



**SO ORDERED,**

A handwritten signature in blue ink that reads "Katharine M. Samson".

**Judge Katharine M. Samson  
United States Bankruptcy Judge  
Date Signed: January 11, 2018**

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE: KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.**

**NO. 17-51155-KMS**

**CHAPTER 11**

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**AGREED ORDER GRANTING DEBTOR'S EMERGENCY MOTION PURSUANT  
TO SECTION 364(c) and (d) OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULE 4001(c) FOR ORDER AUTHORIZING POST-PETITION FINANCING ON A  
FINAL BASIS AND GRANTING ADEQUATE PROTECTION FOR SAME  
(DKT#133)**

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THIS MATTER COMES before the Court upon Emergency Motion for a Final Order for (i) Obtaining Post-Petition Credit, (ii) Modifying Automatic Stay, and (iii) Granting Post-Petition Liens (DKT#133) filed by **KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.**

("Kappa"). After reviewing the facts and considering the same the Court finds that the Motion is well taken and should be granted on an interim and final basis. The ~~Court finds~~ <sup>parties agree</sup> as follows: (KMS)

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 1557, 11 U.S.C. § 364, 11 U.S.C. § 362, Rule 4001 of the Federal Rules of Bankruptcy Procedure and other related code sections and rules.

2. This matter is a core proceeding.

3. On June 12, 2017, (the "Petition Date"), the Debtor filed with this Court its Voluntary Petition (the "Petition") for relief under Chapter 11 of Title 11, United States Code (the "Bankruptcy Code"). The Debtor is the debtor-in-possession in this Chapter 11 case and it remains in possession of its assets and properties as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. To date, no trustee, examiner or official committee has been appointed in this case.

5. The Debtor, **KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.**, ("Kappa") is a general contracting and construction firm organized and existing under the laws of the State of Mississippi. The Debtor is wholly owned by Raymond "Randy" Blackledge, Robert Allen and Katherine Marie Clark Parker.

6. Kappa is a general contractor licensed by the State of Mississippi.

7. On November 14, 2017, the Debtor filed its Emergency Motion (**DKT#131**) for (i) Obtaining Post-Petition Credit; (ii) Modifying Automatic Stay, and (iii) Granting Post-Petition Liens.

8. The Debtor requested authority to obtain credit from one of its owners, Randy Blackledge,

in good faith to supply certain Debtor-in-Possession loans in order to maintain payroll and to allow for compliance with some negotiated aspects of the disputed construction contract with the City of Waveland that will allow the Debtor-in-Possession to receive certain funds presently due and owing from the City of Waveland.

On the Budget attached to the Debtor's Motion as Exhibit "1", the cost of performing the remaining work to trigger these payments is shown, together with the anticipated payments that would be received from the City of Waveland and the Perry County Bridge Project. The funds are to be used by the Debtor according to the aforesaid Budget.

9. As of the Petition Date, the Debtor is obligated to three Creditors, each of whom asserts claims to cash collateral and contract proceeds belonging to the Debtor-in-Possession, The First, Charter Bank and Hanover Insurance. This indebtedness is secured, *inter alia*, by a lien upon all contract proceeds. While the Debtor makes no claim at this time as to which of the three entities potentially having claims on contract proceeds have priority, it is respectfully submitted that allowing the Debtor to borrow these funds post-petition would enhance the contract proceeds that would be coming in to the Debtor-in-Possession, and other than the repayment of funds loaned by Blackledge, the cash position of the Debtor will be enhanced. The Debtor will seek future Court approval for any use of cash collateral coming in for these contract proceeds.

**The First:**

10. As of the Petition Date, for the purposes of the Motion and this Order, the Debtor admits

and stipulates that it is indebted to The First for Pre-Petition Indebtedness in the aggregate amount of approximately \$1,117,715.06, comprised of unpaid principal and interest accrued through the date of the filing of the Petition. The Debtor acknowledges for the purposes of this Motion that as security for the Pre-Petition Indebtedness, The First holds valid, perfected and enforceable liens on the cash collateral.

**The First Documents and Provisions:**

11. For the purposes of the Motion and this Order only, the Debtor does not dispute the Proofs of Claim that have been filed by and on behalf of the First and would incorporate said Proofs of Claim into this Motion.

**Charter Debt and Liens:**

12. As of the Petition Date, for the purposes of the Motion and this Order, the Debtor is obligated to Charter Bank. In accordance with the terms of the Proofs of Claim that Charter Bank has filed, the Debtor-in-Possession is indebted to Charter Bank in the amount of \$433,739.95. This indebtedness is secured, *inter alia*, by a lien upon all contract proceeds.

13. For the purposes of the Motion and this Order only, the Debtor admits and stipulates that as of the Petition Date, it is indebted to Charter for Pre-Petition Indebtedness in the aggregate amount of approximately \$433,739.95, comprised of unpaid principal and interest accrued through the date of the filing of the Petition. The Debtor acknowledges for the purposes of this Motion that as security for the Pre-Petition Indebtedness, Charter holds valid, perfected and enforceable liens on

all contract proceeds.

**Charter Documents and Provisions:**

14. For the purposes of the Motion and this Order only, the Debtor does not dispute the Proofs of Claim that have been filed by and on behalf of Charter Bank and would incorporate said Proofs of Claim into the Motion and this Order.

**Hanover Debt and Liens:**

15. As of the Petition Date, the Debtor is obligated to Hanover in an amount that is uncertain and undetermined. This Court has ruled that certain funds held in a segregated account by the Debtor related to the Camp Shelby Project (the “Camp Shelby funds”) bonded by Hanover constitute property of the estate, but has left unresolved the issue of the extent and priority of any lien which Hanover may have on such Camp Shelby funds. Again, the Debtor does not seek, nor does the Debtor feel at this time it is necessary, to adjudicate the extent and priority of such liens, other than to say that the Debtor will be entitled to use the cash proceeds to repay Randy Blackledge for funds loaned to the Debtor.

16. The Debtor is unable to obtain unsecured credit allowable under Section 503(b)(1) as an administrative expense. The Debtor must obtain financing in order to preserve and maintain the assets of the estate. The Debtor is unable to obtain the post-petition financing without granting the liens provided under the Motion and this Order.

17. The Post-Petition Financing has been negotiated in good faith and at arms-length between the Debtor and Blackledge, and any credit extended and loans made to the Debtor ("DIP Loans") have been extended, issued or offered to be made, as the case may be, in good faith as required by and within the meaning of, Bankruptcy Code §364(e) and Blackledge is entitled to the protections of Bankruptcy Code §364(e).

18. The terms of the proposed Post-Petition Financing are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and that the lien security interest and administrative claim granted to Blackledge in conjunction with the Post-Petition Financing are supported by reasonably equivalent value and fair consideration. The post petition or DIP Financing shall be according to the terms of the Proposed Note and Security Documents submitted to this Court prior to the final hearing.

19. The Debtor has requested the entry of an Order pursuant to Bankruptcy Rules 4001(c)(2) approving post-petition financing. The authorization requested herein is necessary to avoid immediate and irreparable harm to the Debtor and its estate.

20. The Debtor has requested authority to borrow from Blackledge, on the terms and subject to the conditions and limitations in availability set forth in the Motion and this Order. The Debtor is authorized to use the loan proceeds in the operation of the Debtor's business, provided that

a. the proposed use or borrowing is in compliance with the terms of the Proposed Note and this Order, and

b. the Debtor's use of funds is in accordance with the budget prepared by the Debtor (the "Budget"), a copy of which is attached hereto and incorporated herein by reference as Exhibit "1".

21. Any funds borrowed from Blackledge under the Motion and this Order shall be referred to as "New Obligations." In accordance with Bankruptcy Code §§ 364(c)(1) and 507(b), the New Obligations shall constitute claims with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, (except for UST fees, wages or salaries, and professionals' fees as approved by the Court), and shall at all times be senior to the rights of the Debtor, and any successor trustee or any other creditor in the Bankruptcy Case or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any Chapter 7 proceedings in the Debtor's case is converted to a case under Chapter 7 of the Bankruptcy Code (the "Super-Priority Claims").

22. As security for the New Obligations, and as provided in the Blackledge Note, Blackledge shall have and is hereby granted (effective and continuing without the necessity of the execution, filing and/or recordation of mortgages, security agreements, patent security agreements, trademarks security agreements, pledge agreements, financing statements or otherwise), valid and perfected security interests and liens (the "Liens") in Kappa's pre-petition collateral and on property of the estate that is not otherwise subject to a lien pursuant to 11 U.S.C. §364(c)(2), (collectively "Collateral"), provided, however, that the Collateral does not include any avoidance actions pursuant to Bankruptcy Code §§544, 545, 547, 548, 549 and 553(b) and any proceeds therefrom, and does not include the Camp Shelby funds.

23. The Liens and Super-Priority Claims granted to Blackledge pursuant to the DIP Loan Documents, the Motion and this Order shall be subject only to the payment of allowed professional fees and disbursements incurred by the professionals retained, pursuant to Bankruptcy Code §§ 327 or 1103(a), by the Debtor, and any unpaid fees of the United States Trustee;

24. Without limiting the rights of access and information afforded pre-petition Secured Creditors under the (1) pre-petition First Note(s); (2) Charter Note(s), (3) Blackledge Note or (4) Hanover under the Hanover Bonds and Indemnity Agreement(s), the Debtor shall be required to provide representatives, agents and/or employees of Blackledge, Charter, The First and Hanover access to the Debtor's premises and records shall otherwise cooperate, consult with, and provide to such persons all such non-privileged information and information not subject to a binding confidentiality agreement as they may reasonably request.

25. The Debtor shall be liable for all New Obligations.

26. Randy Blackledge is extending credit and making the DIP Loans to the Debtor in good faith. Accordingly, Blackledge is entitled to the full protection of Bankruptcy Code §364(e) with respect to the New Obligations and the Liens created, adjudicated or authorized by this Order granting the Motion in the event that this Order granting the Motion or any finding, adjudication, or authorization contained herein is stayed, vacated, reversed or modified on appeal.

27. Nothing in the DIP Loan Documents or this Order granting the Motion shall be construed



as a consent by The First, Charter Bank or Hanover, or an approval by The First, Charter Bank or Hanover of the terms of any plan or any amendment or modification thereto.

28. The Debtor requests the Court to set a period of time in its Final Order for the Debtor, creditors or parties-in-interest to challenge Charter Bank and The First's pre-petition secured positions.

**THEREFORE, IT IS ORDERED** that based upon the record presented to the Court by the Debtor, it appears that the Debtor's Motion for a Final Order for (i) Obtaining Credit, (ii) Modifying Automatic Stay, and (iii) Granting Post-Petition Liens is well taken and should be granted. The terms and provisions of this Order are hereby approved on a final basis. The Debtor is authorized to borrow funds from Blackledge pursuant to the terms of this final order. The Debtor is only authorized to utilize such funds available to it to fund essential aspects of the Debtor's operation, specifically to maintain payroll and to allow for compliance with some negotiated aspects of the disputed construction contract with the City of Waveland that will allow the Debtor-in-Possession to receive certain funds presently due and owing from the City of Waveland.

**SO ORDERED.**

**##END OF ORDER##**

**[SIGNATURES ON FOLLOWING PAGE.]**

**PRESENTED AND PREPARED BY:**

**APPROVED AS TO FORM:**

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