

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
<http://www.flmb.uscourts.gov>

In re:

R. CARRIER TRUCKING, INC.,

Debtor.

Case No: 17-bk-08163-CPM
Chapter 11

**DEBTOR'S EMERGENCY MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS AUTHORIZING USE OF CASH
COLLATERAL AND PROVIDING ADEQUATE PROTECTION**

R. Carrier Trucking, Inc. (the “**Debtor**”), pursuant to 11 U.S.C. §§ 105 and 363, and Fed. R. Bankr. P. 4001(b), hereby files this motion (the “**Motion**”), seeking (1) entry of an interim order authorizing Debtor’s immediate use of property that may constitute “cash collateral,” *nunc pro tunc* to September 23, 2017, and providing adequate protection to entities that may have an interest in such property (the “**Interim Order**”), and (2) the entry of a final order approving all relief requested in this Motion (the “**Final Order**”).

Pursuant to Fed. R. Bankr. P. 4001(b)(2), Debtor requests this Court (1) schedule a preliminary hearing on an emergency basis at the Court’s earliest opportunity to authorize use of cash collateral as is necessary to avoid immediate and irreparable harm to Debtor and its estate (“**Preliminary Hearing**”), and (2) schedule a final hearing at least fifteen (15) days after service of this Motion to consider final approval of the requested relief (“**Final Hearing**”). In support of this Motion, Debtor state the following:

PROCEDURAL HISTORY

1. On September 23, 2017 (the “**Petition Date**”), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Middle District of Florida, Tampa Division.

2. Debtor is continuing in possession of its property and both operating and managing its business as Debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

4. Debtor is a trucking company specializing in transporting heavy building materials. Debtor has five employees and is located at 19400 Fort Dade Avenue, Brooksville, FL 34609.

5. In 2015, BET-ER Mix, one of Debtor's customers, informed Debtor that BET-ER Mix would be increasing the business that it sends to the Debtor. As a result, Debtor purchased an additional five tractor trucks and an additional five trailers.

6. Debtor financed the vehicles through TCH and Scottrade Bank ("**Scottrade**"). Scottrade filed a UCC financing statement asserting a lien in Debtor's accounts receivable.

7. Subsequently, BET-ER Mix cut the business that it was sending Debtor by fifty percent (50%), and in November 2016, BET-ER Mix pulled all of its business from Debtor resulting in Debtor's inability to make all of the payments on its vehicles.

8. Prior to the Petition Date, secured creditor TCF repossessed three tractor trucks and one trailer, and Scottrade accelerated the loans for two of Debtor's tractor trucks and two of Debtor's trailers and has threatened to repossess same.

RELIEF REQUESTED AND BASIS FOR RELIEF

9. By this Motion and to avoid immediate and irreparable harm to the Debtor's estate pending the Final Hearing, Debtor respectfully requests: (a) an emergency Preliminary Hearing to consider the immediate entry of an Interim Order authorizing the Debtor's limited use of cash collateral

to the extent needed to avoid immediate and irreparable harm until a subsequent Final Hearing can be conducted to consider the relief requested in this Motion; and (b) a subsequent Final Hearing to consider the full relief requested by this Motion.

10. In accordance with Fed. R. Bankr. P. 4001, Debtor provides the following:

A. Identification of Secured Creditors Asserting an Interest in Cash Collateral

11. As set forth above, Debtor believes that Scottrade may have a security interest and lien in both Debtor's assets that may constitute cash collateral (the "**Cash Collateral**"). As of the Petition Date, Debtor had \$21,299.28 in accounts receivable and \$6,469.73 in its bank account.

12. Scottrade asserts a claim for \$147,573.35 against the Debtor.

B. Terms of Use of Cash Collateral, Reporting, and Offer of Adequate Protection

13. To provide adequate protection of the interests of Scottrade, Debtor proposes granting replacement liens in Debtor's post-petition accounts receivable. Such post-petition liens would be granted to the same extent, validity, and priority of their respective liens in such Cash Collateral as of the Petition Date.

C. Amount and Types of Cash Collateral as of the Petition Date

14. As of the Petition Date and as explained above, Debtor estimates that its interest in property that may be considered Cash Collateral consists primarily of accounts receivable.

D. Purposes for the Use of Cash Collateral and Cash Flow Budget

15. From the date of the filing of this Motion through the date of the Preliminary Hearing and Final Hearing, Debtor must have access to and authorization to use Cash Collateral to generate revenue used for: (a) the cost, maintenance, and preservation of the estate's assets; (b) payment of necessary payroll and other operating expenses; and (c) other payments necessary to sustain constant business operations. A short-term cash budget (the "**Budget**") will be filed prior to the Preliminary

Hearing reflecting the Debtor's immediate cash needs for the next several weeks. The use of such Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtor's estate, to maintain business operations, and to preserve value for all creditors.

16. Debtor proposes to use Cash Collateral in accordance with the Budget for, among other things, payment of necessary payroll and other ordinary business expenses related to its operations. This Motion is filed without prejudice to Debtor's right to modify the Budget and/or request further authority to use Cash Collateral in excess of the amounts sought herein.

17. Debtor requests authority to use Cash Collateral immediately to pay expenses set forth in the Budget, with a ten percent variance, as payment of such expenses is necessary to maintain its business, to maximize return on assets, and to otherwise avoid irreparable harm and injury to its estate. In making this request, Debtor neither acknowledges nor contests that Scottrade or any other creditor has a valid, perfected security interest in or lien upon any of Debtor's assets, including Cash Collateral.

**BASIS AND NEED FOR EMERGENCY PRELIMINARY
HEARING AND IMMEDIATE RELIEF**

18. If Debtor is denied the ability to immediately use Cash Collateral, there will be direct, immediate, and irreparable harm to the Debtor's ability to continue business operations, perform its obligations, and maximize its assets and distributions to its creditors. Given the Debtor's daily cash needs for its continued operations, any delay or denial of access to the Cash Collateral would, in all likelihood, force Debtor to cease operations. The primary recoveries of creditors in this case will derive from the Debtor's value as an operating business. For those reasons, Debtor requests the Preliminary Hearing on an emergency basis and the entry of the Interim Order, to be followed by a Final Hearing to consider entry of the Final Order.

19. A copy of this Motion is being sent via electronic mail to Scottrade's attorney and via mail to all creditors listed on the all-creditor mailing matrix. Accordingly, Debtor requests this Court

enter an order finding that such notice of this Motion is adequate and sufficient and complies with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court.

WHEREFORE, Debtor respectfully requests this Court (1) enter an order granting this Motion on an emergency basis, which (a) authorizes the continued use of Cash Collateral on an interim basis as described herein (without prejudice for further requests for authority to use Cash Collateral), subject to the provisions set forth in this Motion, (b) grants replacement liens to Scottrade as adequate protection as described in this Motion, and (c) schedules a final hearing in compliance with Fed. R. Bankr. P. 4001 to consider entry of a final order granting relief requested in this Motion; (2) enter a final order granting relief requested in this Motion following a Final Hearing; and (3) grant such other relief as the Court deems fair and just under the circumstances.

Dated this 25th day of September, 2017.

/s/ Suzy Tate
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by CM/ECF electronic service, electronic mail, and/or U.S. Mail, postage prepaid to Office of the United States Trustee, 501 E. Polk St., Ste. 1200, Tampa, FL 33602; Sally Sinclair, Esq., Jenkins & Kling, P.C., 150 N. Meramac Ave., Ste. 400, St. Louis, MS 63105 (ssinclair@jenkinskling.com); and to the parties listed on the all-creditor matrix for this Chapter 11 case on September 25th, 2017.

/s/ Suzy Tate
Suzy Tate