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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	BANKRUPTCY NO.
	§	17-40339-MXM-11
DCCS, LLC.	§	
	§	
DEBTOR	§	CHAPTER 11

DEBTOR’S MOTION FOR AN INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL OF EXISTING SECURED LENDER; (II) GRANTING ADEQUATE PROTECTION FOR USE THEREOF; (III) AUTHORIZING THE DEBTOR TO OBTAIN POST PETITION FINANCING FROM ITS EXISTING SECURED LENDER; AND (IV) MODIFYING THE AUTOMATIC STAY TO THE EXTENT NECESSARY FOR THE RELIEF REQUESTED HEREIN

EMERGENCY CONSIDERATION OF THIS MOTION IS BEING REQUESTED.

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 501 W. 10TH STREET, FORT WORTH, TEXAS 76102 BEFORE CLOSE OF BUSINESS FEBRUARY 27, 2017, WHICH IS AT LEAST TWENTY-FOUR (24) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH

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HEREIN. IF A RESPONSE IS FILED, A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter under to 28 U.S.C. § 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court in this district under 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. Petition Date. On January 31, 2017, DCCS, LLC (“DCCS”) filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. Since the filing of this case, DCCS has continued in the possession of its property and operation of its business as a Debtor in Possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code

4. No creditors. Committee has been appointed in this case by the United States Trustee. Further, no trustee or examiner has been requested or appointed in this Chapter 11 Case.

FACTUAL BACKGROUND

A. The Debtor’s Business Operation

5. DCCS is in the “heavy construction” business working primarily as a 2nd or 3rd tier subcontractor on commercial projects, specifically road and bridge construction in the North Texas area. The assets of DCCS are located primarily in Fort Worth, Texas.

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B. Cash Collateral

6. DCCS has interests in certain funds that its pre-petition lender contends constitute “Cash Collateral” as defined in section 363 of the Bankruptcy Code. The Creditor known to DCCS that claims an interest in cash collateral is:

C. First Financial Bank, N.A.

7. DCCS’s primary pre-petition lender is First Financial Bank, N.A. (“FFB”). DCCS has multiple separate obligations to FFB;

a) First there is a Line of Credit that was originally in the amount of \$1,000,000.00 dated July 28, 2014 (the “FFB Line of Credit”). FFB contends that the FFB Line of Credit is secured by a lien on the accounts receivable of FFB (the “FFB Cash Collateral”). UCC’s reflecting FFB’s lien were filed on February 15, 2011 and November 4, 2016. The approximate balance currently owed by DCCS to FFB with regard to the FFB Line of Credit is \$941,352.00. DCCS was in default with regard to the covenants on the FFB Line of Credit when this case was filed.

b) Secondly, DCCS, as borrower, and FFB as lender, entered into a Commercial Promissory Note (the “2003 Miller Loan”) in the original amount of \$100,000 in September of 2013. The repayment of the 2003 Miller Loan is secured by a purchase money security interest in a **2003 Miller Formless, Model No. 8100** (the “2003 Miller”). FFB filed a UCC reflecting a security interest in the 2003 Miller on October 9, 2013. The current balance owed by DCCS on the 2003 Miller Loan is approximately \$18,206.00. The payments on the 2003 Miller Loan were current as of the filing of this case.

c) Thirdly, DCCS, as borrower, and FFB as lender, entered into a Commercial Promissory Note (the “1990 Miller Loan”) in the original amount of \$94,172.00 in January of 2014. The

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repayment of the 1990 Miller Loan is secured by a purchase money security interest in a **1990 Miller Formless, Model No. 8100** (the “1990 Miller”). FFB filed a UCC reflecting a security interest in the 1990 Miller on January 10, 2014. The current balance owed by DCCS on the 1990 Miller Loan is approximately \$25,543.00. The payments on the 1990 Miller Loan were current as of the filing of this case.

The obligations of DCCS to FFB described above may be cross-collateralized.

RELIEF REQUESTED

10. By this Motion, the Debtor seeks the entry of an interim order pursuant to sections 105(a) and 363 of the Bankruptcy Code and Rules authorizing the use of the FFB Cash Collateral. On an interim basis, DCCS seeks the entry of an order providing for DCCS’s use of Cash Collateral to pay operating expenses and professional fees during the next 30 days. Specifically, DCCS requests that it be allowed to use Cash Collateral during the next 30 days for the payment of DCCS’s operating expenses with adequate protection for the interests of FFB as set out below.

BASIS FOR RELIEF

A. The Secured Lender’s Interests are Adequately Protected

DCCS proposes the following protection for the interests of FFB in the FFB Cash Collateral:

11. FFB will receive a replacement lien in any receivables generated by DCCS following the petition date.

12. FFB currently has over \$100,000 of DCCS funds on deposit (the “Trapped Funds”).

The Trapped Funds represent FFB Cash Collateral or the proceeds of FFB Cash Collateral. FFB

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will apply \$50,000 of the Trapped Funds to reduce the principal balance of the FFB Line of Credit. The remaining Trapped Funds will be released to DCCS.

13. DCCS will provide FFB with a budget, reflecting the expected receipts in the next 30 days and the proposed uses of those funds. FFB will not expend any FFB Cash Collateral other than as reflected on that budget.

14. DCCS will pay FFB at least \$25,000 toward the balance due on the FFB Line of Credit before the end of February 2017.

15. The authority to use cash collateral requested in this Motion will expire 30 days after the Petition Date.

B. The Relief Requested is Reasonable and Necessary

14. The relief requested herein is necessary to prevent the immediate and irreparable harm to DCCS's Chapter 11 estate and to provide sufficient funds to permit DCCS to continue to operate its business. DCCS asserts that an immediate and critical need exists for DCCS's use of Cash Collateral in order to continue the operation of its business and that without the use of the Cash Collateral, DCCS will not be able to pay its payroll and other direct operating expenses or obtain goods and services needed to carry on its business during this sensitive time period. DCCS asserts that, at this time, its ability to use Cash Collateral is vital to the confidence of DCCS's employees and is crucial to the preservation and maintenance of the going concern value of DCCS's estate.

15. To remain in possession of its property, to continue its business activities, and to achieve a successful reorganization, DCCS requests to use Cash Collateral in its ordinary business operations. DCCS currently has no outside borrowing source from which it could secure

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funding to operate its business, and therefore, it must rely on its ability to use Cash Collateral to fund the operation of its business. DCCS believes that payment of its operating expenses is reasonable and necessary in order to continue DCCS's operations.

16. In the event the Court does not authorize DCCS's proposed use of cash collateral, DCCS believes that it will be unable to maintain its current business operations or to confirm a plan of reorganization as contemplated by the Bankruptcy Code. Thus, without the use of Cash Collateral, DCCS will be seriously and irreparably harmed, and it will be unable to preserve its going concern business value.

C. Interim Relief is Necessary to Prevent Immediate and Irreparable Harm to the Debtor's Estate

17. DCCS's needs the immediate use of a portion of the Cash Collateral. On an interim basis, DCCS requests that it be permitted to use Cash Collateral on the basis set out above for the payment of operating expenses and professional fees. Bankruptcy Rule 4001 (b) provides that the final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. *See Fed. R. Bankr. P. 4001(b)(2)*. DCCS requires use of Cash Collateral to pay present operating expenses, including payroll, professional fees, and other expenses essential to DCCS's continued viability.

18. DCCS requests immediate authority to use Cash Collateral to fund its day-to-day operations as set out above. Absent such relief, DCCS will not be able to continue to operate its business. Granting the interim relief requested herein will minimize disruption to DCCS's business and operation and permit DCCS to meet payroll and sufficient funds to satisfy its

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ongoing business obligations. Allowing the use of Cash Collateral, to the extent provided by the proposed Interim Order, therefore, is in the best interest of DCCS's estate.

19. The use of Cash Collateral is reasonable under the circumstances. Moreover, as stated above, the interests of FFB are adequately protected by the virtue of the fact that the FFB Line of Credit will be paid as described above and remain secured by the liens and security interests in the property that secures that debt. Moreover, DCCS is confident that it can successfully reorganize in a relatively short period of time.

CONCLUSION

WHEREFORE, DCCS respectfully requests that the Court (i) grant the Motion; (ii) enter the proposed Interim Order, and (iii) grant such other and further relief as is just and proper.

Respectfully submitted,

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Certificate of Conference

I certify that prior to the filing of this Motion I have communicated by phone and email on multiple occasions with Mark Zachary, Counsel for First Financial Bank, N.A. regarding the relief sought in this Motion. While I am optimistic that an agreement will be reached, discussions are ongoing and no agreement has been reached as of the time this Motion is filed.

/s/Mark B. French
Mark B. French

Notice to United States Trustee

I certify that prior to the filing of this Motion I have communicated by email with Elizabeth Ziegler of the Office of the United States' Trustee regarding the relief sought in this Motion. A copy of this Motion and the proposed Order will be provided to Ms. Ziegler to review.

/s/Mark B. French
Mark B. French

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