

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In Re:

S. MURPHY ENTERPRISES, INC.
Debtor.

Chapter 11
Case No.: 8:17-bk-08576-KRM

**MOTION FOR AUTHORITY TO USE CASH COLLATERAL
NUNC PRO TUNC AND PROVIDING ADEQUATE PROTECTION**

****Emergency Hearing Request Pursuant to Local Rule 9075-1****

The above-captioned Debtor being the Debtor-in-Possession, respectfully requests an emergency hearing in this matter to prevent immediate and irreparable harm that would occur if the Debtor does not have immediate access to use of cash collateral to fund the continued operation of its business, payroll, and critical expenses in order to preserve the value of the estate. As such, the Debtor respectfully requests that this Motion be set for hearing on an Expedited Basis.

COMES NOW, S. Murphy Enterprises, Inc., (the “Debtor”), by and through its undersigned counsel, files this its *Motion for Authority to Use Cash Collateral Nunc Pro Tunc and Providing Adequate Protection* pursuant to §§ 105 and §363 (c)(2)(B) of Title 11 of the Bankruptcy Code, 11 U.S.C. §101, et. seq. as amended (the “Bankruptcy Code”) and Rules 4001(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, the Debtors state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested is 11 U.S.C. §§ 105 and 363 and Rule 4001(d)(1)(D), Federal Rules of Bankruptcy Procedure.

BACKGROUND

3. On October 10, 2017, the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code (the “Petition Date”) and pursuant to Bankruptcy Code §§1107(a) and 1108, is operating its business and managing its affairs as a Debtor-in-Possession.

4. As of the date hereof, no trustee, examiner, or statutory committee has been appointed.

5. The Debtor manufactures digital display signs.

6. Upon information and belief, American Express Bank, FSB and TD Bank, N.A., (collectively the “Secured Creditors”) hold UCCs on the Debtor’s assets in the amounts of \$32,198.60 and \$367,490.00, respectively.

7. The Debtor reserves the right to challenge the validity, priority and extent of the Secured Creditor’s lien.

RELIEF REQUESTED

8. Through this Motion, the Debtor seeks an Order of this Court authorizing the Debtor to use cash, accounts receivable and other income derived from the Debtor’s operations to fund its operating expenses and costs of administration in this Chapter 11 case for the duration of the chapter 11 case (the “Cash Collateral”) pursuant to 11 U.S.C. §§ 105 and 363, Federal Rules of Bankruptcy Procedure 4001(b)(2) and Local Rule 4001-3, since any cash collateral generated by the Debtor may constitute the cash collateral of the Secured Creditor.

TERMS AND USE OF CASH COLLATERAL AND OFFER OF ADEQUATE PROTECTION

9. In order for the Debtor to operate its business, it is imperative that it have the use of

its cash collateral

10. Petition Date, the cash collateral is approximately \$33,000.00.

11. Debtor seeks authority to use that cash immediately and future revenues from sale, until a final hearing.

12. As adequate protection for the use of cash collateral, Debtor offers the following:

- a. The Secured Creditors shall have post-petition liens on the Debtor's assets and Cash Collateral to the same extent, validity and priority as existed pre-petition; and
- b. The Debtor will maintain property insurance on its insurable assets.

PURPOSES FOR THE USE OF CASH COLLATERAL

13. The Debtor must have access to and authorization to use Cash Collateral in the amounts and for the purposes set forth in the budget, attached as **Exhibit "A"** to this Motion (the "Budget"). The use of such Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtor's estate. The Cash Collateral will be used to maintain business operations and preserve value of the estate. Among other things, the Debtor proposes to use Cash Collateral in accordance with the Budget for payment of necessary owner/operators, employees, supplies, and ordinary business expenses related to its operations. This Motion is filed without prejudice to the Debtor's right to request further authority to use Cash Collateral in excess of the amounts sought herein.¹

14. The Debtor requests authority to use Cash Collateral immediately to pay the expenses set forth in the Budget as payment of such expenses is necessary to maintain its business, maximize the return on its assets, and to otherwise avoid irreparable harm and injury to its estate.

¹ The Budget reflects general line items reflecting the projections of the Debtor's normal operating expenses for the period covered by the Budget. The Debtor's expenditures will be in reasonable compliance with Budget.

15. In order to ensure that the Debtor operates effectively throughout this bankruptcy proceeding, the Debtor also requests permission to:

- (a) exceed any line item on the budget by an amount equal to ten percent (10%) of each such line item; or
- (b) to exceed any line item by more than ten percent (10%) so long as the total of all amounts in excess of all line items for the Budget do not exceed ten percent (10%) in the aggregate of the total budget.

WHEREFORE, S. Murphy Enterprises, Inc., the Debtor, respectfully requests that this Honorable Court (i) enter an order granting this Motion on an emergency interim basis *nunc pro tunc* to the Petition Date; (ii) authorizes the Debtor's use of Cash Collateral in accordance with the Budget and to provide related adequate protection; (iii) permitting the Debtor to deviate from the Budget in the amount of ten percent (10%) to the extent necessary; (iv) scheduling a Final Hearing in order to authorize the Debtor's use of cash collateral; and (v) granting such other and further relief as the Court shall deem just and proper.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion *for Authority to Use Cash Collateral Nunc Pro Tunc and Providing Adequate Protection* has been furnished electronically (CM/ECF) or US Mail on October 11, 2017, to:

- **U.S. Trustee, 501 E. Polk St., #1200, Tampa, Florida 33602;**
- **Those listed on the attached Local Rule 1007-2 Parties in Interest Matrix**

/s/ Steven M. Fishman
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Steven M. Fishman, P.A.
2454 McMullen Booth Rd.
Suite D-607
Clearwater, FL 33759
727-724-9044 Fax: 727-724-9503
steve@attorneystevenfishman.com
Florida Bar No. 0920721
Attorney for the Debtor

**Exhibit "A" - CASH BUDGET
S. Murphy Enterprises, Inc.**

S. Murphy Enterprises, Inc.	Month Oct. 2016	Month Nov.	Month Dec.	Month Jan. 2017	Month Feb.	Month Mar.	6 Month Average
CASH RECEIPTS							
Sales	\$ 59,638.00	\$ 62,619.90	\$ 72,012.89	\$ 64,811.60	\$ 71,292.76	\$ 74,857.39	\$ 67,538.76
Shareholder Investment	\$ 10,000.00						\$ 10,000.00
TOTAL RECEIPTS	\$ 69,638.00	\$ 62,619.90	\$ 72,012.89	\$ 64,811.60	\$ 71,292.76	\$ 74,857.39	\$ 69,205.42
CASH DISBURSEMENTS							
Advertsing & Promotion	\$ 50.00	\$ 51.50	\$ 56.65	\$ 48.15	\$ 52.97	\$ 55.62	\$ 52.48
Bank Charges - Credit Card Transaction Cost	\$ -	\$ -					
Charitable Contributions	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00
Insurance	\$ 350.00	\$ 350.00	\$ 350.00	\$ 350.00	\$ 350.00	\$ 350.00	\$ 350.00
Inventory	\$ 30,100.00	\$ 31,003.00	\$ 34,103.30	\$ 28,987.81	\$ 30,000.00	\$ 30,000.00	\$ 30,699.02
Licenses & Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Management Fees	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
Meals & Entertainmant	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Misc. Purchases	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Misc. Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Office Supplies	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
Payroll (Leased Employees)	\$ 15,050.00	\$ 15,050.00	\$ 15,050.00	\$ 15,050.00	\$ 15,050.00	\$ 15,050.00	\$ 15,050.00
Penalties & Fines	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Postage	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Rent	\$ 10,942.00	\$ 10,942.00	\$ 10,942.00	\$ 10,942.00	\$ 10,942.00	\$ 10,942.00	\$ 10,942.00
Repairs & Maintence	\$ 100.00	\$ 103.00	\$ 113.30	\$ 96.31	\$ 105.94	\$ 111.23	\$ 104.96
Taxes Paid - Payroll	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Taxes Paid- Sales & Use	\$ 3,500.00	\$ 3,605.00	\$ 3,965.50	\$ 3,370.68	\$ 3,707.74	\$ 3,893.13	\$ 3,673.67
Taxes Paid - Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Telephone	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Travel & Entertainment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
U.S. Trustee Quarterly Fees		\$ -	\$ -	\$ -	\$ -	\$ -	
Utilities	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00
Vehicle Expenses	\$ -	\$ -					
Other							
Total Business Disbursements	\$ 65,442.00	\$ 66,454.50	\$ 69,930.75	\$ 64,194.94	\$ 65,558.65	\$ 65,751.98	\$ 66,222.14
Net Income	\$ 4,196.00	\$ (3,834.60)	\$ 2,082.13	\$ 616.66	\$ 5,734.11	\$ 9,105.42	\$ 2,983.29

EXHIBIT "A"- Cash Budget

Label Matrix for local noticing
113A-8
Case 8:17-bk-08576-KRM
Middle District of Florida
Tampa
Wed Oct 11 13:51:34 EDT 2017

American Express Bank, FSB
4315 South 2700 West
Salt Lake City, UT 84184-0002

Department of Revenue
PO Box 6668
Tallahassee FL 32314-6668

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

Regions Bank
Bankruptcy Dept.
1900 Fifth Ave North
Birmingham, AL 35203-2670

Stephen & Raffaella Murphy
2912 Chancery Ln.
Clearwater, FL 33759-1403

TD Bank, N.A.
PO Box 1029
SC1-094-102
Greenville, SC 29602-1029

WRI-TC East Lake
Woodlands, LLC
PO Box 924133
Houston, TX 77292-4133

End of Label Matrix
Mailable recipients 11
Bypassed recipients 0
Total 11