

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

In re:)	
)	
JHL INDUSTRIAL SERVICES, LLC d/b/a)	Case No. 17-14141 JGR
PLATT ROGERS CONSTRUCTION,)	Chapter 11
)	
Debtor.)	

STIPULATED ORDER AUTHORIZING DEBTOR’S USE CASH COLLATERAL

The Court, having reviewed the Motion for Entry of Stipulated Order Authorizing Debtor’s Use of Cash Collateral, and the Debtor and the Colorado Department of Revenue having reached an agreement as to interim use of certain cash collateral, the Court orders as follows:

THE COURT HEREBY FINDS:

A. On May 5, 2017 (the “Petition Date”), JHL Industrial Services, LLC d/b/a Platt Rogers Construction (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and continues to operate its businesses as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

D. An official committee of unsecured creditors has not been appointed in this case.

E. The Colorado Department of Revenue (“State of Colorado”) asserts a claim against the Debtor of approximately \$25,148.00 (as of the Petition Date) for unpaid withholding taxes. The State of Colorado asserts that it has a “lien to secure the payment of any amounts withheld and not remitted as provided in this section upon all of the assets of the employer and all property” of the Debtor “which lien shall be prior to any lien of any kind whatsoever, including existing liens for taxes.” Colo. Rev. Stat. Ann. § 39-22-604. The State of Colorado asserts that any and all moneys held or received by the Debtor post-petition are “cash collateral” as that term is defined in Section 363(a) of the Bankruptcy Code (the “Colorado Department of Revenue Cash Collateral”).

F. Old Republic Surety Company (“Old Republic”) asserts a claim of approximately \$272,622.01 (as of the Petition Date) against the Debtor. Old Republic asserts that Old Republic

holds rights of equitable subrogation to receivables on certain pre-petition bonded construction contracts, which rights are superior to the claims of all other parties in this bankruptcy case as to those pre-petition receivables.¹ Old Republic asserts that its lien was perfected through the filing of a UCC Financing Statement with the Colorado Secretary of State on December 11, 2015. Old Republic asserts that the general prohibition contained in 11 U.S.C. § 552(a) against “property acquired by the estate or the debtor after commencement of the case” being “subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case” is not applicable because “the security interest created by such security agreement extends to property of the Debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property acquired by the estate after commencement of the case” under 11 U.S.C. § 552(b)(1) and is “cash collateral” as that term is defined in Section 363(a) of the Bankruptcy Code. Accordingly, Old Republic asserts that the the interest of Old Republic in all proceeds of certain pre-petition bonded contracts is entitled to adequate protection pursuant to § 363(e) of the Bankruptcy Code (the “Old Republic Cash Collateral”). Until the Debtor obtains permission to use the Old Republic Cash Collateral, the Debtor will open a separate account and segregate and keep a detailed account of any proceeds from the pre-petition bonded construction contracts. The Debtor reserves the right to dispute the nature, extent, and priority of Old Republic’s alleged lien.

G. Wells Fargo Bank, National Association (“Wells Fargo”) asserts a claim in the approximate amount of \$481,172.14 (as of the Petition Date) against the Debtor. Wells Fargo asserts that it has valid, perfected pre-petition lien and security interest in “[a]ll accounts (including health insurance receivables), contract rights, chattel paper, (whether electronic or tangible), general intangibles (including payment intangibles and software), and other rights to payment of every kind now existing or at any time hereafter arising)” of the Debtor. Wells Fargo asserts that its lien was perfected through the filing of a UCC Financing Statement with the Colorado Secretary of State on June 5, 2014. Wells Fargo asserts that the general prohibition contained in 11 U.S.C. § 552(a) against “property acquired by the estate or the debtor after commencement of the case” being “subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case” is not applicable because “the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property acquired by the estate after commencement of the case” under 11 U.S.C. § 552(b)(1) and is “cash collateral” as that term is defined in Section 363(a) of the Bankruptcy Code. Accordingly, Wells Fargo asserts that the interests of Wells Fargo in all proceeds of pre-petition accounts receivable and construction contracts are entitled to adequate protection pursuant to § 363(e) of the Bankruptcy Code (the “Wells Fargo Cash Collateral”). Until the Debtor obtains permission to use the Wells Fargo Cash Collateral, the Debtor will open a separate account and segregate and keep a detailed account of any proceeds from pre-petition accounts receivable and any pre-petition construction contracts (other than the proceeds from the pre-petition bonded construction contracts against which Old Republic claims a superior interest). The Debtor reserves the right to dispute the nature, extent, and priority of Wells Fargo’s alleged lien.

¹ See e.g., *Pearlman v. Reliance Insurance Company*, 371 U.S. 132 (1962).

H. The Debtor asserts that it has an exigent need for immediate access to and use of the Colorado Department of Revenue Cash Collateral to preserve and maintain its business as a going concern. The Debtor asserts that all of its creditors, not just the Colorado Department of Revenue will benefit from its continued operations and that any return to creditors will be greater through continued operations and a reorganization under Chapter 11 of the Bankruptcy Code than immediately ceasing operations and winding up the Debtor's business under applicable law. The Debtor asserts that if this Court were to decline to allow the Debtor to use the Colorado Department of Revenue Cash Collateral, the Debtor and its creditors would suffer immediate and irreparable harm.

I. Despite the potential disputes, contingencies, and uncertainties summarized above, the Debtor asserts that it would be in the best interests of the estate to permit the Debtor to use the Colorado Department of Revenue Cash Collateral in accordance with the Budget and the terms set forth herein.

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:

1. Subject to the terms and conditions set forth herein, the Debtor is authorized to use the Colorado Department of Revenue Cash Collateral during the pendency of this Chapter 11 bankruptcy case. The Debtor shall not and may not pay any prepetition debts or obligations of the Debtor or its estate without Court authority.

2. The Debtor shall deposit into the Debtor's debtor-in-possession accounts (the "**DIP Accounts**") all revenues and proceeds of every type derived from the operation of the Debtor's business. No business proceeds or funds of any type of the Debtor shall be deposited or transferred into an account other than the DIP Accounts without Court authority.

3. Debtor is required to pay (or cause to be paid) all post-petition federal and state payroll, withholding, sales, use, personal property, real property and other taxes and assessments of any kind when due and owing under applicable law.

4. To provide the Colorado Department of Revenue above with the adequate protection required by Sections 361 and 363(e) of the Bankruptcy Code, the Debtor will pay the Colorado Department of Revenue \$25,148.00 over 58 months with 7% interest as follows:

Due Date	Payment Amount	Principal	Interest	Balance
8/1/17	\$512.31	\$365.61	\$146.70	\$24,782.39
9/1/17	\$512.31	\$367.75	\$144.56	\$24,414.64
10/1/17	\$512.31	\$369.89	\$142.42	\$24,044.75
11/1/17	\$512.31	\$372.05	\$140.26	\$23,672.70

12/1/2017	\$512.31	\$374.22	\$138.09	\$23,298.48
1/1/2018	\$512.31	\$376.40	\$135.91	\$22,922.08
2/1/2018	\$512.31	\$378.60	\$133.71	\$22,543.48
3/1/2018	\$512.31	\$380.81	\$131.50	\$22,162.67
4/1/2018	\$512.31	\$383.03	\$129.28	\$21,779.64
5/1/2018	\$512.31	\$385.26	\$127.05	\$21,394.38
6/1/2018	\$512.31	\$387.51	\$124.80	\$21,006.87
7/1/2018	\$512.31	\$389.77	\$122.54	\$20,617.10
8/1/2018	\$512.31	\$392.04	\$120.27	\$20,225.06
9/1/2018	\$512.31	\$394.33	\$117.98	\$19,830.73
10/1/2018	\$512.31	\$396.63	\$115.68	\$19,434.10
11/1/2018	\$512.31	\$398.94	\$113.37	\$19,035.16
12/1/2018	\$512.31	\$401.27	\$111.04	\$18,633.89
1/1/2019	\$512.31	\$403.61	\$108.70	\$18,230.28
2/1/2019	\$512.31	\$405.97	\$106.34	\$17,824.31
3/1/2019	\$512.31	\$408.33	\$103.98	\$17,415.98
4/1/2019	\$512.31	\$410.72	\$101.59	\$17,005.26
5/1/2019	\$512.31	\$413.11	\$99.20	\$16,592.15
6/1/2019	\$512.31	\$415.52	\$96.79	\$16,176.63
7/1/2019	\$512.31	\$417.95	\$94.36	\$15,758.68
8/1/2019	\$512.31	\$420.38	\$91.93	\$15,338.30
9/1/2019	\$512.31	\$422.84	\$89.47	\$14,915.46
10/1/2019	\$512.31	\$425.30	\$87.01	\$14,490.16
11/1/2019	\$512.31	\$427.78	\$84.53	\$14,062.38
12/1/2019	\$512.31	\$430.28	\$82.03	\$13,632.10
1/1/2020	\$512.31	\$432.79	\$79.52	\$13,199.31
2/1/2020	\$512.31	\$435.31	\$77.00	\$12,764.00
3/1/2020	\$512.31	\$437.85	\$74.46	\$12,326.15
4/1/2020	\$512.31	\$440.41	\$71.90	\$11,885.74
5/1/2020	\$512.31	\$442.98	\$69.33	\$11,442.76
6/2/2020	\$512.31	\$445.56	\$66.75	\$10,997.20
7/1/2020	\$512.31	\$448.16	\$64.15	\$10,549.04
8/1/2020	\$512.31	\$450.77	\$61.54	\$10,098.27
9/1/2020	\$512.31	\$453.40	\$58.91	\$9,644.87
10/1/2020	\$512.31	\$456.05	\$56.26	\$9,188.82
11/1/2020	\$512.31	\$458.71	\$53.60	\$8,730.11
12/1/2020	\$512.31	\$461.38	\$50.93	\$8,268.73
1/1/2021	\$512.31	\$464.08	\$48.23	\$7,804.65
2/1/2021	\$512.31	\$466.78	\$45.53	\$7,337.87
3/1/2021	\$512.31	\$469.51	\$42.80	\$6,868.36

4/1/2021	\$512.31	\$472.24	\$40.07	\$6,396.12
5/1/2021	\$512.31	\$475.00	\$37.31	\$5,921.12
6/1/2021	\$512.31	\$477.77	\$34.54	\$5,443.35
7/1/2021	\$512.31	\$480.56	\$31.75	\$4,962.79
8/1/2021	\$512.31	\$483.36	\$28.95	\$4,479.43
9/1/2021	\$512.31	\$486.18	\$26.13	\$3,993.25
10/1/2021	\$512.31	\$489.02	\$23.29	\$3,504.23
11/1/2021	\$512.31	\$491.87	\$20.44	\$3,012.36
12/1/2021	\$512.31	\$494.74	\$17.57	\$2,517.62
1/1/2022	\$512.31	\$497.62	\$14.69	\$2,020.00
2/1/2022	\$512.31	\$500.53	\$11.78	\$1,519.47
3/1/2022	\$512.31	\$503.45	\$8.86	\$1,016.02
4/1/2022	\$512.31	\$506.38	\$5.93	\$509.64
5/1/2022	\$512.31	\$509.64	\$2.97	\$0.00

The terms of such payment plan shall be incorporated into the Debtor's plan of reorganization, if any.


5. Notwithstanding anything herein to the contrary, the Debtor's right to use the Colorado Department of Revenue Cash Collateral pursuant to the terms of this Order shall terminate on the earlier of (i) conversion of the Debtor's Chapter 11 case to a Chapter 7 case; (ii) Debtor's failure to comply with the requirements set forth herein; (iii) depositing any revenues or proceeds of the Debtor of any kind into any account other than the DIP Accounts; (iv) Debtor's failure to timely file or pay any post-petition federal or state payroll, withholding, sales, use, personal property, real property or other taxes and assessments of any kind by the date last due without penalty, or (v) the Debtor's failure to comply with the reporting requirements set out in paragraph 7 below. Termination of Debtor's rights under this Order shall be without prejudice to the Debtor's right to request further authority to use Cash Collateral pursuant to Section 363 of the Bankruptcy Code.

6. The provisions of this Order shall inure to the benefit of Debtor, its estate and creditors and the Secured Creditors and shall be binding upon Debtor, its estate and creditors and any successors or assigns of the foregoing, including, without limitation, any chapter 11 or chapter 7 trustee.

7. During the term of this Order, the Debtor shall timely file all reports required by the Bankruptcy Court and the United States Trustee and provide copies to the Secured Creditors.

DATED this 25th day of August, 2017.

BY THE COURT:



Joseph G. Rosania, Jr.

UNITED STATES BANKRUPTCY JUDGE

AGREED AND APPROVED AS TO FORM AND CONTENT:

Debtor

WADSWORTH WARNER CONRARDY, P.C.

By: /s/David J. Warner

David J. Warner, #38708

Colorado Department of Revenue

By: /s/Ross A. Hoogerhyde

Ross A. Hoogerhyde, #42588

Assistant Attorney General