

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:

NITRO FLUIDS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-60018 (CML)

(Jointly Administered)

Related Docket No. 18

**LIMITED OBJECTION OF BLUE SKY BANK
TO DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (A) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION
FINANCING, (B) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL,
(C) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (D) GRANTING ADEQUATE PROTECTION,
(E) MODIFYING THE AUTOMATIC STAY, (F) SCHEDULING A FINAL HEARING,
AND (G) GRANTING RELATED RELIEF**

Blue Sky Bank, for its limited objection to the Debtors' above-referenced DIP financing and cash collateral motion [Doc. #18] (the "Motion"), respectfully states as follows:

Introduction

1. These Chapter 11 cases were commenced on May 15, 2024.
2. The Motion was filed on May 17, 2024.
3. The Court entered an interim order, granting the Motion on an interim basis, on May 22, 2024 [Doc #44] (the "Interim Order").
4. The Interim Order set a deadline of June 3, 2024 at 10:00 a.m. (Prevailing Central Time) for filing objections to the Motion.
5. Accordingly, this limited objection is timely.

¹ The Debtors in these Chapter 11 cases are Nitro Fluids, LLC, NFH Leasing, LLC, and Straitline Pumps, LLC.

6. The Debtors have not yet filed schedules of assets and liabilities, nor their statements of financial affairs. On May 30, 2024, a Committee of Unsecured Creditors was appointed [Doc. #78] (the “Committee”).

7. For the reasons explained below, Blue Sky Bank objects to the proposed post-petition DIP financing to the extent it proposes the granting of priming liens against the collateral of Blue Sky Bank; or, alternatively, to the extent that any such priming liens attach to the collateral of Blue Sky Bank, for DIP loan proceeds provided to Debtors, Nitro Fluids, LLC and NFH Leasing, LLC, rather than Blue Sky Bank’s borrower, Debtor Straitline Pumps, LLC (“Straitline”).

8. Blue Sky Bank also objects to the extent that the Debtors propose to excuse Simmons Bank from filing any proof(s) of claim in these cases.

Background

9. On or about June 5, 2023, as part of a refinancing of two prior term notes and a revolving line of credit, Straitline, as borrower, entered into a *Loan and Security Agreement* (the “Loan Agreement”) with Blue Sky Bank.

10. Pursuant to the Loan Agreement, for good and valuable consideration, Straitline made, executed and delivered to Blue Sky Bank a *Promissory Note* (the “Blue Sky Note”) in the original principal amount of \$15,000,000, payable with interest under its terms.

11. Pursuant to the Loan Agreement, the Blue Sky Note is secured by, among other things, all business assets of Straitline, including, perhaps most significantly but not limited to, all equipment of Straitline (the “Blue Sky Collateral”). Blue Sky Bank’s security interest in the Blue Sky Collateral is fully perfected in accordance with applicable law. As of May 15, 2024, Blue Sky was owed \$15,432,130.96.

12. This limited objection is submitted because the Motion is in some respects vague regarding the Blue Sky Collateral and seems to suggest that a priority dispute may exist between Blue Sky Bank and Simmons Bank. The Motion alludes to – without explaining the basis for – a potential conflict between Blue Sky Bank and Simmons Bank, stating: “The Debtors believe that Blue Sky will assert that obligations owing under the Blue Sky Note are secured by liens in certain assets of Straitline.” (Motion, p. 12, ¶ 26.)

13. At the same time, according to the Motion, the proposed DIP lender, Simmons Bank, which is also the “Prepetition Fluids Lender” (*i.e.*, prepetition lender to Debtor Nitro Fluids, LLC) holds a claim secured by “assets of certain of Fluids’ non-Debtor affiliates” and “certain assets of Straitline.” (Motion, pp. 7-10.)

14. Presumably in an effort to maintain the status quo, the Interim Order states: “Nothing in this Order shall determine the extent or priority of the Blue Sky Liens or of any other right, lien, claim or encumbrance, if any, of Blue Sky on or to the Pre-Petition Collateral or the Cash Collateral.” (Interim Order, pp. 6-7, ¶ J.)

15. This posturing leaves Blue Sky Bank uncertain of its need for adequate protection of its interests. The Debtors propose none for Blue Sky Bank, and Blue Sky Bank has not consented to post-petition DIP liens priming its security interests.

16. To be clear, Blue Sky Bank maintains that it holds first-priority security interests in the Blue Sky Collateral, including but not limited to the equipment of Straitline, senior to the security interest, if any, of Simmons Bank.

Argument and Authorities

I. The Debtors have not demonstrated that Blue Sky Bank's first-priority liens and security interests are adequately protected, and therefore may not obtain post-petition liens priming those interests.

17. Blue Sky Bank supports the Debtors' sale efforts and does not dispute the Debtors' need for Debtor in Possession (DIP) financing and the use of cash collateral. However, 11 U.S.C. § 364(d)(1) requires, as a condition to authorizing priming liens as requested by the Debtors, that "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." The Debtors bear the burden of proving adequate protection. *See, e.g., In re YL W. 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) ("Under section 364(d), the trustee or DIP has the burden of proof on the issue of adequate protection.")

18. The Debtors acknowledge this requirement, but simply pass over the interests of Blue Sky Bank and assert that they need not provide adequate protection because the Prepetition Lender and proposed DIP Lender – Simmons Bank – consents. (Motion, pp. 29-30.) Despite the fact that the Debtors acknowledge the existence of Blue Sky Bank's secured claims, to the extent proof of adequate protection has been provided in connection with the DIP financing sought, it has only been provided to Simmons Bank and not Blue Sky Bank.

19. The Motion makes no mention of adequate protection for Blue Sky Bank's interests, and Debtors have neither sought nor obtained the consent of Blue Sky Bank to any priming liens.

20. Absent satisfactory proof that the Blue Sky Collateral will be adequately protected, Blue Sky Bank objects to any post-petition liens priming its pre-petition security interests in the Blue Sky Collateral. The same analysis applies to the Debtors' use of cash collateral that constitutes Blue Sky Collateral.

21. The Debtors have sought and obtained the joint administration of these three bankruptcy cases, not the substantive consolidation of these Debtors. In the event that the Court allows the lien securing Simmons Bank's DIP loan to prime Blue Sky Bank's security interest in the Blue Sky Collateral – which can only occur on satisfactory proof of adequate protection of Blue Sky Bank's security interests – such priming should only be permitted to the extent of the DIP funds that are provided to and actually used by Straitline for its post-petition operations, and not to DIP funds furnished to either of the other two Debtors.

22. In other words, absent substantive consolidation of these Debtors, there is no justification for securing the post-petition debt of one Debtor with assets belong to the other Debtors, absent compelling proof that doing so will not impair the secured claim of the holder of a pre-existing security interest in the assets being encumbered.

II. Given the facts alleged by the Debtors, which tend to suggest a potential priority dispute between Simmons Bank and Blue Sky Bank, the Court should require Simmons Bank to file proofs of claim.

23. As a term of the proposed DIP financing, the Debtors seek to excuse Simmons Bank from filing proofs of claim in these cases. (Motion, p. 19.)

24. The Motion, in addition to stipulating to the allowance of the claims of Simmons Bank, subject to the Committee's right to timely challenge the claim, proposes to relieve Simmons Bank of the burden of filing proofs of claim. Considering this challenge right, and the statutory right of parties in interest, under 11 U.S.C. § 502(a) to object to the allowance of claims, Simmons Bank should be required to file proofs of claim in these cases so that parties in interest may evaluate the allowability of such claims and so that the Committee and Blue Sky Bank may determine the validity, priority and extent of the liens securing Simmons Bank's claims.

Conclusion

In short –

A. Blue Sky Bank does not contest the Debtors’ needs for post-petition DIP financing but does object to their attempt to obtain such financing secured by liens with priority over the pre-petition liens of Blue Sky Bank, absent proof of adequate protection of Blue Sky Bank, which has not been provided.

B. To the extent the Court authorizes post-petition financing with new liens that prime the interests of Blue Sky Bank, such liens should be limited to only those funds that are utilized by Straitline in its operations, and not the other Debtors in their operations.

C. Finally, Simmons Bank should be required to file proofs of claim in these cases to allow parties in interest a full opportunity to evaluate its claims.

Based on the foregoing, Blue Sky Bank requests that the Court sustain this objection, limit any authorization of post-petition DIP financing consistent with this objection, and grant Blue Sky Bank such further relief as the Court deems just and equitable.

Dated: June 3, 2024.

Respectfully submitted,

/s/Brandon C. Bickle

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 3, 2024, a true and correct copy of the foregoing document was served on all parties requesting service via the Court's ECF system, including counsel to the Debtors.

/s/ Brandon C. Bickle

Brandon C. Bickle