



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

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The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 7, 2016

Mark X. Mullin

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:

Pro Resources 1, LLC,,

Debtor.

Case No.: 16-44041

Chapter 11

FINAL ORDER: (I) APPROVING SECOND AMENDED STIPULATION AND AGREEMENT REGARDING DEBTOR'S MOTION FOR POST-PETITION FINANCING AND USE OF CASH COLLATERAL; (II) GRANTING LIENS AND SECURITY INTERESTS PURSUANT TO 11 U.S.C. §364(c); AND (III) AUTHORIZING USE OF CASH COLLATERAL

This matter came on for consideration of the motion to approve the *Second Amended Stipulation and Agreement* (the "Stipulation") *Regarding Debtor's Emergency Motion Pursuant to 11 U.S.C. §§ 363 and/or 364 For Interim and Final Orders Authorizing (I) Debtor-in-Possession Financing, and/or (II) Limited Use of Cash Collateral and Granting Adequate Protection* (the "Motion") by and between Pro Resources 1, LLC ("Debtor or DIP") and Marquette Transportation Finance, LLC ("Marquette" or the "Lender"), seeking *inter alia*, pursuant to Sections 105, 361, 362(a), 363 and 364 of Title 11 of the United States Code (the

“Code”), and Rules 2002, 4001, 6003 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the entry of an order (the “Order”) for the Debtor to incur debt and borrow funds (the “DIP Financing”)¹ from Marquette upon the terms set forth in the Stipulation.

THE COURT, AFTER DUE DELIBERATION THEREON, AND FINDING GOOD AND SUFFICIENT CAUSE APPEARING THEREFORE, AND BASED UPON THE STIPULATION BETWEEN THE DEBTOR AND LENDER, THE EVIDENCE PROFFERED AND/OR PRESENTED AT THE HEARING, THE GROUNDS SET FORTH IN THE STIPULATION, AS SUPPLEMENTED, AND THE ARGUMENTS OF COUNSEL, HEREBY FINDS AND CONCLUDES AS FOLLOWS:

I.

JURISDICTION

1. On October 20, 2016, Debtor filed a voluntary petition for reorganization under Chapter 11 of title 11 of the United States Code (the “Code”). The Debtor is operating its business as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Code. No trustee, examiner or statutory committees have been appointed in these cases.

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. Consideration of this action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II.

DIP FINANCING

3. The Debtor is seeking to incur debt by borrowing from Marquette post-petition on the terms and conditions of the Loan Documents (the “DIP Financing”), and as set forth in the

¹ All capitalized terms in this Order not otherwise defined shall have the meanings given to those terms in the DIP Financing agreement referenced herein or the Stipulation.

Stipulation. To the extent any conflict may exist between the Loan Documents and the Stipulation, the Stipulation controls. Without DIP Financing, the Debtor will not have the funds necessary to operate its business, maintain assets, or pay employees, payroll taxes, insurance, utilities, fuel suppliers and other vendors, overhead, lease expenses and other expenses required for the reorganization of the Debtor's business and to maximize the value of the Debtor's estate.

4. Notice of the Stipulation was adequately served by giving notice thereof to the Office of the United States Trustee, each of the lenders listed therein and its counsel where known, and the Debtor's known secured creditors, and the Debtor's twenty (20) largest unsecured creditors (without exhibits) by facsimile and emails where known and first-class mail, postage prepaid. Accordingly, notice was adequate and sufficient under the circumstances, and pursuant to Bankruptcy Rules 4001(c) and 4001(d)(4), no further or other notice is necessary.

5. Lender has indicated a willingness to extend credit to Debtor, but only under the terms and conditions set forth in the Stipulation. Debtor believes that, under the circumstances, the following terms and conditions are a fair and reasonable response to Debtor's request for financial assistance.

6. Entry of an Order approving the agreements contained in the Stipulation will minimize disruption of Debtor as "going concerns," will increase the possibilities for a successful reorganization, and, therefore, is in the best interests of the Debtor's estate and its creditors. The Debtor represents that no financing is available on terms and conditions more favorable than offered by Lender.

7. The Debtor has been unable to find any entity willing to provide financing on terms more favorable than the terms provided by the Lender, and believes, based on that investigation, its historical experience with potential lenders, and its knowledge of the lending

terms provided to companies that, under the circumstances, no financing on terms more favorable than those proposed by the Lender is available. Thus, pursuant to §§ 364(a) and 364(b) of the Code, Debtor has attempted, and is unable to obtain either unsecured credit or unsecured credit allowable under § 503(b)(1) of the Code as an administrative expense in the amounts and on as favorable terms as are being agreed to by Marquette.

8. The Lender has acted in good faith in agreeing to extend credit to the Debtor in accordance with the Stipulation and this Order. The terms of the DIP Financing authorized by this Order and set forth below are for reasonably equivalent value and fair consideration. The agreements and arrangements authorized in this Order have been negotiated at arms' length with all parties represented by experienced counsel, are fair and reasonable under the circumstances, are enforceable in accordance with its terms and have been entered into in good faith. Any credit extended and loans made to the Debtor by the Lender pursuant to the Stipulation shall be deemed to have been extended in good faith, as that term is used in § 364(e) of the Code.

9. Upon the occurrence of any Event of Default, the Lender shall be entitled to the rights and remedies provided in the Stipulation and the Loan Documents; provided, however, that the Lender shall provide the Debtor, its counsel, any statutory committee appointed in this Bankruptcy Case at least five (5) business days notice of default prior to taking any actions to enforce its rights under the Stipulation and provided further that so long as an emergency motion relating to the asserted Event of Default is pending before the Court, the Lender shall not be entitled to pursue its rights and remedies until a hearing is held on such emergency motion.

Therefore, it is hereby,

ORDERED, ADJUDGED AND DECREED THAT:

10. The Stipulation is hereby approved on a final basis as set forth herein.

11. Authorization to Borrow; DIP Financing. The Debtor is authorized to enter into, perform and be bound by the Stipulation. The Debtor is authorized to borrow money in accordance with the Stipulation in an aggregate amount not to exceed a loan balance of One Million Dollars and No Cents (1,000,000.00). The Stipulation shall be obligations of the Debtor and its estate. All indebtedness and obligations incurred after the Petition Date by the Debtor to the Lender pursuant to the Stipulation (including principal, fees, costs and expenses, including reasonable fees and expenses of professionals engaged by the Lender) are referred to herein as the “Post-Petition Indebtedness.”

12. Permitted Liens shall mean liens held by third parties to the extent such liens were valid, perfected and non-avoidable liens which are liens on any of the Debtor’s assets. Debtor’s accounts, contract rights or payment intangibles whether arising prior to or after the Petition Date are hereinafter referred to as the “Accounts”.

13. Termination of Loans; Term of DIP Financing. The Stipulation and the Lender’s willingness to make advances there under, shall immediately and automatically terminate (except as the Lender may otherwise agree in writing), and all Post-Petition Indebtedness shall become due and payable in full in accordance with the termination provisions set forth in the Stipulation.

14. Security for Post-Petition Indebtedness. Except for Permitted Liens, the Post-Petition Indebtedness shall, pursuant to § 364(c) of the Bankruptcy Code, be secured by a first priority security interest in, the following assets (the “Post-Petition Collateral”) of Debtor:

- (a) all present and future Accounts, all of Debtor’s other accounts; chattel paper, instruments, payment intangibles, general intangibles, and documents whether or not considered an Account under the terms of this Agreement; all assets including, without limitation, records, inventory, equipment of every kind and description (other than rolling stock consisting of tractors and trailers); furniture and fixtures; deposit accounts; money; investment property; letters of credit; notes; tax refunds and insurance proceeds, all as defined in the Uniform

Commercial Code and all proceeds thereof, but specifically excluding: avoidance actions and other actions under Chapter 5 of the Bankruptcy Code and any proceeds or recoveries therefrom.

Provided, however, nothing herein shall grant the Lender a lien on or interest in any insurance deposit held by Great West Casualty Company and/or Mondics Insurance Group, Inc. or related entities.

15. Except for Permitted Liens, the liens granted to Lender on the Post-Petition Collateral shall be senior to any lien on the Post-Petition Collateral, held by any other creditor pursuant to 11 U.S.C. § 364(d)(1). Nothing contained in this Section shall be deemed to grant to Lender a lien on any titled tractor or trailers owned or leased by the Debtor and subject to the interests of any other secured lender.

16. Perfection of Liens on Post-Petition Collateral. The Lender shall not be required to file financing statements or other documents in any jurisdiction or take any other action in order to validate or perfect the security interests and liens granted to it by this Interim Order or by the Stipulation. If the Lender shall, in its sole and absolute discretion, choose to file such financing statements or other documents or otherwise confirm perfection of such security interests and liens, the Lender is authorized to effect such filings and recordation, and all such financing statements or similar documents shall be deemed to have been filed or recorded as of the Petition Date. The liens and security interests granted to Lender by Debtor hereunder shall constitute first, paramount and valid postpetition liens upon and security interests in the Accounts, contract rights, receivables and payment intangibles generated by Debtor.

17. Use of Cash Collateral. Debtor is authorized to use cash collateral. To the extent of the Debtor's use of the Accounts, any creditor holding a valid, enforceable, non-avoidable lien on any Accounts, is hereby granted a replacement lien in the Post-Petition Collateral, including

Post-Petition Accounts, subordinate to the interest of Lender and thereafter in and to the same extent, validity and priority as existed prior to the Petition Date if any; provided, however, that such replacement liens shall be granted only to the extent necessary to replenish the post-petition diminution in value as of the Petition Date of such liens which are not avoidable and such security interest and shall not exceed the amount, priority, validity, extent, perfection or enforceability of such lien positions and rights as of the Petition Date; provided further, that such replacement liens shall not attach to avoidance actions or other actions under Chapter 5 of the Bankruptcy Code or any proceeds or recoveries there from; provided further that the replacement liens shall not (i) attach to any lien that is avoided and preserved for the benefit of the Debtor's estates under section 551 of the Bankruptcy Code, (ii) prevent senior priming liens that may be granted by the Court for Debtor in possession financing pursuant to section 364 of the Bankruptcy Code, subordinated to or made *pari passu* with any other lien under Sections 363 and 364 of the Bankruptcy Code or (iii) prevent proposed plan treatment under section 1129(b).

18. Limitation on Contesting/Objecting to Lender's Indebtedness or Liens. No portion of the Post-Petition Indebtedness shall be used to fund fees or expenses incurred by any entity, including the Debtor and professionals retained by Debtor, in: (1) preventing, hindering or delaying Lender's enforcement or realization upon any of the Post-Petition Collateral; (2) using or seeking to use cash collateral or selling any other Post-Petition Collateral without Lender's consent or by order of the Court; (3) incurring indebtedness without Lender's consent or by order of the Court; or (4) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of the Post-Petition Indebtedness or any liens or security interests with respect thereto or any other rights or interests of Lender.

19. Modification of Automatic Stay. The automatic stay pursuant to § 362 of the Bankruptcy Code is hereby modified with respect to the Debtor and its estate to the extent necessary (i) to enable the Lender to file any financing statements, deeds of trust, mortgages or other instruments and documents, if any, evidencing its security interests in and liens on the Post-Petition Collateral; (ii) to collect and apply the Debtor's pre-petition assigned Accounts and the post-petition Accounts and (iii) to allow the Lender to give the Debtor any notice provided for in the Stipulation or this Order.

20. Limitation on Section 506(c) Charges. In addition to the liens granted to the Lender hereunder, the Post-Petition Indebtedness shall constitute an administrative priority equivalent in priority to a claim under §§ 364(c)(1), 503(b) and 507(a)(1) of the Code provided such claims shall not establish a priority in avoidance actions or other Chapter 5 causes of action or the proceeds or recoveries therefrom. In consideration for Lender's performance hereunder, and except for the Professional Fee Carve Out, as defined in the Stipulation, the surcharge provisions of § 506(c) of the Code and the enhancement of collateral provisions of § 552 of the Code shall not be imposed upon Lender or its collateral, unless prior to incurring the cost or expense Lender provides written waiver for the cost or expense, or the Debtor or any trustee appointed in this case obtains a separate order permitting the cost or expense to be used as a surcharge against the Post-Petition Collateral.

21. Use of Proceeds of Post-Petition Indebtedness. Debtor shall use funds borrowed under the Stipulation only to pay ordinary course of business expenses that are consistent with the historical practices of the Debtor and to replenish working capital expended in accordance with the budgets to be delivered to the Lender by the Debtor under the terms of the Stipulation (the "Budgets"), other than U.S. Trustee fees or expenses and any other expenses approved by

the Court that are outside of the Budget, including the fees or expenses of the Debtor's retained professionals; provided, however, that the foregoing shall not be construed to prohibit the Debtor from using funds advanced by the Lender under the Stipulation to pay expenses as otherwise authorized in this Order or other orders of the Court. It is understood that the Lender may assume that the Debtor will comply with this requirement, and the Lender shall have no duty to monitor such compliance.

22. No Liability to Third Parties. In making decisions to advance loans or other extensions of credit to the Debtor, in administering any loans or other extensions of credit, the Lender shall not be deemed to be in control of the operations of the Debtor or its estate or the Guarantor Debtor or its Estate, or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor or its Estate.

23. Dismissal. If any of the Debtor's case is dismissed, converted, otherwise superseded or substantively consolidated, the Lender's rights and remedies under this Order and the Stipulation shall be and remain in full force and effect as if the Debtor's case had not been dismissed, converted, superseded or substantively consolidated. Furthermore, notwithstanding any such dismissal, conversion, supercession or consolidation, all of the terms and conditions of this Order, including, without limitation, the liens granted hereunder (and its respective priorities), shall remain in full force and effect.

24. Effect of Modification of Order.

- a. If, for any reason, any of the provisions of this Order are hereafter stayed, modified, terminated, or vacated, on any material matter without the Lender's written consent, including, without limitation, by subsequent order of this or any other Court, then in such event: (i) the Lender shall be entitled, but not obligated, to discontinue any further loans, extensions of credit or financial accommodations hereunder or under the Stipulation; and (ii) the Post-Petition Indebtedness, together with all interest, fees, costs, expenses and charges of any nature that may have accrued in

connection therewith, shall upon notice to the Debtor from the Lender, become due and payable upon delivery of such notice, without further notice or order of the Court.

- b. The Debtor and its estate shall not, without the Lender's prior written consent, seek to modify, vacate or amend this Order or the Stipulation. Notwithstanding anything to the contrary in this Order, if any of the provisions of this Order are hereafter modified, vacated or stayed by subsequent order of this or any other court, such stay, modification or vacation shall not affect the validity of any Post-Petition Indebtedness incurred prior to the effective date of such stay, modification or vacation, or the validity and enforceability of any lien or priority authorized hereby with respect to any such Post-Petition Indebtedness. Notwithstanding any such stay, modification or vacation, any Post-Petition Indebtedness incurred by the Debtor and its estate prior to the effective date of such modification, stay or vacation shall be governed in all respects by the original provisions of this Order, and the Lender shall be entitled to all the rights, privileges and benefits, including, without limitation, the security interests and priorities granted herein, with respect to all such Post-Petition Indebtedness and the Debtor shall continue to enjoy and be entitled to all rights and protections provided for in the Order, that are not otherwise modified, stayed or vacated.

25. Rights and Priorities of Lender. The terms of this Order shall be valid and binding upon the Debtor and its respective estate, creditors and all other parties-in-interest from and after the entry of this Order by this Court. If this Court modifies any of the provisions of this Order following the Hearing, such modifications shall not affect the rights and priorities of the Lender granted pursuant to this Order with respect to that portion of the Post-Petition Indebtedness that is advanced prior to such modifications, and the Debtor shall continue to enjoy and be entitled to all rights and protections provided for in the Order for that portion of the Post-Petition Indebtedness that is advanced prior to such modifications and this Order shall remain in full force and effect.

26. Objections Overruled. Except to the extent specifically set forth herein, all objections to the entry of this Order are hereby overruled.

BE IT SO ORDERED.

*****END OF ORDER*****