

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)	
)	
LOUISVILLE ROOF REPAIR AND)	CHAPTER 11
REPLACE, LIMITED LIABILITY)	
COMPANY)	
)	
Debtor)	CASE NO. 18-90039-BHL-11
)	
)	

DEBTOR’S MOTION FOR INTERIM AND FINAL AUTHORITY TO USE CASH COLLATERAL, AND TO PROVIDE ADEQUATE PROTECTION

* * * * *

Comes the Debtor, Louisville Roof Repair and Replace, Limited Liability Company (the “Debtor”), by proposed counsel, and hereby moves the Court for entry of an Order authorizing the interim and final use of cash collateral and to provide adequate protection. In support of this Motion, the Debtor states as follows:

Jurisdiction

1. The Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334 and the general order of reference issued by the United States District Court for the Southern District of Indiana on July 11, 1984.

2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (M) and (O). The statutory predicates for the relief requested in this motion are 11 U.S.C. §§ 105, 361, and 363 and Rules 4001(b) and 9014 of the Federal Rules of Bankruptcy Procedure, and Local Rules B-4001-2 and B-9013-3.

3. Venue of these proceedings and the within motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and Local Rule B-1002-1(e).

Background

4. On January 15, 2018 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107(a) and 1108¹ of the Bankruptcy Code, the Debtor continues to operate its business and manage its property as a debtor in possession.

5. The Debtor is a residential roofing contractor in the southern Indiana and Louisville, Kentucky region. The Debtor bears the marketing, administrative, and job material costs, but it subcontracts the installation labor as necessary for the various contracts. Sales commissions, materials, and subcontractors constitute approximately 80% of the Debtor's expenses, making the Debtor very responsive to changes in market demand.

6. Prepetition, the Debtor found itself squeezed by the timing of the expenses for the commissions, labor, and material, compared to the timing of collection on its jobs. To cover this gap, the Debtor obtained financing at rates that ultimately proved unsustainable and resulted in this petition.

Pre-Petition Banking Relationship with National Funding

7. National Funding, Inc. ("**National Funding**"), has a claim against the Debtor arising from a Business Loan Agreement dated August 7, 2017, in the original principal amount of \$185,999.66 (the "**National Funding Agreement**") inclusive of a pre-paid finance charge of \$35,999.66. The National Funding Agreement matures by its terms after 154 daily weekday payments, or approximately March 9, 2018.

8. At the time of the bankruptcy filing, the amount of the National Funding's claim under the National Funding Agreement was approximately \$73,675.00.

¹All statutes cited herein refer to the Bankruptcy Code unless otherwise specified.

National Funding claims a pre-petition security interest in the Debtor's property, including, "All inventory; Chattel Paper; Accounts, including but not limited to all Receivables, Equipment, General Intangibles; Furniture; Fixtures; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other account proceeds)." ("**National Funding Collateral**"). National Funding filed its financing statement on October 19, 2017, more than two months after the National Funding Agreement, which is within the 90 days prior to the petition date and National Funding's security interest is therefore avoidable by the Debtor.

Pre-Petition Banking Relationship with Wise Funding

9. Wise Funding Group, LLC ("**Wise Funding**"), has a claim against the Debtor arising from a Merchant Sales Agreement dated October 20, 2017, in the original principal amount of \$71,500.00 (the "**Wise Funding Agreement**") inclusive of a pre-paid finance charge of \$21,500.00. The Wise Funding Agreement matures by its terms after weekday payments of \$681.00, or approximately March 16, 2018.

10. At the time of the bankruptcy filing, the amount of the Wise Funding's claim under the Wise Funding Agreement was approximately \$45,391.00.

11. Wise Funding claims a pre-petition security interest in the Debtor's property, including, "All of Debtor's Goods, Inventory, Machinery, Equipment, Furniture and Fixtures (as those terms are defined under the UCC) and all of Debtor's Accounts Receivable, including but not limited to Credit Card and Charge Card Receivables, Cash on Hand and in Deposit in Banks, Cash Equivalents, Contracts, Real Property Leases, Notes, Bills, Acceptances, Chooses in Action, Chattel Paper, Instruments, Documents, and all other General Intangibles or other forms

of obligations at any time owing to the Grantor arising out of goods sold or leased or for services rendered by Grantor, the proceeds thereof and all of Grantor's rights with respect to any goods represented thereby, now owned or hereafter acquired wherever located.” (“**Wise Funding Collateral**”). Wise Funding filed its UCC financing statement under the name “Louisville Roof Repair and Replace LLC,” which does not appear when one searches the legal name of the Debtor in the Kentucky Secretary of State’s Office. Wise Funding’s financing statement is therefore seriously misleading, and Wise Funding’s security interest is therefore avoidable by the Debtor.

12. Debtor’s use of Cash Collateral is essential for its continued operations, and National Funding and Wise Funding may be entitled to adequate protection against the deterioration, depreciation, conversion or loss and diminution in value of their collateral, to the extent they hold properly-perfected security interests.

Relief Requested

13. As more fully set forth in the Debtor’s projected budget attached hereto as Exhibit “A” (the “**Budget**”), the Debtor seeks authorization to use Cash Collateral on an interim basis through February 15, 2018 (the “**First Interim Period**”). The Debtor seeks to meet its ordinary and necessary post-petition expenditures through use of approximately \$200,000 of cash collateral (the “**Cash Collateral**”).

14. The Debtor’s use of Cash Collateral is imperative to ensure the Debtor’s continued operations and to maximize creditors’ recovery. Use of Cash Collateral preserves the value of Debtor’s assets, and without such use the value of the Debtor’s assets will immediately and substantially diminish. Absent authorization to use the Cash Collateral, there would be no

reasonable prospect that the Debtor would be able to reorganize successfully in this Chapter 11 case.

15. Entry of the proposed Order is in the best interests of the estate and its creditors because use of Cash Collateral will minimize disruption of the Debtor as a “going concern,” and increases the possibilities for a successful reorganization.

16. As and for adequate protection in consideration of the Debtor’s continued possession and use of Cash Collateral, the Debtor shall grant to National Funding and Wise Funding, replacement liens on all collateral of the same type and priority as they held as valid and properly perfected liens prior to the petition date.

17. No previous motion for the relief sought herein has been made to this or any other court.

Notice

18. No trustee, examiner or statutory creditors’ committee has been appointed in this Chapter 11 case. Notice of this Motion has been provided to: (1) all secured creditors who are not represented by counsel; (2) all counsel of record for parties in interest; (3) the U.S. Trustee; (4) the Debtor’s 20 Largest Unsecured Creditors as designated in the Debtor’s Petition; (5) all governmental units having claims; and (6) all persons who filed a request to receive such notices. Debtor submits that such notice is sufficient under the circumstances.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order (1) authorizing the use of Cash Collateral; (2) establishing adequate protection for the use of Cash Collateral; and (3) granting the Debtor other just relief.

Respectfully submitted,

/s/ Charity B. Neukomm

CHARITY B. NEUKOMM

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Proposed Counsel for the Debtor

CERTIFICATE OF SERVICE

It is hereby certified that on January 18, 2018, a true and correct copy of the foregoing was (a) mailed electronically through the U.S. Bankruptcy Court's ECF system to the electronic addresses as set forth in the ECF system to the U.S. Trustee and all other persons receiving electronic notifications in this case, and (b) except for parties receiving notice through ECF, mailed, emailed, or faxed to (1) all secured creditors who are not represented by counsel; (2) all counsel of record for parties in interest; (3) the U.S. Trustee; (4) the Debtor's 20 Largest Unsecured Creditors as designated in the Debtor's Petition; (5) all governmental units having claims; and (6) all persons who filed a request to receive such notices.

/s/ Charity B. Neukomm

CHARITY B. NEUKOMM

Louisville Roof Repair and Replace LLC

30 Day Budget

Jan 15, 2018 - Feb 15, 2018

Receivables	\$	205,655.00
Expenses		
Advertising	\$	8,000.00
Bank Charges	\$	500.00
Commissions & fees	\$	24,000.00
Communication/Phone	\$	750.00
Dues & Subscriptions	\$	1,000.00
Equipment Rental	\$	4,000.00
Insurance	\$	1,900.00
Interest Paid	\$	750.00
Job Materials (New Orders)	\$	92,000.00
Legal & Professional Fees	\$	500.00
Meals and Entertainment	\$	500.00
Merchant Services	\$	750.00
Office Expenses	\$	500.00
Mail & Postage	\$	150.00
Payroll	\$	7,500.00
Payroll Expenses	\$	99.00
Payroll Taxes	\$	2,500.00
QuickBooks Payments Fees	\$	1,200.00
Reimbursed Expenses	\$	1,500.00
Rent or Lease	\$	1,833.00
Subcontractors	\$	50,000.00
Travel	\$	800.00
Mileage	\$	250.00
Utilities	\$	285.00
Total Expenses	\$	201,267.00