

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

IN RE:)	
)	
CUBA TIMBER CO., INC.,)	Case No. 17-70349-JHH-11
)	
Debtor.)	Chapter 11
)	
)	

**OBJECTION TO DEBTOR’S VERIFIED EMERGENCY
MOTION TO USE CASH COLLATERAL**

COMES NOW, Fundamental Funding, LLC (“Fundamental”), a secured lender in the above styled bankruptcy case, and pursuant to 11 U.S.C. § 363(c)(2), objects to the Verified Emergency Motion to Use Cash Collateral (the “Motion”) filed by Cuba Timber, Inc. (“Debtor”). In support thereof, Fundamental states as follows:

1. On February 24, 2017 (the “Petition Date”), Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).
2. On February 24, 2017, Debtor also filed the Motion.
3. Pursuant to Bankruptcy Code Section 363(c)(2), Debtor is prohibited from using cash collateral unless: (1) each entity who has an interest in the cash collateral consents; or, (2) the Court, after notice and hearing, authorizes the Debtor’s use of cash collateral.
4. Fundamental is the secured lender of the Debtor pursuant to the terms and conditions of, among other things, the Loan and Security Agreement dated as of August 4, 2015,

as amended from time to time (“Loan Agreement”), a copy of which is attached hereto as Exhibit “A,” pursuant to which Debtor granted Fundamental a security interest in the following:

all right, title and interest of Borrower in and to all of the following, whether now owned or hereafter arising or acquired and wherever located: all Accounts; all Inventory; all Equipment; all Deposit Accounts; all General Intangibles (including without limitation all Payment Intangibles and Intellectual Property); all Investment Property; all Other Property; and any and all claims, rights and interests in any of the above, and all guaranties and security for any of the above, and all substitutions and replacements for, additions, accessions, attachments, accessories, and improvements to, and proceeds (including proceeds of any insurance policies, proceeds of proceeds and claims against third parties) of, any and all of the above, and all Borrower’s books relating to any and all of the above.

5. Fundamental perfected its security interest in the collateral by filing UCC financing statements with the Alabama Secretary of State on August 4, 2015 and August 6, 2015.

6. The collateral granted to Fundamental in the Loan Agreement includes all “cash collateral” as that term is defined in Bankruptcy Code Section 363(a).

7. Pursuant to the Loan Agreement and an intercreditor agreement with various other lenders, Fundamental holds a first priority security interest in substantially all of Debtor’s assets with the exception of certain purchase money security interests in certain assets granted to other secured lenders.

8. While the Debtor has disclosed Fundamental as a secured creditor in its Motion, it also states “there are other secured creditors who may seek to assert a superior interest,” but it fails to identify who these “other secured creditors” are and have not given those creditors notice of hearing on the Motion as required under the Bankruptcy Code and Rules.

9. The Motion gives no guidance to Fundamental, other creditors or the Court regarding how much cash collateral Debtor wishes to use and for what purposes the Debtor

wishes to use it. Additionally, the Debtor has not provided any form of workable cash flow budget from which this information could be gleamed.

10. Several weeks prior to Debtor's bankruptcy, Fundamental requested financials, bank statements, and a thirteen week cash flow budget from the Debtor. Debtor was unable or unwilling to provide this information to Fundamental.

11. Moreover, the schedules and statement of affairs appended to Debtor's voluntary petition are equally uninformative. According to Debtor's schedules, Debtor had no inventory, accounts receivable, or cash as of the Petition Date. Although Fundamental believes the schedules are inaccurate, Fundamental cannot evaluate the request being made or the adequacy of protections purportedly offered by the Debtor without this information.

12. While the Motion also provides that Debtor will provide a "replacement lien and such other adequate protection as the Court may deem appropriate", it does not detail what assets it intends to grant a replacement lien in and to in order to protect Fundamental interest in the cash collateral it intends to use.

13. Fundamental submits that permission to use cash collateral should not be granted in the absence of Debtor's production of its basic current financial records and a proposed budget for the use of cash collateral and confirmation that all creditors having an interest in the cash collateral are given notice of the motion and an opportunity to appear and object.

14. What is even more troubling is the fact that the arrangement between Fundamental and the Debtor required that the account debtors of the Debtor make payment directly to Fundamental. The Debtor acknowledged this fact in its Motion. (Motion, ¶5).

15. Fundamental has also learned that prior to the filing of the petition, the Debtor contacted account debtors and redirected payment from those accounts to the Debtor in violation

of the Loan Agreement. Moreover, the Debtor submitted borrowing base certificates representing that it had outstanding accounts receivable of \$1,269,842.61, when in fact, the Debtor had collected in excess of \$300,000 and did not remit that sum to Fundamental. Thus, Fundamental has no confidence that the borrowing base certificates submitted by the Debtor are true.

16. Fundamental is concerned that the Debtor is continuing to collect and use accounts receivables post-petition without regard to the prohibition against using such funds without court approval.

17. Based on the foregoing, Fundamental does not consent to Debtor's use of its cash collateral.

WHEREFORE, Fundamental requests that the Court deny Debtor's Verified Emergency Motion to Use Cash Collateral.

Respectfully submitted this the 1st day of March, 2017.

/s/ Clark R. Hammond

Clark R. Hammond, Esq.

Gary W. Lee, Esq.

Attorneys for Fundamental Funding, LLC

OF COUNSEL:

Wallace, Jordan, Ratliff & Brandt, LLC

800 Shades Creek Parkway

Suite 400

Birmingham, Alabama 35209

Tel: (205) 870-0555

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following through this Court's CM/ECF System, or if the party does not participate in this Court's CM/ECF System, via first class United States mail, postage prepaid on this the 1st day of March, 2017.

A. Richard Maples, Jr.
Maples & Fontenot, LLP
P.O. Box 1281
Mobile, Alabama 36633
(251) 432-2629

Rachel Webber
Attorney for US Bankruptcy Administrator
2005 University Boulevard, Suite 1300
Tuscaloosa, AL 35401
Rachel_webber@alnb.uscourts.gov

/s/ Clark R. Hammond
OF COUNSEL