



**ORDERED in the Southern District of Florida on January 9, 2018.**

**Raymond B. Ray, Judge  
United States Bankruptcy Court**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

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

**AGREED FINAL ORDER APPROVING THE USE OF CASH COLLATERAL;  
GRANTING ADEQUATE PROTECTION; AND FIXING TIME FOR CREDITORS TO  
OBJECT TO VALIDITY, PRIORITY, EXTENT AND ENFORCEABILITY OF  
SECURED CLAIMS**

THIS MATTER came before the Court for hearing on October 25, 2017 and November 29, 2017 at 1:30 p.m. upon the Court's THIRD INTERIM ORDER (I) SETTING FINAL HEARING ON DEBTOR'S MOTION FOR AUTHORIZATION OF CASH COLLATERAL; (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 ( DE

159) and the Debtor's Emergency Motion to Use Cash Collateral . Upon consideration of the Motion, the agreement of the parties and the record of the hearing, is

ORDERED as follows:

The Motion is GRANTED as follows:

1. (A) Except as otherwise consented to in writing by each of Suntrust N. A. ("SunTrust"), Giant Bicycle, Inc. ("Giant") and Cycling Sports Group, Inc. ("CSG") (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 "Budget") provided however,

Nothing in this Order shall authorize the Debtor to make cure payments with respect to Lessors whose leases are subject to a rejection motion filed by the Debtor, without further order of the Court.

To the extent any cure payments are approved by further order of the Court, no such cure payment will be paid to any lessor whose lease is subject to a rejection motion, unless adequate protection payments to SunTrust are current, and until the SunTrust has received its monthly adequate protection payment for the current month as set forth in the Budget.

Adequate protection payments to SunTrust must be made on December 1, 2017, December 15, 2017, January 2, 2018 and January 15, 2018 in the amount of \$5,000.00. If the Debtor fails to make any payment to SunTrust on the dates set forth above, Debtor's ability to use cash collateral shall immediately cease and SunTrust is authorized to upload the Order attached hereto as Exhibit "B". On each of the payment dates set forth above, the Debtor will send a copy of the

payment receipt from the branch where the payment was made to SunTrust at the following email address: [Debbie.boxell@suntrust.com](mailto:Debbie.boxell@suntrust.com) with a cc to counsel at [ddpowell@suntrust.com](mailto:ddpowell@suntrust.com). The adequate protection payments paid to SunTrust during the pendency of this matter shall not be subject to claw-back or disgorgement claims of any type by the Debtor, or by any trustee in the event this matter is converted to a Chapter 7 or becomes a liquidating chapter 11.

(B) The authorization for the Debtor to use cash collateral pursuant to this Order shall continue until January 29, 2018. On January 29, 2018, SunTrust may submit the Order Converting Case to Chapter 7.

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

(D) 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.

**(E) 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 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.

3. During the initial term of this order, provided there is no default by Debtor in its obligations to SunTrust hereunder, Creditor, Giant Bicycles, Inc. will continue to ship inventory to the Debtor on a payment on shipment basis. The critical vendor payments previously paid to Giant Bicycles, Inc. during the pendency of this matter shall not be subject to claw-back or

disgorgement claims of any type by Debtor, or by any trustee in the event this matter is converted to a Chapter 7 or becomes a liquidating chapter 11.

4. If the Debtor enters into any agreement to sell its business, or any portion thereof, the Debtor will provide to SunTrust, any and all agreements executed in connection with a sale, including any agreement(s) with a broker, other intermediary or potential purchaser.

5. On or before the 20<sup>th</sup> day of each month, the Debtor shall deliver via ECF or electronic mail to the Secured Creditors' counsel (a) a monthly Debtor in Possession Report (including copies of all bank statements ) showing the Debtor's operations during the preceding month; (b) a budget v. actual income and expenses for the previous month; and (c) a Profit and Loss Statement for the previous month.

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

(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;

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

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

*Copies furnished to and submitted by: Susan D. Lasky, Esq., 915 Middle River Dr., Ste 420, Ft Lauderdale, FL 33304 is directed to mail a conformed copy of this Order, immediately upon receipt, to the parties on the attached mailing list.*

# EXHIBIT

# A





# EXHIBIT

# B

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

CASE NO. 17-16095-BKC-RBR  
Chapter 11

BARMER ENTERPRISES, LLC,

Debtor.

/

**ORDER GRANTING SUNTRUST BANK, N.A.'S MOTION  
TO CONVERT (ECF # 231); AND  
CONVERTING CASE TO A CASE UNDER CHAPTER 7**

This matter came before the Court on November 29, 2017, upon SunTrust Bank, N.A.'s *Motion to Convert* (the "Motion") (ECF # 231). The Court, finding that this case was not commenced as an involuntary case under Chapter 11, nor has the case been converted to a case under Chapter 11, and for the reasons stated on the record,

ORDERS:

1. This Chapter 11 case is converted to a case under Chapter 7.

2. If applicable, the debtor shall immediately remit to the clerk of court the \$15.00 trustee surcharge fee prescribed by the Judicial Conference of the United States (if not previously paid by the debtor). Failure to pay this fee will result in dismissal of this case.

3. The debtor or the chapter 11 trustee, shall:

a. Forthwith turn over to the chapter 7 trustee all records and property of the estate under its custody and control as required by Bankruptcy Rule 1019(4);

b. Within 30 days of the date of this order, file an accounting of all receipts and distributions made. A copy of this report must be served on the U.S. Trustee; and

c. File, within 14 days of the date of this order, a schedule of unpaid debts incurred after the commencement of the chapter 11 case as required by Bankruptcy Rule 1019(5) and a supplemental matrix and certification in the format required by Local Rule 1019-1(B). The debtor or debtor's attorney is required to provide notice to those creditors pursuant to Local Rule 1019-1(B). Failure to comply may also result in sanctions being imposed by the court. Debts not listed or noticed timely will not be discharged. A copy of this schedule shall be served on the chapter 7 trustee.

4. The debtor shall:

a. file, within 14 days of the date of this order, the statements and schedules required by Bankruptcy Rule 1019(1)(A) and Bankruptcy Rule 1007(c) and in accordance with Local Rule 1019-1(B);

b. file, if the debtor is an individual, within 14 days of the date of this order, the Official Bankruptcy Form 22 A “Statement of Current Monthly Income and Means Test Calculation for Use in Chapter 7 Only” as required under Local Rule 1019-1(H), and, if not already filed under chapter 11, payment advices as required by Bankruptcy Rules 1007(b)(1) and 1007(c) and, the certificate and debt repayment plan, if any, required by §521(b), a certification under §109(h)(3) or a request for a determination by the court under 109(h)(4).

c. file, if the debtor is an individual, within 30 days of the date of this order, a statement of intention with respect to retention or surrender of property securing consumer debts, as required by 11 U.S.C. §521(a)(2)(A) and Bankruptcy Rule 1019(1)(B), and conforming to Official Form 8.

5. Pursuant to Local Rule 2016-1(C)(2), the debtor's attorney, any examiner or trustee appointed by the court, or any other professional person employed under 11 U.S.C. §327 or 1103 shall, file within 90 days after the date of the post-conversion meeting, an application for compensation for outstanding fees and expenses incurred during the chapter 11 administration including an application justifying retention of any retainer received which has not been approved by a prior award. Any retainers received which are not approved will be subject to turnover to the chapter 7 trustee. The attorney for the debtor in possession, or the chapter 11 trustee (if one was appointed) shall notify all such professionals of this deadline by serving them with a copy of this order.

6. The debtor shall provide notice to affected parties of the deadline set pursuant to Local Rule 1019-1(F)(1) for filing by a nongovernmental unit a request for payment of an administrative expense.

7. If this case is being converted after the confirmation of a plan, the debtor, within 30 days of the date of this order, shall file:

a. A schedule of all property not listed in the final report and account of the debtor in possession or chapter 11 trustee which was acquired after the commencement of the chapter 11 case but before the entry of this conversion order;

b. A schedule of unpaid debts (and a supplemental matrix as described in paragraph 3(c)) not listed in the final report and account of the debtor in possession or chapter 11 trustee, which were incurred after the commencement of the chapter 11 case but before the entry of this conversion order, as required by Bankruptcy Rule 1019(5) and provide notice of the claims deadline as required by Bankruptcy Rule 1019(6) and Local Rule 1019-1(B) and (F); and

c. A schedule of executory contracts and unexpired leases entered into or assumed after the commencement of the chapter 11 case, but before the entry of this conversion order.

8. The Chapter 7 Trustee, in his or her discretion, is authorized to operate the business for a period of thirty (30) days. The Trustee can seek further extensions if necessary.

9. Failure of the debtor to comply with the provisions of this order may result in dismissal of this case without further hearing or notice.

###

**Submitted by:**  
Denise D. Dell-Powell, Esq.

Burr & Forman LLP  
200 S. Orange Avenue, Suite 800  
Orlando, FL 32801  
(305) 536-7285

**THE CLERK IS HEREBY DIRECTED TO SERVE A COPY OF THE INSTANT  
ORDER ON ALL INTERESTED PARTIES.**