

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA**

IN RE:	*	
	*	
BENDER SHIPBUILDING AND	*	CASE NO: 09-12616-MAM-11
REPAIR CO., INC.,	*	
	*	
Debtor.	*	

**EMERGENCY MOTION FOR USE OF CASH COLLATERAL;
GRANT REPLACEMENT LIENS AND FOR EMERGENCY HEARING**

NOW INTO COURT, through undersigned counsel, comes Bender Shipbuilding and Repair Co., Inc., the Debtor herein, and moves this Court to enter an Order pursuant to Bankruptcy Code §363(c) and Bankruptcy Rule 4001(b) authorizing the use of certain cash collateral, and would respectfully show the Court, as follows:

1. On July 1, 2009, the Debtor voluntarily sought conversion of the involuntary petition filed in the above matter. The Debtor remains in possession and continues to operate its business pursuant to 11 U.S.C. §§1107 and 1108.

2. Prior to the filing of the Petition, the Debtor financed its daily business activities through the use of a factoring arrangement with Marquette Commercial Finance, a division of Marquette Business Credit, Inc., successor by merger to Marquette Commercial Finance, Inc., (“Marquette”), pursuant to the Amended and Restated Account Transfer Agreement dated September 29, 2006 between Marquette and the Debtor, as amended by the First Amendment to Amended and Restated Account Transfer Agreement executed September 18, 2007 (the “Purchase Agreement”) and a letter of credit arrangement with Marquette pursuant to the Letter of Credit Agreement dated as of December 31, 2004, (the “Letter of Credit Agreement”). The obligations of the Debtor to Marquette under the Purchase Agreement and the Letter of Credit

Agreement (collectively the “Obligations”) are secured by security interests and liens granted by the Debtor as evidenced by the Purchase Agreement, the Letter of Credit Agreement and the Amended and Restated First Preferred Fleet Mortgage dated as of December 31, 2004 between Marquette and the Debtor, recorded as Document No. 3154304 with the National Vessel Documentation Center (such agreements, together with any and all other agreements executed in connection therewith, hereinafter the “Loan Documents”). The Debtor hereby ratifies and reaffirms the validity of the Loan Documents as well as the Obligations. The Debtor also hereby ratifies and reaffirms that all the accounts receivable purchased by Marquette will not be subject to any settlement and/or compromise without the express written consent of Marquette; that the accounts receivable purchased by Marquette are not property of the estate; and, that Marquette has the right to proceed with notice and collection as it deems necessary.

3. As security for the Obligations, Marquette has a valid and perfected security interest and lien on a significant portion of the Debtor’s property (collectively the “Collateral”), including, without limitation, the Debtor’s accounts receivable and inventory and all proceeds thereof. The outstanding Obligations of the Debtor to Marquette as of the Petition Date is no less than approximately \$9,600,00.00, plus current unpaid accrued interest and other charges that may have been incurred pursuant to the Loan Documents. The Debtor acknowledges and agrees that the indebtedness owed to Marquette is not subject to any defenses, offsets, or claims of any kind by the Debtor. The Debtor hereby releases and forever discharges Marquette, each of its participants, and their respective officers, directors, employees, agents, equity owners, representatives, successors and assigns of and from all claims, demands, actions, causes of action, damages, costs, expenses, and liabilities whatsoever, known or unknown, fixed,

contingent or conditional, at law or in equity, arising in any way in connection with the Loan Documents, the Obligations or the transactions associated therewith, originating in whole or in part at any time at or before the date the court's entry of an order granting this motion, which the Debtor may now or hereafter have against any such Person, irrespective of whether any such claims, demands, actions, causes of action, damages, costs, expenses, or liabilities are based upon contract, tort, violation of law or otherwise. The Debtor believes and represents that the aggregate value of the Collateral exceeds the unpaid amount of the Obligations.

4. The Debtor has an immediate need to obtain funds to continue the operation of its businesses. At the present time it is imperative that the Debtor obtain authority from this Court, in accordance with 11 U.S.C. §363(c)(2)(B), to use cash collateral in order to maintain their business operations and protect their ability to reorganize in accordance with Chapter 11 of the Bankruptcy Code.

5. The Debtor is not aware of any substantial accounts receivable or funds that are not claimed as cash collateral by Marquette or otherwise available to fund its business operations.

6. As requested herein, the Debtor seeks limited authorization to use cash collateral in order to operate its businesses and make other payments that arise in the administration of this Chapter 11 case and in the ordinary course of business. Pursuant to §363(b)(2)(B), the Debtor requests that this Court authorize and approve Debtor's use of the proceeds of its accounts receivable as cash collateral in which Marquette holds a security interest and as specifically set forth on Exhibit "A" as defined herein. The Debtor seeks use of such collateral in an amount not exceeding \$2,251,121.00 for the period from the date an Order for relief is

entered through July 15, 2009, all pursuant to and as set forth in the period budget attached as Exhibit "A" and incorporated by reference for all purposes, provided, and for so long as, (a) the receipts set forth in the Budget in the aggregate are not less than 85% of the amount of receipts indicated for such period in the Budget and (b) the disbursements set forth in the Budget in the aggregate are not more than 15% of the amount of disbursements indicated for such period in the Budget.

7. Until such time as Marquette consents to the use or the Court enters an order approving the Debtor's use of cash collateral, the Debtor shall segregate, forward and account for, and shall not use, any cash collateral in its possession, custody or control in compliance with 11 U.S.C. §363(c)(4).

8. As adequate protection to Marquette for the Debtor's use of cash collateral, the following is proposed:

- (a) Marquette shall be given valid, binding, enforceable, and duly perfected security interests in and liens (with such replacement liens having the same extent and priority as the liens securing the Obligations immediately preceding the Petition Date) upon all of the assets of the Debtor not otherwise pledged or encumbered, and also excluding the stock in Astilleros Bender, S. de R.L. de C.V., a wholly owned subsidiary of Bender Shipbuilding & Repair Company, Inc., and the Debtor's 60% interest in BCAP, L.L.C., whose sole asset is an approximately 200 acre piece of real estate used solely as collateral for individual surety bonds on certain government projects, as well as all currently owned or hereafter acquired property and assets of Debtors of any kind or nature, whether real or personal,

tangible or intangible, wherever located, now owned or hereafter acquired or arising, and all proceeds, products, rents, and profits thereof to secure the amount of the indebtedness, equal to the diminution, if any, subsequent to the petition date, in value of Marquette's interests in the Debtor's inventory and cash collateral as that term is defined in Section 363(a) of the Bankruptcy Code, which said diminution shall be determined by the Court after notice and hearing (the "Adequate Protection Liens"). Solely to the extent necessary to facilitate the acquisition of Debtor-in-Possession financing, and upon Motion by any party in interest, this Court shall conduct a hearing regarding the necessity of the continuation of the Adequate Protection Liens. If the Court determines that no diminution has occurred and that there is no prospect for diminution, then the Adequate Protection Liens and Superpriority Administrative Claim shall be terminated upon Order of the Court. If the Court determines that either diminution has occurred, or a prospect for diminution exists, then the Court will enter an Order determining the extent to which the Adequate Protection Liens and Superpriority Administrative Claims shall continue.

- (b) With the exception of a carve out of \$200,000.00, for allowed fees and expenses of approved professionals in the case and the fees of the Bankruptcy Administrator and court costs, the Adequate Protection Liens shall have priority over all administrative expenses of the kind specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), or 726 (but excluding those of the Bankruptcy Administrator and Court Costs) of the Bankruptcy Code (also

known as a "Superpriority").

- (c) To the extent the indebtedness owed to Marquette exceeds the value of its interest in the Debtor's property, Marquette shall be given 507(b) administrative priority.
- (d) Any cash collateral collected by the Debtor that is in excess of the budget projections shall be applied to the Obligations, interest first, then fees and costs and then principal.
- (e) All proceeds of the Debtor's accounts receivable shall be jointly directed in writing to remit proceeds to the following dominion accounts, which shall be designated as Debtor-in-Possession accounts, and which are being utilized by the Debtor and Marquette, for disbursement to the Debtor subject and pursuant to the terms of the Court's order approving this Motion;

Regions Bank
Marquette Commercial Finance
ABA: 062005690
Acct: 1420347761

For ACH:

Regions Bank
Marquette Commercial Finance
ABA: 062000019
Acct: 1420347761

Payment by check
Marquette Commercial Finance
5910 N. Central Expressway – Suite 1900
Dallas, Texas 75202
For the Benefit of Bender Shipbuilding

- (f) Marquette shall be given a replacement lien on all post-petition receivables and all earned but unbilled receivables generated post-petition.

(g) The Debtor will provide to Marquette financial and operational reports to Marquette in a form and substance satisfactory to Marquette. Debtor will provide Marquette this information immediately upon a request by Marquette. Additionally, without any further request from Marquette, the Debtor will provide to Marquette, by the close of business for each week, a reconciliation and documentation of actual expenses, invoicing and collection for the preceding week.

9. Solely for the purposes of implementing the use of cash collateral under the terms of this Motion, and only to the extent necessary to implement the use of cash collateral under the terms of this Motion, the Debtor requests that the Automatic Stay be immediately lifted, vacated, modified and/or terminated with respect to Marquette.

10. The following shall be considered events of default:

- (a) Any breach of any provision, term or condition of this Motion and the Order entered thereon;
- (b) A failure by the Debtor to convert the existing case to one under Chapter 11 on or before July 1, 2009;
- (c) Expenditures by the Debtor that are in excess of the allowed percentage over the Budget in the aggregate, or a collection of receipts which is less than the allowed percentage below the Budget in the aggregate; or
- (d) The failure by the Debtor to do any of the following:
 - (1) cooperate fully with the full physical inventory in a form and substance satisfactory to Marquette, which Marquette is authorized

to begin on or before July 6, 2009; and

- (2) provide proof of insurance on the inventory showing Marquette as an additional insured and loss payee on or before July 6, 2009.

11. The Debtor must use cash collateral immediately, pending a final hearing to prevent irreparable harm to the estates and the Collateral. Therefore, the Debtor requests an expedited hearing to authorize the interim use of cash collateral pursuant to Bankruptcy Rule 4001(b).

12. Accordingly, the Debtor requires interim authorization to use cash collateral for the purposes of operating its business in the ordinary course until entry of a final Order granting further use of cash collateral. Marquette and the Debtor are currently negotiating the terms of an Interim Order and will provide a copy of the Interim Order to parties upon request.

13. Pursuant to Rule 4001 (b)(2), the Debtor respectfully requests that the Court commence a final hearing on the Debtor's Motion to Authorize Use of Cash Collateral at the earliest time convenient upon fifteen (15) days notice after service of this Motion.

WHEREFORE, premises considered, the Debtor prays that it be authorized to immediately use cash collateral and provide the adequate protection for such use as set forth above; that the Court set an emergency hearing on this motion and a final hearing after fifteen days notice after service; and that it has such other and further relief as is just.

Respectfully Submitted,

/s/ Stewart F. Peck
LUGENBUHL, WHEATON, PECK,
RANKIN & HUBBARD

Stewart F. Peck (LA#10403), *pro hac vice*
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Attorneys for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of July, 2009 a copy of the above and foregoing Emergency Motion for Use of Cash Collateral; Grant Replacement Liens and for Emergency Hearing has been served via court electronic mailing on the persons who have filed request to receive notice with the Court and on the following:

Travis M. Bedsole, Jr., Esq.
U.S. Bankruptcy Administrator
Post Office Box 3083
Mobile, Alabama 36652-3083
Travis_bedsole@alsba.uscourts.gov

/s/ Irvin Grodsky
IRVIN GRODSKY

Bender Shipbuilding Repair, Inc.

Cash Collateral Budget for the two week period ended July 15, 2009

Beginning Cash Balance

\$ 30,000 \$343,906 \$206,086 \$ 30,000

Cash Receipts:

Cash Receipts Existing Contracts
 Loan from Tom B. Bender, Jr.
 Projected Cash Receipts from New Repair Contracts

	Week Ended			Total
	3-Jul-09	10-Jul-09	15-Jul-09	
\$ 828,727	\$ 489,116	\$ 681,400	\$ 1,999,243	
\$ 330,429		\$ 330,429	\$ 330,429	
\$ -	\$ -	\$ 25,000	\$ 25,000	
\$ 1,159,156	\$ 489,116	\$ 706,400	\$ 2,354,672	

Cash Disbursements:

Payroll and Benefits
 Materials, Subcontract & Equip.
 Travel
 Office Equipment
 Rent - property
 Rent - equipment
 Waste services
 Utilities
 Safety
 Repair & Maintenance (Dry-docks and Equip)
 Miscellaneous
 Bank Fees
 Fuel, Oil & Lubricants
 Supplies (Gases for Plate Shop and Other Yrd Supplies)
 Recruiting and Training
 Office Supplies
 Legal (Non-restructuring)
 Consulting and Professional fees
 Phones
 Bids & Proposals
 Small Tools (Purchase and Repair)
 Sales Leads, Commissions and Entertainment
 Interest Payment to Senior Lenders
 Total Other Disbursements
 Total Disbursements
 Week ending cash
 Restructuring Professional Fees Incurred

\$ 747,000	\$ 247,000	\$ 516,685	\$ 1,510,685
\$ 75,000	\$ 150,000	\$ 150,000	\$ 375,000
\$ 2,000	\$ 2,000	\$ 2,000	\$ 6,000
\$ -	\$ 2,600	\$ -	\$ 2,600
\$ -	\$ 70,000	\$ 50,000	\$ 120,000
\$ -	\$ 30,000	\$ 33,500	\$ 63,500
\$ -	\$ -	\$ 3,500	\$ 3,500
\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ 2,000	\$ 2,000
\$ 12,000	\$ 12,000	\$ 12,000	\$ 36,000
\$ 1,000	\$ 1,000	\$ 1,000	\$ 3,000
\$ 500	\$ 500	\$ 500	\$ 1,500
\$ 1,000	\$ 1,000	\$ 1,000	\$ 3,000
\$ 2,000	\$ 2,000	\$ 2,000	\$ 6,000
\$ 500	\$ 500	\$ 500	\$ 1,500
\$ 1,500	\$ 1,500	\$ 1,500	\$ 4,500
\$ -	\$ -	\$ -	\$ -
\$ -	\$ 37,604	\$ -	\$ 37,604
\$ 750	\$ 750	\$ 750	\$ 2,250
\$ 500	\$ 500	\$ 500	\$ 1,500
\$ 500	\$ 500	\$ 500	\$ 1,500
\$ 1,000	\$ 1,000	\$ 1,000	\$ 3,000
\$ -	\$ 66,482	\$ -	\$ 66,482
\$ 98,250	\$ 379,936	\$ 262,250	\$ 740,436
\$ 845,250	\$ 626,936	\$ 778,935	\$ 2,251,121
\$ 343,906	\$ 206,086	\$ 133,551	\$ 133,551
\$ 35,000	\$ 35,000	\$ 35,000	\$ 105,000

EXHIBIT A