

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

HINES HORTICULTURE, INC., et al.,<sup>1</sup>

Debtors.

)  
) Chapter 11

)  
) Case No. 08-11922 (KJC)

)  
) Jointly Administered

)  
) Re: Docket No. 11

**ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY  
PREPETITION CLAIMS OF (A) SHIPPERS AND OTHER LIEN CLAIMANTS AND  
(B) PREPETITION CLAIMS ENTITLED TO PRIORITY UNDER SECTION 503(B)(9)  
OF THE BANKRUPTCY CODE**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors (collectively, the "Debtors") for the entry of an order (the "Order") authorizing, but not directing, the Debtors to pay certain prepetition claims of Shippers, Lien Claimants and 503(b)(9) Claims and the First Day Declaration; it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED

1. The Motion is granted as provided herein.

---

<sup>1</sup> The Debtors in these Chapter 11 Cases and the last four digits of each Debtor's federal tax identification numbers are: Hines Horticulture, Inc. (3204) and Hines Nurseries, Inc. (1319). The location of the Debtors' corporate headquarters and the service address for both Debtors is: 12621 Jeffrey Road, Irvine, California 92620.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

2. The Debtors are authorized, but not directed, in their sole discretion, to pay prepetition Shipping Charges to the Shippers; provided that such payments shall not exceed \$2,000,000 in the aggregate without further order of the Court; provided further that such aggregate \$2,000,000 limit shall be reduced on a dollar for dollar basis by payments actually made by the Debtors on account of Key Supplier Claims.

3. The Debtors are authorized, but not directed, in their sole discretion, to pay prepetition Miscellaneous Lien Claims to the Lien Claimants; provided that such payments shall not exceed \$500,000 in the aggregate without further order of the Court.

4. The Debtors are authorized, but not directed, in their sole discretion, to pay 503(b)(9) Claims; provided that such payments shall not exceed \$1,500,000 in the aggregate without further order of the Court; provided further that such payments shall not exceed \$250,000 in the aggregate pending final approval of the Debtors' postpetition financing.

5. Nothing herein is intended to modify nor should be deemed to modify the procedures and limits provided by the Proposed DIP Orders with respect to the 503(b)(9) Claims that may be paid by the Debtors as such Proposed DIP Orders may be approved by the Court. The Debtors' rights to pay any 503(b)(9) Claim are expressly subject to the limits and procedures set forth therein.

6. The Debtors are not authorized to pay a Miscellaneous Lien Claim unless the Lien Claimant who may assert a Miscellaneous Lien Claim against the Debtors or their property has perfected or is capable of perfecting or may be capable of perfecting in the future one or more liens in respect of such claim in the Debtors' business judgment; provided that such payment shall not be deemed to be a waiver of rights regarding the extent, validity, perfection or possible avoidance of the related liens and payments.

7. The Debtors may request, in their sole discretion, that each Shipper, Lien Claimant or Supplier provide written acknowledgement of its obligation to continue providing services to the Debtors on pre-existing, customary or other terms as may be requested by the Debtors as a condition of receiving payment on account of any payment made pursuant to this Order; provided that the Debtors' failure to request such an acknowledgement shall not be and shall not be deemed to be a waiver of the Debtors' rights hereunder. If any Shipper, Lien Claimant or Supplier does not continue to provide services on such terms, then (a) any payment on account of a prepetition claim received by such Shipper, Lien Claimant or Supplier shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request by the Debtors and (b) upon recovery by the Debtors, any prepetition claim of such Shipper, Lien Claimant or Supplier shall be reinstated as if the payment had not been made.

8. If there exists an outstanding postpetition balance due from the Debtors to such Shipper, Lien Claimant or Supplier, the Debtors may elect to recharacterize and apply any payments made pursuant to this Order to such outstanding postpetition balance, and the Shipper, Lien Claimant or Supplier shall repay immediately in cash to the Debtors such paid amounts that exceed the postpetition obligations then outstanding and without any claim right of setoff or recoupment against the Debtors resulting thereby.

9. The banks and financial institutions on which checks are drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and that all such banks and financial institutions are authorized to

rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

10. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity or amounts of any claims held by the Shippers, Lien Claimants or Suppliers. The Debtors do not concede that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Order are valid, and the Debtors expressly reserve all rights to contest the extent, validity or perfection or seek the avoidance of all such liens.

11. Nothing herein shall be deemed to constitute the postpetition assumption of any executory contracts or leases between the Debtors and any Shipper, Lien Claimant or Supplier, if any.

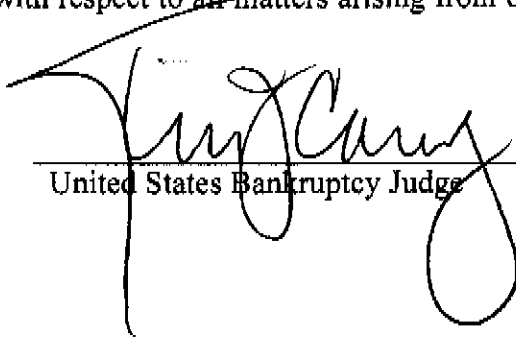
12. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

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

15. The Court retains jurisdiction with respect to ~~all~~ matters arising from or related to the implementation of this Order.

Date: *Aug 22, 2008*  
Wilmington, Delaware

  
United States Bankruptcy Judge