

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

COBB COUNTY, GA
FILED IN OFFICE
2014 JUN -5 PM 2: 25

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

Rebecca Heston
Civil Action COBB SUPERIOR COURT CLERK
File No. 14-1-2518-42

RECEIVER'S FIRST AND FINAL REPORT

Hays Financial Consulting, LLC (the "Receiver"), the court-appointed Receiver for Georgia Hydraulic Cylinder, Inc. and Georgia Hydraulics International, Inc., (collectively, the "Company") files its First and Final Report showing the Court as follows:

INTRODUCTION AND BACKGROUND

1. This matter originally came before the Court on the Emergency Motion for the Appointment of a Receiver, Temporary Restraining Order, and Preliminary Injunction, and Supporting Brief (the "Receiver Motion") filed on April 9, 2014 by Plaintiff GemCap Lending I, LLC ("GemCap").

2. At that time, GemCap held a first priority security interest upon substantially all of the Company's assets¹ pursuant to certain loan documents, including two promissory notes in the aggregate principal amount of \$3,963,500.00, that were executed by the Company in favor of GemCap on or about June 27, 2013 (collectively, the "Loan Documents"). A UCC Financing

¹ As discussed more fully in footnote 2 below, the Receiver believes that GemCap did not have a security interest in commercial tort claims belonging to the Company, including any claims against the Company's officers and directors.

Statement evidencing GemCap's security interest in the Company's assets was filed in DeKalb County, Georgia records on or about July 1, 2013.

3. As more fully described in the Receiver Motion, the Company was in material default under the Loan Documents at the time the Receiver Motion was filed.

4. On April 9, 2014, the Court granted the Receiver Motion on an interim basis and appointed the Receiver as the receiver of all of the Company's assets. On the same day the Receiver retained Scroggins & Williamson, P.C. to represent it in connection with the receivership action.

5. On the morning of April 10, 2014, before the Receiver was able to take control of the Company's assets, the Company filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court").

6. S. Gregory Hays was appointed as Chapter 11 Trustee of the Company's bankruptcy estates on April 11, 2014.

7. By order entered on April 14, 2014, the Bankruptcy Court dismissed the chapter 11 bankruptcy cases of the Company. At that point, the Receiver assumed control over the Company's assets.

8. On April 24, 2014, this Court entered the Final Order Appointing Receiver (the "Final Receiver Order"), in which the Receiver was appointed on a final basis nunc pro tunc to April 9, 2014.

9. On May 6, 2014, the Receiver filed a Budget with the Court in accordance with Paragraph 7 of the Final Receiver Order.

STATUS REPORT

10. At the time the Receiver was appointed, substantially all of the Company's physical assets were located in a building located at 260 The Bluffs, Austell Georgia (the "Premises"), which the Company leased from McNutt Service Group, Inc. ("McNutt"). McNutt is believed to be owned and controlled by one or more of the principals of the Company and was (and remains) a debtor-in-possession in a chapter 11 bankruptcy case pending in the Bankruptcy Court.

11. Pursuant to certain agreements (the "Access Agreements") between GemCap, McNutt and McNutt's primary lender, GemCap was authorized to enter and use the Premises for a period of time following a default by the Company under the Loan Documents to, among other things, remove, maintain, operate, transfer and/or sell GemCap's collateral.

12. Pursuant to paragraph 30 of the Final Receiver Order, GemCap was deemed to remain in control of and permitted to use the Premises in accordance with the Access Agreements. Said paragraph also granted the Receiver "a reasonable right of access to and use of" the Premises in order to perform the Receiver's duties as specified in the Final Receiver Order; provided, however, that the Receiver would not be deemed to have assumed any lease of the Premises or be subjected to any liabilities for rent or other obligations set forth in the applicable lease agreement.

13. Upon reviewing the Company's books and records the Receiver determined that none of the Company bank accounts held any cash, with the exception of an account with Chase Bank. The Receiver promptly closed the Chase Bank account and deposited the funds obtained (\$25,658.45) into the Receiver's case account. The Receiver also requested all of banks at which

Company bank accounts were maintained to freeze such accounts. There are two bank accounts with BB&T which have negative balances that the bank would not close.

14. The remaining assets of the Company consisted primarily of machinery, equipment, and accounts receivable. As the Company had very limited funds with which to operate, GemCap advanced funds for the receivership estate in accordance with paragraphs 7 and 14 the Final Receiver Order.

15. The Receiver, with approval of GemCap and consistent with the Budget, continued production for a limited time on a limited scale, employing a workforce of approximately 20 people, to complete orders that required little or no materials purchase beyond that available from existing inventory. This production began on April 18 and continued through May 9, 2014, and enabled the shipping of an additional \$250,000 worth of product to customers.

16. In further reviewing the Company's books and records, the Receiver and GemCap determined that the existing accounts receivable statements were overstated by several hundred thousand dollars. Accordingly, the Receiver has worked diligently to produce an accurate representation of the Company's accounts and other books and records.

17. Per Paragraph 29 of the Final Receiver Order, the Court gave GemCap the authority to sell its collateral pursuant to the terms of the Loan Documents and applicable law. On May 13, 2014 (the "Sale Date"), GemCap held a public auction of its collateral at the offices of GemCap's counsel in Atlanta, Georgia, which was witnessed by counsel for the Receiver. Approximately 20 interested buyers initially signed NDA agreements in connection with the proposed sale. Potential bidders included both strategic and financial oriented parties. Yates Industries, Inc. (the "Buyer") submitted the highest and best bid at the auction for substantially

all of GemCap's collateral in the amount of \$4,100,000.00 (Four Million and One Hundred Thousand Dollars).² The sale was documented and promptly closed on or about the Sale Date.

18. Accordingly, following the Sale Date, the Company no longer had any economic interest in any assets at the Premises and the Receiver has not accessed or used the Premises for any purposes since that date. To the extent the Buyer has occupied or made use of the Premises or the collateral since the Sale Date, it has presumably done so pursuant to GemCap's authority under the Access Agreements and/or the sale agreement with GemCap. To the extent any assets remain on the Premises in which the Company (or any other entity) has an interest, the Receiver abandons those assets. The Buyer has notified the Receiver that it has acquired insurance for the Company's assets that it acquired, and the Receiver has notified the Buyer that it has cancelled or will promptly cancel any of the Company's insurance policies with respect to those assets and the Premises. To the extent any such insurance policies have not been cancelled as of the hearing on the Receiver's motion to approve this Final Report, the Receiver will request authority to cancel such insurance policies.

19. Currently, approximately \$1,500.00 remains in the Receiver's bank accounts ("Remaining Funds"). Other than the limited funds that were located in an account with Chase Bank as noted above, the receivership estate has been wholly funded by advances from GemCap made pursuant to the Final Receivership Order. GemCap alleges that is currently owed

² As noted in footnote 1 above, the Receiver believes that any claims of the Company against its directors and officers (the "D & O Claims") were not part of GemCap's collateral and thus were not purchased by or transferred to the Buyer. Moreover, upon reviewing the Company's documents, the Receiver determined that the Company held a directors' and officers' liability policy (the "D & O Policy") with a maximum coverage of \$1,000,000.00 (One Million Dollars). On May 13, 2014, the Receiver has provided notice of D & O Claims against the Company's officers and directors, and notified the insurance carrier under the policy of such claim. The Receiver and the Buyer are currently in discussions as to whether the receivership estate or the Buyer owns the D & O Claims and the right to any proceeds from the D & O Policy. At this point, no definitive decision has been reached on these issues. In the meantime, the Receiver continues to investigate the D & O Claims, and is consulting with attorneys who may wish to pursue the D & O Claims on behalf of the receivership estate on a contingency fee basis.

approximately \$4,400,000 (Four Million Four Hundred Thousand Dollars) by the Company for the obligations due under the Loan Documents and the advances to the Receiver. An accounting provided by GemCap to substantiate this obligation has been provided to the Receiver.

20. Because the auction yielded only \$4.1 million for the Collateral, there were not sufficient funds realized from the auction to satisfy the full amount of GemCap's secured claim against the Company. Accordingly, unless significant funds are generated for the receivership estate from the D&O Claims, there will be no funds available to pay any creditors of the Company other than GemCap. The Receiver estimates the total amount of obligations owed to the non-GemCap creditors to total approximately \$450,000.

21. The Receiver has created a sources and uses of funds statement that summarizes the activity that occurred between the appointment date of the Receiver and the Sale Date. This statement is attached as Exhibit A.

RECEIVER RECOMMENDATIONS

22. As noted above, the Company does not appear to have any material assets remaining other than the D & O Claims and there are no funds currently available to pay to any creditors. Accordingly, the Receiver recommends that the receivership be terminated as soon as possible, subject to reopening as discussed below.

23. In order to minimize the cost and expenses to the receivership estate, the Receiver recommends that the receivership be terminated; provided, however that Hays Financial Consulting LLC (i.e., the current Receiver) be appointed as Litigation Agent for the receivership estate, be assigned the Company's interest in the D & O Claims and the D & O Policy, and be granted the authority to investigate, prosecute, settle or abandon the D & O Claims in its sole discretion, including retaining one or more firms to pursue the D & O Claims on a contingency

fee basis. The Receiver makes no representation as to the viability of the D & O Claims or whether any recovery will be realized in pursuing such claims. The Litigation Agent will not bill the receivership estate for any services rendered by it or any attorneys it retains in connection with investigating or pursuing the D & O Claims unless there is a recovery realized on those claims. If and when such a recovery is realized, the Litigation Agent will move this Court to reopen this receivership for the sole purpose of making distributions to creditors. At that time, the Receiver will notify the creditors of the receivership estate of such recovery and initiate a process for distributing any net recovery to the holders of valid claims against the receivership estate.

24. The Receiver recommends that the Court authorize it to immediately abandon all equipment, materials, supplies, documents, records and any other assets or items located at the Premises in which the Company (or any other entity) may hold or assert an interest to the extent that it has not already done so.

25. The Receiver recommends that the Court authorize it to immediately cancel all insurance policies of Company, including any such insurance policies relating to the Company's assets or the Premises, to the extent that it has not already done so.

26. The Receiver requests that the Court enter an order (i) relieving the Receiver from its duties as Receiver and from any further or other obligation imposed pursuant to the Receiver Order; and, (ii) releasing and discharging the Receiver and its employees and counsel from any and all claims and causes of action which might be brought against it for matters arising from its administration of the assets, including, but not limited to, the sale of the assets, and any claim concerning or relating to the filing of any local, state or federal tax returns for any of the

Defendants herein and/or the reporting of any income, assets or tax consequences to any person or entity.

PROFESSIONAL FEES AND EXPENSES

27. The Receiver team worked a total of 550 hours and incurred fees and expenses of \$ 151,616.07 through May13, 2014. The Receiver's fee arrangement, per the Final Receiver Order, includes a capped blended rate of \$275 per hour. The Receiver's actual blended rate was approximately \$ 272.94 per hour for work performed through May13, 2014. The Receiver will request the Court to approve those fees and expenses.

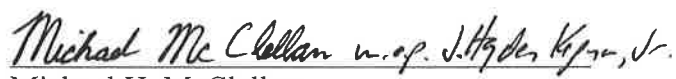
28. As the receivership estate does not have funds to pay the Receiver's fees and expenses, the Receiver requested that GemCap pay such fees and expenses per the Final Receiver Order. On May 29, 2014, the Receiver received a payment of \$132,923.57 from GemCap. The Receiver has agreed to accept this amount from GemCap for the Receiver's fees and expenses through May 13, 2014, and will bill the receivership estate for the additional amount due through May 13, 2014 if additional funds become available to the receivership estate

29. Counsel for the Receiver incurred fees and expenses of \$43,684.00 for services performed on behalf of the Receiver and the receivership estate through May 13, 2014. On May 29, 2014 the Receiver's counsel received a payment from GemCap in the amount of \$ 36,817.50. The Receiver's counsel has agreed to accept this amount from GemCap for the its fees and expenses through May 13, 2014, and will bill the receivership estate for the additional amount due through May 13, 2014 if additional funds become available to the receivership estate.

30. The principal activities of the Receiver after May 13, 2014 involved or will involve revising the sale documents, reviewing GemCap's accounting of the use of the sale proceeds, communicating with GemCap, the Buyer and their respective counsel regarding

transition issues, payment of utilities, insurance, security and related matters, closing the case,, drafting the final report of the Receiver, researching and paying any post-appointment liabilities, ensuring that neither the Receiver nor the receivership estate incurs any further liabilities, and the organization, retention and/or disposition of various records and documents.. Assuming there are no contested matters or unforeseen events in connection with closing this case, the Receiver estimates its remaining fees and expenses to close this case and perform its final obligations will total approximately \$15,000, and that its counsel's remaining fees and expenses will total approximately \$5,000. The Receiver will seek approval of these remaining fees and expenses by the Court and payment of a portion of such fees and expenses from GemCap and/or the Buyer to the extent agreed to by the parties or otherwise ordered by the Court. To the extent that any approved fees and expenses of the Receiver or its counsel remain unpaid by GemCap or the Buyer, the Receiver will seek payment of such fees and expenses from any additional funds that may become available to the receivership estate.

Respectfully submitted this 5th day of June, 2014.


Michael H. McClellan
For the Receiver,
Hays Financial Consulting, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that on the date set forth below, the RECEIVER'S FIRST AND FINAL REPORT was served by first class U.S. Mail, postage prepaid, and by electronic mail, if applicable, to the following:

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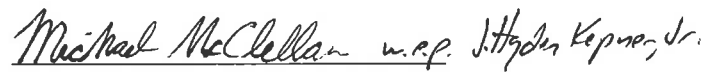
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Department of the Treasury
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This 5th day of June, 2014.

Hays Financial Consulting, LLC

 *Michael H. McClellan* w.r.p. *J. Hayden Kepner, Jr.*

Michael H. McClellan

For the Receiver:

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