

SO ORDERED: March 21, 2017.



James M. Carr
James M. Carr
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:) Chapter 11
)
BURGESS MACHINERY, LLC,) CASE NO. 17-01019-JMC-11
)
Debtor.)

**SECOND INTERIM ORDER AUTHORIZING DEBTOR'S
USE OF CASH COLLATERAL**

This matter is before the Court on the *First Day Motion For Entry of Interim & Final Orders Authorizing Debtor (A) to Utilize Cash Collateral Pursuant to 11 U.S.C. §363, and (B) Granting Adequate Protection to Prepetition Secured Lender Pursuant to 11 U.S.C. §361, Nunc Pro Tunc to Petition Date* [Doc. 6] (the “Motion”) filed by the Debtor, Burgess Machinery, LLC (“Burgess” or “Debtor”).

On March 8, 2017, this Court entered its *Order Authorizing Debtor's Interim Use of Cash Collateral* [Doc. 40] (“First Interim Order”). The First Interim Order authorized cash use by the Debtor to and including the date of the next hearing on the Motion, and reset the Motion for a hearing on March 16, 2017 (the “Hearing”).

The Court, having considered the Motion and the First Interim Order, having heard the representations of counsel at a continued hearing on the Motion on March 16, 2017, and being duly advised in the premises, makes the following findings of fact and conclusions of law:

1. Debtor filed its Voluntary Petition (“Petition”) for relief under chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”) on February 24, 2017 (“Petition Date”).

2. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. Notice of the Motion has been given in accordance with Federal Rule of Bankruptcy Procedure 4001 and Southern District of Indiana Local Rule B-4001-2.

4. Burgess owns and operates its business as a heavy equipment servicer, heavy equipment rentals, parts and sales. In addition, Burgess provides shop and field service on most construction equipment as well as material handlers. Burgess currently employs four (4) salaried employees and three (3) hourly employees, who are paid on a weekly basis. Burgess was incorporated in 2008 and has always been located in Indianapolis, Indiana.

5. Burgess’s customers pay with cash and checks. The cash and checks are deposited into Burgess’s bank account at KeyBank.

6. Burgess has represented that as of the Petition Date, Burgess is indebted to Financial Center First Credit Union (“FCFCU”) and Horizon Bank, N.A. (“Horizon”). Burgess has performed a preliminary investigation and analysis of the related UCC

filings, and without waiver of rights to challenge the validity, priority and extent of the liens, the following parties may assert a lien on Burgess's cash collateral:

- a. Horizon—UCC file number 201300000663586, filed 1/8/2013;
- b. FCFCU—UCC file number 201400006163891, filed 8/1/2014; and
- c. 12FIVE Capital, LLC—UCC file number 201700000728875.

7. Burgess asserts that there are as many as three parties who could assert an interest in Burgess's cash collateral. Upon further review, Burgess believes Horizon holds a valid, enforceable and non-avoidable, first-priority lien and security interest in substantially all of the cash, accounts receivable, and inventory ("Cash Collateral") and FCFCU holds a a valid, enforceable and non-avoidable, second-priority lien and security interest in substantially all of the Cash Collateral. Although other secured creditors have liens on specific vehicles or equipment, Burgess is unaware of any other parties who may assert a lien on Burgess's cash collateral.

8. Burgess contends all of its income constitutes Cash Collateral" (as that term is defined in § 363(a) of the Bankruptcy Code.

9. Burgess contends that it needs use of the Cash Collateral to (i) operate its business and manage the Real Estate and (ii) pay for necessary services.

10. Burgess asserts that it lacks unencumbered cash with which to continue to operate its business in this Chapter 11 Case.

11. Burgess seeks immediate interim authority to use what the Debtor contends is Cash Collateral to continue its operations without interruption.

12. Burgess represents that it will only use the Cash Collateral to pay its operating expenses specifically outlined on the budget attached to the Motion as Exhibit

“A” (the “Operating Budget”) including Tax, and Utilities and Insurance (the “Operating Expenses”).

13. Exhibit “A” submitted by Burgess projects the expenses on a monthly basis. Burgess estimates that it will not require in excess of \$35,000.00 of Cash Collateral for operations for the remaining portion of March 2017, and as provided in the Operating Budget until the next scheduled hearing on its Motion.

14. The Motion complies with Federal Rule of Bankruptcy Procedure 4001 and Southern District of Indiana Local Rule B-4001-2.

15. Neither Horizon nor FCFCU object to the Debtor’s use of Cash Collateral to pay reasonable and necessary Operating Expenses until the next hearing on its Motion.

16. Horizon’s and FCFCU’s consent is without prejudice to any objection, right, remedy or argument that they might make to the future use of Cash Collateral.

BASED ON THE FOREGOING, this Court finds the terms of this Order to be fair and equitable and HEREBY ORDERS that the Debtor is authorized to use the Cash Collateral in accordance with the following terms and conditions:

A. Replacement liens shall be granted over cash collateral in favor of Horizon and FCFCU pursuant to §361(2) of First Bankruptcy Code to the same extent, validity and priority of Horizon and FCFCU’s pre-petition liens, and deem such liens as adequate protection to FCFCU and Horizon for use of the cash collateral.

B. The Debtor shall at all times maintain insurance coverage on the all of the assets of the bankruptcy estate.

C. Nothing contained within this Order shall be construed to be a waiver of the rights of FCFCU or Horizon under 11 U.S.C. § 507(b) in the event the terms and

conditions of this Order prove insufficient to adequately protect Horizon or FCFCU's interests.

D. The right of the Debtor to use the Cash Collateral pursuant to the terms of this Order shall automatically terminate in the event Debtor fails to comply with any term or condition of this Order.

17. Pursuant to 11 U.S.C. § 363(e), this Court conditionally authorizes the Debtor to use Cash Collateral up to \$35,000.00 for operations for the remaining portion of March 2017, and as provided in the Operating Budget until the next scheduled hearing on its Motion.

E. In accordance with Bankruptcy Rule 4001(d), Debtor shall serve a copy of this Order on the Office of the United States Trustee, Secured Creditors, the Debtor's Twenty Largest Unsecured Creditors, and those parties that have appeared in these cases.

F. Except as expressly provided, the provisions of this Order shall be binding upon and inure to the benefit of Horizon and FCFCU and the Debtor and any appointed Chapter 7 trustee, their respective successors and assigns, and all parties in interest.

G. A Final hearing on the Motion shall be held on **April 26, 2017, at 11:00 a.m. in Room No. 325** at the United States Bankruptcy Court, 46 East Ohio Street, Indianapolis, Indiana 46204 (the "Hearing").

H. If any provision of this Order is subsequently modified or vacated, such modification or vacation will not affect the validity of the liens created pursuant to this Order.

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