

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

RCJM, INC.,
d/b/a Union Auto & Truck Repair
d/b/a Magic Auto Body

Debtor.¹

Chapter 11

BK No. 1-19-10161-CLB

Hon. Carl L. Bucki

**MOTION PURSUANT TO 11 U.S.C. §§ 105, 361, AND 363 FOR
AUTHORITY TO (A) USE CASH COLLATERAL ON *EX PARTE*
EMERGENCY BASIS AND PROVIDE ADEQUATE PROTECTION, AND
(B) SCHEDULE INTERIM AND FINAL HEARINGS TO USE CASH COLLATERAL**

RCJM, Inc. d/b/ Union Auto & Truck Repair d/b/a Magic Auto Body ("RCJM" or, the "Debtor"), the debtor in the above-captioned proceeding voluntarily commenced under Chapter 11 of title 11 of the United States Code (the "Code"), by and through its proposed counsel, Baumeister Denz LLP, as and for its motion (the "Motion"), pending an interim and final hearing for interim and final orders, for an emergency *ex parte* order (the "Ex Parte Order"), pursuant to Code sections 105, 361, and 363, and rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Rules"), (a) granting authority to use cash collateral on an emergency basis, and (b) scheduling an interim and final hearings on further use of cash collateral, respectfully shows the Court as follows:

PRELIMINARY STATEMENT

1. RCJM is a New York Corporation formed in or about August 3, 2004 which

¹ The last four digits of the Debtor's federal tax identification number is 6027. See 11 U.S.C. §342(c).

has operated, and continues to operate, as a licensed auto and truck repair shop and body collision shop, providing services primarily for governmental agencies and commercial customers. RCJM operates its business at 1560 Harlem Road, W-2, Cheektowaga, New York 14206.

2. Richard Jones ("Jones"), holds a one hundred (100%) percent shareholder interest in RCJM and is its President and sole director.

3. As of the Petition Date (defined below), Proline was indebted to the following who hold or may claim an interest in cash collateral:

a. KeyBank, N.A. in the amount of approximately \$26,000, the exact amount of which is subject to review by RCJM, the United States Trustee, or any other party in interest (the "Prepetition KeyBank Indebtedness"). The Prepetition KeyBank Indebtedness represents a line of credit account, issued in or about February, 2012 originally by First Niagara Bank, N.A. (which later merged into KeyBank, N.A.). RCJM submits that KeyBank, N.A. currently holds a valid and perfected first lien against all of RCJM's personal property, including all proceeds, as evidenced by that certain UCC-1 Financing Statement filed on or about March 1, 2012 and continued on December 2, 2016 with the New York State Department of State (the "Prepetition KeyBank Lien").

b. Evans Bank, N.A. in the amount of approximately \$145,000, the exact amount of which is subject to review by RCJM, the United States Trustee, or any other party in interest (the "Prepetition Evans Bank Indebtedness"). The

Prepetition Evans Bank Indebtedness represents a term loan account, issued in or about June, 2017. RCJM submits that Evans Bank N.A. currently holds a valid and perfected second lien against all of RCJM's personal property, including all proceeds, as evidenced by that certain UCC-1 Financing Statement filed on or about June 13, 2017 with the New York State Department of State (the "Prepetition Evans Bank Lien").

c. Quarterspot, Inc. in the amount of approximately \$33,000, the exact amount of which is subject to review by RCJM, the United States Trustee, or any other party in interest (the "Prepetition Quarterspot Indebtedness"). The Prepetition Quarterspot Indebtedness represents a term loan account, originally issued in or about August, 2017. RCJM believes that Quarterspot, Inc. will claim that it currently holds a valid and perfected third lien against all of RCJM's personal property, including all proceeds, as evidenced by that certain UCC-1 Financing Statement filed on or about December 20, 2017 with the New York State Department of State (the "Prepetition Quarterspot Lien").

d. Queen Funding LLC in the amount of approximately \$18,697, the exact amount of which is subject to review by RCJM, the United States Trustee, or any other party in interest (the "Prepetition Queen Indebtedness"). The Prepetition Queen Indebtedness represents a financing agreement account, originally issued in or about May, 2018. RCJM believes that Queen Funding LLC will claim that it currently holds a valid and perfected fourth lien against all of

RCJM's personal property, including all proceeds, as evidenced by that certain UCC-1 Financing Statement filed on or about June 22, 2018 with the New York State Department of State (the "Prepetition Queen Lien").

e. New York State Department of Taxation and Finance (the "NY Tax Dep't.") in the amount of approximately \$22,500, the exact amount of which is subject to review by RCJM, the United States Trustee, or any other party in interest (the "Prepetition NY Tax Dep't. Indebtedness"). The Prepetition NY Tax Dep't Indebtedness represents unpaid sales taxes incurred in 2018. RCJM submits that the NYS Tax Dep't. currently holds a valid and perfected fifth lien against all of RCJM's personal property, including all proceeds, as evidenced by those certain tax warrants filed on or about November 28, 2018 and January 2, 2019 in the Erie County Clerk's Office and on or about December 3, 2018 and January 4, 2019 with the New York State Department of State (the "Prepetition NY Tax Dep't. Lien").

(the Prepetition KeyBank Indebtedness, Prepetition Evans Bank Indebtedness, Prepetition Quarterspot Indebtedness, Prepetition Queen Indebtedness and Prepetition NY Tax Dep't. Indebtedness, collectively, the "Prepetition Indebtedness").

(the Prepetition KeyBank Lien, Prepetition Evans Bank Lien, Prepetition Quarterspot Lien, Prepetition Queen Lien and Prepetition NY Tax Dep't. Lien, collectively, the "Prepetition Liens").

Copies of all said UCC-1 Financing Statements and tax warrant filings are

collectively attached hereto as Exhibit "A".

4. To maintain the liquidity necessary to administer this Chapter 11 case and continue its operations in the ordinary course of business, the Debtor respectfully requests authority: (i) to continue using cash collateral in the ordinary course of business subject to the Prepetition Liens (the "Cash Collateral"), during the pendency of this Chapter 11 case, in accordance with the budget attached hereto as Exhibit "B", covering the period through the week of April 29, 2019 (the "Budget"). The portion of the Budget covering the week of February 4, 2019 (the "Emergency Budget"), the portion of the Budget covering the weeks of February 11, 2019 and February 18, 2019 (the "Interim Budget"), and the remainder of the 13-week budget covering the period through the week of April 29, 2019 (the "Final Budget"); (ii) to grant adequate protection to KeyBank, Evans Bank, Quarterspot, Inc., Queen Funding LLC and the NY Tax Dep't. with respect to any potential diminution in value to the extent the Cash Collateral is actually used during the pendency of this Chapter 11 case, pursuant to the Budget, and as set forth more fully below (collectively, the "Adequate Protection"); and (iii) to schedule interim and final hearings on the relief sought by this Motion.

5. A copy of the *Ex Parte* Order is attached as Exhibit "C".

BACKGROUND

6. On January 31, 2019, the Debtor voluntarily filed its petition and commenced the above-captioned Chapter 11 proceeding (the "Petition Date").

7. The Debtor is authorized to continue to operate its business and manage its property as a debtor in possession pursuant to Code sections 1107(a) and 1108.

8. No trustee, examiner, or statutory committee of creditors has been appointed in this Chapter 11 case.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(b), 28 U.S.C. § 157(a), and the Standing Order of Reference so ordered by Hon. William M. Skretny, Chief Judge, United States District Court for the Western District of New York, on February 29, 2012. This is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(A) and (b)(2)(M). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

THE EMERGENCY AND INTERIM RELIEF REQUESTED SHOULD BE GRANTED BY THE COURT

10. By this Motion, the Debtor requests entry of an *Ex Parte* Order, pending an interim and final hearing, (i) granting authority to use the Cash Collateral on an emergency basis; and (ii) scheduling an interim and final hearing on the relief sought in this Motion. Specifically, the Debtor seeks the following:

- a. authority to use the Cash Collateral subject to the Prepetition Liens on an emergency basis pursuant to the Emergency Budget, so as to meet basic operating costs and payroll obligations of the Debtor during this Chapter 11 case, in exchange for granting Adequate Protection to holders of the Prepetition Liens in the form of roll-over or replacement liens granting

security to the same extent and with respect to the same assets as served as collateral for the Prepetition Indebtedness, to the extent the Cash Collateral is actually used, without the need of any further recordation to perfect such liens or security interests (the "Adequate Protection Liens"); and

b. scheduling interim and final hearings on this Motion.

11. Upon interim and final hearing on the relief sought by this Motion, the Debtor further seeks authority to (i) continue using the Cash Collateral in accordance with the Budget, with the Adequate Protection Liens continuing as the Cash Collateral is actually used during this Chapter 11 case; and (ii) provide KeyBank, N.A. and Evans Bank, N.A. with further Adequate Protection in the form of monthly cash payments in an amount equal to \$527.00 and \$2,340.00 per month, respectively, commencing February 28, 2019 (the "Adequate Protection Cash Payments").

A. The Debtor should be authorized to use the Cash Collateral and to provide the Adequate Protection.

12. Code section 363(c) provides that a debtor may use cash collateral in the ordinary course of business, after a preliminary hearing scheduled in accordance with the needs of the debtor. *See* 11 U.S.C. § 363(c) (2016). Parties with an interest in cash collateral are entitled to adequate protection. *See* 11 U.S.C. § 363(e) (2016). Adequate protection may be provided in various forms, including granting roll-over or replacement liens and providing cash payments. *See generally* 11 U.S.C. § 361 (2016); *see also* 495 *Cent. Park*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996). An *ex parte* order authorizing the use of cash collateral may be appropriate so as

to maintain the status quo of the debtor's operations. *See generally, Armstrong v. Norwest Bank, Minneapolis, N.A.*, 964 F.2d 797, 801 (8th Cir. 1992).

13. The Debtor has commissioned an appraisal of its assets by Cash Realty & Auctions, Inc. Attached as Exhibit "D" is a summary of the said appraisal showing an orderly liquidation value of RCJM's assets of \$150,000.

14. The Debtor does not dispute the validity and extent of the Prepetition KeyBank Lien held by KeyBank, N.A. and the Prepetition Evans Bank Lien held by Evans Bank, N.A., in the Debtor's cash proceeds, nor that the Prepetition KeyBank Indebtedness and Prepetition Evans Bank Indebtedness in the aggregate totals approximately \$171,000 - an amount substantially in excess of the overall orderly liquidation value of all of the Debtor's assets.

15. Consequently, it is evident that and the Debtor submits that the claims held by Quarterspot, Inc., Queens Funding LLC and the NY Tax Dep't are wholly unsecured as to value and the Debtor anticipates that to the extent that claims of Quarterspot, Inc. and Queens Funding LLC are allowed, they will be allowed only as unsecured claims pursuant to 11 U.S.C. § 506 and that the claim of the NY Tax Dep't will be allowed as an unsecured priority claim pursuant to 11 U.S.C. § 507(a)(8).

16. Prior to the Petition Date, the Debtor used cash collateral in the ordinary course of business to pay its ongoing operating costs and payroll obligations, the latter of which is due each Thursday.

17. In the event the Debtor is not authorized to use the Cash Collateral on an emergency basis, the Debtor will be unable to meet its various obligations as they become due, including its weekly payroll due February 7, 2018.

18. The Debtor believes and submits that in light of the foregoing, the Adequate Protection Liens and proposed Adequate Protection Cash Payments are sufficient to protect holders of Prepetition Liens from any potential diminution in value of its collateral with respect to the Prepetition Indebtedness and the Prepetition Liens, to the extent the Cash Collateral is actually used during this Chapter 11 case.

19. Accordingly, for the reasons set forth above, entry of an *Ex Parte* Order granting the above relief on an emergency basis, pending an interim and final hearing on the additional relief sought herein, is necessary to preserve the status quo of the Debtor's operations and to avert immediate and irreparable harm to the Debtor's estate.

B. Request for an Interim and Final Hearing

20. Pursuant to Rules 4001(b)(2), the Debtor requests that the Court set a date within seven (7) days after entry of the *Ex Parte* Order as a hearing for consideration of entry of an interim order on the relief sought by this Motion; and that the Court set a date more than fourteen (14) days after entry of the *Ex Parte* Order as a hearing for consideration of entry of a final order on the relief sought by this Motion.

21. The Debtor requests that it be authorized to serve a copy of the signed *Ex Parte* Order, which fixes the time and date for the interim and final hearings, by first class

mail upon the notice parties listed below. The Debtor further requests that the Court consider such notice of the Interim Hearing to be sufficient notice under Rule 4001(c)(2).

Reservation of Rights

22. Nothing contained herein is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtor, except as expressly set forth herein, (ii) a waiver of the Debtor's or any appropriate party in interest's rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under Code section 365. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtor's rights to dispute such claim, except as expressly set forth herein.

NOTICE

23. The Debtor proposes that Notice of this Motion for interim and final hearings be provided to (i) the Office of the U.S. Trustee for Region 2: Western District of New York (Buffalo Division) (Attn.: Mr. Joseph W. Allen, II, Esq.); (ii) the holders of the twenty (20) largest unsecured claims against the Debtor; (iii) KeyBank, N.A.; (iv) Underberg and Kessler, LLP, counsel to KeyBank N.A. (Attn. Mr. Timothy P. Johnson, Esq.); (v) Evans Bank, N.A.; (vi) Rupp Baase Pfalzgraf & Cunningham LLP, counsel to Evans Bank, N.A. (Attn. Mr. Daniel E. Sarzynski, Esq.); (vii) Quarterspot, Inc.; (viii) Queen Funding LLC; (ix) NY Tax Dep't.; (x) Christopher Moen, Esq., district counsel to

the NY Tax Dep't. The Debtor submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

WHEREFORE the Debtor respectfully requests entry of the *Ex Parte* Order, as well as interim and final orders, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

DATED: Buffalo, New York
February 4, 2019

BAUMEISTER DENZ LLP

By: /s/ Arthur G. Baumeister, Jr.
Arthur G. Baumeister, Jr., of Counsel
Proposed Attorneys for the Debtor
Office and P.O. Address
174 Franklin Street, Suite 2
Buffalo, New York 14202
Phone: (716) 852-1300