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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/23/2014 02:56 PM Pg: 1 of 9

SPACE ABOVE FOR RECORDER'S USE ONLY

ORDER ON TRUSTEE'S MOTION FOR TURNOVER OF ACCOUNT RECEIVABLE

PREPARED BY:

Perkins Coie LLP
131 S. Dearborn Street, Suite 1700
Chicago, Illinois 60603
Attn.: Brian A. Audette, Ch. 7 Trustee

AFTER RECORDING RETURN TO:

First American Title Insurance Company
30 N. La Salle Street, Suite 2700
Chicago, Illinois 60602
Attn.: Katherine Hahm

NCS-661729

1 of 4

Property of Cook County Clerk's Office

9

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Case 14-15623 Doc 69 Filed 07/10/14 Entered 07/10/14 13:13:27 Desc Main Document Page 1 of 2
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:) BK No.: 14-15623
EDISON CONSTRUCTION COMPANY,)
) Chapter: 7
) Honorable Pamela S. Hollis
)
)
Debtor(s))

ORDER ON TRUSTEE'S MOTION FOR TURNOVER OF ACCOUNT RECEIVABLE

THIS CAUSE COMING TO BE HEARD on Trustee's Motion for Turnover of Account Receivable and to Permit Valid Liens to Attach to the Proceeds Recovered ("Motion"), the Court having found that it has jurisdiction over the parties and the subject matter, due notice having been given and the Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors and other parties in interest, and the Court being otherwise fully advised in the premises,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, subject to the provisions of this Order.
2. 230 West Monroe Associates Property LLC ("Owner") shall pay the Receivable in full within five (5) business days following entry of this Order.
3. Trustee shall hold the portion of the Receivable (the "Subcontractor Funds") relating to labor and materials provided before the Petition Date and pursuant to the Owner Contract by Equal Electric II, Inc., Competitive Piping Systems, Inc., Emerald Mechanical, Inc., Lehre Painting Company, Inc. and Break Thru Enterprises, Inc. (collectively the "Subcontractors") on the office space leased by Owner (the "Office Space") and located within the real property commonly known as 230 West Monroe Street, Chicago, Illinois (the "Property"), which Subcontractor Funds Trustee may only disburse upon further order of Court.
4. Provided that, and specifically conditioned on, timely payment of the Receivable by Owner to Trustee, any and all lien rights that Subcontractors may have under the Illinois Mechanics Lien Act, 770 ILCS 60/1, et seq (the "Illinois Act") solely with respect to the labor and materials performed and/or supplied at the Office Space by the Subcontractors pursuant to the Owner Contract and that are the subject of the Invoice, shall attach exclusively to the Subcontractor Funds with the same validity, force, effect and priority as existed with respect to the Property as of the Petition Date (the "Subcontractor Liens") and shall be extinguished with respect to the Office Space within the Property. The amount, priority, enforceability and validity of the Subcontractor Liens shall be determined by the Court.
5. Notwithstanding anything to the contrary either in the Illinois Act or in this Order, the Subcontractors shall be deemed to have complied with §24 and §28 of the Illinois Act solely with respect to labor and materials furnished by the Subcontractors that are the subject of the Invoice and that were performed pursuant to the Owner Contract prior to the Petition Date upon submission to Trustee of an executed invoice for labor and/or materials furnished on the Office Space within the Property prior to

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Case 14-15623 Doc 69 Filed 07/10/14 Entered 07/10/14 13:13:27 Desc Main Document Page 2 of 2

the Petition Date ("Subcontractor Invoice"). Within thirty (30) days after submission of all applicable Subcontractor Invoices, with respect to each such Subcontractor Invoice Trustee shall either (a) pursue the entry of a Court order authorizing the payment in full of such Subcontractor Invoice from the Subcontractor Funds or (b) file a pleading to challenge the Subcontractors' alleged lien rights.

6. Upon payment by Owner of the Subcontractor Funds, and attachment of the Subcontractor Liens exclusively to those funds with the same validity, force and effect which they had against the Property as of the Petition Date, such liens shall be extinguished with respect to the Office Space within the Property in connection with labor or materials provided pursuant to the Owner Contract and that are the subject of the Invoice and each of the Subcontractors covenants that it will (a) not record any lien against the Property with respect to the amounts claimed by any Subcontractor in the Subcontractor Invoice and in connection with the labor or materials that are the subject of the Invoice and (b) will promptly release any Subcontractor Lien (inclusive of any notice thereof) that has been or may hereafter be filed against the Property for work performed or materials provided pursuant to the Owner Contract and that are the subject of the Invoice before the Petition Date; provided that Subcontractors reserve all rights and remedies, under the Illinois Act and otherwise, with respect to labor and materials provided on or for the benefit of the Property which are not included in the Subcontractor Invoice or paid to Trustee as part of the Subcontractor Funds.

7. Except as set forth in this Order, Subcontractors, Owner and Trustee shall retain all rights, remedies and defenses under the Illinois Act and all other applicable laws with respect to the Subcontractor Liens and Subcontractor Funds.

8. This Order applies only to claims relating to the Property in connection with labor and materials furnished by the Subcontractors that are the subject of the Invoice and that were performed pursuant to the Owner Contract prior to the Petition Date. Trustee and the Subcontractors reserve any and all rights and remedies, including, without limitation, Subcontractor lien rights under the Illinois Act or Trustee's right to collect further receivables, with respect to (a) any other property on which the Subcontractors performed work or furnished materials prior to the Petition Date and (b) services and materials that the Subcontractors may have provided at the Office Space within the Property prior to the Petition Date that are not the subject of the Invoice.

9. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Enter:



Honorable Pamela S. Hollis

United States Bankruptcy Judge

Dated: July 10, 2014

Prepared by:

Brian A. Audette, Ch. 7 Trustee
PERKINS COIE LLP
131 South Dearborn Street, Suite 1700
Chicago, IL 60603

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LEGAL DESCRIPTION

ALL OF LOT 7 AND ALL OF LOT 8 (EXCEPT THE WEST 40 FEET THEREOF TAKEN FOR WIDENING OF FRANKLIN STREET) IN BLOCK 94 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 33 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM SAID PREMISES THE NORTH 9 FEET THEREOF TAKEN FOR ALLEY), IN COOK COUNTY, ILLINOIS.

ADDRESS:

230 W. MONROE STREET, CHICAGO, IL 60606

TAX NUMBERS:

17-16-202-013-0000 Vol. 511 (Affects the West 1/2 of Lot 7 and all of Lot 8)

17-16-202-014-0000 Vol. 511 (Affects the East 1/2 of Lot 7)

MAIL TO:

Brett Feinberg
Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 West Madison Street, Suite 3900
Chicago, IL 60606

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Case 14-15623 Doc 55 Filed 06/24/14 Entered 06/24/14 13:21:32 Desc Main Document Page 1 of 5

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

In re:) Chapter 7
EDISON CONSTRUCTION COMPANY,) Case No. 14-15623
Debtor.) Hon. Pamela S. Hollis
)
)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **Thursday, July 10, 2014, at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis, Room 644, United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or any other Judge sitting in her place or stead, and then and there present the *Trustee's Motion for Turnover of Account Receivable and to Permit Valid Liens to Attach to the Proceeds Recovered*, a copy of which is hereby served upon you, at which time and place you may appear as you see fit.

DATED: June 24, 2014

By: /s/ Brian A. Audette
Brian A. Audette, Chapter 7 Trustee

Brian A. Audette (ARDC #6277056)
PERKINS COIE LLP
131 South Dearborn Street, Suite 1700
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Case 14-15623 Doc 55 Filed 06/24/14 Entered 06/24/14 13:21:32 Desc Main Document Page 2 of 5

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

In re:) Chapter 7
) Case No. 14-15632
Edison Construction Company,)
) Hon. Pamela S. Hollis
Debtor.)

**TRUSTEE'S MOTION FOR TURNOVER OF ACCOUNT RECEIVABLE AND
TO PERMIT VALID LIENS TO ATTACH TO THE PROCEEDS RECOVERED**

Brian A. Audette, not individually, but solely in his capacity as chapter 7 trustee ("Trustee") of the estate of Edison Construction Company ("Debtor"), hereby moves, pursuant to 11 U.S.C. §§ 105(a) and 542, for entry of an order (a) for turnover of an account receivable from 230 West Monroe Associates Property LLC ("Owner"), (b) permitting all liens that subcontractors may have against the office space (the "Office Space") leased by Owner within the real property commonly known as 230 West Monroe Street, Chicago, Illinois (the "Property") to attach to the proceeds paid to the estate by Owner in the order of their priority, with the same validity, force and effect which they now have against the Property, subject to all defenses, and (c) precluding subcontractors from filing mechanic's liens against the Property. In support of this Motion, Trustee states as follows:

1. On April 25, 2014 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code.
2. Trustee is the duly appointed chapter 7 trustee of Debtor's estate.
3. Prior to the Petition Date, Debtor was engaged in commercial office interior renovations. Debtor provided office demolition and remodeling services as well as general contracting services.

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Case 14-15623 Doc 55 Filed 06/24/14 Entered 06/24/14 13:21:32 Desc Main Document Page 3 of 5

4. On or about March 25, 2014, Debtor entered into a contract with Owner (together with all change orders, the "Owner Contract"), whereby Debtor agreed to remodel the Office Space located within the Property. In exchange for Debtor's services, Owner agreed to pay Debtor \$114,262.00, which amount is inclusive of Change Orders #1 and #2 but excludes the \$18,795.00 of sprinkler work set forth in Change Order #2 which has not yet been performed. A copy of the Owner Contract is attached hereto as Exhibit A. Debtor hereby agrees that Owner shall be permitted to directly engage Subcontractors to complete additional work at the Property without the consent of Debtor, inclusive of that certain sprinkler-related work which was originally contemplated to be performed by a Subcontractor pursuant to Change Order #2 to the Owner Contract.

5. In connection with the Owner Contract, Debtor served as a general contractor and also directly provided certain labor and materials. With respect to the balance of the services to be provided under the Owner Contract, Debtor retained the following subcontractors to provide specified labor and/or services (collectively, the "Subcontractors"): Equal Electric II, Inc.; Competitive Piping Systems, Inc.; Emerald Mechanical, Inc.; Lohr Painting Company, Inc.; and Break Thru Enterprises, Inc.

6. Debtor substantially completed the work on the Office Space and delivered an invoice to Owner (the "Invoice") for the payment of \$114,262.00 (the "Receivable"). A copy of the Invoice, including all lien waivers provided in connection therewith, is attached hereto as Exhibit B. Of the total amount of the Invoice, it appears that the Subcontractors are collectively owed \$94,835.00 (the "Subcontractor Funds") and Debtor is owed \$19,427.00.

7. Trustee desires to collect the full amount of the Receivable from Owner; *provided, however*, that (a) any lien rights that the Subcontractors may have against the Office

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Case 14-15623 Doc 55 Filed 06/24/14 Entered 06/24/14 13:21:32 Desc Main Document Page 4 of 5

Space and/or the Property in connection with the labor and materials that are the subject of the Owner Contract and the Invoice will attach to the Subcontractor Funds with the same validity, force and effect which they may have had against the Office Space and/or the Property as of the Petition Date, subject to all defenses, and (b) the Subcontractors will be precluded from filing mechanic's liens against the Office Space and/or Property and will promptly release any mechanic's liens (inclusive of any notices thereof) they may already have filed or recorded against the Office Space and/or the Property. Trustee further desires the entry of an order providing that the Subcontractors will be deemed to have satisfied all requirements under sections 24 and 28 of the Illinois Mechanics Lien Act, 770 ILCS 60/1, et. seq., upon the delivery of an executed invoice to Trustee describing the labor and materials provided and the amount due. Trustee shall not disburse the Subcontractor Funds pending further order of Court.

8. Trustee believes that this solution is the most beneficial solution to Debtor's estate, Owner and the Subcontractors since all parties' respective rights will be preserved and protected. For example, Debtor's estate will not lose the opportunity to collect the Receivable, Owner will not have to face the prospect of mechanic's liens being filed against the Office Space and/or the Property and whatever lien rights the Subcontractors might have will be preserved pending a resolution with Trustee or Court order. Indeed, Trustee submits that to the extent it is determined that the Subcontractors actually have valid lien rights, they will be better off having a lien against cash that is sufficient to satisfy their claims in full rather than a right to file a mechanic's lien against the Office Space and/or the Property.

9. Based upon the foregoing, the Court should grant the relief requested herein by Trustee because it is in the best interests of Debtor's estates, its creditors and parties in interest.

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Case 14-15623 Doc 55 Filed 06/24/14 Entered 06/24/14 13:21:32 Desc Main Document Page 5 of 5

WHEREFORE, Trustee respectfully requests the entry of an order (a) directing Owner to pay the Receivable to Trustee within five business days following the entry of this order, (b) providing that any and all lien rights the Subcontractors may have against the Office Space and/or the Property in connection with the Owner Contract and the Invoice shall attach to the Subcontractor Funds with the same validity, force and effect which they may have had as of the Petition Date, subject to all defenses, (c) precluding the Subcontractors from filing mechanic's liens against the Office Space and/or the Property and promptly releasing any mechanic's liens (inclusive of any notices thereof) that may have already been filed and/or recorded by any of the Subcontractors and (d) granting Trustee such other and further relief the Court deems just and proper.

Dated: June 24, 2014

Respectfully submitted,

**BRIAN A. AUDETTE, Chapter 7 Trustee of the
Estate of Edison Construction Company**

By: /s/ Brian A. Audette

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