

**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

**CREATIVE ENGINEERED POLYMER PRODUCTS, LLC’S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATED TO
MOTION FOR RELIEF FROM STAY OF FORD MOTOR COMPANY**

In response to the Court’s request at the telephonic hearing on October 19, 2006 on the motion of Ford Motor Company (“Ford”) for emergency relief from the automatic stay (the “Motion”), Creative Engineered Polymer Products, LLC (“CEPP”) respectfully submits to the Court its Proposed Findings of Fact and Conclusions of Law.

I. Proposed Findings of Fact

1. On September 20, 2006 (the “Petition Date”), Debtors CEPP, CEP Holdings, LLC (“CEP”), and Thermoplastics Acquisition, LLC (“TA” and, together with CEP and CEPP, the “Debtors”) commenced jointly administered chapter 11 cases upon the filing of voluntary petitions. On or about September 28, 2006, the Office of the United States Trustee appointed an official committee of unsecured creditors (the “Committee”).

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

3. Ford owns certain molds and tools (commonly referred to collectively as the “Blow Mold”) that have been and currently reside at the Canton Facility.¹ CEPP has been in continuous possession of the Blow Mold, and it has utilized the Blow Mold to form and manufacture “Console Heater Ducts” for use by Ford.

4. CEPP acknowledges that the Blow Mold is owned by Ford; however, CEPP believes that certain Secondary Equipment may not be owned by Ford.

5. CEPP believes that Ford owes the estate approximately \$112,800, for aged invoices remaining inventory, and certain related equipment used in production.²

6. On October 9, 2006, CEPP sent to all of its customers, including Ford, a notice (the “Notice”) informing them of CEPP’s intentions and requesting each customer to settle and pay all outstanding amounts owed to the Debtors. A copy of the Notice is attached hereto as Exhibit A.

7. CEPP contends that pursuant to Ohio Revised Code sections 1333.29 through 1333.31 (the “Molder’s Lien Law”) that it has an absolute right to retain the Blow Mold until Ford has paid all outstanding amounts owed to CEPP. Pursuant to the Molder’s Lien Law, CEPP must possess the Blow Mold in order to perfect its possessory lien. O.R.C. § 1333.31(A); *International Extrusions, Inc. v. PM Security Rolling Shutters, Inc., et al.*, 1995 Ohio App. LEXIS 3974, *10 (Attached hereto as Exhibit B).

8. On October 18, 2006, Ford filed the Motion, seeking emergency relief, pursuant to 11 U.S.C. section 362 and Federal Rule of Bankruptcy Procedure 4001. On October 20, 2006, Ford filed its proposed findings of fact and conclusion of law (the “Ford Findings”).

¹ The Blow Mold consists of two cavity blow molds, a check fixture gauge, and related secondary assembly equipment (the “Secondary Equipment”).

² On October 22, 2006, CEPP provided to counsel for Ford a proposed statement of account.

Interestingly, neither the Motion, nor the Ford Findings acknowledge or address CEPP's secured possessory lien under the Molder's Lien Law.

9. The Court held a preliminary hearing on the Motion on October 19, 2006, which was continued to October 20, 2006 (the "Hearing"), and which has been continued further to October 24, 2006.

II. Conclusions of Law

10. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and the Emergency Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

A. CEPP has a Possessory Lien Secured by the Blow Mold

11. The Molder's Lien Law is found in O.R.C. §§ 1333.29 through 1333.31. Pursuant to the Molder's Lien Law, CEPP is a "Molder," and Ford is a "Customer." O.R.C. § 1333.29(A) and (B), respectively.

12. The Molder's Lien Law states in pertinent part:

(A)(1) A molder has a lien on a die, mold, pattern, or form that is in his possession and that belongs to a customer, for the following:

(a) The amount due from the customer for plastic, metal, paper, china, ceramic, glass, or rubber fabrication work performed with the die, mold, pattern, or form, or for making or improving the die, mold, pattern, or form;

(b) The cost associated with the notification described in division (B) of this section;

(c) Costs and interest awarded in a judgment rendered pursuant to division (C) of this section.

(2) Except as provided in division (C) of this section, the molder may retain possession of the die, mold, pattern, or form until the customer pays all applicable monetary amounts described in division (A)(1) of this section or the die, mold, pattern, or form is sold in accordance with this section.

O.R.C. § 1333.31. (emphasis added)

13. Under the Molder’s Lien Law, the customer has the right to re-take possession of the mold during the pendency of a civil action by doing one of the following:

(a) The customer may deposit with the clerk of the court the amount due claimed by the molder and the cost of the notification provided by the molder pursuant to division (B) of this section, together with an amount that the court considers sufficient to cover the probable amount of the costs and interest that could be awarded to the molder if he prevails in the civil action; or

(b) The customer may deposit with the clerk of the court a bond as described in this division. The bond shall be in an amount equal to the amount due claimed by the molder, the cost of the notification provided by the molder pursuant to division (B) of this section, and an amount that the court considers sufficient to cover the probable amount of the costs and interest that could be awarded to the molder if he prevails in the civil action . . .

O.R.C. § 1333.31(C)(2).

14. The United States Bankruptcy Court for the Northern District of Ohio has addressed the Molder’s Lien Law. In *In re: Flue Gas Resources, Inc.*, Judge Speer held in favor of the molder, and in doing so, stated: “[I]t appears to the Court that the molder’s lien is a codification of a common law artisan’s lien, and therefore, should be given a liberal construction under Ohio law. Such a construction would lead the Court to find that the possession of the molds is the act which perfects the lien, . . . moreover, this finding would be consistent with the general rule that a lien which is declaratory of the common law, must be interpreted in the conformity with common law principles. 51 Am.Jur. 2nd, *Liens* § 38. Under the common law,

superior rights were typically obtained through possession of the property.” In *In re Flue Gas Resources*, 77 B.R. 628, 631 (ND OH Bankr. 1987).

15. In that case, the court would not permit the Trustee to avoid a creditor’s molder’s lien under 11 U.S.C. § 545. Similarly, the Court in this matter should not permit Ford to effectively erase CEPP’s molder’s lien by allowing Ford to take possession of the Blow Mold without full payment being rendered first.

16. In addition, the Court of Appeals of Ohio affirmed the trial court in favor of the molder on this legal issue. (1995 OH App. LEXIS 3974, *10; citing *In re Flue Gas Resources*) (The lien is perfected upon possession . . .).

B. Ford is not Entitled to Relief From the Automatic Stay

17. Bankruptcy Code section 362 provides that when a 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).

18. Under section 362, cause is a proper ground for a court to grant relief. 11 U.S.C. § 362(d)(1).

19. Courts have applied a balancing test to determine whether cause exists to justify stay relief. *In re Cardinal Indus., Inc.*, 116 B.R. 964, 983 (Bankr. S.D. Ohio 1990). Under the balancing test, three factors are generally considered by the courts: (1) whether any 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).

20. Applying this balancing test, Ford has not established sufficient cause for relief, and the Motion must be denied. Rather, Ford's remedies are set forth in the Molder's Lien Law.

21. The Debtors will suffer clear prejudice from a lifting of the stay, because under the Molder's Lien Law, the Blow Mold is the only collateral that secures CEPP's right to full payment by Ford. Lifting the stay clearly prejudices CEPP's rights, by compromising its secured claim against Ford, and it thus, compromises CEPP's estate and the rights of its creditors.

22. The hardship professed by Ford is by its own hand. A prompt return of the Blow Mold could have occurred shortly after Ford received the Notice on or about October 9, 2006, and settled its account. CEPP is prepared to turn over the Blow Mold immediately upon receipt of full payment by Ford, or the establishment of an appropriate escrow.

23. Under the Molder's Lien Law, Ford is not entitled to recover the Blow Mold until it pays CEPP in full for all outstanding amounts owed. Ford does not require an order from this Court to obtain the relief it is requesting in the Motion. Ford need only pay CEPP in full or provide a fully funded escrow pending a reconciliation of all accounts. Thus, Ford's claims fail on the merits.

24. Under the balancing test, each of the factors weigh in CEPP's favor. Based on the totality of the circumstances, there is no cause for relief, and Ford may exercise its remedies under State law. In sum, the Debtors and their creditors will suffer clear prejudice if the Motion

is granted, and the interrupted operations of Ford's manufacturing plants, if any, is by Ford's own hand. CEPP respectfully requests the Motion be dismissed.

Dated: October 23, 2006

Respectfully submitted,

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