although the precise parameters of standard termination remain unclear, the Debtors understand that the costs of a standard termination would be substantially less than the amount of the fully secured, now effectively first-priority claim the PBGC would have against the Debtors in the event of a PBGC-initiated or distress termination.[5] The Debtors also expect that a standard termination will eliminate most, if not all, of the IRS's asserted secured claim for penalties relating to the pension plan's chronic underfunding as well.

12. These actions would redound to the benefit of the Debtors' remaining secured and potentially unsecured creditors. For United Bank as to its remaining secured claim and Subaru Acceptance, the Debtors' actions may eliminate the PBGC's competing and potentially senior liens, thus ensuring that proceeds are freed up to satisfy their secured claims (if and to the extent established and allowed). For the IRS to the extent of its remaining secured claim, if any, the Debtors' actions help to ensure, at least to the extent possible, the availability of sale proceeds to

[5] The PBGC has filed proofs of claim totaling some $5.2 million in claims against the Debtors' estates premised on a PBGC-initiated termination of the pension plan.

go toward the satisfaction of its claim. And, although no assurances can be made and depending on a number of factors that are not yet subject to complete visibility (the extent of the proceeds remaining after termination of the pension plan and the extent of the secured claims against the remaining sale proceeds), the Debtors' actions might free up sufficient proceeds to confirm a Chapter 11 plan and potentially provide for limited distributions to unsecured creditors.

13. To accomplish those goals, the Debtors require the continued use of the Cash Collateral.

14. To that end, the Debtors have extended their initial 13-week wind-down budget for an additional 13-week period (the "Wind-Down Budget," a copy of which is attached hereto as Exhibit 1).[6]

RELIEF REQUESTED

15. By this Motion, the Debtors request the entry of a second order authorizing them to use the Cash Collateral in accordance with and as set forth in lines 7-14 of the extended Wind-Down Budget for the period from October 1 through December 30 pursuant to Section 363 of the Bankruptcy Code.

16. Approval of the Motion will provide the Debtors with the ability to meet their necessary current and ongoing operating expenses through the conclusion of the responsible wind-down process.

[6] The Debtors' inclusion of amounts in the Wind-Down Budget does not constitute an admission that the Debtors actually owe the amounts set forth therein. Royal, in particular, contests the amounts due with respect to its accounting system.

12. In accordance with Bankruptcy Rules 4001(b) and (d) and below is a summary[7] of the terms of the proposed use of Cash Collateral:

a. Amount of Cash Collateral to Be Used. The Debtors seeks to use Cash Collateral in an amount up to the total expenditures set forth in lines 7-14 of the Wind-Down Budget for the period from October 1 through December 30.

b. Parties with an Interest in Cash Collateral. United Bank, Subaru Acceptance Corporation, Great American Financial, the Pension Benefit Guaranty Corporation, and the Internal Revenue Service may each have competing interests in the Cash Collateral.

c. Use of Cash Collateral. The Debtors seek authority to use Cash Collateral in accordance with the Wind-Down Budget to satisfy the postpetition expenses of the Debtors for the period from October 1 through December 30 as more fully described in lines 7-14 of the Wind-Down Budget.

BASIS FOR RELIEF

13. Section 363(c) of the Bankruptcy Code authorizes a business debtor in possession to enter into transactions and use property of the debtor's estate in the ordinary course of business. *See* 11 U.S.C. 363(c)(1). But Section 363 restricts the debtor in possession's ability to use cash collateral. Specifically, Section 363(c)(2) states that a debtor in possession

> may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—
>
> (A) each entity that has an interest in such cash collateral consents; or
>
> (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

A debtor's proposed use of cash collateral under Section 363(c)(2)(B) is bound up with the provisions of Section 363(e) of the Bankruptcy Code, which authorizes the Court, "on request of

[7] The summary of the terms and conditions for the use of Cash Collateral set forth in this Motion is designed to provide an overview of material terms and is qualified in its entirety by the proposed order(s) relating hereto. In the event that there is any conflict between this Motion and the order(s), the order(s) will control in all respects.

an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], . . . [to] prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

14. The Court should authorize the Debtors to use cash collateral in accordance with the Wind-Down Budget pursuant to Section 363(c)(2)(B).

15. First, the Debtors submit that the interests of each and every one of their secured creditors is adequately protected against any diminution in the value of their collateral in these cases. Indeed, in each instance, the Debtors' proposed use of Cash Collateral to wind-down their businesses and cases through the standard termination of their pension plan and the subsequent proposal of a Chapter 11 plan will either ensure that the Debtors' secured creditors are paid in full or, at a minimum, the value of their collateral will be enhanced.

16. Absent court authorization to use the Cash Collateral, the Debtors will be forced to convert their cases to Chapter 7, as the Debtors, left only with funds constituting Cash Collateral, will lack any funding whatsoever to complete the wind-down of their businesses, confirm and consummate a Chapter 11 plan, and bring their Chapter 11 cases to a conclusion. The Debtors submit that such a result would be potentially disastrous for all their creditors and interest holders, including the PBGC whose claims, absent the Debtors' ability to effect a standard termination, appear substantially under water.

17. In addition, the Debtors submit that authorizing them to use Cash Collateral to wind-down their businesses and cases is consistent with Section 105(a) of the Bankruptcy Code as necessary and appropriate to further the Debtors' efforts to develop and confirm a Chapter 11 plan for the benefit of all their creditors and in accordance with the purposes and policies underlying Chapter 11.

15. In addition to the notice provided by the Clerk, the Debtors will provide prompt notice of this Motion in accordance with Federal Rule of Bankruptcy Procedure 4001(b)(1)(C) and 4001(b)(3) to each entity with an interest in the Cash Collateral, the twenty largest unsecured creditors as set forth on their list thereof, and the Office of the United States Trustee. The Debtors submit that no other or further notice as to the preliminary relief requested in the Motion need be given.

WHEREFORE, the Debtors request entry of an order, in form and substance as attached hereto as Exhibit 2, authorizing them to use Cash Collateral in accordance with lines 7-14 of the Wind-Down Budget for the period from October 1 through December 30 and granting them such other and further relief as is just.

Dated: September 18, 2018

/s/ Marc R. Weintraub

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CERTIFICATE OF SERVICE

On September 18, 2018, a copy of the foregoing pleading was filed via the Court's CM/ECF system which caused notification and service of same upon each of the parties entitled to notice thereof and the parties registered to receive ECF notifications in this case.

/s/ Marc R. Weintraub
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