

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
www.flsb.uscourts.gov

In re:

Case No. 18-16690-RBR

Chapter 11

BG BIG BOAT, LTD.,

Debtor-in-Possession.

**MOTION TO USE CASH COLLATERAL NUNC PRO TUNC TO OCTOBER 1, 2018**

- Debtor is seeking authority to use the cash collateral of Creditor IberiaBank.
- Debtor has contacted Creditor IberiaBank regarding adequate protection payments but Creditor IberiaBank does not consent for Debtor to use the cash collateral.
- The cash collateral is proceeds earned from Debtor's major asset, a 154' Feadship Motor Yacht.
- Debtor is requesting to use all cash collateral for its operation until a final hearing on this motion.
- Debtor has attached a budget, pursuant to the Court's Guidelines for Motion Seeking Authority to Use Cash Collateral and Motion Seeking Approval of Postpetition Financing (Exhibit "A").
- Debtor has attached an interim order, pursuant to the Court's Guidelines for Motion Seeking Authority to Use Cash Collateral and Motion Seeking Approval of Postpetition Financing (Exhibit "B").

BG Big Boat, Ltd. (the "Debtor"), by and through undersigned counsel, seeks entry of an order allowing the use of the cash collateral of **Creditor IberiaBank** ("IB") without a provision of the payment of adequate protection of IB as their security interest in the cash collateral is protected as it is over-secured and, in support thereof, states as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for relief requested herein are §§ 361 and 363 of the Bankruptcy Code, Rule 4001(b)(2) of the Federal Rules of Bankruptcy, Local Rule 4001-2 and 9013-1(F)-(G), and the Court's Guidelines for Motions Seeking Authority to Use Cash Collateral and Motions Seeking Approval of Postpetition Financing.

**Factual Background**

4. On June 1, 2018, Debtor filed for voluntary relief under Chapter 11 of the Bankruptcy Code (the "Code") (DE 1).
5. IB filed a case in admiralty in the Southern District of Florida in the case styled *IberiaBank v. BG Capital Management South Florida, LLC, et al.*, case no. 18-cv-60301 (the "District Court Case").
6. IB has an interest in the 154' Feadship Motor Yacht (Official Number 71061) (the "M/Y BG") and the cash collateral of the Debtor.
7. Debtor estimates that the M/Y BG is valued at \$9,000,000.00.
8. Debtor uses the M/Y BG for boat charters to produce revenue.
9. IB has filed two proof of claims:
  - a. Proof of Claim No. 2-1, which has a debt of \$3,288,970.91.
  - b. Proof of Claim No. 3-1, which has a debt of \$1,672,978.47.
10. Proof of Claim No. 3-1 has been reduced by the sale of a different vessel by or around the amount of \$950,000.00.

11. Debtor seeks to use cash collateral of IB, which includes no provision for adequate protection as IB is adequately protected by virtue of being over-secured.

12. Debtor contacted IB regarding the use of its cash collateral, and IB would not entertain the use of the cash collateral.

### **Legal Analysis**

13. Section 363 of the Bankruptcy Code provides for the use, sale or lease of property in bankruptcy. 11 U.S.C. § 363.

14. Pursuant to § 363(c)(2)(B), the Court may authorize the use of cash collateral only if the use accords with other provisions of section 363. *See In re George Ruggiere Chrysler-Plymouth, Inc. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.)* 727 F. 2d 1017, 1019 (11th Cir. 1984).

15. The principal determination on authorizing the use of cash collateral is whether “adequate protection”, a term undefined by the Bankruptcy Code, is provided. *Id.*

16. Adequate protection payments are payments that are intended to protect against, and compensate for, a decrease in the value of a creditor’s collateral. *See In re Sunacruz Casinos, LLC*, 298 B.R. 833 (Bankr. S.D. Fla. 2003).

Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process. If the value of the collateral decreases, the creditor is entitled to cash payments so that the value of its interest in the collateral remains constant. Thus, the amount by which the collateral depreciates is the amount of adequate protection to which the secured creditor is entitled.

*First Fed. Bank v. Weinstein (In re Weinstein)*, 227 B.R. 284, 296 (9th Cir. BAP 1998) (citations omitted).

17. **In the instant case, IB’s interest in the collateral is over-secured (See Chapter 11 Voluntary Petition, DE 1, p. 6).**

18. **IB is fully secured as the value of the Debtor's property is \$9,000,000.00 and the value of IB's claim is on or around \$4,015,000.00.**

19. **It is crucial that Debtor maintains access to the cash collateral to continue to operate its business in the chapter 11 case.**

20. Debtor requests access to all of the cash collateral to continue to operate.

**WHEREFORE**, the Debtor requests this Court enter an order (a) authorizing the Debtor to use the cash collateral pending entry of a final order and (b) for any further relief this Court deems proper.

Dated: November 2, 2018

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**BG Big Boat**  
Oct 2018-Mar 2019  
Budget

	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
	USD	USD	USD	USD	USD	USD	USD
<b>INCOME FROM CHARTERS</b>	\$ 340,000	\$ 125,000	\$ 440,000	\$ 315,000	\$ -	\$ -	\$ 1,220,000
<b>EXPENDITURES:</b>							
<b>INTERIOR &amp; GALLEY DEPARTMENT</b>							
INTERIOR AND GALLEY STORES (EXCLUDING FOOD)	\$ -	\$ -	\$ 500	\$ 600	\$ -	\$ -	\$ 1,100
INTERIOR & GALLEY REPAIRS & REPLACEMENTS	\$ -	\$ -	\$ 1,300	\$ 1,300	\$ -	\$ -	\$ 2,600
LAUNDRY, CARPET & SPECIALTY CLEANING	\$ -	\$ -	\$ -	\$ 500	\$ -	\$ -	\$ 500
<b>TOTAL INTERIOR DEPARTMENT</b>	\$ -	\$ -	\$ 1,800	\$ 2,400	\$ -	\$ -	\$ 4,200
<b>DECK DEPARTMENT</b>							
DECK STORES AND SPARES	\$ 800	\$ -	\$ 1,200	\$ 1,200	\$ -	\$ -	\$ 3,200
DECK REPAIRS & REPLACEMENTS	\$ 57	\$ -	\$ 800	\$ 800	\$ -	\$ -	\$ 1,657
<b>TOTAL DECK DEPARTMENT</b>	\$ 857	\$ -	\$ 2,000	\$ 2,000	\$ -	\$ -	\$ 4,857
<b>ENGINEERING DEPARTMENT</b>							
ENGINEERING STORES AND SPARES	\$ 3,800	\$ -	\$ -	\$ 3,000	\$ -	\$ -	\$ 6,800
ENGINEERING REPAIRS & REPLACEMENTS	\$ 14,400	\$ -	\$ -	\$ 4,200	\$ -	\$ -	\$ 18,600
<b>TOTAL ENGINEERING DEPARTMENT</b>	\$ 18,200	\$ -	\$ -	\$ 7,200	\$ -	\$ -	\$ 25,400
<b>TENDERS &amp; TOYS</b>							
TENDER STORES AND SPARES	\$ 19,000	\$ -	\$ 420	\$ 420	\$ -	\$ -	\$ 19,840
TENDER REPAIRS AND REPLACEMENTS	\$ 300	\$ -	\$ 400	\$ 400	\$ -	\$ -	\$ 1,100
TENDER FUEL	\$ 300	\$ -	\$ 1,200	\$ 1,200	\$ -	\$ -	\$ 2,700
<b>TOTAL TENDERS &amp; TOYS DEPARTMENT</b>	\$ 19,600	\$ -	\$ 2,020	\$ 2,020	\$ -	\$ -	\$ 23,640
<b>WHEELHOUSE, OFFICE &amp; ENTERTAINMENT</b>							
NAVIGATION SUPPLIES (CHARTS, PUBLICATIONS, WEATHER ROUTING)	\$ 3,800	\$ 150	\$ -	\$ -	\$ -	\$ -	\$ 3,950
NAVIGATION EQUIPMENT REPAIRS & REPLACEMENTS	\$ 5,100	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,100
COMMUNICATION EQUIPMENT REPAIRS & REPLACEMENTS	\$ 2,600	\$ -	\$ -	\$ 400	\$ -	\$ -	\$ 3,000
ENTERTAINMENT EQUIPMENT REPAIRS & REPLACEMENTS, SATELLITE TV COSTS	\$ -	\$ -	\$ 800	\$ 1,200	\$ -	\$ -	\$ 2,000
OFFICE EQUIPMENT REPAIRS & REPLACEMENTS, SOFTWARE LICENSES	\$ 120	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 120
<b>TOTAL WHEELHOUSE, OFFICE &amp; ENTERTAINMENT</b>	\$ 11,620	\$ 150	\$ 800	\$ 1,600	\$ -	\$ -	\$ 14,170
<b>CREW</b>							
CREW SALARIES	\$ 98,000	\$ 60,000	\$ 57,000	\$ 57,000	\$ 45,000	\$ 45,000	\$ 362,000
CREW TRAVEL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
CREW CATERING	\$ 3,500	\$ 5,000	\$ 3,500	\$ 3,500	\$ -	\$ -	\$ 15,500
CREW UNIFORM	\$ -	\$ -	\$ 400	\$ -	\$ -	\$ -	\$ 400
CREW TRAINING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
CREW RECRUITMENT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
MEDICAL EXPENSES	\$ 100	\$ 100	\$ 100	\$ 100	\$ -	\$ -	\$ 400
DAY WORKERS	\$ -	\$ -	\$ -	\$ 3,000	\$ -	\$ -	\$ 3,000
CREW MISCELLANEOUS	\$ 16,000	\$ 500	\$ 500	\$ 500	\$ -	\$ -	\$ 17,500
<b>TOTAL CREW</b>	\$ 117,600	\$ 65,600	\$ 61,500	\$ 64,100	\$ 45,000	\$ 45,000	\$ 398,800

**EXHIBIT "A"**

**BG Big Boat**

Oct 2018-Mar 2019  
Budget

	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
	USD	USD	USD	USD	USD	USD	USD
<b>OVERHEADS</b>							
COMMUNICATIONS	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ -	\$ -	\$ 4,800
CAR & ASSOCIATED COSTS	\$ 600	\$ 800	\$ -	\$ 1,500	\$ -	\$ -	\$ 2,900
OFFICE CONSUMABLES, MAIL, COURIERS & FREIGHT	\$ 300	\$ 300	\$ 300	\$ 300	\$ -	\$ -	\$ 1,200
PORT EXPENSES (DOCKAGE)	\$ 5,000	\$ 5,000	\$ 5,000	\$ 10,000	\$ -	\$ -	\$ 25,000
PORT EXPENSES (ELECTRICITY)	\$ 4,500	\$ -	\$ -	\$ 5,000	\$ -	\$ -	\$ 9,500
PORT EXPENSES (WATER)	\$ 500	\$ 500	\$ 500	\$ 500	\$ -	\$ -	\$ 2,000
PORT EXPENSES (GARBAGE)	\$ 1,200	\$ 800	\$ 250	\$ 250	\$ -	\$ -	\$ 2,500
FUEL OIL	\$ 40,000	\$ 60,000	\$ 10,000	\$ 10,000	\$ -	\$ -	\$ 120,000
LUBE OIL	\$ 12,000	\$ -	\$ -	\$ 1,000	\$ -	\$ -	\$ 13,000
AGENCY & CUSTOMS	\$ 550	\$ 500	\$ 500	\$ 500	\$ -	\$ -	\$ 2,050
BANK CHARGES	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ -	\$ -	\$ 4,000
HULL & CREW INSURANCE	\$ 3,100	\$ 13,000	\$ 3,100	\$ 13,000	\$ -	\$ -	\$ 32,200
PILOTAGE FEES & CANAL DUES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
STORAGE	\$ 500	\$ 500	\$ 500	\$ 500	\$ -	\$ -	\$ 2,000
GRATUITIES	\$ -	\$ 1,200	\$ -	\$ -	\$ -	\$ -	\$ 1,200
<b>TOTAL OVERHEADS</b>	<b>\$ 70,450</b>	<b>\$ 84,800</b>	<b>\$ 22,350</b>	<b>\$ 44,750</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 222,350</b>
<b>SAFETY, SURVEY &amp; CERTIFICATION</b>							
CLASSIFICATION SURVEY	\$ -	\$ 4,000	\$ -	\$ 15,500	\$ -	\$ -	\$ 19,500
STATUTORY SURVEY	\$ 2,800	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,800
OTHER SURVEY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
SAFETY EQUIPMENT	\$ -	\$ 16,000	\$ 200	\$ 4,000	\$ -	\$ -	\$ 20,200
<b>TOTAL SAFETY, SURVEY &amp; CERTIFICATION</b>	<b>\$ 2,800</b>	<b>\$ 20,000</b>	<b>\$ 200</b>	<b>\$ 19,500</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 42,500</b>
<b>ADMINISTRATION EXPENSES</b>							
MANAGEMENT FEE	\$ 40,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,000
PROFESSIONAL SERVICES - CREW EMPLOYMENT	\$ 12,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ -	\$ 36,000
TRAVEL & ACCOMMODATION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
UNITED STATES TRUSTEE FEE	\$ 325	\$ -	\$ -	\$ -	\$ 4,875	\$ -	\$ 5,200
<b>TOTAL ADMINISTRATION EXPENSES</b>	<b>\$ 52,325</b>	<b>\$ 6,000</b>	<b>\$ 6,000</b>	<b>\$ 6,000</b>	<b>\$ 10,875</b>	<b>\$ -</b>	<b>\$ 76,000</b>
Drydock/Maintenance							
<b>TOTAL EXPENDITURE</b>	<b>\$ 293,452</b>	<b>\$ 176,550</b>	<b>\$ 96,670</b>	<b>\$ 149,570</b>	<b>\$ 55,875</b>	<b>\$ 45,000</b>	<b>\$ 817,117</b>

## EXHIBIT "B" - PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
www.flsb.uscourts.gov

In re:

Case No. 18-16690-RBR  
Chapter 11

BG BIG BOAT, LTD.,

Debtor-in-Possession.

**INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL NUNC  
PRO TUNC TO OCTOBER 1, 2018 AND SETTING FINAL HEARING DATE.**

**THIS MATTER** came before the Court on Date at 10:00 A.M. upon Debtor's *Motion to Use Cash Collateral Nunc Pro Tunc to October 28, 2018* (DE X) (the "Motion"). The Court, having reviewed the Motion, determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, and all parties in interest, heard argument of counsel, finds that good cause exists to grant the Motion.

**IT IS THEREFORE ORDERED:**

1. The Motion is granted and approved on an interim basis pending a final order.

2. Debtor is authorized to use the cash collateral referenced in the Motion.
3. A copy of this Interim Order shall be served on the Notice Parties within three (3) business days from entry.
4. There shall be a carve-out in the budget for the inclusion of fees due the Clerk of Court or the U.S. Trustee pursuant to 28 U.S.C. § 1930.
5. This Interim Order is without prejudice to the rights of the parties to seek any further or different relief, or modification of this Interim Order, including, but not limited to, relief from the automatic stay.
6. Except as expressly provided herein, the rights, claims, and interests of the Debtor, any prepetition lender, and all other parties in interest are hereby reserved.
7. A final hearing shall be held on *Date at 10:00 A.M. at the United States Courthouse, 299 E. Broward Blvd., Courtroom 308, Fort Lauderdale, FL 33301*, and any objections to Debtor's use of cash collateral must be served on Debtor's counsel two (2) business days prior to the final hearing.

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Submitted by:

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*(Chad Van Horn, Esq. is hereby directed to provide a conformed copy of this Order to all parties-in-interest and to file a Certificate of Service as to same.)*