

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>In Re:</b>	)	
	)	
<b>TS Arms, LLC</b>	)	<b>BK Case No.:</b>
	)	
<b>Debtor-in-Possession.</b>	)	<b>18-03928-DSC11</b>

**MOTION TO PROHIBIT USE OF CASH COLLATERAL,  
FOR ACCOUNTING OF POST-PETITION USE OF CASH  
COLLATERAL AND ADEQUATE PROTECTION**

**COMES NOW**, SouthPoint Bank ("**SouthPoint**"), a secured creditor of TS Arms, LLC ("**Debtor**"), by and through its undersigned counsel and hereby moves this Court for an order prohibiting Debtor from using any cash collateral subject to SouthPoint's security interest, for an accounting of all such cash collateral received post-petition and for adequate protection (the "**Motion**"). As grounds for this Motion, SouthPoint states the following:

**PROCEDURAL BACKGROUND**

1. September 26, 2018 (the "**Petition Date**"), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**").
2. Debtor is operating its business and managing its financial affairs as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed for this Case pursuant to § 1104 of the Bankruptcy Code.

**JURISDICTION AND BASIS FOR RELIEF**

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core

proceeding pursuant to 28 U.S. C. § 157(b)(2). The statutory predicates for relief requested in this Motion are §§ 361, 362 and 363 of the Bankruptcy Code.<sup>1</sup>

### **FACTUAL BACKGROUND**

4. On December 27, 2016, SouthPoint loaned to Debtor the principal sum of \$350,000.00 to Debtor evidenced by a Business Loan Agreement ("**Loan Agreement**") and a Commercial Line of Credit Agreement and Note ("**Note**").

5. The Note is validly secured by the Commercial Security Agreement executed by Debtor dated December 27, 2016 ("**Security Agreement**"). The Loan Agreement, the Note, and the Security Agreement are referred to collectively herein as the "**Loan Documents**."

6. Pursuant to the Security Agreement, Debtor granted Bank a blanket lien on all inventory ("**Collateral**"). The Security Agreement defines the Collateral as all inventory "which the Debtor now owns or may hereafter acquire or create and all proceeds and products thereof."

7. The Security Agreement was perfected pursuant to that certain UCC Financing Statement filed with the Alabama Secretary of State on December 27, 2016, at Instrument No. 16-7568782.

8. Pursuant to the Security Agreement, Debtor agreed that whenever a default exists SouthPoint "may exercise, from time to time, any rights and remedies, including the right to immediate possession of the Collateral, available to it under the applicable law." The Security Agreement requires Debtor "in the case of default, to assemble, at its own expense, all Collateral at a convenient place acceptable to the Lender."

---

<sup>1</sup> In the event that adequate protection granted to Bank proves to be insufficient, Bank reserves all of its rights to administrative expense priority claim pursuant to 11 U.S.C. § 507(b). "When adequate protection has been given to a secured creditor and later proves to be inadequate, the creditor becomes entitled to a superpriority administrative expense claim to the extent that the proffered adequate protection was insufficient." *In re Carpet Center Leasing Co., Inc.*, 991 F.2d 682, 685 (11<sup>th</sup> Cir. 1993).

9. The Note matured on January 2, 2018. Pursuant to a forbearance agreement, the maturity date was extended to August 1, 2018, at which time the entire balance of principal, interest, fees, premiums, charges, costs and expenses then outstanding under the Note ("**Obligations**") were to be paid to SouthPoint.

10. Due to Debtor's failure to make payment of the Obligations as they came due, by letter dated August 3, 2018, SouthPoint notified Debtor of the default and demanded payment of the indebtedness on or before August 18, 2018 ("**Demand Letter**").

11. Upon Debtor's failure to make payment of the Obligations as set forth in the Demand Letter, SouthPoint filed suit against Debtor in the Circuit Court of Shelby County, Alabama on September 4, 2018 ("**State Court Action**").

12. In the State Court Action, SouthPoint filed a Motion for Writ of Seizure of the Collateral and a Motion for Summary Judgment.

13. On September 21, 2018, the Circuit Court of Shelby County entered an order granting SouthPoint's Motion for Writ of Seizure and Motion for Summary Judgment and finding, among other things, that SouthPoint is entitled to immediate possession of the Collateral.

14. As of the Petition Date, Debtor's obligation under the Note and Loan Agreement, exclusive of attorneys' fees and collection costs, are as follows:

<b>PRINCIPAL</b>	<b>INTEREST</b>	<b>LATE FEES &amp; OTHER FEES</b>	<b>TOTAL</b>
\$343,880.99	\$5,884.19	\$9,914.73	\$359,679.91

15. Debtor has failed to make any payments on the Note since July 3, 2018 and remains in default under the Loan Documents.

16. Upon information and belief, Debtor is still in business and offering to sell the Collateral to the general public.

### RELIEF REQUESTED

17. Section 363 of the Bankruptcy Code provides that a debtor-in-possession, after notice and hearing, may "use, sell or lease, other than in the ordinary course of business, property of the estate." *See* 11 U.S.C. §§ 363(b)(1) and 363(c)(1). Nonetheless, any such authorization to use property of the estate is subject to certain express limitations. In particular, upon request of an entity that has an interest in the property used, sold or leased, or property to be used, sold or leased by a debtor-in-possession, such use, sale or lease *should be prohibited* or conditioned to provide adequate protection of the lien holder's interest. *See* generally, 11 U.S.C. § 363(e).

18. In this case, there can be no dispute that the Security Agreement grants SouthPoint a security interest in the proceeds of the Collateral, which serves as SouthPoint's cash collateral. Further, SouthPoint has not consented to Debtor's use of its cash collateral post-petition. Debtor has failed to make any payments on the Note since July 3, 2018. SouthPoint is entitled to the proceeds of the sale of the Collateral as its cash collateral.

19. Further, there can be no dispute that Debtor continues to use the Collateral for its benefit, while failing to provide an adequate protection to SouthPoint for such use.

20. At a minimum, SouthPoint is entitled to adequate protection payments as to all the Collateral. While the Bankruptcy Code does not explicitly define "adequate protection," it does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including "other relief" resulting in "indubitable equivalent" of the secured creditor's interest in such property. 11 U.S.C. § 361. The purpose of adequate protection "is to insure that the secured creditor receives in value essentially what he bargained for." *In re Putnal*, 483 B.R. 799,

783 at n.7 (Bankr. M.D. Ga. 2012)(internal citation omitted). The focus of the requirement is to protect the secured creditor from diminution in value during the use period. *Id.* at 802.

21. Based upon the risks and potential decline in value of the Collateral, SouthPoint is entitled to adequate protection of its security interest in the form of monthly cash payments and/or a replacement lien pursuant to § 361 of the Bankruptcy Code. Specifically, in connection with Debtor's use of the Collateral, and for any decrease in the value of SouthPoint's interest in the Collateral as of the Petition Date, SouthPoint requests, *nunc pro tunc* as of the commencement of this Chapter 11 case, a replacement lien pursuant to 11 U.S.C. § 361(2) on all property acquired or generated post-petition by Debtor to the same extent and priority and of the same kind and nature as SouthPoint's pre-petition lien and security interest in the Collateral.

22. Further, SouthPoint requests adequate protection of its interest in the Collateral through: (i) monthly cash reports and a budget, subject to approval by SouthPoint, which covers Debtor's usage of cash collateral (to the extent all of the proceeds, from sales of the Collateral are not paid over to SouthPoint); (ii) monthly written reports with respect to the preceding month showing Debtor's opening inventory, inventory acquired, inventory sold, inventory returned, inventory manufactured or created, inventory used in Debtor's business, closing inventory, and other inventory not within the preceding categories; (iii) all such other financial and other information as required by the Loan Documents or other reports as SouthPoint reasonably requests, including but not limited to, copies of compiled monthly/quarterly/yearly financial statements, federal and state tax returns and monthly bank statements; and (iv) proof of sufficient insurance coverage on the Collateral.

WHEREFORE, SouthPoint respectfully requests that this Court enter and order:

(a) Requiring Debtor to turn over to SouthPoint any cash collateral in its possession, custody or control;

(b) Holding that the automatic stay does not apply to SouthPoint's interest in the cash collateral, and granting SouthPoint leave to take action to enforce its interest in the cash collateral;

(c) Prohibiting Debtor from using SouthPoint's cash collateral without SouthPoint's written consent;

(d) Requiring Debtor to provide SouthPoint an accounting of all cash collateral in its possession, custody, or control, and to segregate SouthPoint's cash collateral from other monies in its possession;

(e) Granting SouthPoint adequate protection of SouthPoint's interest in the Collateral as set forth herein; and

(f) For such other relief as the Court deems just and proper.

Respectfully submitted this 3<sup>rd</sup> day of October, 2018.

/s/ Michael B. Odom  
Michael B. Odom  
Attorney For SouthPoint Bank

**OF COUNSEL:**

McGlinchey Stafford  
505 North 20<sup>th</sup> Street, Suite 800  
Birmingham, AL 35203  
(205) 725-6400 (telephone)  
(205) 725-6411 (direct)  
(205) 278-6904 (facsimile)  
[modom@mcglinchey.com](mailto:modom@mcglinchey.com)

2172717.3

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 3<sup>rd</sup> day of October, 2018, the foregoing was served on either electronically through the Court's ECF Noticing System or via United States Mail, First Class, postage pre-paid the parties listed below and on the attached Matrix:

TS Arms, LLC  
3548 Pelham Pkwy South  
Pelham, AL 35124

Tameria S. Driskill  
PO Box 8505  
Gadsden, AL 35902  
Email: [tsdriskill@aol.com](mailto:tsdriskill@aol.com)

Bankruptcy Administrator  
Robert S. Vance Federal Building  
1800 5th Avenue North  
Birmingham, AL 35203

*/s/Michael B. Odom* \_\_\_\_\_  
Of Counsel

Label Matrix for local noticing  
1126-2  
Case 18-03928-DSC11  
NORTHERN DISTRICT OF ALABAMA  
Birmingham  
Wed Oct 3 11:36:57 CDT 2018

U. S. Bankruptcy Court  
Robert S. Vance Federal Building  
1800 5th Avenue North  
Birmingham, AL 35203-2111

Coconut Funding  
1225 Franklin Ave Ste 325  
Garden City, NY 11530-1693

Five Lakes Financial Inc  
dba Tech Financial Services  
310 Madrid Street, Ste 101  
Marshall, MN 56258-4002

(p)INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA PA 19101-7346

Principas Capital LLC  
111 Town Square Place, Ste 700  
Jersey City, NJ 07310-2768

Sheldon Mfg Inc.  
300 N 26th Avenue  
Cornelius, OR 97113-8507

Southpoint Bank  
c/o J. Stephen Smith, CEO & President  
3501 Grandview Pkwy  
Birmingham, AL 35243-1930

(p)US BANK  
PO BOX 5229  
CINCINNATI OH 45201-5229

Tamera S. Driskill  
PO Box 8505  
Gadsden, AL 35902-8505

SouthPoint Bank  
3501 Grandview Parkway  
Birmingham, AL 35243-1930

Cadence Bank  
Sam Tortorici  
2100 3rd Ave North  
Birmingham, AL 35203-3371

Department of Revenue  
Jefferson County Courthouse  
Birmingham AL 35203

Five Lakes Financial Inc  
dba Tech Financial Services  
840 N Old World Third Street  
Milwaukee, WI 53203-1704

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

Secretary of the Treasury  
1500 Pennsylvania Ave., NW  
Washington, DC 20220-0001

Southpoint Bank  
Hon. Michael B. Odom  
505 N 20th Street, Ste 800  
Birmingham, AL 35203-4602

State of Alabama Dept of Revenue  
P O Box 320001  
Montgomery AL 36132-0001

United States Attorney  
Northern District of Alabama  
1801 Fourth Avenue North  
Birmingham, AL 35203-2101

TS Arms, LLC  
3548 Pelham Pkwy South  
Pelham, AL 35124-2012

Cadence Bank  
c/o Sam Tortorici, its CEO  
2100 3rd Ave North  
Birmingham, AL 35203-3371

Engel Realty Co.  
PO Box 187  
Birmingham, AL 35201-0187

General Counsel  
State Department of  
Industrial Relations  
Montgomery AL 36102

LG Funding  
1218 Union Street, Ste 2  
Brooklyn, NY 11225-1512

Shelby County Tax Collector  
Shelby County Courthouse  
112 Main St  
Columbiana, AL 35051

Southpoint Bank  
c/o Hon. Michael B. Odom  
505 N 20th Street, Ste 800  
Birmingham, AL 35203-4602

U.S. Securities and Exchange Commission  
Branch of Reorganization  
950 East Paces Ferry Road Ste 900  
Atlanta, GA 30326-1382

J. Thomas Corbett  
Bankruptcy Administrator  
1800 5th Avenue North  
Birmingham, AL 35203-2111



The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Internal Revenue Service  
801 Tom Martin Dr  
Birmingham AL 35211

(d)Internal Revenue Service  
P O Box 21126  
Philadelphia PA 19114

US Bank  
Andy Cecere, President  
425 Walnut Street  
Cincinnati, OH 45202

(d)US Bank  
c/o Andy Cecere, its President  
425 Walnut Street  
Cincinnati, OH 45202

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Coconut Funding  
1225 Franklin Avenue Ste 325  
Garden City, NY 11530-1693

End of Label Matrix	
Mailable recipients	27
Bypassed recipients	1
Total	28