

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE:)	
)	
MCCORMICK ARCHITECTURE, LLC,)	Case No. 16-31649-HCM
)	Chapter 11
Debtor.)	

**MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING THE
USE OF CASH COLLATERAL, (B) GRANTING ADEQUATE PROTECTION TO
JPMORGAN CHASE BANK AND (C) SCHEDULING A FINAL HEARING PURSUANT
TO 11 U.S.C. SECTION 363 AND RULE 4001 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE**

TO THE HONORABLE H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW McCORMICK ARCHITECTURE, LLC (“McCORMICK”), through its attorneys of record MIRANDA & MALDONADO, P.C., as Debtor and Debtor-in-Possession in this Chapter 11 proceeding, and files this *Motion for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection to JPMorgan Chase Bank and (C) Scheduling a Final Hearing Pursuant to 11 U.S.C. Section 363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure* (the “*Motion*”). In support of its *Motion*, MCCORMICK would show this Court as follows:

I. Jurisdiction

1. This Court has jurisdiction over this *Motion* under 28 U.S.C. §§157(b)(2)(M) and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).
2. Venue of this proceeding and this *Motion* in this District is proper under 28 U.S.C. §§1408 and 1409.
3. The statutory basis for the relief requested are sections 105, 361, 362 and 363 of Title 11 of the United States Bankruptcy Code (the “Code”), Rules 2002, 4001, 6003

and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and the applicable Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Western District of Texas (the “*Local Bankruptcy Rules*”).

II. Background

4. On October 14, 2016 McCORMICK filed a *Voluntary Petition for Relief* under Chapter 11 of the Code (the “*Petition Date*”). McCORMICK is operating its business as a Debtor-In-Possession under Sections 1107(a) and 1108 of the Code.

5. McCORMICK is a Limited Liability Company formed under Texas law and has operated in the El Paso area since July 29, 1998.

6. McCORMICK serves the Southwest region of the United States with the following services: Evaluation and Planning, Schematic Design, Design Development, Construction Documents, Building and Negotiation, Construction Administration, Master Planning – Specific Site, City, Regional Construction Management, Americans with Disabilities Act review, ADA Building Code Review - Life Safety System / Security Design Renovation, Special Client Request, Rendering / Graphics, CNU “Congress of New Urbanism” Design Principles, LEED Certification and Interior Design.

III. Secured Creditor(s) and Collateral at Issue

7. The Accounts Receivable of McCORMICK upon which JP Morgan Chase Bank (“*Chase*”) asserts a lien interest are referred to as the “Cash Collateral”. Upon a prepetition lien search, McCORMICK has determined that *Chase* may be entitled to Adequate Protection for the postpetition use of its Cash Collateral.

JP Morgan Chase Bank

a). JP Morgan Chase Bank (“*Chase*”) is a secured creditor of McCORMICK by being the holder of a prepetition Lien dated November 19, 2001 and filed with the Texas Secretary of State’s Office, and most recently renewed on June 13, 2016, creating certain lien interests (the “*Chase Lien*”) (**Exhibit “1”**). The *Chase Lien* encompasses the Debtor’s Inventory, Equipment and Accounts Receivable (collectively referred to as the “*Collateral*”).

Budget

8. All of information concerning the revenue produced by the *Cash Collateral* will be set forth on McCORMICK’s **Thirty-Day Cash Budget**. The Budget will be provided as an Exhibit at the hearing on the merits on this *Motion*.

IV. Use of Cash Collateral

9. The Collateral, which consists of “cash collateral” as that term is defined in §363 of Title 11, United States Bankruptcy Code, does not come into existence until an appropriate demand has been made. Although *Chase* has not demanded that McCORMICK cease using cash collateral, it expects such demand to be made. Nevertheless, for McCORMICK to continue to operate its business it must have access to and the use of the cash collateral generated from the accounts of the business. These funds will be used generally in accordance with the proposed operating budget.

V. Basis for Relief

I. McCORMICK’s Request to Use Cash Collateral and the Proposed Adequate Protection is Appropriate.

Statutory Basis

10. McCORMICK's use of property of the estate is governed by Section 363 of the Code which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section...1108...of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c)(1).

11. Section 363(c)(2)(A) of the Code permits a debtor in possession to use cash collateral. Section 363(e) of the Code requires that the debtor adequately protect a secured creditor's interest in property to be used by a debtor against any diminution in value of such interest resulting from the debtor's use of the property during a Chapter 11 case.

12. What constitutes sufficient adequate protection is decided on a case-by-case basis. Although Section 361 of the Code provides some illustrations of what constitutes adequate protection, the statute seems rather suggestive as the definition provided is a broad and extremely flexible definition. Specifically, the statute provides as follows:

When adequate protection is required under section...364...such adequate protection may be provided by...granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property. 11 U.S.C. §361.

13. It is clear that by adequate protection, the Code's primary purpose is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. Adequate protection can come in various forms, including payment of adequate protection fees, payment of interest, granting of replacement liens and administrative claims.

Offers of Adequate Protection - Monthly Payments

14. McCORMICK proposes to provide *Chase* with adequate protection as follows.

a). McCORMICK proposes to pay to Chase the total of \$3,300.00 on an ongoing monthly basis, which is the payment amount owed under the *Prepetition Note*.

Maintenance of Casualty Insurance

b). Providing adequate insurance coverage on any personal property to which Chase's liens may attach.

Affirmation of Prepetition Lien Prioritie

c). McCORMICK will provide *Chase* a replacement lien equivalent to its prepetition Lien. This replacement lien will have the same priority as the prepetition lien.

Budget Item for Attorney's Fees

15. McCORMICK desires to tender to its Bankruptcy Counsel the amount of \$1,000.00 per month to be deposited into Counsel's IOLTA Trust Account for attorney's fees subject to a future *Fee Application* to this Court by its general bankruptcy counsel and special counsel. As such, McCORMICK requests that its *Budget* providing for this expense also be approved.

16. McCORMICK believes that the proposed adequate protection terms for the benefit of Chase are necessary and appropriate to ensure that it can continue to use the *Cash Collateral*. Accordingly, the adequate protection proposed herein and in the *Cash Collateral Order* is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Code.

II. Failure to Use the Cash Collateral Would Cause Immediate and Irreparable Harm to McCORMICK.

17. Pursuant to **Bankruptcy Rule 6003 - Interim and Final Relief Immediately Following the Commencement of the Case**, the Court may grant the relief requested in the *Motion* within 20 days after the *Petition Date* if the relief is necessary to avoid immediate and irreparable harm.

18. Without use of the Cash Collateral, McCORMICK will have no ability to operate its business. McCORMICK will not be able to pay any vendors and the vendors will likely cease to provide goods and services to it. This would deteriorate the condition of McCORMICK and in turn jeopardize the services provided to its customers. If this occurs, McCORMICK will not be able to fund its payroll; maintain the Estate and will not be able to pay professionals necessary for the successful reorganization of the estate. All of these outcomes will cause immediate and irreparable harm to the Bankruptcy Estate.

19. McCORMICK's ability to finance its operations and the availability of sufficient working capital to it and liquidity through the use of Cash Collateral is vital to the preservation and maintenance of the estate.

20. Therefore, McCORMICK seeks immediate authority to use the Cash Collateral as set forth in this *Motion* and to prevent immediate and irreparable harm to the Estate pending the Final Hearing pursuant to Bankruptcy Rule 4001(c).

21. Accordingly, to the extent that McCORMICK requires the use of Cash Collateral, it submits that it has satisfied the requirements of Bankruptcy Rule 6003 to support immediate Cash Collateral availability.

VI. Request for Final Hearing

22. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), McCORMICK requests that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than 45 days following the entry of the *Interim Cash Collateral Order*, and fix the time and date prior to the Final Hearing for parties to file objections to this *Motion*.

VII. No Prior Request

23. No prior motions nor applications for the relief requested in the *Motion* have been made to this Court or any other court.

VIII. Relief Requested

24. By this *Motion*, the Debtor seeks entry of the *Cash Collateral Order* granting the following relief, without limitation:

- (a) Authorizing the Debtor to use Cash Collateral pursuant to sections 361 and 363 of the Code;
- (b) Approving the form of adequate protection provided to *Chase* pursuant to Sections 361, 362, 363 and 364 of the Code;
- (c) Scheduling a Final Hearing on the *Motion* to consider entry of the Final Cash Collateral Order Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2); and,
- (e) Granting the Debtor with any and all other related relief deemed fair and equitable by this Court.

WHEREFORE, PREMISES CONSIDERED for the reasons set forth herein, McCORMICK respectfully requests that the Court enter an *Order* granting the relief requested herein and granting any and all other and relief deemed fair, equitable and appropriate by this Court.

Respectfully Submitted,

/s/ Carlos A. Miranda III, Esq.
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Bankruptcy Counsel for the Debtor

CERTIFICATE OF SERVICE

I certify that on the 24th day of October, 2016, a copy of the foregoing document was served as provided by the Electronic Case Filing System for the United States Bankruptcy Court for the Western District of Texas; and *via* facsimile or overnight delivery to those Parties listed on the attached Exhibit 2 and the following Parties:

JPMorgan Chase Bank
P.O. Box 2558
LPS 8-1111F-301
Houston, Texas 77252-2558

/s/ Carlos A. Miranda III, Esq.
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Gabe Perez, Esq.
Bankruptcy Counsel for the Debtor