

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

**IN RE:
WALL GROUP INDUSTRIES, INC.
DEBTOR**

**CHAPTER 11
CASE NO. 17-80873**

EMERGENCY MOTION FOR AUTHORITY TO USE CASH COLLATERAL

Wall Group Industries, Inc. (the “Debtor” or “WGI”) moves the Court pursuant to 11 U.S.C. § 363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure for an Order authorizing it to use cash collateral pursuant to 11 U.S.C. § 363. In support of this Motion, the Debtor shows the Court:

1. On October 20, 2017 (the “Petition Date”), the Debtor filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code. The Debtor continues in possession of its assets as debtor-in-possession. No official committee of unsecured creditors has been appointed.

2. The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 151, 157 and 1334 and this is a core proceeding within 28 U.S.C. §157(b)(2). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.

3. WGI is in the business of commercial construction specializing in custom dry-wall, framing and insulation subcontract work. WGI’s clients include the federal and state governments and major museums including the Nasher and Smithsonian.

4. As is described in the adversary proceeding *Wall Group Industries, Inc. v. FFD and Olander* (the “Adversary Proceeding”), this bankruptcy filing is the direct result of inequitable conduct by Michael Olander Jr., WGI’s minority shareholder, and Olander’s improper and inequitable efforts to seize WGI’s accounts receivable for his own benefit. Many of the facts recited here are taken from the Verified Complaint with exhibits filed in that case.

5. The Debtor believes that Insulation Distributors, Inc. may have a lien in the amount of \$7,435.51 on cash collateral as that term is defined in Section 363(a) of the Bankruptcy Code. The Debtor does not believe that FFD has liens on cash collateral, and Debtor proposes that, until the Adversary Proceeding is resolved, FFD and Insulation Distributors receive a lien on cash collateral to the same extent, validity and priority as existed prior to the Petition Date.

THE FFD UCC

6. WGI was incorporated in North Carolina in or about January 2012, with Frankie Lee Byrd (“Byrd”), its president and CEO, owning all of WGI’s 100,000 shares.

7. In or about March 2015, Byrd discussed the possibility of investing in WGI with Defendant Olander.

8. WGI was at that time the victim of its own success, and the company was suffering severe cash flow issues despite being otherwise profitable.

9. Olander offered to make a substantial line of credit available to WGI in exchange for receiving 25% of the company’s shares.

10. In or about June of 2015, Byrd entered into an agreement with Olander to sell 25% of his shares in WGI to him (the “Stock Purchase Agreement”).

11. Olander agreed to two things as consideration for this substantial stake in WGI, as set forth in paragraph 2.2 of the Stock Purchase Agreement:

- a. Ten Thousand Dollars payable to Byrd; and
- b. An unrestricted line of credit for the company in the amount of Eight Hundred Thousand Dollars, with WGI and Byrd named as obligors and Olander agreeing to guarantee the payment of the obligation (the “Line of Credit”).

12. The Stock Purchase Agreement does not specify that Olander is required to provide the Line of Credit himself. In fact, Olander’s agreement to guarantee the payment of the obligation allows for the possibility of obtaining this Line of Credit from an outside financial institution.

13. On or about September 11, 2015, Olander was able to obtain an \$800,000 Line of Credit from Capital Bank, N.A. (“Capital Bank”). This Line of Credit is referred to as the Capital Bank Line of Credit.

14. On or about September 11, 2015, WGI executed a Promissory Note in favor of Capital Bank N.A. in the principal amount of \$800,00.00.

15. On or about September 11, 2015, Byrd and Olander each executed guarantees of the Line of Credit.

16. At the time WGI entered into the agreement for the Capital Bank Line of Credit, WGI also executed a Commercial Security Agreement (the “CSA”).

17. The CSA gave Capital Bank a lien on substantially all of WGI’s assets, including accounts receivable. Capital Bank filed a UCC perfecting its security interest (the “UCC”).

18. As he had agreed when he received a 25% interest in WGI, Olander guaranteed the Capital Bank Line of Credit as well.

19. In addition to arranging the Line of Credit, Olander offered to provide “back office” functions to WGI, offering bookkeeping services.

20. Upon information and belief, during the time Olander managed the back-office functions of WGI, despite hundreds of thousands of dollars being available on the Line of Credit he had arranged for the company, WGI fell behind on multiple obligations, including the payment of payroll trust fund taxes.

21. During this time, despite the frequent requests of CEO Byrd, Olander began to cut off WGI’s access to its own financial records.

22. Olander and his companies still have possession of key documents necessary for the administration of this bankruptcy, and to date they have not been provided.

23. Without documenting the amount of the purported “loans,” Olander convinced Byrd to sign a second shareholder agreement in January of 2017 in which the company gave Olander an additional 10% in equity in exchange for these purported “loans,” and Olander’s cooperation in obtaining credit beyond the \$800,000 Line of Credit.

24. In or about July of 2017 FFD, LLC (“FFD”) was formed. Its principal office address of 135 E. Martin Street, Suite 201, Raleigh, NC 27601 is also the address of several companies owned by Olander, and Olander’s counsel has represented that Olander is the owner of FFD.

25. Upon information and belief, Olander is both member and manager of FFD.

26. On or about July 31, 2017, Olander, through FFD, purchased the Capital Bank Line of Credit from Capital Bank.

27. In addition, Capital Bank purportedly assigned its security interest to Olander though FFD.

28. Upon information and belief, as part of the transaction between Capital Bank and FFD, Olander negotiated satisfaction of the guarantee obligations that served as consideration for his acquisition of a 25% interest in WGI.

29. Because Olander was a guarantor on the Capital Bank Line of Credit, he was personally obligated to satisfy that Line of Credit for the benefit of WGI.

30. Likewise, WGI was obligated to satisfy the Line of Credit, and in exchange for receiving his interest in WGI, Olander agreed to ensure that WGI met its obligation to Capital Bank.

31. By attempting to structure the transaction between Capital Bank and Olander (through FFD) as a note purchase and assignment of security interest rather than what it really was – namely satisfaction of the Line of Credit requiring cancellation of the UCC – Olander is attempting to improperly benefit from the note he had agreed to guarantee.

32. Indeed, Olander, through counsel for FFD, attempted to divert WGI's accounts receivable to himself by sending letters to WGI's creditors asserting that the UCCs gave him a right to collect these funds.

33. The FFD UCC recites that the secured collateral is:

All Business Assets and Accounts Receivable 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 accounts proceeds.)

THE INSULATION DISTRIBUTORS LIEN

34. Insulation Distributors, Inc. is a trade creditor of WGI. WGI has an outstanding balance of \$7,435.51 with Insulation Distributors.

35. On March 31, 2014, Insulation Distributors filed a UCC Financing Statement with the North Carolina Secretary of State listing “Wall Group” not “Wall Group Industries, Inc.” as the debtor.

36. Insulation Distributor’s UCC lists the following collateral:

Debtor gives and grants until Insulation Distributors, Inc. a security interest in the following described collateral, (as defined by the Uniform Commercial Code): Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, General Intangibles, Goods, Instruments, Inventory, Investment Property, and all products and proceeds therefrom, including cash and non-cash proceeds.

37. Although the discrepancies in the Debtor’s name raise issues regarding the validity of Insulation Distributors’ lien, it is likely valid.

RELIEF REQUESTED

38. The Debtor reserves for itself and any trustee subsequently appointed in this Chapter 11 proceeding or in any subsequent Chapter 7 proceeding, any and all rights to challenge, avoid, object to, set aside or subordinate any claims, liens, security interests or rights of setoff against the Debtor’s property, or the rents, profits and income generated therefrom.

39. On the Petition Date, the Debtor’s total outstanding receivables are \$290,459.00. Debtor proposes establishing a separate cash collateral account and paying those receivables into that account.

40. The Debtor is currently anticipating a continuation of operations by way of this proposed reorganization. The Debtor believes that in order to maintain existing operations and retain maximum value of its business, the Debtor will be required to incur certain operating expenses. The Debtor’s only significant source of income is through continued business operations and the resulting accounts receivable generated by them. The Debtor has no other

readily available cash with which to operate its business. As a result, the Debtor respectfully requests a preliminary hearing on this Motion to avoid closing operations down and immediate, irreparable harm to the Estate.

41. The Debtor represents that a reorganization and continuation of its operations will generate the greatest source of funds for creditors, including Olander and FFD. The Debtor will require access to the cash collateral generated by its business operations to continue operations.

42. Furthermore, if Debtor's use of cash collateral is not immediately approved, the Estate will suffer immediate and irreparable harm because it will not be able to pay its expenses from funds generated by business operations.

43. The Debtor is not aware of any other liens or security interests that could constitute "cash collateral" as that term is defined in the Bankruptcy Code.

44. Rule 4001(b)(2) of the Bankruptcy Rules states:

Hearing. The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Pursuant to Rule 4001, the Debtor respectfully requests a preliminary hearing authorizing it to use cash collateral as specified in this Motion.

45. The Debtor seeks authority to use cash collateral through and including the effective date of a confirmed plan of reorganization or liquidation, a sale of substantially all assets of the estate, or the appointment of a trustee or examiner or conversion of the case to Chapter 7, whichever may first occur; provided, however, without further notice and hearing the Debtor may not use cash collateral for any purpose other than (i) operations in the ordinary

course of business, (ii) adequate protection payments (if any) to secured creditors, or (iii) payment of allowed administrative fees, costs, or expenses.

46. To the extent that the Court is inclined to order the Debtor to make adequate protection payments to FFD, the Debtor contends that the estate and Creditors would be harmed if those payments are made directly to FFD. Instead, the Debtor proposes that any adequate protection payments ordered by the Court be paid into the trust account of Parry Tyndall White, where they can be held pending further orders of the Court regarding their distribution.

47. As for Insulation Distributors, Inc., because of the relatively small size of its debt, WGI believes that payment of \$100.00 per month

48. A copy of a proposed Order is attached to this Motion as **Exhibit “1.”**

WHEREFORE, the Debtor respectfully requests that the Court:

1. Set a preliminary hearing on this Motion so that immediate harm to the Estate can be avoided.
2. Grant the Debtor leave to pay necessary expenses using current cash collateral generated by its business operations;
3. Grant, as adequate protection, a replacement lien equal in extent, validity, and priority to the lien held by the purported secured party as of the Petition Date;
4. To the extent it orders adequate protection payments, order that those payments be made into escrow;
5. Enter an Order authorizing the Debtor’s use of cash collateral in accordance with 11 U.S.C. § 363; and
6. Grant such other relief as the Court may deem necessary and proper.

Dated: October 20, 2017

PARRY TYNDALL WHITE

/s/ James C. White

James C. White, N.C. Bar # 31859

Michelle M. Walker, N.C. Bar # 41664

100 Europa Drive, Ste 401

Chapel Hill, NC 27517

jwhite@ptwfirm.com

(919) 246-4676

(919) 246-9113 fax

ATTORNEYS FOR DEBTOR

EXHIBIT “1”

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

**IN RE:
WALL GROUP INDUSTRIES, INC.
DEBTOR**

**CHAPTER 11
CASE NO. 17-80873**

**INTERIM ORDER AUTHORIZING DEBTOR’S USE OF CASH COLLATERAL AND
PROVIDING NOTICE OF FURTHER HEARING**

THIS CAUSE was scheduled for hearing on [REDACTED] upon the Debtor’s Emergency Motion for Authorization of Cash Collateral. It appears to the Court that the terms and conditions set forth below are reasonable and appropriate, are in the best interest of the bankruptcy estate and all creditors and should be approved. It further appears to the Court that the notice of the Motion which the Debtor provided to creditors and parties in interest is adequate and proper.

THEREFORE based upon the Debtor’s Emergency Motion for Authorization of Cash Collateral, the arguments of counsel and the record in this case, the Court hereby makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. The Debtor filed its petition pursuant to Chapter 11 of the United States Bankruptcy Code on October 20, 2017 (the “Petition Date”) and operates as debtor-in-possession. A Committee of Unsecured Creditors (“Committee”) has not been appointed.
3. In or about June 2015, Frankie Byrd (“Byrd”), who was then WGI’s sole shareholder, president and CEO, entered into an agreement with Michael Olander Jr. (“Olander”) to sell 25% of Byrd’s shares in WGI to Olander (the “Stock Purchase Agreement”).
4. Olander agreed to two things as consideration for this substantial stake in WGI, as set forth in paragraph 2.2 of the Stock Purchase Agreement:
 - a. Ten Thousand Dollars payable to Byrd; and
 - b. An unrestricted line of credit for the company in the amount of Eight Hundred Thousand Dollars, with WGI and Byrd named as obligors and Olander agreeing to guarantee the payment of the obligation (the “Line of Credit”).
5. The Stock Purchase Agreement does not specify that Olander is required to provide the Line of Credit himself. In fact, Olander’s agreement to guarantee the payment of the obligation allows for the possibility of obtaining this Line of Credit from an outside financial institution.
6. On or about September 11, 2015, Olander was able to obtain an \$800,000 Line of Credit from Capital Bank, N.A. (“Capital Bank”). This Line of Credit is referred to as the Capital Bank Line of Credit.
7. On or about September 11, 2015, WGI executed a Promissory Note in favor of Capital Bank N.A. in the principal amount of \$800,00.00.

8. On or about September 11, 2015, Byrd and Olander each executed guarantees of the Line of Credit.

9. Byrd signed a second shareholder agreement in January of 2017 in which the company gave Olander an additional 10% in equity in exchange for unspecified loans, and Olander's cooperation in obtaining credit beyond the \$800,000 Line of Credit.

10. In or about July of 2017 FFD, LLC ("FFD") was formed.

11. The Debtor contends that minority shareholder Olander is the sole member of FFD.

12. On or about July 31, 2017, FFD purchased the Capital Bank Line of Credit from Capital Bank.

13. In addition, Capital Bank assigned its security interest to Olander through FFD.

14. The Debtor is not aware of any other liens or security interests against accounts receivable or inventory, the proceeds of which would constitute "cash collateral" as that term is defined in the Bankruptcy Code.

15. The Debtor asserts that the terms and condition of this Order appear to provide adequate protection of the interests of FFD in the Debtor's use of cash collateral. FFD retains all rights with respect to adequate protection, including a right to seek further relief under 11 U.S.C. §§ 361, 362, and 363 and any other remedies available under applicable law.

16. The Debtor asserts that the terms, conditions, and limitations of this Order are reasonably tailored to protect the interests of all creditors of the bankruptcy estate.

17. The requirements of the Bankruptcy Rules and the Bankruptcy Code, including without limitation Bankruptcy Rule 4001(d), have been satisfied for the Debtor's use of cash collateral and for the grant of adequate protection to FFD upon the terms set forth in this Order.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law the Court hereby ORDERS:

1. The Debtor shall maintain Debtor-in-Possession accounts into which it shall deposit all cash, checks and other cash items.
2. The Debtor shall pay all pre-petition accounts receivable it receives into a separate cash collateral Debtor-in-Possession account (the "Cash Collateral Account").
3. FFD shall each have a lien and security interest in all pre-petition accounts receivable received by the Debtor;
4. FFD shall have a continuing post-petition lien on the funds held in the cash collateral account in the same categories of property of the Debtor in which and of the same priority as FFD held a similar, unavoidable lien as of the Petition Date, and the proceeds thereof, whether acquired pre-petition or post-petition (the "Post-petition Collateral"), equivalent to a lien granted under §§ 364(c)(2) and (3) of the Bankruptcy Code, but only to the extent of cash collateral used. The validity, enforceability, and perfection of the aforesaid post-petition liens on the Post-petition Collateral shall not depend upon filing, recordation, or any other act required under applicable state or federal law, rule, or regulation.
5. The Debtor shall not use cash collateral except to pay its ordinary, necessary and reasonable post-petition operating expenses.
6. Upon reasonable prior notice, the Debtor shall provide to the Bankruptcy Administrator and representatives and/or employees of FFD all such information as they may reasonably request for the purpose of appraising or evaluating the collateral of the Debtor.

7. The terms and conditions of this Order do not necessarily constitute adequate protection of the interests of FFD in its cash collateral. Nothing in this Order shall waive any rights of FFD unless expressly provided for herein, including but not limited to the right to assert any claim pursuant to Section 507(b) of the Bankruptcy Code with priority over all other expenses of administration in this case and any ensuing Chapter 7 case. FFD retains the right to contend that the terms and conditions of this Order do not constitute adequate protection of its interests and its right to seek further relief under 11 U.S.C. §§ 361, 362 and 363.

8. The Debtor expressly reserves its right to contest the extent and validity of FFD's lien and to seek the use of the alleged cash collateral beyond the stated terms of this Order. Any party may seek further consideration of the relief granted in this Order or other cash collateral issues by filing a request with the Court; provided however that a hearing of such request shall not occur on less than five (5) business days' notice to the Bankruptcy Administrator, the Debtor, and all creditors.

9. This Order shall remain in full force and effect until the earlier of (i) entry of an Order by the Court modifying the terms of the use of cash collateral or the adequate protection provided to FFD; (ii) entry of an order by the Court terminating this Order for cause, including but not limited to breach of its terms and conditions; (iii) entry of a judgment in the Adversary Proceeding determining that FFD does not have a valid security interest; (iv) upon filing of a notice of default as provided in this Order; or (v) **DATE**.

10. The following shall constitute events of default:

- a. If the Debtor fails to deposit funds in the Cash Collateral Account as set forth in this Order;

- b. If any post-petition lender to the Debtor or any other creditor of the Debtor shall acquire a post-petition security interest in or lien upon the Post-petition Collateral having priority over the security interests and liens in such property held by FFD unless FFD expressly consents to such subordination in writing.
- c. If the Debtor falls to comply with any of the other terms and conditions of this Order;
- d. If the Debtor uses cash collateral in a manner other than as agreed in this Order;
- e. Conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code; or
- f. Appointment of a trustee or examiner.

11. Upon the occurrence of any one of the Events of Default enumerated above and thereafter upon the giving of notice of such Event of Default by FFD to the Debtor and the Debtor's failure to effect a cure thereafter within five (5) days from the giving of such notice, then (i) the Debtor shall immediately cease using cash collateral, and (ii) FFD may seek relief from the automatic stay provided by Section 362(a) to enforce its rights and remedies with respect to the Post-petition Collateral upon not fewer than five (5) business days prior written notice to the Debtor, the Debtor's counsel, and to counsel for any Committee (or if no Committee has been appointed, the 20 largest unsecured creditors of the Debtor as reflected in the Debtor's Schedules), with a copy to the Office of the Bankruptcy Administrator.

12. Upon filing of a written notice of default with the Court by FFD (which shall be served upon counsel for the Debtor by email and overnight courier and served upon the Bankruptcy

Administrator by U.S. Mail) the Debtor may request a hearing to challenge the declaration of default. The parties shall have the right to seek an expedited hearing on any challenge by the Debtor, provided, however, that such hearing shall not occur on less than three (3) business days' notice to the other parties.

13. Nothing in this Order shall be deemed to authorize or direct the Debtor to pay any pre-petition debt.

14. The Debtor shall pay all state and federal taxes as they become due and will make all tax deposits and file all state and federal returns on a timely basis.

15. The Debtor shall not dispose of any assets except pursuant to Orders of this Court obtained after due notice and hearing.

16. If any or all of the provisions of this Order are hereafter modified, vacated or stayed by any subsequent order of this Court or any other court, such stay, modification or vacation shall not affect the validity or enforceability of any lien or priority authorized or created hereby prior to the effective date of such modification, stay, vacation or final order to the extent that said lien or priority is valid, perfected, enforceable and otherwise non-avoidable as of the Petition Date. The validity and enforceability of all liens and priorities authorized or created in this Order shall survive the conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code or the dismissal of this proceeding.

17. The terms of this Order shall be binding upon any Committee (if formed), and upon any trustee subsequently appointed, including but not limited to a Chapter 7 trustee upon conversion of this case to a case under Chapter 7 of the Bankruptcy Code; provided however, the findings, conclusions, or orders set forth herein are made on an interim basis, shall not constitute a

final decision on any legal or factual issue, and are without prejudice to the right of any party to raise, contest, or seek the same or a different outcome at any subsequent hearing.

18. This Order shall be in effect until _____.

19. A further hearing (which may be a final hearing) on this Motion will be held at _____ o'clock a.m. on _____ in the Courtroom, U.S. Bankruptcy Court, _____, at which time the Court will further consider the Motion for Authority to Use Cash Collateral.

20. The Debtor shall serve a copy of this Order upon the Bankruptcy Administrator, creditors asserting a lien on any property of the estate or an interest in cash collateral, and the creditors holding the 20 largest unsecured claims, and shall file a certificate of such service with the Clerk.

END OF DOCUMENT