

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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IN RE: CASE NO. 17-16095-BKC-RBR
BARMER ENTERPRISES, LLC Chapter 11
Debtor.
_____ /

**DEBTOR'S EMERGENCY MOTION FOR AUTHORIZATION
TO USE CASH COLLATERAL**

**BASIS FOR EXPEDITED RELIEF
(Debtor needs to purchase inventory and fund its operations. Debtor's first post petition
payroll is May 28, 2017 and rent will be due)**

BARMER ENTERPRISES, LLC, the Debtor herein, through undersigned counsel, files this Emergency Motion for Authorization to Use Cash Collateral pursuant to Bankruptcy Code Section 363 and Bankruptcy Rule of Civil Procedure Sections 4001, 6003, 6004 and 7001 seeking permission for the Debtor to use of cash collateral in accordance with the monthly budget as set forth herein and in support thereof states as follows:

1. On May 15, 2017, (the "Petition Date") the Debtor filed a voluntary petition under Chapter 11, Title 11 of the United States Code.
2. The Debtor is the owner and operator of eight (8) retail bicycle stores known as Bike America and located in Pembroke Pines, East Boca, West Boca, Sunrise, Coral Springs, Boynton Beach and West Palm Beach.
3. This Motion and Proposed Order contain the following provisions of the type indicated in Bankruptcy Rule 4001 and the Guidelines.

(i) Entities with an Interest in Cash Collateral

Suntrust Bank, N.A. (“Suntrust”) has a secured claim which arises from a Small Business Administration (“SBA”) loan currently in the approximate amount of \$1,900,000.00. Suntrust is secured by a blanket lien on the Debtor’s assets and proceeds therefrom, which was perfected by a UCC-1 filed June 30, 2014. Debtor believes that Suntrust’s lien only attaches to the proceeds of sales in excess of the purchase money security interests as set forth below.

BMC USA CORPORATION (“BMC”) is one of the Debtor’s suppliers. BMC is secured by a purchase money security interest which creates a first lien on the inventory of BMC Bikes and other products sold by BMC to the Debtor. The lien of BMC was perfected by a UCC -1 filed on November 10, 2015. The approximate value of the pre petition inventory of BMC Bikes sold to the Debtor by BMC is approximately \$17,000.00, and Debtor’s pre petition obligation to BMC is approximately \$30,000.00 in total.

CYCLING SPORTS GROUP, INC. a/k/a Cannondale (“Cycling”) is one of the Debtor’s major suppliers and provides the Debtor with the right to sell Cannondale brand bicycles in East Boca, West Boca, Sunrise, Coral Springs, Boynton Beach and West Palm Beach. Cannondale is a secured creditor by reason of a purchase money security interest which creates a first lien on the inventory of Cannondale and other products sold by Cycling to the Debtor. The lien of Cycling was perfected by a UCC -1 filed on July 16, 2014. The approximate value of the inventory sold to Cycling pre petition currently held by the Debtor is \$180,000.00 and Debtor’s pre petition obligation to Cycling is approximately \$425,000.00. Debtor has been on a cash in advance of delivery basis with Cycling for many months.

Giant Bicycle, Inc. (“Giant”) is the Debtor’s largest supplier. Giant is a secured creditor

by reason of a purchase money security interest which creates a first lien on the inventory of Giant products sold by Giant to the Debtor. The lien of Giant was perfected by a UCC -1 filed on March 22, 2017. The approximate value of the inventory sold to the Debtor by Giant pre petition is \$273,000.00, and the Debtor's prepetition obligation to Giant is approximately \$484,855.00.

CHTD Company, Specialized Bicycle Components, ASS'N and America Express have filed UCC-1's. Debtor does not believe there is equity in excess of the foregoing liens to secure these secondary lien positions.

(ii) Purpose for Use of Cash Collateral and (iii) Material Terms, including duration

4. Debtor requests permission to use cash collateral pursuant to the Budget attached hereto and incorporated herein as Exhibit A.

Debtor's Budget includes an additional payment of \$7,000 per week to Cycling in payment of its pre petition claim in anticipation of a determination that Cycling is a critical vendor. The additional weekly payment will continue until such time as the claim of Cycling is equal to the value of the inventory provided by Cycling to the Debtor.

Debtor's Budget also includes a payment of \$5,500.00 per week to Giant in payment of its pre petition claim in anticipation of a determination that Giant is a critical vendor. The additional weekly payment to Giant will continue until such time as the claim of Giant is equal to the value of the inventory provided by giant to the Debtor.

5. The Debtor's Budget is based on the Debtor's annual revenue from 2016. Debtor's sales thus far have been consistent with its revenue from 2016.

(iv) Adequate Protection

6. The Debtor will make payments to its suppliers on a cash in advance of delivery basis. The weekly payments to Giant and Cycling are anticipated to continue as set forth above until Debtor is no longer “out of trust.”

7. Debtor proposes to make monthly interest payments to Suntrust in the amount of \$10,000.00 which will provide Suntrust with interest at the rate of six percent (6%). The Debtor’s is fully insured.

BACKGROUND

8. In support of the Budget, Debtor is prepared to demonstrate that its revenue from sales will support these expenses. Debtor’s SBA loan was based upon a fifteen (15) year amortization, and payments were \$25,000.00 each month. Debtor believes it can pay its vendors by decreasing its monthly SBA loan payment, and systematically reducing the size of its stores.

10. Debtor reduced its obligations to its suppliers in the months preceding the Petition Date.

11. A proposed order is attached hereto as Exhibit B which includes the following provisions:

PURSUANT TO THIS COURT’S LOCAL GUIDELINES: The acknowledgments and agreements binding the Debtor’s estate, and any subsequently appointed trustee, with respect to the validity, priority and enforceability of the secured claims set forth in paragraph 2 above, shall not affect or impair the rights of creditors, a Creditors’ Committee, if any is subsequently appointed, or other parties in interest having standing in this matter (other than the Debtor or a subsequently appointed trustee) (a “Party in

Interest”) to challenge the validity, priority, extent or enforceability of such liens or claims (a “Challenge”) by filing an adversary proceeding on or before 75 days after the entry of this order (the “Challenge Deadline”). If a Challenge is not filed before the Challenge Deadline, it shall be barred forever and the pre-petition liens granted to secure the obligations set forth in the Loan Documents shall be legal valid, perfected and enforceable according to their terms for all purposes in this case and any succeeding Chapter 7 case, without further Order of the Court.

WHEREFORE the Debtor respectfully requests an order of the Court allowing the Debtor the Use of Cash Collateral in accordance with the Budget attached hereto and for such further relief as the Court deems just.

I hereby certify that a copy of this Motion was served pursuant to Bankruptcy Rule 7004 via U.S. Mail or electronic mail to the parties on the attached list on this 24th day of May, 2017 and that I am admitted to the Bar of the United States District Court for the Southern District and I am in compliance with the requirements of Local Rule 2090-1(A).

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By: /S/ SUSAN D. LASKY
SUSAN D LASKY, ESQ.
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EXHIBIT

“A”

Monthly

Ordinary Income/Expense

Income

Sales	455,000.00
Total Sales	455,000.00

Total Income

Cost of Goods Sold

Cost of Goods Sold	237,000.00	237,000.00	**Payment
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Total COGS

Gross Profit	218,000.00
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Expense

Advertising and Promotion	1,000.00
Automobile Expense	3,675.90
Bank Service Charges	288.10
Computer and Internet Expenses	1,372.00
Contrabutions	100.00
Insurance Expense	5,341.82
Janitorial Expense	400.00
License	1,647.71
Meals and Entertainment	1,000.00
Merchant Account Fees	13,650.00
Office Supplies	1,000.00
PO Shipping	360.50
Payroll	80,000.00
Rent Expense	83,000.00
Repairs and Maintenance	1,000.00
State Sales Tax	
Telephone Expense	2,387.00
Utilities	9,146.28
SBA	10,000.00

not included in sales .It's a wa

Total Operations	215,369.32
Net operating Cash	<u>239,630.68</u>

Cost of Good Sold	Amout	Monthly Payment	Budget
Cannadale	450,000.00	62,000.00	62,000.00
		28,000.00	28,000.00
Giant	475,000.00	80,000.00	80,000.00
		22,000.00	22,000.00
J&B - Supplier/Accessaries		45,000.00	45,000.00
Total	925,000.00	237,000.00	237,000.00

EXHIBIT “B”

Proposed

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

IN RE: CASE NO. 17-16095-BKC-RBR
BARMER ENTERPRISES, LLC Chapter 11
Debtor.

PROPOSED ORDER (I) SETTING FINAL HEARING ON . (II) APPROVING THE INTERIM USE OF CASH COLLATERAL; (III) GRANTING ADEQUATE PROTECTION AND (IV) FIXING TIME FOR CREDITORS TO OBJECT TO VALIDITY, PRIORITY, EXTENT AND ENFORCEABILITY OF SECURED CLAIMS

THIS MATTER came before the Court on , 2017 at a.m. (the “Hearing”), upon the *Debtor’s Expedited Motion for Authority to Use Cash Collateral Pursuant to 11 U.S.C. § 363(c) Nunc Pro Tunc to May 15, 2017* (the “Motion”). The Motion seeks, among other relief, the entry of an Order (the “Order”) authorizing (1) the use of cash collateral by Barmer Enterprises, LLC (the “Debtor”) and (2) payments to Giant Bicycle, Inc. which is the Debtor’s primary supplier and holder of a purchase money security interest; Cycling Sport Group, which is Debtor’s secondary supplier and holder of a purchase money security interest; and Suntrust Bank, N.A., which is the holder of a blanket first lien and security interest in and to the property owned by the Debtor. Upon consideration of the Motion and the record of the hearing, it is **ORDERED** as follows:

1. The Motion is **GRANTED** as follows:

a. Except as otherwise consented to in writing by the Suntrust N. A, Giant Bicycles Inc and Cycling Sports Group, Inc (collectively referred to as the “Secured Creditors”) or authorized by further Order of the Court, the Debtor may use its cash collateral to pay only actual, ordinary and necessary post-petition business expenses in amounts not to exceed the line item amounts set forth in the Budget attached hereto as Exhibit “A”, plus 10%. The authorization for the Debtor to use cash collateral pursuant to this Order shall continue until the earlier of: (i) the termination of such authority in accordance with this Order, or (ii) a further Order of the Court prohibiting the use of cash collateral.

b. Pursuant to 28 U.S.C. § 1930, the Debtor may use cash collateral to pay quarterly fees to the U.S. Trustee.

c. All cash collateral shall be deposited in and disbursed through one or more debtor-in-possession bank accounts established by the Debtor (the "DIP Account"). All net income realized from the Debtor's operations shall be held in the DIP Account and shall not be disbursed without further Order of the Court.

d. **PURSUANT TO THIS COURT'S LOCAL GUIDELINES:** The acknowledgements and agreements binding the Debtor's estate, and any subsequently appointed trustee, with respect to the validity, priority and enforceability of the secured claims set forth in paragraph 1 above, shall not affect or impair the rights of creditors, a Creditors' Committee, if any is subsequently appointed, or other parties in interest having standing in this matter (other than the Debtor or a subsequently appointed trustee) (a "Party in Interest") to challenge the validity, priority, extent or enforceability of such liens or claims (a "Challenge") by filing an adversary proceeding against the Secured Creditors on or before 75 days after the entry of this order (the "Challenge Deadline"). If a Challenge is not filed before the Challenge Deadline, it shall be barred forever and the pre-petition liens granted to the Secured Creditors to secure the obligations set forth in the Loan Documents shall be legal, valid, perfected and enforceable according to their terms for all purposes in this case and any succeeding Chapter 7 case, without further Order of the Court, provided, however, if a Creditors' Committee is appointed within 75 days from the date of this Order, within 30 days from the date of its appointment, the Committee may seek an extension of the Challenge Deadline, upon a showing of cause for such relief, with notice to the Debtor and the Secured Creditors.

2. In addition to the protections of section 552(b) of the Bankruptcy Code, as further protection for the Debtor's use of cash collateral, the Secured Creditors shall have a replacement lien with the same validity and priority as its pre-petition liens upon all property which would have constituted its collateral but for the institution of this chapter 11 case, including, without limitation, any cash or cash equivalents acquired by the Debtor on or after the date of the filing of the bankruptcy petition (the "Petition Date"), provided, that such lien shall not extend to avoidance actions of the Debtor's estates arising under §§ 544, 545, 547, 548, 550, and 553 of the Bankruptcy

Code, and all proceeds thereof. The liens granted under this Order shall be valid, perfected, and enforceable as of the Petition Date without further filing or recording of any document or instrument or the taking of any further actions.

3. On or before the 20th day of each month, the Debtor shall deliver via ECF or electronic mail to the Secured Creditor's counsel (a) a Debtor in Possession Report (including copies of all bank statements) showing the Debtor's operations during the preceding month.

4. The Debtor's ability to use cash collateral will terminate immediately upon the occurrence of the events described in subparagraphs (a), (b) (c), (d), or (e) :

a. the Debtor's authorization to use cash collateral is terminated by the Court;

b. the Debtor fails to comply in any material respect with any of the terms or conditions of this Order;

c. (i) this case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, (ii) the Debtor shall file a motion, or other pleading, seeking dismissal of this case under section 1112 of the Bankruptcy Code, or otherwise; or (iii) a trustee under Chapter 11 of the Bankruptcy Code, or a responsible officer or an examiner with enlarged powers relating to the operation of the Debtor's business, is appointed under section 1106 of the Bankruptcy Code;

d. the Debtor shall cease to operate all or substantially all of its business; or

e. the Debtor shall use cash collateral in excess of any amount permitted by this Order, without the consent of the Secured Creditors.

5. This Order is without prejudice to the respective rights of the Debtor or the First Mortgage Holder to seek a modification of the Budget, after notice and hearing, including a hearing noticed on an emergency basis.

6. The Court shall conduct a final hearing on this motion on , 2017 at a.m. at 299 E. Broward Blvd., Room 301, Fort Lauderdale, FL 33301.

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Copies Furnished to: Susan D. Lasky, Esq. is directed to mail a conformed copy of this Order, immediately upon receipt, to the parties on the attached mailing list.

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Label Matrix for local noticing
113C-0
Case 17-16095-RBR
Southern District of Florida
Fort Lauderdale
Wed May 24 15:38:30 EDT 2017

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

(u)Giant Bicycle, Inc.
c/o Gunster
600 Brickell Avenue, #3500
Miami

(u)Haro Bikes

(u)Louis Garneau
3916 US Route 5
POB 1460

(u)Thule

End of Label Matrix	
Mailable recipients	39
Bypassed recipients	4
Total	43