

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:

CUBA TIMBER CO., INC.,

Debtor.

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Case No. 17-70349-DSC11

Chapter 11

INTERIM ORDER TO USE CASH COLLATERAL

This matter comes before the Court on the Debtor's Emergency Motion To Use of Cash Collateral ("Motion") [Dkt. 3] by Cuba Timber Co., Inc., as debtor and debtor-in-possession (the "Debtor") seeking authorization, on a limited basis, of the use of "Cash Collateral" (as that term is defined in Section 363(a) of the Bankruptcy Code), all of which Cash Collateral is presently subject to a first priority security interest of Fundamental Funding, LLC ("Fundamental"), as the secured creditor, under that certain Loan and Security Agreement dated as of August 4, 2015, as amended from time to time and/or the security interest of Strategic Funding Source, Inc. ("Strategic"). The Bankruptcy Administrator and Fundamental filed objections to the Motion. [Dkt. 14 and 15, respectively] After a hearing on the merits, the Debtor, Fundamental, Strategic and the Bankruptcy Administrator announced they had reached an interim agreement consenting to the limited use of Cash Collateral. Based on the testimony given at the hearing and the interim agreement of the parties, the Court does hereby find and determine as follows:

1. On February 24, 2017 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). Debtor continues in possession of its properties as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
3. Venue of this case is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is Section 363 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

**I. FACTS
Background**

4. The Debtor is in the timber business pursuant to which it negotiates contract with landowners to acquire and cut timber so it can be sold to various end users, such as paper mills.
5. Pursuant to the Loan and Security Agreement between the Debtor and Fundamental, the Debtor granted to Fundamental, to secure such Debtor's obligations, a security

interest in and continuing lien on substantially all of such Debtor's assets, including but not limited to, all of such Debtor's accounts, chattel paper, documents, general intangibles, goods (including, without limitation, inventory, equipment, and fixtures), instruments, investment property, intellectual property, patents, trademarks, copyrights, patent licenses, deposit accounts, money, cash or cash equivalents, supporting obligations and letter of credit rights, commercial tort claims, and all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing, in each case whether then owned or existing or thereafter acquired or arising.

6. Pursuant to Merchant Agreements between the Debtor and Strategic Funding Source, Inc. ("Strategic"), the Debtor granted to Strategic, to secure such Debtor's obligations, a security interest in and continuing lien on substantially all of such Debtor's assets, including but not limited to, all of such Debtor's accounts, chattel paper, documents, general intangibles, goods (including, without limitation, inventory, equipment, and fixtures), instruments, investment property, intellectual property, patents, trademarks, copyrights, patent licenses, deposit accounts, money, cash or cash equivalents, supporting obligations and letter of credit rights, commercial tort claims, and all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing, in each case whether then owned or existing or thereafter acquired or arising.

7. As of the Petition Date, the obligations for which the Debtor was allegedly truly and justly indebted to Fundamental, without defense, counterclaim, recoupment or offset of any kind, aggregated not less than approximately \$1,692,162.30.

8. Pursuant to an Intercreditor Agreement, Strategic subordinated to Fundamental its prior security interest and lien in all of the Debtor's assets, except for the Timber Deed, for which Strategic retained its first position.

9. As of the Petition Date, the obligations for which the Debtor was allegedly truly and justly indebted to Strategic, without defense, counterclaim, recoupment or offset of any kind, aggregated not less than approximately \$516,041.

10. The Debtor desires to use cash collateral on an interim basis in order to maintain its operations until a final hearing on use of cash collateral can be held on March 20, 2017 at 11:00 AM.

II. USE OF CASH COLLATERAL

11. Section 363(c)(2) of the Bankruptcy Code states that a debtor may not use, sell or lease cash collateral unless: (i) each entity that has an interest in the cash collateral consents; or (ii) the court, after notice and hearing, authorizes such use in accordance with the provisions [of Section 363 of the Bankruptcy Code]" 11 U.S.C. § 363(c)(2).

12. Cash collateral includes "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property..." 11 U.S.C. § 363(a).

13. Fundamental and Strategic assert that their interests in the Debtor's cash collateral were properly perfected prior to the Petition Date. The Debtor proposes to use the cash collateral to meet its postpetition obligations and to pay its expenses, general and administrative operating expenses, and other necessary costs and expenses, including taxes and insurance and other expenses incurred during the pendency of the bankruptcy case.

14. Fundamental and Strategic have given the Debtor permission to use its cash collateral in the manner and for the purposes set forth herein, subject to the Court authorizing the

Debtor, pursuant to sections 361 and 363 of the Bankruptcy Code, to grant to Fundamental and Strategic, as and for adequate protection (a) replacement security interests in and liens upon the prepetition collateral and (b) security interests and liens (the “Post-Petition Liens”) upon Debtors’ interests in now owned or hereinafter acquired interests in the Debtor’s accounts, inventory, general intangibles, equipment, commercial tort claims, goods, books, records, and information relating to the Post-Petition Collateral and/or to the operation of Debtors’ business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded, and maintained; as well as the products and proceeds of the foregoing (collectively, the “Post-Petition Collateral”), and (b)superpriority administrative expense claims under section 507(b) of the Bankruptcy Code (the “Adequate Protection Priority Claim”).

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

(1) The Motion is granted on the terms and conditions set forth in this Order. Any objections or responses to the relief requested in the Motion are hereby continued until the final hearing on the use of cash collateral set for March 20, 2017 at 11:00 AM (CST).

(2) Until the earlier of (i) March 20, 2017; or (ii) the occurrence or existence of an Event of Default (as hereinafter defined), the Debtor is hereby authorized to use Cash Collateral solely in accordance with the budget¹ (“Budget”) presented at the hearing. For purposes of this Order, “solely in accordance with the Budget” shall mean (i) with respect to each category of expenses referenced in the Budget, use of Cash Collateral in an amount up to 115% of 50% the amount set forth in the Budget with respect to such category of expenses; and (ii) use of Cash Collateral up to 50% of the total use of Cash Collateral set forth in the Budget due to the fact that the Budget is for a 30 day period, but the Debtor’s use of Cash Collateral is limited to two weeks.

(3) As and for adequate protection for the use by the Debtor of the cash collateral, Fundamental and Strategic shall be, and hereby are, granted the Post-Petition Liens and the Adequate Protection Priority Claims (each as defined in paragraph 11 above). As additional adequate protection, (i) the Debtor shall provide to the Fundamental and Strategic, no later than by Friday March 10th and 17th, a report that sets forth in reasonable detail and in the format of the Budget (i.e., on a line item-by-line item basis) a report as to the Debtor’s use of Cash Collateral and the cash revenues collected and the cash expenditures made by Debtor during the preceding week and a report as to the issuance of invoices to account debtors; (ii) an aging of accounts receivable and payable; and (iii) such other information as reasonably requested by Fundamental or Strategic. The Debtor shall maintain with respect to the prepetition collateral insurance in the type and in the amount as the Debtor maintained as of the Petition Date. As further adequate protection, Fundamental shall be entitled to and allowed to collect any prepetition accounts and apply such sums to the outstanding obligations. Additionally, the Debtor shall remit or provide to Fundamental any and all funds, payment remittances or checks received from prepetition accounts receivables for application to the obligations due Fundamental.

¹ The Budget presented at the hearing was for a one month period. Thus all of the categories or line items should be one-half of the amounts shown on the Budget during this interim period. For example, the Budget, as amended at the hearing, shows payroll of \$86,800, which for a two week period should be one-half that amount.

(4) Fundamental's and Strategic's Replacement Liens shall attach and become valid, perfected, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtor, the Debtor's estate, Fundamental, Strategic, and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, security agreements, mortgages, UCC financing statements, or other documents or the taking of any other actions.

(5) In the event that this case is converted to Chapter 7, the terms of this interim order shall not be binding upon the trustee regarding the validity, priority, or extent of a lien or other interest in property.

DONE and ORDERED this 8th day of March, 2017.

/s/ D. Sims Crawford
D. SIMS CRAWFORD
United States Bankruptcy Judge