

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In re: SHORT ENTERPRISES, INC., Debtor.))))))	Chapter 11 Proceeding Case No. 16-41020
--	----------------------------	--

EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING: DEBTOR’S USE OF CASH COLLATERAL PURSUANT TO § 363 OF
THE BANKRUPTCY CODE

COMES NOW Debtor and Debtor-in-Possession Short Enterprises, Inc. (“**Debtor**”) by and through its undersigned counsel, and move the Court, pursuant to Section 363 of the Bankruptcy Code, and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for the entry of interim and final orders: (a) authorizing the Debtor to use Cash Collateral (as such term is defined in Section 363(a) of the Bankruptcy Code); and (b) approving and authorizing the Debtor to enter into certain related financing documents. In support of this Motion, the Debtor respectfully states and allege as follows:

I BACKGROUND

1. On November 2, 2016 (the “**Petition Date**”), Debtor filed a voluntary petition for relief under Chapter 11, Title 11 of the United States Code (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of Illinois.

2. The Debtor continues to operate its business and manage its affairs as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case, and no official committee of creditors or equity interest holders has been established in this case.

II. DEBTOR'S PRE-PETITION RELATIONSHIP WITH SECURED LENDERS

3. Debtor's secured creditors for its various property locations (the "**Real Estate**") and accompanying personal property are Anna-Jonesboro National Bank, The Bank of Carbondale, First Southern Bank, and Murphy Wall Bank (the "**Banks**").

4. As of the Petition Date, Debtors owed Banks at least \$1,111,918.95 under its agreements with Banks, plus accrued and unpaid interest thereon, fees, and costs. These amounts together with all interest, fees, costs and charges are identified as the "**Pre-Petition Indebtedness**."

5. The Pre-Petition Indebtedness is secured by valid, perfected, enforceable, first-priority liens and security interests upon and in the Real Estate of the Debtor and inventory, accounts, improvements, and proceeds of the forgoing (the "**Pre-Petition Collateral**").

III. THE DEBTOR'S NEED FOR USE OF CASH COLLATERAL

6. The Debtor requires the use of Cash Collateral to continue its business operations and to pay its regular daily expenses, including employees' wages, utilities, and other costs of doing business.

7. The Debtor requires Cash Collateral to meet post-petition payroll, to pay necessary business expenses, and to continue their operations. A Monthly Budget, showing the amount of funds needed to maintain Debtor's operations until the entry of a final order permitting use of Cash Collateral is to be reviewed and approved by the Banks and the Court.

8. The Debtor cannot carry on the operation of its business without the use of the Cash Collateral. Collection of customer payments in the ordinary course of business is the core of the Debtor's operations. In the absence of the use of the Cash Collateral, serious and irreparable harm to the Debtor and its estate would occur. The preservation and maintenance

relations with customers, the preservation of the going concern value of the Debtor and the reduction of claims against the Debtor are of utmost significance and importance to a successful reorganization of the Debtor under Chapter 11 of the Bankruptcy Code.

9. The ability of the Debtor to continue in business and remain viable and to have any prospect to propose a plan of reorganization under Chapter 11 of the Bankruptcy Code depends upon obtaining such authority to immediately use Cash Collateral on the Petition Date.

10. Absent the requested relief, the Debtor will be unable to pay its payroll and payroll expenses, operating expenses, and to otherwise operate their business and preserve their assets. Immediate and irreparable harm to the Debtor's business and value of their estate will occur absent the relief requested herein.

11. Pursuant to Section 363(c)(2) of the Bankruptcy Code, if Banks' interest in Cash Collateral is valid, the Debtor may use Cash Collateral only with the consent of Bank or with the Court's approval.

12. Banks' interest in Cash Collateral is and will be adequately protected. Such adequate protection will be provided to Banks through the payment of Banks' loans in the ordinary course of business and granting Banks a replacement lien in their respective collateral.

13. Approval of the attached Interim Order is in the best interest of the Debtor's estate, and the Debtor believes that other creditors will not be prejudiced by the entry of the Interim Order.

14. The Debtor requests that they be immediately authorized, pursuant to Section 363(c) of the Bankruptcy Code, to use Cash Collateral according to the terms of the Interim Order.

V. REQUEST FOR INTERIM RELIEF

15. Use of Cash Collateral represents the Debtor's sole source of operating funds and working capital. Without the right to use Cash Collateral, the Debtor would be forced to cease operations. The Debtor seeks, therefore, after a preliminary hearing, immediate use of Cash Collateral to avoid immediate and irreparable harm to the Debtor and its estate. A copy of the proposed Interim Cash Collateral Order is attached as **Exhibit A**.

VI. NOTICE

16. No creditors' committee has been appointed in this Chapter 11 case. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the United States Trustee; (b) the Debtor's 20 largest unsecured creditors as identified in its Chapter 11 petition; and (c) any party with an interest in the Cash Collateral. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

17. The Debtor further requests that the Court deem service of this Motion, pursuant to Bankruptcy Rules 4001(b)(1) and 4001(c)(1) and service of the Interim Order, good and sufficient notice of the final hearing.

VII. NO PRIOR REQUEST

18. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, Debtor Short Enterprises, Inc. respectfully requests that the Court enter an Interim Order after a preliminary hearing:

A. Authorizing the Debtor's immediate use of Cash Collateral in an amount sufficient to avoid immediate and irreparable harm to the Debtor and its estate;

B. After a final hearing, enter a final order authorizing the Debtor use of cash collateral in the ordinary course of the Debtor's business;

C. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

SHORT ENTERPRISES, INC.

/s/ Robert E. Eggmann

By: _____
One of its Attorneys

Robert E. Eggmann, Illinois Bar #6203021
Thomas H. Riske, Illinois Bar #6301953
Carmody MacDonald P.C.
120 South Central Ave., Suite 1800
Clayton, MO 63105
314-854-8600 (Telephone)
314-854-8660 (Fax)
ree@carmodymacdonald.com (Email)
thr@carmodymacdonald.com (Email)

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In re:)	Chapter 11 Proceeding
)	Case No. 16-41020
SHORT ENTERPRISES, INC.,)	
)	
Debtor.)	

**ORDER AUTHORIZING INTERIM USE OF CASH COLLATERAL
AND GRANTING ADEQUATE PROTECTION**

Upon the Motion for Order Authorizing Interim Use of Cash Collateral (the “Motion”) filed by Debtor Short Enterprises, Inc. (“Debtor”), the Court finds and concludes as follows:

1. The Court has jurisdiction over the Motion and issues raised therein pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

2. Appropriate notice of the hearing on the Motion was provided to creditors and parties in interest as required under Rule 4001(b)(3) of the Federal Rules of Bankruptcy Procedure.

3. On November 2, 2016, (“Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. § 101 et. seq.)

4. Debtor has operated since the Petition Date and are continuing to operate its business as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

5. Certain of Debtor’s’ secured creditors for its various locations (the “Real Estate”) are Anna-Jonesboro National Bank, The Bank of Carbondale, First Southern Bank, and Murphy Wall Bank (the “Banks”).

6. As of the Petition Date, Debtors owed Banks at least \$1,111,918.95 under its agreements with Banks, plus accrued and unpaid interest thereon, fees, and costs. These amounts

together with all interest, fees, costs and charges are identified as the "Pre-Petition Indebtedness."

7. The Pre-Petition Indebtedness is secured by valid, perfected, enforceable, first-priority liens and security interests upon and in the Real Estate of the Debtor and inventory, accounts, improvements, and proceeds of the forgoing (the "Pre-Petition Collateral").

7. The Debtor will require use of Banks' collateral during the case.

8. Good cause has been shown for the entry of this Order. The ability of the Debtor to operate and maintain their business and maximize a return for their creditors requires the availability of Cash Collateral on and subject to the terms and conditions set forth in this Order. In the absence of the use of Cash Collateral, the continued operation and maintenance of the Debtor's business may not be possible, and serious and irreparable harm to the Debtor, its estate, and its creditors would occur.

NOW THEREFORE, the interim relief requested in the Motion is GRANTED and it is hereby ORDERED:

A. The Debtor is permitted to use Cash Collateral only to the extents set forth herein or otherwise approved by the Court;

B. As adequate protection, Banks shall receive valid, binding, enforceable, and duly perfected replacement security interests that are only valid and non-avoidable to the same extent that the pre-petition liens of Banks are valid and non-avoidable. The security and priorities granted to Banks shall not affect or impair the separate existing collateral of all other creditors. As further adequate protection, Banks shall receive regular payments on their loans in the ordinary course of Debtors' business.

C. A final hearing on the Motion shall be held on _____, at 9:00 a.m.;

D. Debtor shall at all times maintain a policy of property and casualty insurance in an amount equal to the value of the Real Estate and accompanying personal property;

E. Any objections to this agreement for the use of Cash Collateral shall be filed with the Court and served by fax and e-mail upon; Robert E. Eggmann and Thomas H. Riske, Carmody MacDonald, P.C., 120 South Central Ave., Suite 1800, St. Louis, MO 63105 (e-mail: ree@carmodymacdonald.com; thr@carmodymacdonald.com; fax #314-854-8600); United States Trustee, Office of the U.S. Trustee, Becker Building, Room 1100, 401 Main Street, Peoria, IL 61602.

F. The Debtor shall serve a copy of this Order on the twenty largest unsecured creditors, all parties requesting notice and the United States Trustee as required by Fed. R. Bankr. 4001(d).

DATED: _____

HONORABLE LAURA K. GRANDY
UNITED STATES BANKRUPTCY JUDGE
SOUTHERN DISTRICT OF ILLINOIS