

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:) Case No. 17-24246
)
Bear Metal Welding & Fabrication, Inc.,) Chapter 11
)
Debtor-in-Possession.) Judge Deborah L. Thorne

NOTICE OF MOTION

To: See service list attached.

PLEASE TAKE NOTICE that on the day of 17th August, 2017, at 9:30 a.m., or as soon as counsel may be heard, I shall appear before the Honorable Deborah L. Thorne in Room 615 of the United States Bankruptcy Court, 219 S. Dearborn Street, Chicago, Illinois, 60604, and shall then and there present **Motion of Debtor-in-Possession for Entry of Interim and Final Orders Authorizing it to Use Cash Collateral; Granting Adequate Protection; and Scheduling a Final Hearing**, a copy of which is hereby served upon you.

Bear Metal Welding & Fabrication, Inc.

By: /s/ Abraham E. Brustein
One of its attorneys

Abraham Brustein, #0327662
Julia Jensen Smolka, #6272466
DiMonte & Lizak, LLC
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CERTIFICATE OF SERVICE

The undersigned, a non-attorney, hereby certifies that by 6:00 p.m. on the 14th day of August, 2017, she caused to be served upon the persons list listed below, via the court's CM/ECF system, via Facsimile, via Email and Via First Class Mail, a copy of **Motion of Debtor-in-Possession for Entry of Interim and Final Orders Authorizing it to Use Cash Collateral; Granting Adequate Protection; and Scheduling a Final Hearing**, and this Notice.

/s/ Jenna Jarke

Service List

Via ECF

Patrick S. Layng
United States Trustee, Region 11
219 S. Dearborn Street #873
Chicago, IL 60604

Chase
Card Member Services
PO Box 15153
Wilmington, DE 19886
Fax No. 888-643-9628

**Via Facsimile, Via First Class Mail
or Email**

Arnell Steel Corporation
750 N. Harvard Avenue
Villa Park, IL 60181
Fax No. 630-833-5458

Citi Cards
Processing Center
Des Moines, IA 50363
Fax No. 605-357-2073

Bank of America
PO Box 5859
Harlan, IA 51593
Fax No. 336-297-2832

Commerce Bank
PO Box 8060000
Kansas City, MO 64180
Fax No. 816-760-3748

**First Class Mail
(No fax or email available)**

Charles Whitlock
11 Quails Run Blvd. Unit 6
Englewood, FL 34223

Cordial Electric
21W036 Glen Park Drive
Lombard, IL 60148
Email: cordial16@hotmail.com

David L. Hazan
Diver, Grach, Quade & Masini, LLP
111 N. County Street
Waukegan, IL 60085
Email: dlhazan@divergrach.com

De Sio Franzen & Associates, Ltd.
28371 Davis Parkway, Unit 103
Warrenville, IL 60555
Fax No. 630-657-1820

Department of Treasury
Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101
Fax No. 267-466-1015

DuPage County Collector
Gwen Henry, CPA
DuPage County Treasurer
421 N. County Farm Road
Wheaton, Illinois 60187-2553

Fifth Third
PO Box 740523
Cincinnati, OH 45274
Fax No. 513-534-6757

Home Depot
Processing Center
Des Moines, IA 50364-0500
Fax No. 888-447-5535

Howard & Howard
Stacie A. Schenk
450 West Fourth Street
Royal Oak, MI 48067
Fax No. 248-645-1568

IL Dept. of Employment Security
Benefit Payment Control Division
PO Box 4385
Chicago, IL 60680
Fax No. 312-338-6985

Illinois Department of Revenue
Bankruptcy Unit
PO Box 19035
Springfield, IL 62794
Fax No. 217-785-2635

Michele J. Braun, Esq.
Law Offices of Michele J. Braun
1906 Maplewood Road
Northbrook, IL 60062
Email: mbraun45@sbcglobal.net

Myers & Filbert
17 North Sixth Street
Geneva, IL 60134
Fax No. 630-566-1770

O'Hare Mechanical Contractors
95 Gaylord
Elk Grove Village, IL 60007
Fax No. 847-437-4747

Staples
PO Box 689020
Des Moines, IA 50368
Fax No. 866-533-0508

Terrace Supply
1397 Glenlake Avenue
Itasca, IL 60143
Fax No. 630-285-8947

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|---|---|-------------------------|
| IN RE: |) | |
| |) | |
| Bear Metal Welding & Fabrication, Inc., |) | Case No. 17 -24246 |
| |) | |
| Debtor-in-Possession. |) | Judge Deborah L. Thorne |

**MOTION OF DEBTOR-IN-POSSESSION FOR ENTRY OF INTERIM AND FINAL
ORDERS AUTHORIZING IT TO USE CASH COLLATERAL; GRANTING
ADEQUATE PROTECTION; AND SCHEDULING A FINAL HEARING**

Bear Metal Welding & Fabrication, Inc., (öBear Metalö)(öDebtorö) by its attorneys, Abraham Brustein and Julia Jensen Smolka, bring this motion (öMotionö) for entry of an order (i) authorizing it to use case collateral of QCB Properties, LLC (öQCBö), the U.S. Department of the Treasury-Internal Revenue Service (öIRSö), the Illinois Department of Revenue (öIDRö), and the Illinois Department of Employment Security (öIDESö) (collectively, öSecured Partiesö) on an interim or preliminarily basis, (ii) setting further hearings on the Motion for entry of a final order authorizing it to use cash collateral of Secured Parties; (iii) granting Secured Parties adequate protection; and (iv) providing such other relief as may be appropriate under the circumstances. In support of this Motion, the Debtor states the following:

Introduction

1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on August 14, 2017 (öPetition Dateö). The Debtor is a limited liability company organized under the laws of the State of Illinois.

2. No trustee has been appointed to this case. Debtor continues to operate its business as Debtor-in-Possession pursuant to the provisions of Sections 1107 and 1108 of the Bankruptcy Code. No committee has been appointed as of the date of this Motion.

3. Bear Metal has been in business since 1997. It incorporated under the laws of the State of Illinois in 2002. Dean Mormino has been its principal officer at all times since the Debtor began business operations. Mr. Mormino has been the sole shareholder, director and the president since 2012 when his marriage to Melisa Mormino was dissolved. Prior to the dissolution of their marriage, Melisa Mormino was a shareholder of the Debtor.

4. Bear Metal is in the business of providing fabrication and repair of metals to commercial and consumer markets. Bear Metal's principal asset is the improved real estate from which it operates at 948 North Ridge Avenue, Lombard, Illinois (Property). The debtor believes the Property has a market value of approximately \$450,000.00.

5. In this Motion, Debtor seeks entry of an order authorizing it to use cash collateral of the Secured Parties on an interim or emergency basis and to schedule such hearings as may be appropriate to consider entry of a final order authorizing it to use cash collateral of Secured Parties. Debtor also seeks authority to grant to Secured Parties adequate protection for their interim or emergency use of cash collateral by (i) granting them replacement liens upon the same property on which they had liens prior to the Petition Date, to the same extent and with the same priority as existed on the Petition Date; and (ii) limiting its use of the Secured Parties cash collateral to expenditures set forth in a budget to be incorporated into the order authorizing use of cash collateral.

6. At the initial presentation of this Motion, Debtor seeks authorization to use cash collateral through September 15, 2017 in accordance with the budget attached to this motion and

to set further hearings on use of cash collateral on a preliminary and final basis, after notice and hearing, in accordance with the provisions of Bankruptcy Rule 4001(b), or if applicable, Bankruptcy Rule 4001(d).

7. This court has subject matter jurisdiction to grant the relief requested in this motion as a core proceeding pursuant to 28 U.S.C §§1334(b) and 157(b)(2)(M).

8. This court is authorized to grant the relief requested by the Debtor pursuant to Section 105 and 363(c) of the Bankruptcy Code and Bankruptcy Rule 4001.

Claims of the Secured Parties

9. QCB is the successor in interest to Fifth Third Bank pursuant to a Loan Purchase and Assumption Agreement between QCB and Fifth Third Bank dated as of July 20, 2016. QCB is the current holder or owner of the following instruments:

- a) Promissory Note dated August 26, 2011 in the original principal amount of \$335,488.50;
- b) Construction Mortgage, Security Agreement, and Financing Statement dated as of August 26, 2011 and recorded with the DuPage County Recorder of Deeds on October 3, 2011 as document no. R2011-116013;
- c) Security Agreement dated August 26, 2011;
- d) UCC-1 Financing statement filed with the Illinois Secretary of State on September 12, 2011 as document no. 16593036;

- e) UCC Financing Statement Amendment (Continuation) filed with the Illinois Secretary of State on June 16, 2016 as document no. 09422945;
- f) UCC Financing Statement filed with the Illinois Secretary of State on September 13, 2011 as document no. 16596027; and
- g) UCC Financing Statement Amendment (Continuation) filed with the Illinois Secretary of State on June 17, 2016 as document no. 09423161.

10. Fifth Third Bank filed a complaint in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois to collect the amounts due to it under its note in an action titled *Fifth Third Bank v. Bear Metal Welding & Fabrication, Inc.*, Case No. 2015-CH-000647 (Foreclosure Suit). QCB is now the plaintiff in the foreclosure suit. A judgment of foreclosure and sale was entered into the Foreclosure Suit on June 7, 2017. Pursuant to that judgment, a judicial of the Property was scheduled for August 15, 2017.

11. The IRS holds claims against Bear Metal for unpaid payroll taxes assessed in 2013 and 2014. It filed two notices of federal tax lien with the Illinois Secretary of State:

| Filing Date | Assessment | Secretary of State Document No. |
|--------------------|-------------------|--|
| March 25, 2014 | \$55,342.60 | 733210 TLF |
| November 7, 2017 | \$6,848.62 | 762180TLF |

12. The IDR filed with the DuPage County Recorder a notice of tax lien related to unpaid withholding income taxes in the amount of \$7,592.35 on November 24, 2014 as document R2014-110527.

13. The IDES filed a notice of lien for contributions under the Illinois Employment Insurance Act totaling, with penalties and interest, \$8,639.38, with the Cook County Recorded on April 10, 2015 as document R2015-037018.

14. Prior to the Petition Date, Bear Metal had entered into installment payment arrangements with the various taxing authorities pursuant to which he made monthly payments to reduce those claims. Bear Metal became delinquent under those installment arrangements in early 2017 because Mr. Mormino suffered a serious personal injury at a customer's business premises on January 20, 2017. As a result of those injuries, Mr. Mormino was unable to work from the date of the injury until June 2017.

Immediate Need for Use of Cash Collateral

15. The Debtor's business operations were seriously adversely affected due to Mr. Mormino's injury in January 2017. He was not able to attend to his business on a full time basis for approximately 5 months. The Debtor believes that its business can be operated profitably. The Debtor also believes that the market value of the Property and the going concern value of the business significantly exceed the amount of all the claims held by the Secured Parties.

16. The Debtor is currently engaged in active business operations. It has three full time employees and one part time employee. It also hires occasional workers on an as needed basis. It currently is working on 9 work orders. Based on its history of operations, it expects to receive additional work orders and "walk-in" business during the period of its proposed use of cash collateral.

17. The Debtor has immediate need for use of property that is or may be cash collateral of the Secured Parties as defined in Section 363(A) of the Bankruptcy Code ("Cash Collateral").

18. In order to continue its business operations, the Debtor must pay salaries, insurance premiums, vehicle expenses, utilities, and purchase materials used in providing its services. The Debtor has attached its proposed budget for use of Cash Collateral during the period August 15-September 15, 2017 which sets forth its projected receipts and its necessary expenses for that period as **Exhibit A** to this motion (öBudgetö). The Debtor is requesting that it be authorized to use cash collateral for the purposes set forth on the Budget, subject to the terms and conditions of this order.

19. The Debtor markets its business through recommendations and referrals from past customers and internet marketing. It typically receives both written work orders based upon this marketing and also services öwalk-inö customers.

20. If the Debtor is not permitted to use Cash Collateral for the items set forth on the Budget, it will suffer harm that is both immediate and irreparable. It will have to stop performing work under the work orders now in place; it will have to lay off its employees; it will not be able to continue its internet marketing; and it will not be able to pay for the maintenance and upkeep of the Property.

21. If the business has to cease operations, the inevitable result will be the inability to successfully reorganize under Chapter 11 and, ultimately, a foreclosure sale of the Property and a complete shutdown of its business. All of the market value of the Property and the going concern value of the business that could be realized through reorganization or sale in a successful Chapter 11 would be lost.

22. As adequate protection to the Secured Parties for Debtorö's proposed use of Cash Collateral, the Debtor proposes to grant to each of the Secured Parties a valid, perfected enforceable lien upon the Debtorö's post-petition assets that are now or later become property of

the Debtor's estate, to the extent and with the priority of their respective pre-petition liens, but only if those liens are valid.

Notice

23. Debtor has provided notice of the presentation of this Motion to the Secured Parties, the holders of the 20 largest unsecured claims, the DuPage County Collector and the United States Trustee. The parties that were not served through the court's CM/ECF system were served by facsimile. The notice was given on August 14, 2017, except for the DuPage County Collector. Notice to the DuPage County Collector will be given on August 15, 2017.

Respectfully submitted,

Bear Metal Welding & Fabrication, Inc.

By: /s/ Abraham Brustein

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