

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

IN RE:

CJ MICHEL INDUSTRIAL SERVICES, LLC

CASE NO: 17-51611
CHAPTER 11

DEBTOR IN POSSESSION

EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS FOR AUTHORITY TO (I) CONTINUE DEBTOR'S SALE OF ACCOUNTS RECEIVABLE TO GULF COAST BANK AND TRUST COMPANY PURSUANT TO RECEIVABLES PURCHASE AGREEMENT, (II) TO USE CASH COLLATERAL AND (III) TO PROVIDE ADEQUATE PROTECTION

Comes CJ Michel Industrial Services, LLC, as a debtor and debtor in possession (the "Debtor"), by counsel, and hereby moves the Court for an order approving *nunc pro tunc* to the Petition Date the Debtor's Emergency Motion for Authority to (1) Continue Debtor's Sale of Accounts Receivable to Gulf Coast Bank and Trust Company ("Gulf Coast") pursuant to terms of the existing Receivables Purchase Agreement, (2) to Use Cash Collateral and (3) Provide Adequate Protection (the "Motion"). The Debtor states that entry of the Interim Order is necessary to ensure continuation of its operations and to protect and preserve the value of the Debtor's assets. In support thereof, the Debtor states as follows:

RULE 4001(b) STATEMENT:

(a) Name of Each Entity That May Claim an Interest in Cash Collateral:

Secured Creditor	Collateral	Claim Amount
Gulf Coast	UCC-1's in accounts/assets	Approximately \$234,717.17
Capital Stack, LLC	UCC-1's in accounts/assets	Approximately \$248,548
Yellowstone Capital, LLC	UCC-1's in accounts/assets	Approximately \$413,909
Ace Funding Source LLC	UCC-1's in accounts/assets	Approximately \$182,375

(with the exception of Gulf Coast, collectively, the "Other Cash Collateral Creditors")

(b) Purposes for the Use of Cash Collateral: As set forth in more detail in the budget attached hereto as Exhibit A, the Debtor proposes to use cash collateral (“Cash Collateral”) to meet its post-petition obligations and to pay its expenses, general and administrative operating expenses, and other necessary costs and expenses incurred during the pendency of the bankruptcy case. The budget does include the insider expense of the owner’s draw.¹

(c) Terms and Duration: The Debtor seeks authority to use Cash Collateral in the amounts as set forth on the budget attached hereto as Exhibit A for the interim period effective through any final hearing date (the “Interim Period” or “Interim Budget” or “Budget”).

(d) Adequate Protection: As adequate protection for any diminution in the value of the Gulf Coast’s interest in its collateral, pursuant to 11 U.S.C. §§ 361 and 363, the Debtor proposes that Gulf Coast receive a replacement lien in postpetition collateral of the same type of Budget generated by the Debtor’s postpetition operations to the extent of Debtor’s use of Cash Collateral to the same extent, validity, and priority as existed as of the Petition Date (the “Replacement Lien”). The Debtor is providing adequate protection to Gulf Coast because it is the first lienholder in the Cash Collateral. The Other Cash Collateral Creditors may claim an interest in the Cash Collateral pursuant to various UCC-1s filed with the Kentucky Secretary of State. However, no adequate protection is currently being offered to these creditors because they appear to have no value to attach to their asserted liens due to a secured senior creditor or their liens are avoidable by the Debtor. The inclusion of the Other Cash Collateral Creditors is not a stipulation that these creditors have valid claims or liens in the Debtor’s assets as certain

JURISDICTION AND VENUE

1. On August 10, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief with this Court under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”). The Debtor is operating its business as a debtor and debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over this Chapter 11 case under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

3. The Debtor is a limited liability company which maintains its principal assets in Boyle

¹ Clarence J. Michel, Jr. is the sole owner and president of Debtor. He serves as Chief Executive and Operating Officer. He is the primary salesman and contact for all of Debtor’s customers. One of Debtor’s main customers is based in Wisconsin. Mr. Michel works year-round to strengthen and ensure the relationship with that customer, including traveling multiple times a year to hold business meetings with that customer. He also travels to visit various jobsites across the country to ensure Debtor’s field employees are performing up to standards, including tool checks. Mr. Michel also oversees all day-to-day operations, including financial and budgeting decisions, insurance policies for the company, human resource and recruitment departments, and estimating and bidding processes. The small support staff functions to do just that: support Mr. Michel in his endeavors and efforts to keep the company operational. Typically, Mr. Michel has received prepetition draws for his services to the Debtor and postpetition monthly draws have been included in the Budget. The Motion requests authority to pay items on the Budget including this insider expense.

County, Kentucky. Accordingly, venue for the Debtor's Chapter 11 case is proper in this District under 28 U.S.C. § 1408 and 1409.

4. No trustee or examiner has been appointed in this Chapter 11 case, and no creditors' committee or other official committee has been appointed.

BACKGROUND

5. The Debtor has provided staffing and/or contracting services for customers in the construction and industrial sector for over 20 years. Services are not limited to the electrical trade but include OSHA certified, trade licensed and fully insured low-E, data/communications service technicians, pipefitters, welders, iron workers, riggers, millwrights, concrete tradesmen, and general tradesmen. The company offers complete design/build services as the general contractor, sub-contracting and support staffing to our clients. The Debtor began to experience cash flow issues after it borrowed money from nontraditional lending sources which were primarily merchant cash advance lenders. The Debtor has been unable to reach out-of-court workout agreements with these lenders and seeks a "breathing spell" to reorganize its business under Chapter 11 of the Bankruptcy Code in order to restructure its debts, reorganize as a going concern, and maximize value for the benefit of the creditors of its Estate.

REQUESTED RELIEF

6. By this Motion and pursuant to sections 105, 363, and 361 of the Bankruptcy Code, as supplemented by Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtor seeks the entry of interim and final orders granting the Debtor (1) Authority to Continue Debtor's Sale of Accounts Receivable to Gulf Coast pursuant to terms of the Receivables Purchase Agreement, (2) Use Cash Collateral and (3) Provide Adequate Protection.

THE RECEIVABLES PURCHASE AGREEMENT

7. Pre-petition, Debtor has in the ordinary course of its business factored its accounts receivable with Gulf Coast pursuant to the Receivables Purchase Agreement attached as Exhibit B² to this Motion (the “Agreement”). Debtor’s obligations in that regard is secured by a security interest in the Debtor’s assets, including its accounts receivable as evidenced by a UCC-1 filing of record with the Kentucky Secretary of State. Pre-petition, the Agreement worked as follows: the Debtor would sell or “factor” a receivable to Gulf Coast and would be paid the Net Face Amount less the Reserve Amount relating to that “factor” or receivable (capitalized terms are further defined in the Agreement). This sale portion of the Agreement is referred to as the “Factoring Component.” The Debtor believes the sale or factoring of its receivables is within the ordinary course of business but files this Motion for approval out of an abundance of caution. The financial arrangements proposed are the same as those in place pre-petition.

(i) Need for Factoring

8. The Debtor must pay necessary operating expenses like payroll, insurance, and taxes. Historically, the Debtor has maintained a factoring relationship to bridge the gap in time between the payment to third parties and the receipt of the income. The Debtor believes that factoring services is crucial to its business operations and a necessary part of its business.

9. It is critical that the Debtor maintains (i) its ongoing business operations without interruption, and (ii) the confidence of its employees, vendors and customers. It is imperative to the Debtor’s reorganization efforts that it be able to pay for all post-petition obligations in the ordinary course and pay any outstanding debts to its employees, suppliers and customers. The inability of the Debtor to accomplish these goals will cause irreparable harm to the Debtor’s estate pursuant to Rule 4001 of the Bankruptcy Rules.

² This Motion will be served without Exhibit B. A copy of Exhibit B may be requested by contacting Debtor’s counsel.

10. The Debtor finds the terms and conditions of the Agreement to be reasonable and states it has been unable to obtain factoring services or traditional financing on better terms.

(ii) Use of Cash

11. The Debtor proposes to use cash in accordance with the Interim Budget attached hereto as Exhibit A. The Budget includes normal operating expenses and the insider expense to Mr. Michel as discussed above.

(iii) The Necessary Showings Under Section 363

12. Section 363(b) of the Bankruptcy Code provides, in pertinent part, as follows:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate...

11 U.S.C. § 363(b). Subsection (c) of § 363 provides, in pertinent part, as follows:

(c)(1) If the business of the debtor is authorized to be operated under section... 1108... of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c). The sale of the factored accounts receivable is within the ordinary course of the Debtor's business and accordingly, is permissible under §§ 363(b) and (c). Subsection (1) of § 363 provides, in pertinent part, as follows:

- (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate only if
 - (1) Applicable nonbankruptcy law permits a sale of such property free and clear of such interest;
 - (2) Such entity consents;
 - (3) Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
 - (4) Such interest is an bona fide dispute; or
 - (5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f). Gulf Coast holds a first priority lien on the factored accounts receivable and upon information and belief Gulf Coast does not oppose the relief sought by this Motion. Accordingly, §363(f) is satisfied.

USE OF CASH COLLATERAL

13. Gulf Coast and the Other Cash Collateral Creditors may claim an interest in Cash Collateral as a result of the various UCC-1's filed of record with the Kentucky Secretary of State. Such collateral includes the accounts receivables of the Debtor. The Debtor hereby requests the authority to use Cash Collateral on an interim basis and to set a final hearing for continued cash use, if necessary, in the event any objections are filed. The value of Debtor's estate assets does not exceed the amount owed to the Gulf Coast.

14. The Debtor's need to use Cash Collateral is essential to continuation of these Chapter 11 proceedings and to ensure continued operations to maximize the recovery to all creditors. Without the use of Cash Collateral, the Debtor would be unable to pay expenses related to maintenance and preservation of its assets and operations including payroll and insurance obligations. In short, the Debtor is unable to operate its business without the use of Cash Collateral and the entry of an interim Order is necessary to avoid immediate and irreparable harm to the Debtor's business operations, its creditors, and other parties in interest.

15. Section 363(c)(2) of the Bankruptcy Code provides that a debtor "may not use, sell or lease cash collateral . . . unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section."

16. Good cause has been shown for the entry of the Interim Order. Among other things, entry of the Interim Order will allow the Debtor to maintain its business operations and preserve its assets, to maximize recovery to all creditors.

17. The Debtor proposes entry of an Interim Order pursuant to the proposed Interim Budget attached hereto as Exhibit A. Additionally, the Debtor requests this Motion to be without prejudice to a "carve-out" of Cash Collateral in the sums set forth in its subsequent monthly budgets for the accrual of administrative fees including legal fees and United States Trustee fees. A future

“carve-out” will likely be essential for the Debtor to make a reserve for administrative expenses in this Chapter 11 proceeding.

18. As adequate protection for the asserted lien in Cash Collateral of Gulf Coast, the Debtor proposes that Gulf Coast receive a Replacement Lien in postpetition collateral of the same type generated by the Debtor’s postpetition operations (the Post-petition Collateral) to the extent of the Debtor’s use of Cash Collateral to the same extent, validity, and priority as existed on the Petition Date. The Other Cash Collateral Creditors may claim an interest in the Cash Collateral pursuant to various UCC-1s filed with the Kentucky Secretary of State. However, no adequate protection is currently being offered to these creditors because they appear to have no value to attach to their asserted liens due to a secured senior creditor or their liens are avoidable by the Debtor. The inclusion of the Other Cash Collateral Creditors is not a stipulation that these creditors have valid claims or liens in the Debtor’s assets as certain.

19. The proposed interim use of Cash Collateral is for the time period commencing on the Petition Date and continuing until such date as the Court may set a final hearing on this Motion, which final hearing date is likewise being requested hereby.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order granting the Debtor on an interim basis (1) Authority to Continue Debtor’s Sale of Accounts Receivable to Gulf Coast pursuant to the terms of the Agreement, (2) Use Cash Collateral and (3) Provide Adequate Protection and granting such other and further relief as is just and proper.

NOTICE

Notice is hereby given that the foregoing shall be brought on for hearing before the United States Bankruptcy Court for the Eastern District of Kentucky, 100 East Vine Street, Second Floor, Lexington, Kentucky, on Monday, August 14, 2017, at the hour of 1:00 p.m. (ET), or as soon thereafter as counsel may be heard.

Respectfully submitted,

DELCOTTO LAW GROUP PLLC

/s/ Jamie L. Harris, Esq.

KY Bar No. 91387

200 North Upper Street

Lexington, KY 40507

Telephone: (859) 231-5800

Facsimile: (859) 281-1179

jharris@dlgfirm.com

COUNSEL FOR DEBTOR

AND DEBTOR IN POSSESSION

(UNDER PENDING APPLICATION)

CERTIFICATE OF SERVICE

In addition to the parties who will be served electronically by the Court's ECF System, the undersigned certifies that a true and accurate copy of the foregoing (without Exhibit B) was served by electronic mail or first-class U.S. mail, postage prepaid, on August 11, 2017 on all non-ECF creditors.

/s/ Jamie L. Harris, Esq.

COUNSEL FOR DEBTOR