

U. S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

Order
5/5/04

1/21/04

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

CEI ROOFING, INC., et al.

Debtors

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CASE NO. 04- 35113-hdh-11
(Joint Administration Requested)

ORDER GRANTING EMERGENCY MOTION FOR ORDER UNDER 11 U.S.C. §§ 105, 363, 1107 AND 1108 AUTHORIZING (i) MAINTENANCE OF EXISTING BANK ACCOUNTS, (ii) CONTINUED USE OF EXISTING BUSINESS FORMS, AND (iii) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM

Upon the Emergency Motion for Order Under 11 U.S.C. §§ 105, 363, 1107 and 1108 Authorizing (i) Maintenance of Existing Bank Accounts, (ii) Continued Use of Existing Business Forms, and (iii) Continued Use of Existing Cash Management System (the "Motion"), filed by the debtors and debtors in possession, CEI Roofing, Inc. and its affiliated debtors (collectively, the "Debtors"), and the Court having jurisdiction to consider the Motion, having heard the evidence and statements of counsel regarding the Motion, and finding that no further notice is needed, it is therefore

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that the Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to (i) designate, maintain, and continue to use, with the same account numbers, all of the bank accounts in existence on the Petition Date, including, without limitation, those accounts identified on Exhibit A to the Motion (the “Bank Accounts”); (ii) use, in their present form, checks and other documents related to the Bank Accounts; and (iii) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; and it is further

ORDERED, that every bank at which any Bank Account is maintained is hereby authorized to continue to service and administer such Bank Account as an account of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process, honor, and pay any and all checks and drafts drawn on the Bank Account after the Petition Date by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by any bank only if specifically authorized by order of this Court; and it is further

ORDERED, that except for those checks that may be honored and paid to comply with any order of this Court authorizing payment of certain prepetition claims, no checks or draws issued on the Bank Accounts before the Petition Date but presented for payment after the Petition Date shall be honored or paid; and it is further

ORDERED, that nothing contained herein shall prevent the Debtors from opening any new bank accounts or closing any existing Bank Account as they may deem necessary and appropriate; provided, however, that any new account shall be with a bank that is insured by the Federal Deposit Insurance Corporation and organized under the laws of the United States or any of the states therein; and it is further

ORDERED, that the Debtors are authorized to continue to use their existing business and correspondence forms and checks without alteration and without the designation "Debtors in Possession" imprinted upon them, but when the current supply of checks is exhausted, the Debtors will replace them with checks containing the "Debtor in Possession" designation; and it is further

ORDERED, that if any checks are drawn in payment of any of the Obligations (as defined in the Motion) upon any of the Bank Accounts, the bank at which the Bank Account is maintained is authorized to honor upon presentation any such checks; and it is further

ORDERED, that such banks are authorized to rely on the representations of the Debtors as to which checks are in payment, honor and/or satisfaction of the Obligations; and it is further

ORDERED, that the Debtors are authorized to continue utilizing their cash management system to manage their cash, pay intercompany payables, and extend intercompany credit, in a manner consistent with the Debtors' prepetition practices; and it is further

ORDERED, that (i) that certain "Deposit Agreement and Disclosure for Non-Personal Accounts" between Wachovia Bank, National Association ("Wachovia") and the Debtors shall continue to govern the postpetition cash management relationship between the Debtors and Wachovia, and that all of the provisions of such agreement, including, without limitation, the termination and fee provisions, shall remain in full force and effect, (ii) the Debtors and Wachovia may, without further Order of this Court, agree to and implement changes to the cash management systems and procedures in the ordinary course of business, including, without limitation, the opening and closing of bank accounts, and (iii) in the course of providing cash management services to the Debtors, Wachovia is authorized, without further Order of this Court, to deduct from the appropriate accounts of the Debtors its customary fees and expenses associated with the nature

of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition, and further, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, regardless of whether such items were deposited prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items; and it is further

ORDERED, that ^{NOTWITHSTANDING THE INTERIM ORDER AUTHORIZING DIP FINANCING ENTERED} all obligations incurred by Wachovia in the course of providing cash ^{IN THIS} management services to the Debtors (the "Cash Management Claims") shall be paid and secured on ^{CASE,} a pari passu basis with the Debtor's post petition debtor-in-possession financing, if any, and if there is no such debtor-in-possession financing, then such Cash Management Claims shall be accorded superpriority status, with priority over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code; and it is further

ORDERED, that should Wachovia honor a prepetition check or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtor to honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of customary item handling procedures, Wachovia shall not be deemed to be nor shall be liable to the Debtor or its estate or otherwise in violation of this Order; and it is further

ORDERED, that nothing contained herein shall prevent Wachovia from terminating any cash management services not less than thirty (30) days prior written notice to the Debtors and upon terms reasonably satisfactory to Wachovia.

ORDERED, that the Debtor is granted an additional thirty (30) days from the Petition Date to come into compliance with Section 345 of the Bankruptcy Code, and that if the Debtor determines that it is unable to comply with the requirements of Section 345 within the thirty (30)

day period, the Debtor shall file a motion seeking authority to deviate from such requirements; and it is further

ORDERED, that the Debtors shall cause a copy of this Order to be served on all of the banks at which any Bank Account is maintained within five business days of the date of entry of this Order; and it is further

ORDERED, that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order; and it is further

ORDERED, that notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED, that all time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

END OF ORDER

Submitted By:

Charles R. Gibbs
Keith Miles Aurzada
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CERTIFICATE OF SERVICE

District/off: 0539-3
Case: 04-35113

User: sdugan
Form ID: pdf019

Page 1 of 1
Total Served: 4

Date Rcvd: May 06, 2004

The following entities were served by first class mail on May 08, 2004.

aty Charles R. Gibbs, Akin Gump Strauss Hauer & Feld, LLP, 1700 Pacific Avenue, Suite 4100,
Dallas, TX 75201
aty Keith Miles Aurzada, Akin, Gump, Strauss, Hauer & Feld, LLP, 1700 Pacific, Suite 4100,
Dallas, TX 75201
aty Randell J. Gartin, Akin, Gump, Strauss, Hauer & Feld, 1700 Pacific, Suite 4100,
Dallas, TX 75201
dbpos CEI Roofing, Inc., 3022 Wheelock, Dallas, TX 75220

The following entities were served by electronic transmission.

NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE. TOTAL: 0

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

First Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 08, 2004

Signature:

