

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

GEMCAP LENDING I, LLC,)
)
 Plaintiff,)
)
 v.)
)
 GEORGIA HYDRAULIC CYLINDER, INC.)
 and GEORGIA HYDRAULICS)
 INTERNATIONAL, INC.,)
)
 Defendants.)

Civil Action
File No. 14-1-2518-42

ORDER APPOINTING RECEIVER

WHEREAS, this matter having come before this Court on the Emergency Motion for the Appointment of a Receiver, Temporary Restraining Order, and Preliminary Injunction, and Brief of Plaintiff GemCap Lending I, LLC (“GemCap” or “Plaintiff”) in support thereof;

WHEREAS, on or about June 27, 2013, Defendants Georgia Hydraulic Cylinder, LLC and Georgia Hydraulics International, LLC (“Defendants”) executed and delivered to GemCap that certain Secured Promissory Note in the original principal amount of \$1,700,000.00 (the “Revolving Note”);

WHEREAS, on or about June 27, 2013, Defendants executed and delivered to GemCap that certain Secured Promissory Note in the original principal amount of \$2,263,500.00 (the “Term Note,” together with the Revolving Note and Term Note, collectively, the “Notes”);

WHEREAS, the Notes are secured by a first priority continuing security interest and lien upon all of Defendants’ assets, including, without limitation, all of Defendants’ accounts, equipment, fixtures, goods, and inventory all as more fully described in that certain Loan Security Agreement dated as of June 27, 2013, by and between Defendants and GemCap (“Security Agreement”);

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Rebecca Keaton
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WHEREAS, GemCap's security interest is further evidenced by that certain UCC Financing Statement File No. 044-2013-002298, filed July 1, 2013, Dekalb County, Georgia records (the "UCC Financing Statement");

WHEREAS, the Notes, Security Agreement and UCC, together with all other documents evidencing, securing or otherwise relating to the indebtedness evidenced by the Notes being hereinafter sometimes collectively referred to as the "Loan Documents;"¹

WHEREAS, the Collateral is in danger of being lost, materially injured, or impaired; that in order to protect the value of the Collateral, the Collateral should be managed under the supervision of a Receiver.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Pursuant to the provisions of O.C.G.A. §§ 9-8-1, 9-8-2, and/or 9-8-3, Hays Financial Consulting, LLC be and hereby is appointed, to serve without bond, as Receiver ("Receiver") of all personal property, business licenses, any other government permits and other tangible and intangible assets (such Collateral and assets, collectively, the "Collateral") owned by Defendants in which GemCap holds a security interest at this time pursuant to the Loan Documents executed in favor of GemCap by Defendants.

2. Upon execution of this Order, the Receiver shall have authority to take exclusive possession, control, and custody of the Collateral, and to maintain and/or repair all of the Collateral.

3. Upon execution of this Order, the Receiver shall have authority to take custody of any and all cash, proceeds, product, offspring, security deposits, rents, issues, profits, revenues

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

and accounts relating to the Collateral or arising out of the Defendants' ownership of the Collateral and otherwise due and payable to Defendants.

4. Defendants and their current or former officers, directors, members, employees, agents, representatives and/or any entity controlled by the Defendants (collectively, the "Defendants' Representatives") be and the same hereby are ordered to immediately deliver to the Receiver all of the Collateral and to fully cooperate with the Receiver including, but not limited to, providing the Receiver all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, saving accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, computer databases, sales brochures, sales and marketing materials, and any and all other documents and tangible things owned by the Defendants or used in and for the operation of the Collateral. Receiver shall not have any power, control, or access to any software, access codes of any software, or computer database of any party other than Defendants and Defendants' Representatives. Defendants and Defendants' Representatives shall also immediately turn over to the Receiver all cash, proceeds, product, offspring, security deposits, rents, issues, profits, revenues and accounts relating to the Collateral. Any failure by Defendants or Defendants' Representatives to cooperate with the Receiver as provided herein shall render Defendants or Defendants' Representatives in contempt of this Order and subject to sanctions by this Court. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to compel the cooperation of the Defendants and Defendants' Representatives or any other foregoing persons acting on behalf of or for the Defendants, to comply fully and completely with this Order. If necessary, the Receiver may request of this Court letters rogatory or commissions or supplemental orders as necessary to require out-of-state directors, officers, employees, agents, representatives, managers, attorneys, accountants, banks,

contractors, subcontractors, or any other person acting in participation with the Defendants or Defendants' Representatives, through the court of appropriate jurisdiction to comply with any of the orders of this Court.

5. Defendants and Defendants' Representatives are hereby immediately, preliminarily and permanently enjoined from: (a) interfering with the Receiver; (b) collecting any revenues from the Collateral, or withdrawing funds from any bank or other depository account relating to the Collateral or paying any funds derived from the operation of the Collateral to or for the benefit of themselves or to any party other than the Receiver or GemCap; (c) removing, destroying or depleting any assets relating to the Collateral; (d) terminating, or causing to be terminated, any license, permit, lease, contract, insurance policy or agreement relating to the Collateral or the operation of any of the businesses on the Collateral; (e) remaining in possession of the Collateral or otherwise interfering with the operation of the Collateral or the Receiver's discharge of its duties hereunder; or (f) destroying any of Defendants' Books and Records, deleting any information from computers or computer records or databases, or taking any other action to destroy or remove materials or information concerning the Collateral. Any failure by Defendants or Defendants' Representatives to comply with the terms and conditions of this Order shall render Defendants or Defendants' Representatives in contempt of this Order and subject to sanctions by this Court.

6. The Receiver is hereby authorized to hire, employ, retain, and terminate consultants, brokers, professionals and any other personnel or employees, which the Receiver deems necessary to assist it in the discharge of its duties. The Receiver is further authorized to retain legal counsel to represent it and assist it with the performance of its duties as set forth herein;

7. The Receiver shall be paid for its services at the blended hourly rate not to exceed \$275.00 and such other incentive compensation as the Receiver and GemCap may agree to. In addition, the Receiver shall be reimbursed for all expenses incurred by the Receiver on behalf of the Collateral. The Receiver, its management company, its consultants, agents, employees, legal counsel, and professionals shall be paid on a monthly basis. The Receiver shall bill for its services on a monthly basis in accordance with the fee schedule. To be paid on a monthly basis, the Receiver must file a statement of account with the Court and serve a copy on all parties each month for the time and expense incurred in the preceding calendar month. At the Receiver's discretion, this statement of account may accompany the monthly reports filed by Receiver pursuant to this Order. If no objection thereto is filed and served on or within ten (10) days following service thereof, such statement of account may be paid. If an objection is timely filed and served, such statement of account shall not be paid absent further order of the Court. In the event objections are timely made to fees and expenses, objected to fees and expenses will be paid within ten (10) days of an agreement among the parties or entry of a Court order adjudicating the matter.

8. Subject to further orders of this Court, the Receiver shall operate, manage, control and conduct the Collateral and its business and incur the expenses necessary in such operation, management, control, and conduct in the ordinary and usual course of business, and do all things and incur the risks and obligations ordinarily incurred by owners, managers, and operators of similar properties, and no such risks or obligations so incurred shall be the personal risk or obligation of the Receiver, but shall be a risk or obligation of the receivership estate. . In the event the Receiver retains existing employees, such employees are obligated to cooperate fully with the Receiver in good faith the fulfill the purposes of this Order. Defendants will remain

solely and exclusively responsible for any claims or liabilities in any way related to an employee's employment with or separation from Defendants which arise prior to the date of this Order, including any compensation insurance, severance liabilities, contractual obligations, benefit plans or liabilities related to the Worker's Adjustment and Retraining Notification Act (WARN), 29 U.S.C. §2101, *et seq.*, or similar state statutes or regulations.

9. The Receiver shall prepare on a monthly basis, commencing forty-five (45) days after its appointment, so long as the Collateral shall remain in its possession or care, reports setting forth all receipts and disbursements, cash flow, changes in the assets in its charge, claims against the assets in its charge, and other relevant operational issues that have occurred during the preceding month. The Receiver is directed to file such reports with the Clerk of this Court. The Receiver shall serve a copy of this report on the attorneys of record for the parties and may serve any other interested parties who request the same.

10. The Receiver shall pay only those bills which are reasonable and necessary for the operation of the Collateral and shall allocate funds in the following order of priority: (a) the fees and expenses incurred by the Receiver and its professionals in managing the Collateral; (b) the costs and expenses of operating the Collateral including employees' payroll, health insurance and other benefits to employees currently in effect, excluding compensation or benefits of any kind owed to Defendants, Joe Bajjani, or insiders (collectively, the "Owner Parties"), commissions due employees or independent contractors, utilities, business insurance, hazard, liability, workers' compensation and any other insurance premiums related to the protection of the interests of the property, sales, tax, general and special taxes or assessments levied on any property and improvements thereon; (c) payments to creditors including any employee wages, health insurance and other benefits to employees currently in effect and federal or state employee

withholdings which relate to the previous period prior to the appointment of the Receiver (except no wages or benefits will be paid to Owner Parties without either a stipulation from all Parties or Court approval provided to the Receiver), and which are, in the Receiver's judgment, bona fide expenses reasonably necessary for the continued operation of the Collateral. The Receiver shall obtain Court approval prior to making capital expenditures (other than emergency capital expenditures to protect the Collateral from immediate damage, and individuals on or about the Collateral from immediate threats to health and safety) or payment of unsecured debt (other than ordinary and necessary trade accounts payable), or payments other than those ordinarily and necessarily incurred in the operation of the Collateral. After reserving sufficient funds as the Receiver deems reasonable to cover one month of the expenses of the receivership, the Receiver shall pay any remaining amounts to GemCap to reduce the amounts due, owing and unpaid by Defendants and reduce the accrual of interest on such amounts.

11. Neither the Receiver nor GemCap shall be liable for any expenses incurred with regard to the Collateral prior to the Receiver taking possession of the Collateral, nor shall the Receiver or GemCap be required to use any rents or other revenues collected after the Receiver takes possession of the Collateral for payment of any expenses incurred with regard to the Collateral prior to the Receiver's taking possession of the Collateral (the "Commencement Date"). The Receiver may, upon written approval by GemCap, pay expenses incurred with regard to the Collateral prior to the Commencement Date if the Receiver deems payment of said expenses necessary for the continued operation of the Collateral.

12. The Receiver may demand, and make reasonable, good faith efforts to collect, and receive all accounts, issues and profits for the Collateral or any part of it that are owed, unpaid, and uncollected as of the Effective Date of this Order, or hereafter to become due, and may

compromise or give acquittance for accounts and payments, income or proceeds that may become due.

13. The Receiver may execute and deliver in its own name as Receiver, such documents and instruments as are necessary or appropriate to consummate authorized transactions (including, but not limited to, all documents required by any financial institution to take possession of or transfer any deposit or operating accounts).

14. The Receiver shall pay all lawful debts of the business incurred after the Commencement Date, open and maintain checking and savings accounts and the like, and do all things and incur the risks and obligations ordinarily incurred by owners, managers, and operators of similar businesses and enterprises, and no risk or obligation so incurred shall be the personal risk or obligation of the Receiver but shall be a risk or obligation of the receivership estate. If sufficient funds to operate the Collateral and its business are not available, GemCap may, in its sole and absolute discretion, advance such funds to the Receiver (the "Advances"). Nothing contained in this Order shall create any duty or obligation upon GemCap to make any Advances whatsoever. The Receiver is authorized, but not required, to receive the Advances from GemCap. If required to borrow funds from GemCap for purposes related to the Collateral, the Receiver shall issue receiver certificates to evidence any such Advances. The repayment of all such Advances shall be secured by the Loan Documents.

15. The Receiver may institute and prosecute all suits as may be reasonably necessary in the Receiver's judgment to protect the Collateral, and to defend all such suits and actions as may be instituted against the Receiver.

16. The Receiver is authorized and empowered to establish bank accounts at any bank the Receiver deems appropriate for the deposit of monies and funds collected and received in

connection with its administration of the receivership estate, provided that all funds on deposit are insured by an agency of the United States Government.

17. The Receiver may obtain and pay any reasonable price for any lawful license and, to the extent permitted by law, exercise the privileges of any existing license issued in connection with the Collateral or any business transacted with respect to it, until further order of the Court, and to do all things necessary to protect and maintain said licenses.

18. Except as otherwise provided in this Order, the Receiver shall hold and retain all money that may come into the Receiver's possession, custody, and control by virtue of its appointment and not expended for any other authorized purpose, until further order of this Court, or until the sale of the Collateral under the terms of the Loan Documents or as otherwise authorized by this Court.

19. It is Ordered that the Receiver is hereby authorized to make appropriate notification as needed to the United States Postal Service to forward delivery of any mail addressed to the Business to any Post Office box or other mail depository controlled by the Receiver.

20. Receiver shall maintain adequate insurance covering the Collateral to the same extent and in the same manner as it has heretofore been insured, or as in the judgment of Receiver may seem fit and proper, and to cause all presently existing policies to be amended by (i) adding Receiver and the receivership estate as an additional insured within ten (10) days of the entry of this Order and (ii) obtaining additional insurance providing liability coverage or otherwise covering the Collateral and its operations, and such insurance expense shall be deemed a normal, ordinary and necessary operating expense of the Collateral. If there are insufficient funds in the receivership estate to procure adequate insurance, Receiver is directed to

immediately petition the Court for instructions. During the period in which the Collateral is uninsured or underinsured, the Receiver shall not be personally responsible for any claims arising therefrom.

21. Given the urgency of the situation and the need to appoint a Receiver, the Receiver accepts this appointment without time for independent verification that appropriate insurance is in place on the Collateral or that appropriate liability or other insurance is in place to protect the assets and the receiver estate. Accordingly, the Court acknowledges that the Receiver has no responsibility or liability until such time as he/it can confirm that such insurance is in place or acquire the appropriate insurance. The Receiver will make it a priority to verify or obtain insurance coverage immediately upon this Order Appointing Receiver being entered; however, the Plaintiff, Defendant and Court acknowledge there may be a gap of time before such insurance may be in place to properly protect the assets of the estate and any employees of the estate, and that the Receiver has no responsibility or liability until such time as he/it has notified the Court by filing a notice that insurance is in place.

22. The Defendant(s) is/are ordered to immediately provide the Receiver with all available insurance information for both existing and prior insurance policies. This includes all applications, policies, riders, correspondence, endorsements, claims and other information. The Defendant(s) is/are ordered: (1) to advise the insurance agent(s) of this Order in writing, (2) designate all authority over the policies to the Receiver, and (3) take no action with regard to terminating or modifying existing insurance policies.

23. Any insurance broker, agent, carrier, or underwriter is specifically ordered by the Court to cooperate with the Receiver by timely furnishing the following: (1) copies of all insurance policies including any riders, endorsements and applications with respect to policies

related to the Receiver Estate, (2) loss history for five consecutive years or for as long as insurance has been in force if less than five years, (3) premium payment history including current status, and (4) any correspondence with insurance agents, brokers and companies. Policies shall be endorsed by the Defendants naming the Receiver as Named Insured and Loss Payee effective the date of this Order as appropriate to the type of coverage, and evidence of this policy endorsement shall be promptly supplied to the Receiver.

24. The Receiver is hereby authorized to engage insurance brokers and consultants as necessary to properly insure the assets of the Receivership.

25. Nothing contained within this Order, nor the grant or exercise of any powers provided for herein by the Receiver shall cause said Receiver to be considered a past or present owner, operator or other potentially responsible or liable party pursuant to any provision of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601, *et seq.*; the Hazardous Site Response Act (HSRA), O.C.G.A. § 12-8-90, *et seq.*; or incur liability based on ownership or operation of the Collateral pursuant to any other statutory, regulatory, common law or strict liability theory. Furthermore, to the extent hazardous substances, wastes or constituents are known or discovered to be present upon the Collateral, the Receiver shall not be considered to be in any direct or indirect contractual relationship with any party responsible for such substances, wastes or constituents pursuant to CERCLA and/or HSRA, and shall instead be considered to be acting solely in a "fiduciary capacity" with respect to the Collateral, pursuant to 42 U.S.C. § 107(n) of CERCLA and §12-8-92(7)(C) of HSRA.

26. The Receiver shall have authority and be authorized to take possession of all bank accounts containing funds associated with the Business whether in the name of the Defendants, or any other agents of Defendants, wherever located, and to open transfer and change all bank

and trade accounts relating to the assets, so that all such accounts are in the name of the Receiver.

27. The Receiver shall have authority and be authorized to sign checks on and otherwise withdraw funds from any accounts owned by or in the name of the Defendants, or for operation of the Business, howsoever they be named. The Receiver shall also be authorized to add or delete signers, including those currently authorized on the account(s). The representatives of the Receiver initially designated with authority over these accounts shall be Henry P. Lorber, Michael H. McClellan, and S. Gregory Hays.

28. In addition, it is Ordered that the Receiver shall have the authority to open and maintain bank accounts in the name of the Receiver for the use in administering and preservation of the Defendants businesses, using the Federal Employer Identification Number of the Defendants businesses, at the Receiver's discretion. Defendants shall turnover to the Receiver any and all Federal Employer Identification Number(s) or other tax identifying/reporting numbers associated with the Collateral and the Defendants' business.

29. To succeed to, take physical possession of, manage, operate, and/or renew, any licenses or permits, including but not limited to all business licenses or permits, that are presently held by the defendants or any of their related parties.

30. GemCap, or its successors or assignees, is hereby permitted, without further notice or order of this Court, to foreclose on either of the Collateral, accept a deed in lieu of foreclosure and to exercise any and all other rights and remedies provided for under the Loan Documents, at law and in equity.

31. Subject to the provisions of this Order, the Receiver shall remain in exclusive control of the Collateral, until the completion of any sale or foreclosure sale of same, or until further order of this Court.

32. Receiver shall not have a duty to obtain any environmental reports, engineering reports or other reports, tests or investigations concerning the condition of the Collateral unless (i) it is requested in writing by GemCap or (ii) it receives notice from a governmental authority of a possible violation of applicable laws, ordinances or regulations.

33. The Receiver may, at any time, resign as the receiver under this Order by providing thirty (30) days prior written notice to the Court, GemCap's counsel and Defendants, whereupon the Court will entertain an emergency motion to appoint a substitute receiver.

34. Without limiting any other rights or immunities the Receiver may have at law or in equity, the Receiver shall have no liability for acts or omissions made by or on behalf of it in its capacity as the Receiver of the Collateral, so long as such acts and omissions are made in good faith, without gross negligence, and in a manner that the Receiver reasonably believes is in the best interest of the Collateral.

35. The Court shall retain jurisdiction and supervision of all matters concerning the Receiver and the receivership. The Receiver may seek instructions and additional authority from the Court upon written notice to Bank and Defendants.

36. Nothing contained in this Order shall constitute or be deemed to constitute any waiver, release or impairment of any kind of any of the rights, powers and remedies of GemCap under the Loan Documents or applicable law, all of which rights, powers and remedies remain in full force and effect.

37. If a Defendant files or is the subject of a bankruptcy petition during the receivership, the Receiver shall, as soon as possible after being advised of such bankruptcy petition, give prompt notice of the bankruptcy case to the Court, and to all other parties to this action, if any.


38. If the Receiver receives notice that a bankruptcy petition has been filed and part of the bankruptcy estate includes personal property that is the subject of this Order, the Receiver shall have the following duties:

- a. The Receiver shall immediately contact GemCap and determine whether that party intends to move in the bankruptcy court for an order for (1) relief from the automatic stay, and (2) relief from the Receiver's obligation to turn over the property (11 U.S.C. § 543). If the party has no intention to make such a motion, the Receiver shall immediately turn over the property constituting the receivership estate to the appropriate entity: either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession and otherwise comply with 11 U.S.C. § 543.
- b. If GemCap intends to seek relief immediately from either the automatic stay and the Receiver's obligation to turn over the property of the receivership estate, the Receiver may remain in possession and preserve the property of the receivership estate pending the ruling on such motion(s) (11 U.S.C. § 543(a)). The Receiver's authority to preserve the property comprising the Receivership estate during this period shall be limited as follows:
 - i. The Receiver may continue to collect rents and other income;
 - ii. The Receiver may make only those disbursements necessary to operate, preserve and protect the receivership estate's property;

- iii. The Receiver shall not execute any new rental, sales contracts, or other long-term contracts or leases; and
 - iv. The Receiver shall do nothing that would effect a material change in the condition of the receivership estate's property.
- c. If GemCap fails to file a motion within ten (10) court days after receipt of notice of the bankruptcy filing, the Receiver shall immediately turn over the receivership estate's property to the trustee in bankruptcy, if one has been appointed or, if not, to the debtor in possession and otherwise comply with 11 U.S.C. § 543.

39. A copy of this Order shall be served upon each of the parties entitled to receive notice of the hearing with respect to the foreclosure.

This the 9 day of April, 2014. at 3:35 p.m.



Judge
Superior Court Judge
Cobb County, Georgia