

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	
PRECISION CASTING PROTOTYPES)	Case No. 16-20113 TBM
AND ENGINEERING, INC.)	Chapter 11
Debtor.)	
)	

**MOTION FOR CONTINUED USE OF CASH COLLATERAL
PURSUANT TO 11 U.S.C. §363(c)**

Precision Casting Prototypes and Engineering, Inc. (“Precise Cast” or the “Debtor”), Debtor-in-Possession herein (“Debtor”), through its undersigned counsel, for its Motion For authority to Continued Use of Cash Collateral pursuant to 11 U.S.C. §363(c), Fed.R.Bankr.P. 4001(b) and L.B.R. 4001-3, the Debtor states as follows:

1. Precise Cast filed for relief under Chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”) on October 13, 2016. The Debtor is operating as a debtor-in-possession pursuant to 11 U.S.C. §§1107 and 1108.

2. Precise Cast is a veteran owned foundry and machine shop in Colorado serving the entire United States, located in Commerce City Colorado. The Debtor employs 28 people. Precise Cast specializes in rapid prototyping and the precision casting and machining of aluminum, magnesium, and zinc parts primarily for Fortune 500 companies in the aerospace, defense, automotive, commercial vehicle, electronic, and medical device industries.

Pre-Petition Loans

3. Pre-petition, the Debtor took out several loans with Bank of the West (“BOTW”), which are secured by various security agreements against all of the assets of the Debtor, pursuant to 11 U.S.C. § 506. In all, the Debtor took out six different loans in the total principal amount of \$1,579,354.93 between 2011 and 2014. BOTW properly perfected its security interests in all of the assets of the Debtor pre-petition. BOTW filed a proof of claim asserting that the amount of \$857,116.55 was owed on such loans as of the Petition Date.

4. On or about October 7, 2014, the Debtor took out a loan from TCF Equipment Finance, a division of TCF Bank (“TCF”) in the principal amount of \$147,417.21 (the ‘TCF Loan”). The funds from the TCF loan were used to purchase a Haas Machining Center. The Debtor granted TCF a lien on the Haas Machining Center pursuant to a Security Agreement. TCF filed a financing statement with the Colorado Secretary of State on October 20, 2014. TCF therefore asserts a perfected lien on such equipment. As of the Petition Date, TCF asserts that it is owed the sum of \$110,750.42.
5. On or about October 16, 2014, the Debtor entered into a Conditional Sales Contract: Sales and Security Agreement with Leco Corporation to purchase a new Leco GDS500A Spectrometer from Leco Corporation in the amount of \$66,436.00 (the “Leco Loan”). The Leco Loan was assigned to Stearns Bank. Under the Leco Loan, the Debtor granted Stearns Bank a security interest in the purchased equipment. Stearns Bank filed a Financing Statement with the Colorado Secretary of State on November 10, 2014. Stearns Bank therefore asserts a perfected lien on such equipment. Stearns Bank filed a proof of claim asserting that it was owed \$50,989.00 on the Petition Date.
6. In or around March, 2015, the Debtor entered into a Conditional Sales Contract: Sales and Security Agreement with Industrial Finance-Texas to purchase several pieces of equipment (the “Rotary Equipment) in the amount of \$49,253.72 (the “Industrial Loan”). The Industrial Loan was assigned to Stearns Bank. Under the Industrial Loan, the Debtor granted Stearns Bank a security interest in the purchased equipment. Stearns Bank filed a Financing Statement with the Colorado Secretary of State on March 2, 2015. Stearns Bank therefore asserts a perfected lien on such equipment. Stearns Bank filed a proof of claim asserting that as of the Petition Date \$43,124.72 on this debt.
7. On or about November 26, 2014, the Debtor entered into a Combination Loan and Security Agreement with Wells Fargo Equipment Finance, Inc., to acquire a 2014 Projet Model CPX 3500 Max Plus 3D Printer in the amount of \$117,840.00 (the “Wells Fargo Loan”). Under the Wells Fargo Loan, the Debtor granted Wells Fargo a security interest in the purchased equipment. Wells Fargo filed a Financing Statement with the Colorado Secretary of State on December 4, 2014. Wells Fargo therefore asserts a perfected lien on such equipment. The Debtor surrendered this equipment to Wells Fargo and Wells Fargo obtained relief from stay from this Court to exercise its state law rights to the collateral.
8. On or about October 17, 2014, the Debtor entered into a Equipment Finance Agreement with First Sound Bank to acquire a Haas VF-5/40XT CNC Vertical

Machining Center in the amount of \$134,779.80 (the “First Sound Bank Loan”). Under the First Sound Bank Fargo Loan, the Debtor granted First Sound Bank a security interest in the purchased equipment. First Sound Bank filed a Financing Statement with the Colorado Secretary of State on October 24, 2014. Wells Fargo therefore asserts a perfected lien on such equipment. The Debtor asserts that as of the Petition Date First Sound Bank is owed the amount of \$78,756.71.

9. During the initial stages of this case, the Debtor sought and obtained this Court’s approval to use its cash collateral. *See Docket Nos. 29 & 47*. This Court’s Final Order Granting Motion for Use of Cash Collateral (“Cash Collateral Order”) permitted the Debtor to use its cash collateral for a period of 6 months provided that it comply with the terms of the Order. *See Docket No. 47*. Notably, the Debtor obtained the consent of its secured creditors to the Cash Collateral Order.
10. Given the pending expiration of the Cash Collateral Order, the Debtor seeks authority from this Court to continue to use its cash collateral on the same terms and conditions in the Cash Collateral Order for a period of six (6) months.
11. The Debtor intends to file its Plan of Reorganization and Disclosure Statement very soon. The Debtor has circulated a draft of its Plan to the major secured creditors in an effort to assist with this Motion.
12. Prior to filing this Motion, the Debtor conferred with BOTW, TCF, Pinnacle Assurance and the US Trustee’s office. As of the filing of this Motion, such parties have not yet taken a position on the relief requested.
13. Pursuant to the Cash Collateral Order, the secured creditors were granted replacement liens on the Debtor’s assets in the same priority and perfection that existed pre-petition.
14. Post-petition, the Debtor is operating profitably and is current on all adequate protection payments to its secured creditors. The Debtor has also filed all required monthly operating reports evidencing its operations and cash flow.

Relief Requested

15. The Debtor submits that entry of an order authorizing the continued use of cash collateral is appropriate under the provisions of 11 U.S.C. § 363(c)(2) and the rationale articulated in *Chaussee v. Morning Star Ranch Resorts Company*, 64 B.R. 818 (Bankr.D.Colo. 1986). The Debtor seeks authority to continue to use cash collateral during the pendency of this bankruptcy case.

Basis for Relief

16. 11 U.S.C. § 363(c)(2) provides that “the court, after notice and a hearing [may authorize the use of cash collateral] in accordance with the provisions of this section.” The Debtor needs immediate use of its cash collateral to operate its business and prevent diminution in value of the assets of the estate while this Motion is pending. The Debtor’s business depends upon uninterrupted access to funds that were held in the DIP Account necessary to operate, meet payroll, and fund its other operating expenses necessary to maintaining its ordinary course of business. In order to pay its necessary operating expenses, the Debtor must immediately use funds in which the secured creditors claim a security interest. In addition, the Debtor will use cash collateral in order to generate revenue and fund its post-petition operations over the next few months, including payment to its employees and trade vendors.
17. Under *Morning Star Ranch*, a debtor-in-possession may use a secured creditor’s cash collateral in much the same fashion as a receiver would be permitted to use cash from operations under state law. The court reasoned that “there would be no proceeds to fight over if the property were not operated,” the debtor has fiduciary obligations to its creditors to “operate the property in good fashion,” and, absent bankruptcy, the secured creditor would have to pay the expenses of the receivership prior to applying monies received to the debtor’s obligation. *See Id.*, 64 B.R. at 822.
18. The *Morning Star* court authorized the debtor to continue to operate in the ordinary course its business and to use funds received from such operations to “pay the ordinary and necessary expenses of operation of the property and the costs of care, preservation and maintenance which shall include the following: the costs of propane for heating, electricity, water, sewer and telephone charges; maid service to the extent contracted from non-affiliated employees; laundry expense, cleaning, upkeep, maintenance and repairs; insurance; purchase of necessary supplies; and general landscaping and groundskeeping expense.” *Id.* at 823. The court also authorized the debtor to pay salaries to its managers. *See Id.*
19. Absent authorization to use cash collateral on an interim basis, the Debtor will be unable to continue its operations and to proceed with the reorganization of its debts in an orderly fashion, which could result in a significantly reduced recovery for the Debtor’s estate. Alternatively, if the Debtor is authorized to use cash collateral, the Debtor will be able to maximize the value of its estate through the continuation of the Debtor’s business.

20. The Debtor proposes to use cash collateral in substantial accordance with the budget projections as set forth in **Exhibit 1**, which is attached hereto and incorporated herein by reference.
21. The Debtor proposes the following in order to provide adequate protection to the secured creditors, including BOTW, for the Debtor's use of its cash collateral:
 - a. The Debtor will maintain adequate insurance coverage on its real property and adequately insure against any potential loss;
 - b. The Debtor will provide all periodic reports and information required by the Bankruptcy Code, Local Bankruptcy Rules, and the Office of the United States Trustee;
 - c. The Debtor will only expend cash collateral pursuant to the projections and budget (**Exhibit 1**) subject to reasonable fluctuation by no more than 10% for each expense item unless prior written approval is obtained from the appropriate secured creditor;
 - d. The Debtor will retain in good repair all collateral in which the secured creditors may claim an interest.
22. Moreover, the interests of the secured creditors in protecting any interest it may have in cash collateral is outweighed by strong public policies favoring continuation of jobs, preservation of going concern values, and rehabilitation of distressed debtors. *See* H.R. Rep. 834, 103rd Cong., 2nd Sess. 27 to 29 (Oct. 4, 1994); 140 Cong. Rec. H10768 (Oct. 4, 1994). Approval of the Debtor's use of cash collateral in accordance with this Motion is in the best interest of the Debtor, its creditors, and the estate as it will allow the Debtor to maintain its ongoing business operations, generate revenue, and provide the Debtor with an opportunity to propose a meaningful plan of reorganization.
23. Moreover, under 11 U.S.C. § 506(c), a debtor-in-possession "may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim." *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000) (holding debtor-in-possession may invoke § 506(c)). The use of Operating Funds and the Bank Collateral proposed by the Debtor would be allowable under § 506(c) and could be surcharged against the Bank's collateral.
24. All creditors, including the Bank will be best served by allowing the uninterrupted and continued operations of the Debtor. The Court may fashion an order allowing the use of cash collateral to permit these continued operations without prejudicing the secured creditors. Moreover, to the extent necessary, the Court may provide the

secured creditors with adequate protection in the form of a replacement lien in Debtor's post-petition assets. *See In re Gallegos Research Group*, 193 B.R. 577 (Bankr.D.Colo. 1995).

25. Approval of the Debtor's use of cash collateral in accordance with this Motion is in the best interest of the Debtor, its creditors, and the estate as it will allow the Debtor to maintain its ongoing business operations, generate revenue, and provide the Debtor with an opportunity to propose a meaningful plan.
26. Certain disclosures are required in this Motion under Local Bankruptcy Rule 4001-3(a)(1)(A):
 - a. Paragraph 3 of the proposed order provides the Debtor continued authorization to use cash collateral consistent with the terms of its Final Budget, which is attached hereto as **Exhibit 1**, including payment of ordinary expense, employee payroll obligations, general corporate purposes and administrative costs and expenses, including the US Trustee fees.
 - b. Paragraphs 4 and 5 of the proposed order provide for adequate protection payments to each of the secured creditors, as required by 11U.S.C. §§361 and 363;
 - c. Paragraph 5 of the proposed order provide for replacement liens for the secured creditors on the Debtor's assets to the same extent and priority as they existed pre-petition. as required by 11U.S.C. §§361 and 363.
 - d. Paragraph 7 of the proposed order imposes certain covenants on the Debtor, specifically that the Debtor will:
 - i. Only use Cash Collateral consistent with the Budget presented at the hearing;
 - ii. Maintain and retain in good repair all Cash Collateral in which the Secured Lenders claim an interest;
 - iii. Not pay any pre-petition debts or obligations of the Debtor or its estate without further order of the Court;
 - iv. Not grant any other post-petition liens to any other party without the consent of the Secured Lenders or an order of the Court on property that is Cash Collateral.
 - e. Paragraph 8 of the proposed order provides for termination of the Debtor's authorization to use cash collateral on the following terms and conditions:
 - i. the Debtor's failure to make any of the Adequate Protection Obligations or otherwise cure such payments after 7 days written notice;
 - ii. this Court's appointment of a chapter 11 trustee or examiner;
 - iii. conversion of the Debtor's chapter 11 case to a chapter 7 case;

- iv. the Debtor's failure to comply with the requirements set forth in the Order;
- v. a material adverse change in the Debtor's financial condition or business operations; or
- vi. six (6) months from the date of the Order.

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court enter an order authorizing the continued use of cash collateral and that the Court grant such other relief as deemed appropriate.

Dated February 10, 2017.

Respectfully submitted,
BUECHLER & GARBER, LLC

/s/ Kenneth J. Buechler

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