

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

In re)
) Case No. 17-15844 TBM
ALL-STATE FIRE PROTECTION, INC.)
) Chapter 11
Debtor.)

**MOTION TO PROHIBIT USE OF CASH COLLATERAL AND WITHDRAWAL OF
CONSENT TO STIPULATION FOR USE OF CASH COLLATERAL**

Wells Fargo Bank, N.A. and Wells Fargo Equipment Finance, Inc. (“WFEF”), (jointly referred to herein as “Wells Fargo”) by and through its counsel, Coan, Payton & Payne, LLC, hereby moves this Court for an Order Prohibiting Use of Cash Collateral and withdraws its consent to the Stipulated Motion to Use Cash Collateral and for Adequate Protection filed by All-State Fire Protection, Inc.’s (the “Debtor”) and in support thereof states as follows:

Background

Wells Fargo Prepetition Loans

1. Prepetition, in or around October of 2014, the Debtor entered into a Revolving Line of Credit with Wells Fargo in the principal amount of \$1,500,000 (the “Loan”). The Loan replaced a prior loan with Wells Fargo and has been extended several times. Copies of the Loan and the extensions are collectively attached as **Exhibit 1** and incorporated herein.

2. To secure the Loan, the Debtor granted Wells Fargo a lien on substantially all of its assets, including its accounts, accounts receivable and cash, as more specifically set forth in the Financing Statement filed with the Colorado Secretary of State, which was continued several times, including most recently, on June 27, 2016 at Reception No. 20162057739. Copies of the Financing Statements are collectively attached hereto as **Exhibit 2** and incorporated herein.

3. Wells Fargo has a valid and enforceable lien and perfected security interest in the Debtor's cash and cash equivalents, which the Debtor has used to, among other things, fund its operations, make the post-petition premium payments to its worker's compensation insurance provider, Pinnacol Assurance, as well as the cure of the prepetition arrears to Pinnacol Assurance.

4. Wells Fargo also has a perfected security interest in the furniture, fixtures, equipment, accounts receivable, cash, general intangibles, etc., of the Debtor (the "Bank Collateral").

5. Prepetition, the Debtor's cash was maintained at Wells Fargo (the "Operating Account"). The Debtor's Operating Account funds and any remaining checks, credit card receipts and cash are collectively referred to as the "Operating Funds."

6. As of the Petition Date, the principal balance owed on the Loan was \$1,200,000.00.

7. Postpetition, the Debtor opened a debtor-in-possession account at Bank of the West (the "DIP Account"). The Debtor will deposit all post-petition receipts into the DIP Account and pay all expenses through this account.

8. On or about September 22, 2015, the Debtor executed a Single Sided Lease Agreement -\$1 Purchase Option (the "Lease") with WFEF for the lease of a New 2015 Nissan PF80YLP Forklift (the "Equipment"). A copy of the Lease is attached hereto as **Exhibit 3** and incorporated herein. The present balance owed on the Lease is \$30,540.40.

9. Under the terms of the Lease, the Debtor is required to make monthly payments of \$792.00. At the end of the Lease, the Debtor may purchase the Equipment for \$1.

10. WFEF recorded a Financing Statement with the Colorado Secretary of State on October 28, 2015 at Reception No. 20152098816. *See Exh. 3, pp. 4-5.* WFEF has a valid and perfected security interest on the Equipment.

11. The Debtor asserts that the Lease is a disguised secured transaction such that the Lease is not a true lease under C.R.S. §4-2.5-101, *et seq.* *See Colorado Leasing Corp. v. Borquez*, 738 P.2d 377 (Colo. App. 1986).

The Bankruptcy Case

12. The Debtor filed for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on June 23, 2017 (the “Petition Date”), and is operating as a Debtor-in-Possession. 11 U.S.C. §§1107 & 1108.

13. The Debtor specializes in residential and commercial installation of fire sprinkler systems. The Debtor offers in-house design, fabrication and installation for steel, copper, and CPVC systems.

14. On July 31, 2017, the Debtor and Wells Fargo filed a Stipulated Motion to Use Cash Collateral and for Adequate Protection (the “Stipulation”).

15. On August 14, 2017, the Colorado Department of Revenue and the Colorado Department of Labor and Employment (the “State”) filed an objection to the Stipulation claiming a priority tax lien in the Debtor’s cash collateral. The Court has not entered an order approving the Stipulation.

Monthly Operating Reports Raise Serious Concerns

16. A review of the Debtor’s most recent Monthly Operating Report for period ending August 31, 2017 (Docket #126), reflects the Debtor’s ending cash balance was \$15,172.86.

17. In addition to a serious revenue shortage in both July and August (September's financial reports are not yet available.), Debtor has made a number of unauthorized payments from Wells Fargo's cash collateral (and perhaps, without conceding the same, the Colorado Department of Revenue and the Colorado Department of Labor and Employment's cash collateral) which give Wells Fargo pause and, moreover, grounds to withdraw its consent to the Stipulation including:

(a) Payment of a Sears Mastercard held in Raymond Gibler's name and include charges for groceries, alcoholic beverages, and gasoline.

(b) Payments totaling \$21,500.00 to Gibs Performance Horses, LLC, an unsecured creditor owned, on information and belief, by Raymond Gibler.

(c) Debtor's financial reports also show its postpetition taxes payable as of August 31, 2017 are \$93,692.00, an increase of \$25,209.00 in just one month.

Argument

18. The Stipulation has not been approved by this Court, yet, Debtor has been using the cash collateral to operate its business. Moreover, the Debtor has failed to stay within the budget agreed to in the Stipulation. It also appears that based on the Debtor's current financial picture, it will not be able to pay the adequate protection payments owed to Wells Fargo under the terms of the Stipulation.

19. In light of the developments in this case postpetition (or lack thereof), Wells Fargo withdraws its consent to the Stipulation and moves to prohibit further use of the cash collateral without Court authorization.

WHEREFORE, Wells Fargo requests this Court prohibit the Debtor from using cash collateral, and this Court enter such other and further relief as may be required under the circumstances.

Dated this 18th day of October, 2017.

/s/ Robert D. Lantz
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