

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:) Chapter 11
)
BLACKFOOT CONSTRUCTION) CASE NO. 17-08448-RLM-11
COMPANY)
dba BLACKFOOT SOLUTIONS,)
Debtor(s).)

**FIRST DAY MOTION FOR ENTRY OF INTERIM AND 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**

Blackfoot Construction Company dba Blackfoot Solutions, debtor-in-possession (the “Debtor”), by counsel, and for its *First Day Motion for Entry of Interim and Final Orders (A) Authorizing Debtor to Use Cash Collateral Pursuant to 11 U.S.C. §363, and (B) Granting Adequate Protection to Pre-Petition Secured Lender Pursuant to 11 U.S.C. §361, Nunc Pro Tunc to Petition Date* (the “Cash Use Motion”), respectfully states as follows:

I. Jurisdiction

1. On November 8, 2017, (the “Petition Date”), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101 *et seq.*, as amended (the “Bankruptcy Code”). The Debtor continues to operate its businesses and manage its property as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§1157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409. This motion is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

3. The statutory bases for relief requested herein are sections 105(a), 361, 363, 1107 and 1108 of the Bankruptcy Code.

4. No Trustee or examiner has been appointed in this chapter 11 case. No committee of unsecured creditors has yet been appointed in this chapter 11 case.

5. The Debtor has left messages concerning the filing of its case with the Office of the United States Trustee for the Southern District of Indiana (the “Trustee”), and advised the Trustee of its first day motions. This motion is a First Day Motion pursuant to S.D. Ind. L.R. B-9013-3.

6. The Debtor owns and operates a construction company located in Noblesville, Indiana. The Debtor constructs and maintains cell phone towers and facilities as well as provides installation services to telecommunication providers. The Debtor was incorporated on December 9, 2004, in Dyersburg, Tennessee under different ownership. The Debtor’s current owner acquired the Debtor in 2007 and began operating the business out of his residence in Fishers, Indiana. The Debtor has been located in Noblesville, Indiana since March of 2014. The Debtor has fifteen (15) employees.

II. Relief Requested

7. By this Motion, the Debtor seeks the entry of interim and final orders authorizing the Debtor to use cash collateral.

8. As of the Petition Date, the Debtor is indebted to Swift Financial Corporation (“Swift”). The Debtor has performed a preliminary investigation and analysis of the related UCC filings, and based upon preliminary investigation believes, that without waiver of rights to challenge the validity, priority and extent of the liens,

all of the Debtor's obligations to Swift may be valid, enforceable and non-avoidable, first-priority liens and security interests in substantially all of the Debtor's personal property.

9. The Debtor has an immediate need to use cash collateral which is the subject of the liens in favor of Swift, in order to permit, among other things, the orderly continuation of the operation of the Debtor's business, to maintain business relationships with vendors and suppliers and to satisfy other working capital needs. Use of cash collateral is necessary to prevent the immediate and irreparable harm to the Debtor and its respective estate that would otherwise result if the Debtor is prevented from obtaining use of cash collateral for the foregoing purposes.

10. All of the Debtor's cash, cash equivalents and cash on deposit as of the Petition Date and all proceeds of the Debtor's personal property securing the Debtor's obligation to Swift, among other things, may constitute "cash collateral" (as that term is defined in Section 363(a) of the Bankruptcy Code) of Swift.

11. Swift may be entitled to adequate protection of its interests in the Debtor's personal property, including any cash collateral thereof, for any diminution in value of such property or cash collateral, including any diminution resulting from the use of cash collateral and the imposition of the automatic stay. The Debtor believes, in an exercise of its prudent business judgment, that the adequate protection given by the proposed granting of replacement liens over cash collateral to the same extent, validity and priority of Swift's pre-petition liens is fair, reasonable and necessary under the circumstances. As additional adequate protection to Swift, the Debtor agrees to operate

under the budget attached hereto as Exhibit “A” which covers the Petition Date through the end of November 2017.

12. The Debtor believes that the use of cash collateral is fair, reasonable and necessary under the circumstances, and reflects Swift’s exercise of prudent business judgment consistent with its fiduciary duties.

WHEREFORE, the Debtor, by counsel, requests that the Court enter an Interim Order *nunc pro tunc* to the Petition Date providing for the following:

- (a) Granting replacement liens over cash collateral in favor of Swift pursuant to section 361(2) of the Bankruptcy Code to the same extent, validity and priority of Swift’s pre-petition liens, and deem such liens as adequate protection to Swift for use of the cash collateral;
- (b) Authorizing the Debtor to use cash collateral as provided in the projections or budget attached hereto as Exhibit “A”; and
- (c) All other appropriate relief under the circumstances.

Respectfully submitted,

HESTER BAKER KREBS LLC

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Proposed Attorneys for Debtor

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

- Ronald J. Moore Ronald.Moore@usdoj.gov
- U.S. Trustee ustpreion10.in.ecf@usdoj.gov

I further certify that on November 10, 2017, a copy of the foregoing was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

n/a

/s/ John J. Allman

David R. Krebs

John J. Allman

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