

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
SHELBY DIVISION

IN RE: ) Case No: 16-40291  
) Chapter 11  
FARR ENTERPRISES, INC., )  
)  
Debtor. )  
\_\_\_\_\_ )

**AMENDED**  
**RESPONSE TO MOTION TO ENJOIN USE OF CASH COLLATERAL,**  
**MOTION FOR ADEQUATE PROTECTION, AND MOTION FOR RELIEF FROM**  
**STAY, AND IN ADDITION, MOTION IN THE ALTERNATIVE FOR USE OF**  
**CASH COLLATERAL**

COMES now the Debtor/Debtor-in-Possession (hereinafter referred to as “Debtor/DIP”), by way of further response to the Motion to Enjoin Use of Cash Collateral, Motion for Adequate Protection, and Motion for Relief from Stay filed by Reid and Patsy Scott on January 5, 2017, and, further, on its Motion in the alternative for an Order Authorizing Debtor/DIP’s use of cash collateral, and shows the Court the following:

1) The Debtor/DIP incorporates herein in its further response to Movant’s Motion, by incorporating the issues raised by the Debtor/DIP in its response, and in particular, paragraphs 1, 2, and 3 of said Response.

2) The Debtor/DIP responded to the Motion to Enjoin Use of Cash Collateral by denying that the Movants hold an enforceable lien on cash collateral within the meaning of 11 USC Section 363 ( c )(4). In the event that the Court does find that the Movants are entitled to an injunction regarding use by the Debtor/DIP of cash collateral, in the alternative, the Debtor/DIP shows the Court the following:

(a) The Debtor/DIP’s use of cash collateral in this case is necessary for the continued operation of its business. The Debtor/DIP needs to pay operational expenses, for its business enterprise, the Mountain Harbor Marina.

(b) The Debtor/DIP proposes to use cash collateral under the terms of a budget to be formulated by the Debtor/DIP which provides that all cash collateral received, be first applied to the adequate protection payments being made to Morganton Savings Bank and then exclusively thereafter to the routine monthly operating expenses of the Mountain Harbor Marina.

(c) As adequate protection for the use of the Movant’s cash collateral, Debtor/DIP agrees to provide Movants with replacement liens on post petition cash collateral to the same extent and priority as it’s pre-petition liens.

- (d) In the event that the Court considers the Debtor/DIP's Motion to use cash collateral, this Court should conduct a hearing, as contemplated by 11 USC Section 363 ( c ) (2) for the purpose of authorizing use of cash collateral.
- (e) It is necessary that this Court enter an Order authorizing use of cash collateral as set forth herein.

**WHEREFORE**, the Debtor/DIP respectfully prays for the following:

1. That the hearing scheduled in this matter by the Movants for January 27, 2017, be treated as a preliminary hearing.
2. That the Movants' prayers for relief, including injunction relief relative to the alleged lien on cash collateral and Motion for Relief from Stay be denied.
3. That the Movants' request for payment of adequate protection payments be denied.
4. That, in the alternative, upon the finding by the Court that the Movants have an enforceable lien on cash collateral, the Debtor/DIP have continuing use of cash collateral for the ongoing operations as necessary.

THIS 24<sup>th</sup> day of January, 2017.

PITTS, HAY, & HUGENSCHMIDT, P.A.  
Attorneys for the Debtor(s)

By: \_\_\_\_\_

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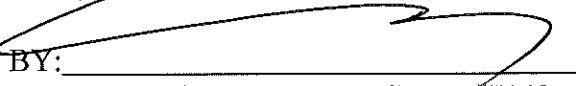
IN RE:	)	Case No: 16-40291
	)	Chapter 11
FARR ENTERPRISES, INC.,	)	
	)	
Debtor.	)	NOTICE OF HEARING
_____	)	

TO ALL CREDITORS LISTED ON THE AFFIXED CERTIFICATE OF SERVICE:

TAKE NOTICE that the Debtor/DIP has filed an Amended Response to Motion to Enjoin Use of Cash Collateral, Motion for Adequate Protection, and Motion for Relief from Stay, and in Addition, Motion in the Alternative for Use of Cash Collateral, to which this Notice is attached, and a Hearing on this will be held on January 27, 2017, at 10:30 am in the Cleveland County Courthouse, Shelby, North Carolina.

THIS the 24<sup>th</sup> day of Jan., 2017.

PITTS, HAY & HUGENSCHMIDT, P.A.

BY: 

Edward C. Hay, Jr., N.C. Bar #7149  
137 Biltmore Ave.  
Asheville, NC 28801  
Telephone: 828-255-8085

**CERTIFICATE OF SERVICE**

This is to certify that I have this date served a copy of the attached Amended Response to Motion to Enjoin Use of Cash Collateral and Motion for Adequate Protection and Request for Preliminary Hearing on all parties listed below by depositing same with the United States Postal Service in a properly addressed envelope with adequate postage thereon and/or by electronic filing\* this 24 day of January, 2017:

\*Bankruptcy Administrator

\*Jimmy R. Summerlin, Jr.



Edward C. Hay, Jr.