

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: 16-05349-jw

**INTERIM ORDER AUTHORIZING DEBTOR'S USE
OF CASH COLLATERAL**

The relief set forth on the following pages, for a total of 10 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT
11/28/2016**



A handwritten signature in cursive script, reading "John E. Waites". The signature is written in black ink and is positioned above a horizontal line.

US Bankruptcy Judge
District of South Carolina

Entered: 11/28/2016

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

Benjamin and Bent Enterprises, LLC,

Debtor.

Case No. 16-05349-jw

Chapter 11

INTERIM ORDER AUTHORIZING DEBTOR'S USE OF CASH COLLATERAL

This matter comes on before the Court upon the motion of Benjamin and Bent Enterprises, LLC, a South Carolina limited liability company, as debtor and debtor-in-possession in this case ("Debtor") for an order authorizing the interim use of certain cash collateral as defined in 11 U.S.C. §363(a) on which Branch Banking & Trust Company ("BB&T") asserts a security interest and lien and authorizing the payment of certain wages and vendors, as set forth on **Exhibit A**, on a nunc pro tunc basis.

This Case was commenced on October 25, 2016, and the Debtor is operating its business and managing its assets as debtor in possession pursuant to 11 U.S.C. §§1107(a) and 1108. The court has subject matter jurisdiction over the Motion pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). The Court can exercise its subject matter jurisdiction pursuant to 28 U.S.C. §157(b)(1). Venue of these proceedings and the Motion is proper in this district pursuant to 28 U.S.C. §§1408 and 1409.

Debtor operates a commercial tile business in Beaufort, South Carolina. BB&T asserts a claim of approximately \$412,573.09 as of October 25, 2016, secured by a lien on the inventory and accounts of Debtor, including post-petition cash collateral as defined by 11 U.S.C. §363(a). The cash collateral to be used by Debtor, proceeds from the sale of inventory and collections on accounts receivable (hereinafter "Cash Collateral"), will be owed by various customers of Debtor. The funds from this limited use of Cash Collateral is necessary (a) for the continued operations of Debtor's business, (b) to enable the Debtor to promulgate, propose, confirm and consummate a Plan of Reorganization, (c) to protect and preserve the estate and the interests of the Creditors of the Estate, (d) proceed with this Chapter 11 case, and (e) continue to operate the business of Debtor.

The Debtor has presented a proposed budget, seeking to pay those items itemized on **Exhibit B** thereto. Debtor has requested from BB&T the ability to use the cash collateral as set forth in the Motion. BB&T has responded and/or objected to the Motion, primarily to request certain conditions on the use of any Cash Collateral. The UST also filed an objection due to, among other things, the Debtor's failure to attach a budget. Notwithstanding its Response/Objection and reserving all rights with respect to any final hearing on the use of cash collateral, BB&T has indicated to Debtor that it is willing to consent to the interim use of the Cash Collateral but only upon the entry of an agreed Order containing certain terms and conditions approved by the Court to provide adequate protection of BB&T's secured position on Cash Collateral. The UST has also consented to the request sought on a limited basis as set forth in more detail in this Order.

Good cause has been shown for the entry of this Interim Order and authorization for Debtor to use the Cash Collateral in accordance with the budget attached hereto as **Exhibit B** (the "Budget"). The Debtor's need for use of Cash Collateral afforded herein is immediate and necessary to avoid irreparable harm.

Entry of this Interim Order will minimize disruption of Debtor's business and operations, preserve the assets of the Debtor estate and be in the best interest of Debtor, its creditors and the bankruptcy estate. The parties stipulate that the terms of this interim use of the cash collateral are fair and reasonable, reflect Debtor's exercise of prudent business judgment and are supported by reasonably equivalent value and fair consideration.

NOW THEREFORE, IT IS ORDERED THAT:

1. All findings of fact that are or may be deemed conclusions of law are hereby incorporated as conclusions of law.
2. Notice of the hearing of the Motion was provided as set forth in the Certificate of Service filed by Debtor.
3. Debtor does not have sufficient unencumbered cash or other assets with which to continue to operate its business in Chapter 11 without the use of the Cash Collateral.
4. The agreement set forth herein with regard to Debtor's use of the Cash Collateral and the relief requested by Debtor related thereto is necessary, appropriate and fully warranted and is essential to the reorganization efforts of Debtor. The entry of this Interim Order is in the best interests of Debtor, its creditors and the bankruptcy estate.

5. Pending the entry of a final order approving the terms and conditions of this Interim Order (the "Interim Period"), Debtor shall be **AUTHORIZED** to use the Cash Collateral solely for purpose of funding the ordinary and necessary costs of operating and maintaining its business limited in kind and amount to the line item expenses set forth in the Budget attached as **Exhibit B** hereto. All disbursements by Debtor shall be made in strict compliance with the terms of this Interim Order and the Budget. The Cash Collateral shall not be disbursed or otherwise used by Debtor for the payment of any expenses not specifically included in the Budget without the prior written approval of BB&T, the UST, and further order of this Court.

6. Debtor will maintain in the Debtor's debtor-in-possession account (the "DIP Account") any and all income, receipts, receivables and all forms of Cash Collateral relating to the Debtor's business operations and will hold all monies in trust for payment solely in accordance with the Budget during the Interim Period. The Debtor has prepared the Budget based on the immediate cash needs of its operations during the period of time from the entry of this Order until the Final Hearing (the "Interim Period"). Debtor is granted a variance of 10% on expenses in any line item category, so long as the total budget number is not exceeded. Notwithstanding the foregoing, the Debtor shall not use Cash Collateral to pay insiders or affiliates of the Debtor for any purpose other than payment as provided in the Budget; and the salaries and other compensation paid to employees shall be no greater than amounts ordinary and necessary and in no event greater than amounts paid prior to the filing of these cases. No attorneys' or other professional fees shall be paid from Cash Collateral without additional Court approval after the filing of a fee application upon proper notice.

7. As adequate protection for use of the Cash Collateral, BB&T is **GRANTED:** (a) continuing liens and security interests in all of BB&T's pre-petition collateral, (b) a post-petition replacement lien and security interest in all collateral generated after the Petition Date in accordance with BB&T's pre-petition security interest (the "Post-Petition Collateral", and together with the BB&T's pre-petition collateral, collectively, the "Collateral") to the same extent and priority as their pre-petition liens in and to the Collateral and only to the extent of diminution in the prepetition collateral, and (c) monthly adequate protection payments of \$2,000 per month paid by the 30th day of each month beginning with November, 2016..

8. The Debtor shall furnish on a weekly basis (not later than the following Tuesday for the preceding week) to BB&T by electronic mail or facsimile the following written reports-

- (a) A schedule showing (i) all invoices generated; (ii) all deposits made in the Cash Collateral Account; and (iii) all checks written or transfers from the Cash Collateral account, showing the payee and purpose of each such check or transfer.
- (b) A report showing the amount expended for each line item of the Budget as compared to the amount allowed in the Budget;
- (c) A list of all product shipped to customers for the week with copies of invoices;
- (d) A list of all accounts receivables, updated to reflect any payments received;
- (e) Income statements, balance sheet, bank account statements and other reports as available but not less than monthly.

9. BB&T shall not be required to file any UCC-1 financing statements or any other document or take any other action (including possession of any of the Collateral) in order to validate or perfect the security interests and liens granted to it hereunder as all such liens and security interests shall be deemed automatically perfected by and upon entry of and this Interim Order.

10. Nothing herein shall be deemed to be a waiver by BB&T of its rights to request additional or further protection of their respective interests in any property of Debtor at the Final Hearing, nor shall anything herein constitute an admission by BB&T of the quantity, quality or value of any Collateral securing the pre-petition debt or the post-petition debt, or constitute a finding of adequate protection with respect to the interests of BB&T in any Collateral. BB&T shall be deemed to have reserved all rights to assert entitlement to the protections and benefits of Section 507(b) of the Bankruptcy Code in connection with any use, sale or other disposition of any of the Collateral, to the extent that the protection afforded by this Interim Order proves to be inadequate.

11. Upon reasonable notice, representative of BB&T shall be authorized to visit and inspect the assets of Debtor. It is anticipated that such representatives will include a forensic accountant who will analyze, verify and obtain supporting details concerning the Debtor's financial situation with specific emphasis on assessing the accuracy and completeness of Debtor's accounting, including a review of Debtor's sources and uses of funds, cash flows and cash disbursements. Debtor will cooperate with BB&T and its representatives in analyzing Debtor's books and records, although inspection will take place only on a cooperative basis.

12. The Debtor shall provide BB&T with access, promptly upon request, to records and financial information concerning its compliance with the attached budget and its accounting for Cash Collateral. BB&T shall have access to the Debtor's business premises to verify the condition of any property in which it claims a pre-petition or post-petition security interest and to examine the Debtor's books and records, where such records are maintained, during normal business hours.

13. The rights and obligations of Debtor and the rights and claims, security interests, liens and priorities of BB&T in connection with this Interim Order are in addition to and not in lieu or substitution of the rights, obligations, claims, security interests, liens and priorities granted under any pre-petition agreements, orders or loan documents between Debtor and BB&T.

14. Unless otherwise agreed in writing by BB&T, Debtor's authority to use Cash Collateral as permitted by this Interim Order shall terminate upon the occurrence of one or more of the following events (each a "Terminating Event"):

- (a) The entry of an order converting this case to a case under Chapter 7 of the Bankruptcy Code or appointing a Chapter 7 trustee or examiner; or
- (b) A default by Debtor under the terms of this Interim Order or the Final Order; or
- (c) The expiration of the authorized use of Cash Collateral as contained in this Interim Order without further agreement of the parties.

15. Debtor shall immediately notify BB&T and its counsel in writing upon the occurrence of any significant event which does or will (a) affect the collection of Cash Collateral or the continued operations of Debtor; (b) threaten Debtor's maintenance of the operations at a level necessary to ensure quality in accordance with customary and prudent industry standards; or (c) affect Debtor's compliance with applicable laws and regulations relating to all permits, contracts and other agreements necessary for the use and operation of the Debtor's business.

16. The amount of \$27,541.00 detailed in **Exhibit A** as being pre-petition obligations to employees and vendors paid post-petition is hereby approved on a nunc pro tunc basis. All parties reserve all rights to any post-petition use of Cash Collateral by the Debtor from the Petition Date to the entry of this Interim Order.

17. All of the terms and conditions of this Interim Order are encompassed herein and no modification of this Interim Order shall be effective unless it is in writing and signed by Debtor and BB&T and approved by the Court.

18. If any party in interest shall have an objection to any of the provisions of this Interim Order, such party shall be authorized to assert such objection in accordance with the terms of the Local Rules and Federal Rules of Bankruptcy Procedure.

19. The Final Hearing shall be held at 10:30 a.m. on January 18, 2017 at the United States Bankruptcy Courthouse, 145 King Street, Charleston, South Carolina. If no objection to the Motion or this Interim Order is timely filed and asserted at the Final Hearing, then this Interim Order shall continue in effect in accordance with its terms subject to such modifications as the Court may make at the Final Hearing.

AND IT IS SO ORDERED.

EXHIBIT A

LIST OF PRE-PETITION PAYMENTS MADE POST-PETITION

Vendor Payments of \$23,241.00-

1. Ackerson-Stevens, Inc.
2. William M. Bird & Company

Pre-Petition Payroll of \$4,300.00-

1. L. Robert Benjamin
2. Robert C. Benjamin
3. Richard Bent
4. Randall Prather
5. Frank Muzicar
6. Jennifer Bent
7. Amy Rhine

EXHIBIT B
CASH COLLATERAL BUDGET
(Attached)

Week Ending 12/30/2017	Week Ending 1/6/2017	Week Ending 1/13/2017	Week Ending 1/20/2017	Week Ending 1/27/2017	Totals
74,699.00	\$ 66,269.00	\$ 69,394.00	\$ 63,169.00	\$ 66,664.00	
10,000.00	\$ 48,700.00	\$ 48,700.00	\$ 49,600.00	\$ 52,800.00	\$ 459,800.00
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4,000.00	\$ 20,300.00	\$ 20,300.00	\$ 22,350.00	\$ 23,600.00	\$ 210,084.00
2,000.00	\$ 12,175.00	\$ 10,175.00	\$ 12,175.00	\$ 12,600.00	\$ 95,125.00
4,350.00	\$ 4,900.00	\$ 5,750.00	\$ 4,900.00	\$ 5,750.00	\$ 50,050.00
1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 13,500.00
2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 20,000.00
1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 10,000.00
-	\$ 2,300.00	\$ 2,600.00	\$ -	\$ 2,600.00	\$ 15,000.00
1,080.00	\$ -	\$ 5,500.00	\$ 1,080.00	\$ -	\$ 13,356.00
-	\$ -	\$ -	\$ -	\$ 1,613.00	\$ 4,539.00
-	\$ 900.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 6,000.00
2,000.00				\$ 2,000.00	\$ 6,000.00
		\$ 5,000.00			\$ 5,000.00
500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 5,000.00
18,430.00	\$ 45,575.00	\$ 54,925.00	\$ 46,105.00	\$ 53,763.00	\$ 453,654.00
(8,430.00)	\$ 3,125.00	\$ (6,225.00)	\$ 3,495.00	\$ (963.00)	\$ 6,146.00
66,269.00	\$ 69,394.00	\$ 63,169.00	\$ 66,664.00	\$ 65,701.00	