

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)
)
ENDLESS SALES, INC.)
) Case No. 17-11037-EEB
)
EIN: 26-2964586)
)
Debtor.)

**SECOND MOTION FOR AUTHORITY TO USE CASH COLLATERAL AND
REQUEST FOR EXPEDITED HEARING**

The Debtor, Endless Sales, Inc. d/b/a Discount Forklift (“Debtor”), by and through its attorneys, Kutner Brinen, P.C., moves the Court pursuant to 11 U.S.C. §§ 361 and 363 and Bankruptcy Rules 4001(b) and 9014 for entry of an order authorizing the Debtor’s use of cash collateral, setting a final hearing on the use of cash collateral, and providing adequate protection to properly perfected secured creditors, and as grounds therefor states as follows:

Background

1. The Debtor filed its voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code on February 13, 2017 (“Petition Date”). The Debtor remains a debtor-in-possession.

2. The Debtor is a Colorado corporation engaged in the business of buying, refurbishing, and reselling used forklifts, and designs and manufactures its own line of forklifts under the trade names “Octane Forklifts.” Additional information about the Debtor and its operations can be found at <http://discountforkliftbrokers.com/>.

A. Compass Bank Loans and Authority To Use Cash Collateral

3. Pre-petition, in July 2013 the Debtor entered into a loan agreement with BBVA Compass (“Compass”). The Debtor subsequently entered into a second loan transaction with Compass in May 2014, and a third loan with Compass in October 2014.

4. The indebtedness owed to Compass is secured by a first position lien on substantially all of the Debtor’s assets, including its inventory, accounts receivable, cash, and accounts.

5. On February 13, 2017, the Debtor filed its first Motion for Authority to Use Cash Collateral. On February 17, 2017, the Court entered an Interim Order Authorizing Use of Cash Collateral through March 3, 2017.

6. On February 28, 2017, the Debtor entered into a Stipulation for Use of Cash Collateral with Compass, pursuant to which the Debtor was authorized to use cash collateral through May 31, 2017, and was required to make monthly adequate protection payments to Compass in the amount of \$13,950.

7. On June 2, 2017, the Debtor entered into a Second Stipulation for Use of Cash Collateral with Compass, pursuant to which the Debtor's use of cash collateral was extended through August 29, 2017, and requiring the Debtor to continue making monthly adequate protection payments to Compass in the amount of \$13,950.

8. On September 13, 2017, Compass filed an Objection to Debtor's Use of Continued Use of Cash Collateral and Motion to Prohibit Further Use of Cash Collateral or Provide Adequate Protection ("Cash Collateral Objection"). The Court entered an Order Prohibiting Use of Cash Collateral on September 14, 2017. Pursuant to the Cash Collateral Objection, the total amount owed to Compass on account of its secured loans is \$576,774.67.

B. Assets and Operations of the Debtor

9. The Debtor's assets as of the date of filing this Motion consist of inventory in the amount of \$1,311,940.87 based on the inventory cost, vehicles in the amount of \$158,325, furniture and fixtures in the amount of \$3,500, and cash and cash equivalents in the amount of approximately \$605,266.01.

10. The Debtor seeks authority to use cash and cash equivalents on an ongoing basis through at least November 30, 2017. The Debtor is replacing its cash on a daily basis. The Debtor's income is derived from sales of its inventory, and payments for services provided to customers.

11. The income generated by the Debtor is cash collateral in which Compass has an interest as a secured creditor. Compass's secured interest will be adequately protected in by the Debtor's ongoing replacement of its cash, and by the value of the Debtor's inventory and equipment. Based on the value of the Debtor's assets, Compass is significantly oversecured by the value of the Debtor's assets.

RELIEF REQUESTED

12. The Debtor intends to propose a Plan of Reorganization within the next month which will provide for the continuation of the Debtor's business and payments to its creditors.

13. In order to pay necessary operating expenses, the Debtor must immediately use Cash Collateral in which Compass has an interest. The Debtor proposes to use cash collateral on an interim basis until such time as the Court schedules a final hearing on the use of cash collateral. At the final hearing, the Debtor will seek relief to use cash collateral pursuant to a budget which is attached hereto. A copy of the budget is attached hereto and incorporated herein as Exhibit A ("Budget"). The Debtor proposes to meet the Budget subject to the ability to deviate from the Budget by up to 15% per line item, per month.

14. The Budget reflects a conservative analysis of the Debtor's income and expenses over the projected periods. As evidenced by the Budget, the Debtor's income is projected to be positive over the projected period. The Debtor's historical performance during this bankruptcy case, as evidenced by its monthly operating reports, establishes that the Debtor is able to meet or exceed its projected income on a consistent basis.

15. Without the use of cash collateral, the Debtor will have insufficient funding for business operations. Therefore, the Debtor's use of cash collateral during the interim period is necessary to avoid immediate and irreparable harm to the estate. With the use of cash collateral, the Debtor will not be able to pay employees, vendors, and other costs associated with operating its business. Without the ability to pay its employees on an ongoing basis, the Debtor not be able to sustain its operations. Additionally, without the ability to continually replenish its inventory, the Debtor will have no ability to continue its sales.

16. The Debtor will be replacing its cash, and cash equivalents in the course of its daily operations. Additionally, the Debtor believes that the value of the assets are stable as long as the Debtor continues to operate. Therefore, the collateral base will remain stable.

17. In order to provide adequate protection for the Debtor's use of cash collateral to Compass, to the extent such secured creditor is properly perfected, the Debtor proposes the following:

- a. The Debtor will provide a replacement lien on all post-petition accounts and to the extent that the use of the cash collateral results in a decrease in the value of the collateral pursuant to 11 U.S.C. § 361(2);

- b. The Debtor will make adequate protection payments in the amount of \$13,950 per month to Compass, to be applied pro rata across its three secured loans;
- c. The Debtor will maintain adequate insurance coverage on all personal property and adequately insure against any potential loss;
- d. The Debtor shall provide to Compass all periodic reports and information filed with the Bankruptcy Court, including debtor-in-possession reports, monthly inventory reports, monthly WIP reports, and monthly financial statements including profit and loss statements and balance sheets;
- e. The Debtor will only expend cash collateral pursuant to the Budget subject to reasonable fluctuation by no more than 15% for each expense line item per month;
- f. The Debtor will pay all post-petition taxes; and
- g. The Debtor will retain in good repair all collateral in which Compass has an interest.

18. Should the Debtor default in the provision of adequate protection, the Debtor's approved use of cash collateral will cease and Compass will have the opportunity to obtain further relief from this Court.

19. Approval of the Debtor's use of cash collateral in accordance with this Motion and pursuant to the Budget, Exhibit A, is, on an interim basis and a final basis, in the best interest of the Debtor, its creditors and the estate as it will allow the Debtor to maintain its ongoing business operations, allow the Debtor to generate revenue, and provide the Debtor with an opportunity to propose a meaningful Plan.

20. The Debtor requests authority to extend the budgeted cash collateral use periodically by agreement with Compass.

REQUEST FOR EMERGENCY HEARING ON INTERIM RELIEF

21. Without the immediate use of cash collateral, the Debtor will not be able to fund ongoing business operations. The Debtor therefore respectfully requests that the Court set an emergency hearing for the consideration of the interim use of cash collateral and continue such hearing as may be needed to allow for extensions of interim use.

22. The proposed form of order does not contain any provision of the type indicated in the appendix at L.B.R. 4001-3(a) App.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, authorizing the Debtor's use of cash collateral in accordance with this Motion, authorize the Debtor to provide adequate protection to any properly perfected secured party in the form of that set forth herein, and for such further and additional relief as to the Court may appear proper.

DATED: September 15, 2017

Respectfully submitted,

By: /s/ Keri L. Riley
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EXHIBIT A

Monthly Budget	Sep-17	Oct-17	Nov-17
Revenue	\$ 450,000.00	\$ 450,000.00	\$ 450,000.00
BBVA Compass; \$500k/\$300k/\$200k	\$ 13,950.00	\$ 13,950.00	\$ 13,950.00
BMO Harris; Freightliner	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
Rent/Building	\$11,518.00	\$11,518.00	\$11,518.00
Fed Taxes	\$18,625.13	\$18,625.13	\$18,625.13
Auto Expense/Fuel/Insurance/Regis/Maint/Repair	\$8,800.00	\$8,800.00	\$8,800.00
Insurance Workmans Comp	\$5,900.00	\$5,900.00	\$5,900.00
Insurance Gen Liability	\$2,700.00	\$2,700.00	\$2,700.00
Payroll	\$90,000.00	\$90,000.00	\$90,000.00
Colorado Dept. Revenue	\$3,400.00	\$3,400.00	\$3,400.00
Colorado Dept. Labor	\$16,000.00	\$16,000.00	\$16,000.00
Meals/Enter/Sales SPIFF's	\$1,200.00	\$1,200.00	\$1,200.00
Phone Cells	\$320.00	\$320.00	\$320.00
Utilities-Waste Management	\$177.00	\$177.00	\$177.00
Utilities Xcel	\$2,400.00	\$2,400.00	\$2,400.00
Denver Water	\$255.00	\$255.00	\$255.00
Lead Gen;Elift/Google/123/Buyer Z/John Murph/GoDaddy/Advert/ZOH	\$30,000.00	\$30,000.00	\$30,000.00
Web/phones	\$1,300.00	\$1,300.00	\$1,300.00
Bank fees	\$1,800.00	\$1,800.00	\$1,800.00
Merchant Fees	\$1,500.00	\$1,500.00	\$1,500.00
Legal Fees; Hampton & Piggot/Kutner	\$4,000.00	\$4,000.00	\$4,000.00
Professional fees; GoodSmith/CPA	\$506.00	\$506.00	\$506.00
Uniforms	\$1,291.34	\$1,291.34	\$1,291.34
Freight	\$35,000.00	\$35,000.00	\$35,000.00
Ebay Fees; Percentage of sales	\$325.00	\$325.00	\$325.00
In-House Tow Expense/Fuel	\$1,650.00	\$1,650.00	\$1,650.00
Service Repair /Parts Exp	\$22,000.00	\$22,000.00	\$22,000.00
Sub Contract Labor	\$25,000.00	\$25,000.00	\$25,000.00
Office Supplies/Expense/postage	\$600.00	\$600.00	\$600.00
Shop Expense	\$1,000.00	\$1,000.00	\$1,000.00
Paint Expense	\$5,000.00	\$5,000.00	\$5,000.00
Accessories - Restock accessories inventory	\$3,500.00	\$3,500.00	\$3,500.00
Office Equip/Security/Repair/Cleaning	\$1,100.00	\$1,100.00	\$1,100.00
Purchase Warranty - Dependant on sales	\$1,010.00	\$1,010.00	\$1,010.00
New/Used Equipment Inventory, GoodSense	\$110,000.00	\$110,000.00	\$110,000.00
Total Expenses	\$423,827.47	\$423,827.47	\$423,827.47
Net Income	\$ 26,172.53	\$ 26,172.53	\$ 26,172.53