

Below is an Order of the Court.

  
TRISH M. BROWN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re:

Champion Excavation, Inc.,  
Debtor.

Case No. 17-61839-dwh11

INTERIM ORDER ALLOWING USE OF  
CASH COLLATERAL

THIS MATTER came before the court on the debtor-in-possession's ("DIP") Motion for Authority to Use Cash Collateral (Docket No. 9). The court having held hearings on both June 14, 2017 and June 20, 2017, having reviewed the motions of the DIP and the files and records herein, and having considered the representations of counsel and testimony of the witnesses, and it further appearing that:

1. On June 9, 2017, this case was commenced by the filing of a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The DIP, on and since such date has continued in possession of its property and operation of its business at its office located at 7664 Baker Lane, Aumsville, Oregon 97325, as a debtor-in-possession. The business of the debtor is commercial excavation work and related services. On the date of filing, the debtor was

INTERIM ORDER ALLOWING USE OF CASH COLLATERAL - Page 1 of 8

performing on several excavation contracts pursuant to which it billed and was owed for services rendered, and pursuant to which it will bill for services to be performed.

2. The DIP's President testified that on the date of filing, the debtor had \$2,000 in deposit accounts. The DIP proposes to use all of said cash. Also on the date of filing, the debtor had current billings/accounts receivable in the approximate sum of \$45,000 and the DIP will bill approximately \$125,000 on Friday, June 15, 2017, all of which will be available for use within the first four (4) weeks following filing. The non-current accounts receivable on the day of filing total approximately \$1,238,080.53. The DIP does not know how much of the non-current accounts receivable is collectible. Therefore, the DIP does not seek use of the non-current accounts receivable to fund operations.

3. The DIP contends that prior to the filing of the debtor's petition, CAN Capital Asset Servicing, Inc. ("CAN Capital") was granted a security interest by the debtor in virtually all of the assets of the company as security for its loan. CAN Capital filed its UCC Financing Statement on May 11, 2016. The balance of the loan on the day of filing was approximately \$74,557.00.

4. The DIP contends that prior to the filing of the debtor's petition, American LeaseFund, Inc. ("American") was granted a security interest by the debtor in a Caterpillar Motor Grader Model 12G, a Caterpillar Water Wagon, and virtually all of the assets of the company as security for its loan. American filed its UCC Financing Statement on November 13, 2015. The balance of the loan on the day of filing was approximately \$91,920.00. The debtor believes the value of the equipment totals \$50,000. American has taken possession of the Caterpillar Motor Grader and has received an offer of purchase in an amount sufficient to pay its claim in full.

5. The DIP contends that prior to the filing of debtor's petition, Flex Financial ("Flex") was granted a security interest by the debtor in unspecified equipment and "personal property". The UCC-1 Financing Statement was filed on February 23, 2015. The Debtor does

not recognize this creditor or that any balance is currently owed to this creditor. The DIP therefore contends that this is not a valid lien against any of the Debtor's personal property.

6. The DIP contends that prior to the filing of the Debtor's petition, Commercial Credit Group ("CCG") was granted a security interest by the debtor in a 2006 Caterpillar D6NXL Dozer with Cab, a Kalyn Lowboy Trailer, and virtually all of the assets of the company as security for its loan. The Note and Security Agreement were signed effective November 20, 2015, and CCG filed its UCC Financing Statements on November 13, 2015. The balance of the loan on the day of filing was approximately \$96,458, plus other charges, fees, and expenses recoverable under the loan documents. The Debtor believes the value of the equipment totals \$83,000.

7. The DIP also contends that among the property securing the claim of CAN Capital, American Financial, and CCG (collectively "Secured Lenders") are accounts, inventory, equipment, chattel paper, general intangibles, and the proceeds and products of such collateral; the proceeds of which constitute "cash collateral" within the meaning of 11 U.S.C. § 363(a).

8. The DIP contends that prior to the filing of the debtor's petition, the IRS filed one tax lien filed against the debtor in the amount of \$4,408.79.

9. If the DIP is not permitted to use cash collateral it will not be able to continue to operate. Exhibit 1 contains the proposed four week cash collateral budget for operating expenses. Exhibit 2 contains the proposed six month cash collateral budget.

NOW, THEREFORE, IT IS HEREBY ORDERED:

A. The DIP is authorized to use cash from the operation of the business in conformance with the Budget attached as Exhibit 1 until July 10, 2017. The DIP may expend in the aggregate one hundred ten percent (110%) of the budgeted expenses; and the DIP may expend two hundred percent (200%) of any individual line item expense.

B. To provide adequate protection to CAN Capital, American Financial, and CCG (Secured Lenders) during the term of this order:

INTERIM ORDER ALLOWING USE OF CASH COLLATERAL - **Page 3 of 8**

1. Secured Lenders shall be granted post-petition liens and security interests against the same types of property of the debtor including all post-petition cash, credit card receipts, accounts receivable, and inventory as security for any claims they may have arising from the diminution in the value of their interest in their prepetition collateral resulting from the use by the DIP thereof from and after the petition date to the same validity, extent, and priority as existed as of the petition date. The relief granted in this interim order is *nunc pro tunc* as of the petition date.

2. Excepting only those funds which are paid to the DIP subject to joint check agreements existing with all suppliers, including Corix Water Products (US), Inc. ("Corix"), which checks are to be endorsed by DIP payable to the supplier and delivered to the supplier, all funds received since the petition date or which will be received during the pendency of this case shall be deposited in the DIP's bank account or accounts and, with the exception of joint checks which will be delivered directly to the supplier, all expenses of the DIP during the pendency of this case shall be paid from such accounts. "Joint Check Agreements" are as described by Dwayne Deesing in his testimony to the Court.

Information regarding DIP's joint check agreements other than those currently existing with Corix shall be disclosed immediately to the U.S. Trustee, interested creditors, and any other party requesting such information.

a. Unless and until otherwise ordered by this Court, the "Joint Check Agreement" dated 3/31/2017 between DIP and Corix Water Products (US), Inc. and Corstone Contractors with respect to that certain project known as "Mill City Dollar General" shall remain in effect and DIP is obligated to comply with all the terms thereof.

b. Unless and until otherwise ordered by this Court, the "Joint Check Agreement" dated 3/31/2017 between DIP and Corix Water Products (US), Inc. and Corstone Contractors with respect to that certain project known as "Aumsville Dollar General" shall remain in effect and DIP is obligated to comply with all the terms thereof.

c. Unless and until otherwise ordered by this Court, any "Joint Check Agreements" entered into before June 9, 2017 between DIP and any supplier shall remain in effect and DIP is obligated to comply with all the terms thereof.

d. Without further Court order, DIP, and any supplier that insists on being paid pursuant to a "Joint Check Agreement," are authorized to enter into future joint check agreements for future construction contracts which may be obtained by the DIP in the ordinary course of DIP's business, provided that such future joint check agreements contain the same terms and conditions as the Joint Check Agreements previously referenced in this Order.

3. Debtor shall at all times maintain such insurance on the Secured Lenders' collateral as is required under the security agreements with one or more insurance companies, and shall name the respective Secured Lender as sole loss payee on such insurance policies. Debtor shall provide Secured Lenders with written evidence of adequate insurance upon request.

4. The DIP shall not use cash collateral during the pendency of the requested order for any purpose which is not authorized by the Bankruptcy Code or by an order of the court.

5. Secured Lenders shall have access to and the right to inspect the DIP's assets and properties during business hours.

6. The DIP shall timely file with the court the monthly financial statement which the DIP is obligated to file under LBR 2015 and shall produce to the U.S. Trustee all the financial information regularly required by the DIP to produce, including bank statements, check registers, proofs of sale, and all records relating to Joint Check Agreements. The DIP shall also include accounting of the joint check agreements in the Rule 2015 monthly operating reports ("MORs") which the DIP may attach to the MOR with a chart.

7. Upon reasonable notice, the DIP shall permit Secured Lenders to inspect, review, and copy any financial records of the DIP. These records shall be made available at the DIP's place of business.

8. If the DIP defaults in any of the conditions of adequate protection, Secured Lenders may provide the DIP with written notice of such default. Such notice shall also be filed with the Court and United States Trustee. If the default has not been cured within five (5) days after notice of default is mailed, the DIP's authorization to use the cash collateral shall terminate without further notice or hearing unless continued use is authorized by further order of the court.

C. Nothing contained in a cash collateral order shall constitute:

1. An admission by Secured Lenders that the protection provided to them shall not at some time become inadequate to fully and properly protect its interests and at any time it may apply to the court for additional adequate protection; or

2. An agreement to the treatment of Secured Lenders under any plan of reorganization.

D. The use of cash collateral will continue until the earlier of a default and failure to cure by the DIP, conversion to a case under Chapter 7, appointment of a Chapter 11 trustee or examiner, or dismissal, or July 10, 2017.

E. Notwithstanding any of the provisions hereof, nothing contained in the cash collateral order shall constitute a determination as to the amount, validity, or priority of any prepetition obligation, lien, or security interest of any creditor; and all rights of the DIP and other parties in interest to argue that any prepetition lien or security interest in any property of the DIP is unperfected, unenforceable, or voidable, are preserved.

F. On or before July 5, 2017, Debtor shall pay to CCG an adequate protection payment in the amount of \$2,000.

G. A final hearing on the DIP's motion, pursuant to BR 4001, shall be held by the court on July 10, 2017 at 10:00 a.m. at the U.S. Bankruptcy Court, Courtroom #3, 1001 S.W. 5<sup>th</sup> Ave., Suite 700, Portland, Oregon 97204.

###

Proponent has provided notice as required by LBR 9021-1 and received no objections during the applicable circulation period which has now expired.

Presented By:

By: /s/ Keith Y. Boyd  
Keith Y. Boyd, OSB#760701  
[keith@boydlegal.net](mailto:keith@boydlegal.net)  
The Law Offices of Keith Y. Boyd  
724 S. Central Ave., Suite 106  
Medford, OR 97501  
Tele: 541-973-2422  
Fax: 541-973-2426  
Of Attorneys for Debtor in Possession

cc:

via Manual Service:

Champion Excavation, Inc.  
POB 1400  
Aumsville, OR 97325

A+ Flagging, Inc.  
John Cramer  
PO Box 123  
Aumsville, OR 97325-0123

Allwest Underground  
Cora  
799 Valentine Ave SE  
Pacific, WA 98047-2124

Bank of the West  
James Roach  
PO Box 7167  
Pasadena, CA 91109-7167

Cal Portland  
Kim Hetzel  
PO Box 3601  
Seattle, WA 98124-3601

Capital Rental  
Mark  
5345 Commercial St SE  
Salem, OR 97306-1015

Chavarria Construction  
Colleen Chavarria  
2200 Silver Falls Dr NE  
Silverton, OR 97381-9458

Columbia West  
Jeff Maruca  
11917 NE 95th St  
Vancouver, WA 98682-2438

Commercial Credit Group  
Amanda Cullison  
2135 City Gate Ln # 440  
Naperville, IL 60563-3062

Corix Water Products  
Vicki Taylor  
11020 W Plank Ct # 100  
Wauwatosa, WI 53226-3279

HB Jaeger  
Jeff Stewart  
2840 Black Lake Blvd SW # B  
Tumwater, WA 98512-5107

High Country Fusion Company  
Beth Coonts  
PO Box 509  
Fairfield, ID 83327-0509

Key Bank  
Sandra/Tracy/Farrin  
4910 Tiedeman Rd  
Brooklyn, OH 44144-2338

Knapp, Michael E.  
2355 State St  
Salem, OR 97301-4541

Les Schwab  
Jeremy  
2275 S Santiam Hwy  
Lebanon, OR 97355-3047

INTERIM ORDER ALLOWING USE OF CASH COLLATERAL - Page 7 of 8

Marc Nelson Oil Products  
Annie Koenig  
PO Box 7135  
Salem, OR 97303-0024

Commercial Credit Group  
Amanda Cullison  
2135 City Gate #440  
Naperville IL 60563

U.S. Attorney for the District of  
Oregon  
1000 SW 3rd Ave #600  
Portland OR 97204

PetroCard Metrofueling Inc.  
John Canini  
PO Box 34243  
Seattle, WA 98124-1243

Commercial Credit Group  
Cogency Global, Inc., Registered  
Agent  
325 13<sup>th</sup> St NE #404  
Salem, OR 97301

Flex Financial  
POB 15270  
Irvine CA 92623

Raccoon Rock Products, Inc.  
Brian Phillips  
306 Shaff Rd  
Stayton, OR 97383-1028

Can Capital Asset Servicing  
2015 Vaugh Rd NW #500  
Kennesaw GA 30144

Jerry Flowers  
POB 463  
Aumsville OR 97325

Roger Langeliers Construction  
Co.  
Rick  
7145 NW Progress Ct  
Hillsboro, OR 97124-8568

Can Capital Asset Servicing  
Parris Sanz, President  
414 W 14<sup>th</sup> St #302  
New York NY 10014

CNH Industrial Capital  
PO Box 3600  
Lancaster, PA 17604-3600

Sunbelt Rentals  
Credit Manager  
PO Box 409211  
Atlanta, GA 30384-9211

Can Capital Asset Servicing  
CT Corporation System,  
Registered Agent  
388 State St #420  
Salem OR 97301

Bank of the West  
PO Box 7167  
Pasadena, CA 91109-7167

Waste Management  
Credit Manager  
Tualatin Valley Waste Recovery  
PO Box 541065  
Los Angeles, CA 90054-1065

IRS  
PO Box 7346  
Philadelphia, PA 19101-7346

Financial Pacific Leasing  
3455 S 344th Way # 300  
Federal Way, WA 98001-9546

American Leasing and Financial  
Thomas Davis, Authorized  
Representative  
11501 SW Pacific Hwy #200  
Portland OR 97223

The Attorney General of the United  
States  
Department of Justice  
10th & Constitution NW  
Washington DC 20530

Summit Leasing, Inc.  
3901 Fairbanks Ave  
Yakima, WA 98902-6394

Sonsray Machinery  
6118 Alcoa "Ave"  
Vernon CA 90058



Champion Excavation  
4 Week Cash Requirement  
6/9/2017

Cash Balance \$2,000.00

Revenue

Dollar store Aumsville	\$50,000.00
Dollar store Mill City	\$55,000.00
Misl starts	\$3,000.00
Dayton	\$35,000.00
Creekside	\$45,000.00

Retainage	\$15,000.00
-----------	-------------

Total Revenue \$203,000.00

Expenses

Dollar store Aumsville

Job Materials	(\$38,550.00)
---------------	---------------

Dollar store Mill City

Job Materials	(\$49,113.00)
---------------	---------------

Dayton

Job Materials	(\$5,000.00)
---------------	--------------

Creekside

Job Materials	(\$8,000.00)
---------------	--------------

Labor Cost	(\$39,963.00)
------------	---------------

Fuel	(\$12,000.00)
------	---------------

Sanitation	(\$750.00)
------------	------------

Telephone	(\$475.00)
-----------	------------

Utilities	(\$640.00)
-----------	------------

Total expenses	(\$154,491.00)
----------------	----------------

Net CashBalance \$50,509.00

Cash Collateral = total expenses plus contingency (\$165,000.00)

Champion Esxcavation  
Six Month Cash Collateral Plan

	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	17-Dec	
<b>Revenue</b>							
Dollar Store Aumsville	\$4,333						
Retainage	\$9,784						
Dollar Store Mill City -Change Order	\$70,170						
Retainage	\$11,254						
<b>Projected Revenue-Not yet Contracted</b>							
Dollar General Dayton	\$45,995	\$91,990	\$45,995				
Retainage	(\$2,300)	(\$4,599)	(\$2,300)	\$9,199			
Lone Oak		\$271,417	\$271,417	\$271,417	\$271,417		
Retainage		(\$13,571)	(\$13,571)	(\$13,571)	(\$13,571)	\$54,283.36	
<b>Total Revenue</b>	<b>\$139,236</b>	<b>\$345,236</b>	<b>\$301,541</b>	<b>\$267,045</b>	<b>\$257,846</b>	<b>\$54,283</b>	
<b>Job Expenses</b>							
Dollar General Dayton							
Material	\$28,471	\$37,962	\$28,471				
Subcontractors		\$2,400					
Lone Oak							
Material		\$97,126	\$97,126	\$97,126	\$97,126		
Subcontractors		\$52,154	\$52,154	\$52,154	\$52,154		
Labor	\$56,091	\$61,131	\$61,131	\$61,131	\$61,131	\$61,131	
<b>Total Job Expenses</b>	<b>\$84,562</b>	<b>\$250,773</b>	<b>\$238,882</b>	<b>\$210,411</b>	<b>\$210,411</b>	<b>\$61,131</b>	<b>\$1,056,170</b>
<b>Overhead Expenses</b>							

Rent	\$2,100	\$2,100	\$2,100	\$2,100	\$2,100	\$2,100
Insurance	\$8,400	\$8,400	\$8,400	\$8,400	\$8,400	\$8,400
Fuel	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000
Repairs	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
Telephone	\$500	\$500	\$500	\$500	\$500	\$500
Utilities	\$700	\$700	\$700	\$700	\$700	\$700
Payroll & Books	\$400	\$400	\$400	\$400	\$400	\$400
Misc	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
Total Overhead	\$30,100	\$30,100	\$30,100	\$30,100	\$30,100	\$30,100
Owner draw	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Trustee Fees	\$4,725			\$4,725		
Cash	\$36,255	\$51,104	\$110,467	\$138,026	\$154,835	\$167,170
						\$125,222