

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 06-51848
)	Jointly Administered
CEP Holdings, LLC, et al.,)	
)	Chapter 11
Debtors)	
)	Judge Marilyn Shea-Stonum

EMERGENCY MOTION FOR RELIEF FROM STAY

Ford Motor Company (“Ford”), a party in interest, by and through its undersigned counsel, hereby requests on an emergency basis (“Emergency Motion”) that the Court, pursuant to Section 362 of Title 11 (“Bankruptcy Code”) of the United States Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure, grant to it relief from the automatic stay authorizing Ford to exercise its available state law remedies for recovery of equipment being wrongfully retained by the Debtors at their Canton, Ohio facility. A separate motion requesting an expedited emergency hearing on the relief requested herein is being filed contemporaneously with this Emergency Motion. In support of this Emergency Motion, Ford respectfully states the following.

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). The venue of this case

and this Emergency Motion is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is Section 362 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

II. FACTUAL BACKGROUND

2. These jointly administered Chapter 11 cases were commenced on September 20, 2006 (“Petition Date”) upon the filing of voluntary Chapter 11 petitions by Debtors CEP Holdings, LLC (“CEP”), Creative Engineered Polymer Products, LLC (“CEPP”), and Thermoplastics Acquisition, LLC (“TA” and, together with CEP and CEPP, “Debtors”). The Debtors continue to operate their businesses and manage their property as debtors and debtors in possession under Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed. On September 28, 2006, the Office of the United States Trustee appointed an official committee of unsecured creditors.

A. *The Parties*

3. Ford is an automotive manufacturer based in Dearborn, Michigan.

4. Debtor CEPP operates manufacturing operations in several locations, including one located in Canton, Ohio (“Canton Facility”).

5. Pursuant to agreement, Ford owns certain tools (commonly referred to collectively as the “Blow Mold”) that currently sit at the Canton Facility.¹ CEPP has utilized Ford’s Blow Mold to form and manufacture “Console Heater Ducts” for use by Ford in all of Ford’s F-Series vehicles.

¹ The Blow Mold consists of two cavity blow molds, a check fixture gauge, and related secondary assembly equipment. Upon information and belief, CEPP acknowledges that Ford owns the Blow Mold.

6. Prior to the Petition Date, Ford requested that CEPP return the Blow Mold. CEPP failed and refused to do so, citing various obligations which it has asserted remain owing from Ford. Each of the asserted obligations has proven to be unfounded.² Upon information and belief, CEPP appears to be asserting an invalid possessory lien interest in the Blow Mold.

7. Most recently, CEPP has contended that it has a right to retain the Blow Mold because of a debt that CEPP asserts is owing to it from *Ford of Australia*—an alleged debt from a separate corporation that is unrelated in any form or fashion to any obligations that may exist between Ford Motor Company and CEPP.

8. Because Ford does not owe obligations to CEPP on account any debt asserted to be owing by an Australian entity, CEPP has no possessory lien interest in the Blow Mold and it is possible, therefore, that the automatic stay does not apply. However, in the interest of caution, Ford hereby submits its emergency request that the stay be lifted to the extent it may apply.

9. Upon information and belief, the Canton Facility is one of the “Closing Facilities”³ that is being wound down to be sold at auction. The Blow Mold was built solely to Ford’s unique specifications, CEPP has no need or use for the Blow Mold other

² For example, CEPP previously asserted that Ford had “misdirected” payments for the Console Heater Ducts to CEPP’s former parent company, Carlisle. Carlisle, however, has since confirmed that CEPP received such payments on all accounts owing via a lockbox specifically established as between CEPP and Carlisle for that purpose.

³ As that term is defined in the Debtor’s Motion for Order (A) Granting Authority for the Sale of Assets pursuant to Section 363(b); (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with such Sale and Determining and Adjudicating Cure Amounts with respect to such Contracts and Leases pursuant to Section 365; (C) Establishing Bidding Procedures; (D) Setting Date for Auction and Hearing on Approval of Sale of Assets; and (E) Approving Form of Notice [docket # 103].

than as it relates to Ford, and there is no buyer, other than Ford, for the Console Heater Ducts.

10. Since well before the Petition Date, CEPP has wrongfully retained the Blow Mold, despite repeated demands from Ford that CEPP return its property. In essence, CEPP has held Ford hostage by demanding that it pay a debt owing from a separate company before Ford may have its Blow Mold back.

11. Pursuant to this guise, CEPP has placed operations at several major Ford plants in serious jeopardy. For reasons explained below, it is critical that Ford recover the Blow Mold as soon as physically possible, and in no event later than October 30, 2006, so that Ford's new supplier can ready the Blow Mold for production before the supply of Console Heater Ducts runs out in approximately three weeks.

B. *Industry Backdrop*

12. It is well known that domestic manufacturers, including automakers such as Ford, regularly utilize a system that is commonly known as "just in time delivery."

13. Just in time delivery is a cost-savings mechanism that allows automakers to reduce their in process inventory and associated costs. With the benefits of just in time delivery, however, come certain burdens—foremost of which is the risk that necessary components of vehicle assembly will not be available at a given time. When that occurs, assembly plants may be forced to shut down, causing massive layoffs and lost profits.

14. Under the just in time inventory delivery regime, the uninterrupted supply of Console Heater Ducts is necessary to continued operations at Ford assembly lines. Specifically, Console Heater Ducts are essential components of all Ford S-Series

vehicles that are manufactured at plants in Dearborn, Michigan; Kansas City, Missouri; and Norfolk, Virginia. Even a temporary interruption in the supply of Console Heater Ducts will shut down all three of these plants, causing thousands of workers to be laid off.

15. This is precisely the danger Ford and its workers face right now. Because of CEPP's wrongful retention of Ford's Blow Mold, Ford's Dearborn, Kansas City, and Norfolk operations are in serious immediate jeopardy.

16. As things currently stand, CEPP is the only supplier for this part. Fortunately, Ford has identified another supplier that is prepared to install the Blow Mold at its plant and supply Ford with Console Heater Ducts. Unfortunately, it could take longer than **four weeks** from the time the Blow Mold is removed from the Canton Facility to the time that the Blow Mold would be operational at the new supplier's plant. Given that as little as three weeks worth of Console Heater Duct inventory remains, this situation has become dire. For this reason, Ford urgently requests that the Court grant it immediate relief from the automatic stay imposed by Bankruptcy Code Section 362, to the extent that code section may apply.

III. RELIEF REQUESTED AND THE REASONS THEREFOR

17. By way of this Emergency Motion, Ford is requesting relief from the automatic stay imposed by Section 362(d) of the Bankruptcy Code in order to recover its Blow Mold. Ford has repeatedly sought CEPP's cooperation in arranging a voluntary return of the Blow Mold, but CEPP has purposely strung Ford along by raising one red herring after another, the latest being the asserted debt owing from an Australian entity. By way of this Emergency Motion, Ford respectfully requests that the Court enter an

Order authorizing it to remove the Blow Mold pursuant to Ohio law. As explained below, Ford believes it may not be prohibited from doing so by the Bankruptcy Code's automatic stay provisions. However, to the extent the automatic stay may apply to Ford's request, Ford requests emergency relief from stay to remove the Blow Mold from the Canton Facility.

A. *The automatic stay may not apply to Ford's request.*

18. Bankruptcy Code section 362(a) provides that when a voluntary petition for relief is filed, it operates as a stay, applicable to all entities of, among other things, any act to obtain possession of property of the estate. 11 U.S.C. § 362(a)(3).

19. Section 362(a) may not apply to Ford's request for authority to remove the Blow Mold, as this request does not entail an act to obtain possession of estate property.⁴ To the extent, however, that the automatic stay may apply to Ford's request, Ford hereby requests relief from stay to exercise its rights under Ohio State law to remove the Blow Mold from the Canton Facility.

B. *If the automatic stay does apply to Ford's request, Ford requests emergency relief from stay to remove the Blow Mold from the Canton Facility.*

20. Section 362(d) provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1).

⁴ See, e.g., *In re Booth*, 43 B.R. 197 (Bankr. D. Vt. 1984) (automatic stay does not apply to property that a debtor has abandoned.)

Upon a showing of cause by the moving party, the burden of proof shifts to the debtor opposing the request.⁵

21. Cause, including the lack of adequate protection of an interest in property, is a proper ground for a court to grant relief from the automatic stay. 11 U.S.C. § 362(d)(1). The statute does not define “cause,” so courts determine whether cause exists on a case-by-case basis. *In re Trident Assocs. Ltd. Partnership*, 52 F.3d 127, 131 (6th Cir. 1995); *Cloughton v. Mixson*, 33 F.3d 4, 5 (4th Cir.1994); *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990); *Laguna Associates Ltd. P’ship v. Aetna Casualty & Surety Co. (In re Laguna Associates Ltd. P’ship)*, 30 F.3d 734, 737 (6th Cir. 1994).

22. Courts have employed a balancing test to determine whether cause exists to justify stay relief: “In determining whether or not cause exists, the bankruptcy court must balance the inherent hardships on all parties and base its decision on the degree of hardship and the overall goals of the Bankruptcy Code. In considering whether ‘cause’ exists to modify the stay, the court must look at the totality of the circumstances.” *In re Cardinal Indus., Inc.*, 116 B.R. 964, 983 (Bankr. S.D. Ohio 1990).

23. Ford respectfully submits that if the automatic stay does apply to its request, ample cause exists for relief from stay under the totality of these circumstances where the Debtors will suffer no prejudice and where the uninterrupted operations of several of Ford’s major manufacturing plants hang in the balance.

⁵ The burden of proof on a motion to lift the automatic stay is a shifting one. Section 362(d)(1) requires an initial *prima facie* showing of cause by Ford; then, with the exception of a debtor’s equity in the property (which is not at issue here), section 362(g) places the burden of proof on the debtor for all other issues. See 11 U.S.C § 362(g); see also *In re Evans*, 78 B.R. 145 (Bankr. N.D. Ohio 1987). Where a party who opposes the lifting of the automatic stay imposed by section 362(a) fails to meet its burden as allocated by Section 362(g), the stay should be lifted. *In re Allstar Bldg. Products, Inc.*, 834 F.2d 898 (11th Cir.1987). The party opposing the motion cannot merely rest once the party seeking to have the stay lifted makes a *prima facie* showing it is entitled to relief.

C. Application of the Balancing Test clearly favors Ford.

24. Under the balancing test, three factors are of primary importance: (1) whether any great prejudice will result to the debtor; (2) whether the hardship to the movant by maintenance of the stay considerably outweighs the hardship to the debtor; and (3) whether the movant has a probability of prevailing on the merits of his case. *In re Bock Laundry Machine Co.*, 37 B.R. 564, 566 (Bankr. N.D. Ohio 1984). *See also In re Rexene Products Co.*, 141 B.R. 574 (D. Del. 1992). Application of the balancing test easily favors Ford.

1. There will be no prejudice to the Debtor from a lifting of the stay.

25. The Debtors will suffer no prejudice should the relief requested herein be granted because the Blow Mold is not property of CEPP's estate, CEPP has no further use for—nor other buyers of—the Blow Mold, and whatever lien rights, if any, CEPP may have with respect to the Blow Mold can still be asserted in these proceedings or elsewhere.

2. Ford will be gravely prejudiced by a maintenance of the stay.

26. The only hardships existing here are borne exclusively by Ford and its workers. Prompt return of the Blow Mold is essential to uninterrupted operations at Ford plants in Dearborn, Kansas City, and Norfolk.

27. Ford may have as little as three weeks of Console Heater Duct supply remaining. Under the best of circumstances, it will take at least four weeks before it can recover the Blow Mold and have it installed and fully running at a replacement supplier's facility.

3. Ford will prevail on the merits.

28. As previously indicated, CEPP has acknowledged that the Blow Mold is property of Ford. Ford clearly will be entitled to replevy the Blow Mold under state law. See generally O.R.C. § 2737.01 *et seq.*

29. Under the balancing test, the factors all weigh heavily in Ford's favor. Ford will not be adequately protected unless the automatic stay is lifted. Based on the totality of the circumstances, and a balancing of the relative hardships, cause clearly exists to justify granting a lift of the automatic stay in order to allow Ford to pursue its rights under Ohio State law to remove the Blow Mold. Without this relief, Ford may be forced to shut down its operations in Kansas City, Dearborn, and Norfolk.

30. Ford respectfully requests that the Court release it from its current hostage situation by allowing Ford to exercise its available state law remedies with respect to the Blow Mold, including without limitation the right to replevy the Blow Mold on an emergency basis. The Debtors will bear no hardship in having the Blow Mold removed and CEPP will maintain the ability to assert its lien rights—if it has any—with respect to the Blow Mold.

31. This Emergency Motion does not present any novel issues of law requiring further briefing. Therefore, Ford requests that the Court waive the requirement pursuant to Rule 9013-1(a) of the Local Rules for the United States Bankruptcy Court for the Northern District of Ohio for a separate memorandum in support of this Emergency Motion. Ford is not aware of any other parties claiming an interest in the Blow Mold.

IV. CONCLUSION

32. Whether the stay provisions of section 362 are applicable or not, for the reasons set forth above, Ford respectfully submits that it is entitled to emergency relief

in the form of an expedited Order granting it relief from stay to remove the Blow Mold as permitted under Ohio law. Such relief will result in no prejudice to the Debtors, and it will protect Ford by allowing it to seek the essential supply of Console Heater Ducts from an alternative supplier on a timely basis.

WHEREFORE, Ford requests that the Court enter an order (i) granting it relief from the automatic stay and authorizing it to exercise its state law remedies to replevy the Blow Mold; and (ii) granting such other and further relief to which it may be entitled.

Dated: October 18, 2006

Respectfully submitted,

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