

SO ORDERED.

SIGNED this 29th day of March, 2017.



Dale L. Somers

Dale L. Somers
United States Bankruptcy Judge

HINKLE LAW FIRM LLC
301 North Main, Suite 2000
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

SLUSS & RAY LLC

Debtor(s)

Case No. 17-10301
Chapter 11

**INTERIM ORDER GRANTING INTERIM RELIEF FOR
USE OF CASH COLLATERAL PENDING A FINAL HEARING ON MOTION**

This matter comes before the Court on the Debtor's Motion for use of cash collateral and scheduling a final hearing. The Debtor appears by and through its counsel, Edward J. Nazar of Hinkle Law Firm LLC. Emprise Bank appears by and through its counsel, Karl R. Swartz of Morris, Laing, Evans, Brock & Kennedy, Chtd. The United States Trustee additionally appears. There are no other appearances.

WHEREUPON THE COURT FINDS:

Background

1. On March 9, 2017 (the “Commencement Date”), the Debtor commenced with this Court a voluntary case under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”). The Debtor is authorized to operate his business and manage his property as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §1334.
3. This 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 28 U.S.C. §1409.

Debtor's Business Operation

4. The Debtor operates three AAMCO franchise transmission shops in Wichita, Kansas. The locations of these shops are as follows:
 - a. 703 North West Street, Wichita, Kansas 67203;
 - b. 901 South Woodlawn, Wichita, Kansas 67203;
 - c. 2490 South Meridian Avenue, Wichita, Kansas 67217.
5. The Debtor's principal source of revenue is from the collection of credit card receivables and cash payments associated with the transmission repair business.
6. The following parties may claim an interest upon the cash collateral resources of the Debtor:

- a. Emprise Bank by reason of a UCC-1 Financing Statement filed April 14, 2014 on all inventory, chattel paper, accounts, equipment, general intangibles, instruments and fixtures;
 - b. ASSN Company by reason of a UCC-1 Financing Statement filed November 6, 2015 on all assets now owned or hereafter acquired and wherever located;
 - c. National Funding, Inc. by reason of a UCC-1 Financing Statement filed May 17, 2016 on all inventory, chattel paper, accounts, accounts receivable, equipment, general intangibles, furniture and fixtures;
 - d. Merchant Money Company by reason of a UCC-1 Financing Statement filed July 19, 2016, on all proceeds of each future sale by the debtor.
7. Further, South Central Kansas Economic Development, Inc. may claim an interest by reason of UCC-1 Financing Statement filed September 21, 2015, on CCWRW, LLC, a related entity of the Debtor, upon all accessions, accounts, extracted collateral, chattel paper, commercial tort claims, commingled goods, consumer goods, deposit accounts, equipment, fixtures, general intangibles, healthcare insurance receivables, instruments, inventory, investment property, letter of credit rights money, payment intangibles, proceeds, software, standing timer.
8. Emprise Bank has a first security interest upon the cash collateral assets of the Debtor.
9. There is insufficient equity to reach the subordinate lienholder claims of ASSN Company, National Funding, Inc. or Merchant Money Company.

10. In addition, the following parties may claim an unperfected interest in the cash collateral:
- a. Behalf, Inc.;
 - b. Circleback Lending, Inc.;
 - c. Sofi Lending Corp.

Interim Relief Approved

11. The Debtor is authorized to use on an interim basis and until the final hearing on any Interim Order for the use of cash collateral, the cash collateral to make the following necessary payments:

- a. Payroll expenses estimated in the amount of \$4,000.00;
- b. Monthly payment for employment withholding taxes due on March 15, 2017 in the amount of \$4,600.00;
- c. Sales taxes due on March 25, 2017 in the estimated amount of \$6,500.00;
- d. Franchise fee to AAMCO Transmission in the amount of \$3,000.00;
- e. Rent for 703 North West Street in the amount of \$2,000.00;
- f. Ongoing utility bills and software licenses for online repair expenses, the total of which is \$4,000.00;
- g. Adequate protection payment to Emprise Bank and Small Business Administration due March 11, 2017, in the amount of \$1,569.00;
- h. Payment to Lease Consultants in the amount of \$450.00 per month for equipment lease payments for tire mounting equipment and air compressors;

- i. Health insurance in the amount of \$2,000.00 per month;
 - j. Worker's compensation insurance in the monthly amount of \$1,800.00;
 - k. Merchant fees on credit card account in the estimated amount of \$2,000.00.
12. The Debtor estimates revenue on a weekly basis of \$25,000.00 to \$30,000.00.

Summary of Relief Requested

13. By the motion (the "Motion"), the Debtor requested (i) pursuant to Sections 105, 361, 362, 363, 506(c) and 507 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 4001(b)(1) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"):
- a. Authority to use cash collateral; and
 - b. Authority to grant adequate protection to Emprise Bank in the form of a post-petition lien on all post-petition assets;
- and (ii) pursuant to Bankruptcy Rule 4001(b)(2), the scheduling of a final hearing (the "Final Hearing") with respect to the foregoing relief.

Bankruptcy Rule 4001 Concise Statement

14. In accordance with Bankruptcy Rule 4001, below is a summary of the nature of the Debtor's request and proposed use of Cash Collateral:
- a. Parties with Interest in Cash Collateral. The parties with interest in Cash Collateral are as stated above:
 - 1) Emprise Bank, PO Box 270, Wichita, Kansas 67201, by reason of a

UCC-1 Financing Statement filed April 14, 2014 on all inventory, chattel paper, accounts, equipment, general intangibles, instruments and fixtures;

- 2) ASSN Company, PO Box 2576, Springfield, Illinois 62708, by reason of a UCC-1 Financing Statement filed November 6, 2015 on all assets now owned or hereafter acquired and wherever located;
- 3) National Funding, Inc., 9820 Town Centre Drive, Suite 200, San Diego, California 92121, by reason of a UCC-1 Financing Statement filed May 17, 2016 on all inventory, chattel paper, accounts, accounts receivable, equipment, general intangibles, furniture and fixtures;
- 4) Merchant Money Company, 330 East Lambert, Suite 330, Brea, California 92821, by reason of a UCC-1 Financing Statement filed July 19, 2016, on all proceeds of each future sale by the debtor;
- 5) Further, South Central Kansas Economic Development, Inc., 200 West Douglas, Suite 710, Wichita, Kansas 67203, may claim an interest by reason of UCC-1 Financing Statement filed September 21, 2015, on CCWRW, LLC, a related entity of the Debtor, upon all accessions, accounts, extracted collateral, chattel paper, commercial tort claims, commingled goods, consumer goods, deposit accounts, equipment, fixtures, general intangibles, healthcare insurance

receivables, instruments, inventory, investment property, letter of credit rights money, payment intangibles, proceeds, software, standing timer.

- b. Use of Cash Collateral. The Debtor intends to use Cash Collateral to pay expenses of the business operation in accordance with the Budget for calendar year 2017 (as defined below), up to amounts not to exceed 110% of the amounts set forth in the Budget on a cumulative basis.
- c. Termination Date. The Debtor seeks authorization to use Cash Collateral through June 30, 2017.
- d. Events of Default. The occurrence of any of the following events, unless waived in writing by Emprise Bank shall constitute an event of default (the "Events of Default"):
 - 1) the entry of an order by the Court, other than the Interim Order, granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral, or (ii) with respect to any lien of or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a material adverse effect on the business operation,

- operations, property, assets, or condition, financial or otherwise, of the Debtor;
- 2) dismissal of the case or conversion of the case to Chapter 7 case, or appointment of a Chapter 11 trustee or examiner with enlarged powers or other responsible person;
 - 3) upon written notice from Emprise Bank, any material misrepresentation of a material fact made after the Commencement Date by the Debtor to Emprise Bank about the financial condition of the Debtor, the nature, extent, location or quality of any Collateral, or the disposition or use of any Collateral, including Cash Collateral;
 - 4) the sale after the Commencement Date of any portion of any of the Debtor's assets outside the ordinary course of dealing and are not approved by the Court under 11 U.S.C. §363;
 - 5) the failure by the Debtor to perform, after notice from Emprise Bank, in any respect, any of the material terms, provisions, conditions, covenants, or obligations under the Interim Order.
- e. Rights and Remedies Upon an Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, Emprise Bank

may declare a termination, reduction or restriction on the ability of the Debtor to use Cash Collateral (any such declaration shall be referred to herein as a “Termination Declaration”). The Termination Declaration shall be given by facsimile (or other electronic means) to counsel to the Debtor, counsel to Emprise Bank, counsel to any official committee of unsecured creditors appointed in this case pursuant to Section 1102 of the Bankruptcy Code (a “Statutory Committee”) and the United States Trustee (the “U.S. Trustee”) (the earliest date any such Termination Declaration is made shall be referred to herein as the “Termination Declaration Date”). During the period that ends seven (7) business days after the Termination Declaration Date (the “Remedies Notice Period”), the Debtor may use Cash Collateral in accordance with the terms and provisions of the Budget solely to meet payroll obligations and to pay expenses critical to the preservation of the Debtor and its estate as set forth in the Budget and the Debtor may request that the Court order further use of Cash Collateral.

f. Adequate Protection.

- 1) Emprise Bank, for its benefit, shall receive, (i) an additional and replacement continuing valid, binding, enforceable, non-avoidable, and automatically perfected post-petition security interest in and lien (the “Senior Adequate Protection Liens”) on any and all presently owned and hereafter acquired

personal property and all other assets of the Debtor and his estate, together with any proceeds thereof, including, without limitation, as set forth in the loan documents; (ii) to the extent provided by Sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the case and any Successor Case (the “Senior Adequate Protection Superpriority Claim”); (iii) (1) payments from the proceeds from the liquidation of secured assets to Emprise Bank at the closing of the sale of any such transaction.

- g. Priority of Adequate Protection Superpriority Claim. Except for the Carve Out, the Adequate Protection Superpriority Claims of Emprise Bank shall have priority over all administrative expenses and unsecured claims against the Debtor and its estate, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code and, upon entry of the Final Order, the Senior Adequate Protection Superpriority Claim shall have priority over all claims pursuant to Section 506(c) of the Bankruptcy Code. Notwithstanding any provisions of the Interim Order, no Adequate Protection Liens shall attach to, and no Adequate Protection Superpriority

Claims shall be recoverable from avoidance actions prior to entry of a Final Order.

h. Carve Out. “Carve Out” means the following amounts:

- 1) statutory fees payable to the U.S. Trustee;
- 2) attorneys' fees in the amount of \$7,000 per month until confirmation of the Plan;
- 3) pursuant to Section 726(b) of the Bankruptcy Code, claims allowed by a final order of the Bankruptcy Court under Section 503(b) of the Bankruptcy Code that are incurred after the conversion of the Chapter 11 case to a case under Chapter 7 of the Bankruptcy code in an amount not to exceed \$5,000;
- 3) up to \$10,000 of other professional fees and disbursements incurred prior to the entry of the Final Order and, subsequent to the entry of a Final Order, such amounts as are provided in the Budget, by an Statutory Committee for any professionals retained by final order of the Court or for any certified public accountants retained by the Debtor and appointed by the Court.

i. Lien on Avoidance Actions. From and after the date of entry of the Final Order, “Collateral” shall also include all proceeds of actions under Chapter 5 of the Bankruptcy Code. The Adequate Protection Liens secure the

payment of the pre-petition obligations in an amount equal to any diminution in value of the Emprise Bank's interest in the Collateral from and after the Commencement Date.

Pre-Petition Liens and Pre-Petition Collateral

15. As more fully set forth in the loan documents, prior to the Commencement Date the Debtor granted security interests in and liens on, among other things, substantially all of the Debtor's existing and after acquired personal property, whether owned by, consigned to or leased from or to the Debtor, to the full extent of the Debtor's interest therein and regardless of where located, including the proceeds and products of, accessions to, substitutions and replacements for, and rents and profits of all such property and assets.

The Proposed Use of Cash Collateral

16. The Debtor does not have available sources of working capital and financing to carry on the operation of its business without the use of Cash Collateral. Overall, the Debtor requires the use of Cash Collateral to continue to operate. The use of Cash Collateral is therefore critical to preserve and maintain the going concern value of the Debtor.
17. For the above reasons, the Debtor has determined, in the exercise of its sound business judgment, that it requires the use of Cash Collateral for the maintenance and preservation of its property, the operation of its business, the payment of expenses attendant thereto, and the costs and expenses of administering this case. The Debtor is hereby authorized to use Cash Collateral for working capital and capital expenditures, other general operating purposes, and to pay the costs and expenses of administering this case, all in compliance with a cash

collateral budget (the “Budget”), which is attached hereto as **Exhibit A**. All payments describe its going concern value for the benefit of the Debtor’s creditors. Without cash to make the payment outlined in the Budget as permitted in this Interim Order, immediate and irreparable harm could occur to the Debtor’s operation and the interest of the Debtor, its estate and creditors.

Proposed Adequate Protection

18. In order to protect the Emprise Bank from any diminution in value of its interest in the Cash Collateral, the Debtor shall provide adequate protection to Emprise Bank (the “Proposed Adequate Protection”) as follows.
19. Emprise Bank, for the benefit of itself, shall receive:
 - a. additional and replacement continuing valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests in and liens (the “Senior Adequate Protection Liens”) on any and all presently owned and hereafter acquired personal property and all other assets of the Debtor and its estate, together with any proceeds thereof, including, without limitation, as set forth in the loan documents (collectively, the “Collateral”);
 - b. to the extent provided by Sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the case and any successor case (the “Senior Adequate Protection Superpriority Claim”);
 - c. post-petition non-default interest under 11 U.S.C. §506(b) to Emprise Bank on all cash collateral.

The Proposed Use of Cash Collateral Should Be Approved

A. The Use of Cash Collateral is Warranted and Should be Approved

20. As set forth above, cash is necessary for working capital and capital expenditures, and operating costs and expenses at the outset of, and during, this Chapter 11 case. The Debtor does not have available sources of working capital and financing to carry on the operation of its business without the use of Cash Collateral. The Debtor's ability to maintain business relationships with its suppliers and operating expenses is essential to the Debtor's continued viability and the value of business operation as going concerns. The use of Cash Collateral is therefore critical to the preservation and maintenance of the going concern value of the Debtor, as well as the value of the Collateral.

B. The Proposed Adequate Protection Should be Approved

21. The Proposed Adequate Protection offered by the Debtor to Emprise Bank is appropriate. Emprise Bank is receiving Adequate Protection Liens and Adequate Protection Superpriority Claims in the same priority as existed prior to the Commencement Date to adequately protect against the diminution of the value of their Collateral. The Debtor believes that it is in the best interest of the estate, creditors and all parties in interest, that its reaches a consensual rather a litigated resolution with Emprise Bank regarding the use of Cash Collateral and provide them with the Proposed Adequate Protection. The Proposed Adequate Protection will sufficiently protect the interest of Emprise Bank in the Cash Collateral. Accordingly, the Proposed Adequate Protection is fair and reasonable and sufficient to satisfy the

requirement of Section 363(c)(2) of the Bankruptcy Code.

The Interim Approval Is Granted

22. This is an Interim Order until the final hearing on this interim Order.
23. This emergency Interim Order approved the use Cash Collateral only in the amount necessary to sustain the Debtor's business operation prior to the Final Hearing, as set forth herein and in the Budget.

Notice of Final Hearing

24. A final hearing with respect to the Motion is scheduled for Thursday, April 13, 2017 at 9:01 a.m. (the "Final Hearing"). The Debtor shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to all creditors and parties in interest set forth on the matrix of the Debtor and to any other party that has filed a request for notices with the Court. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be served upon: (a) Hinkle Law Firm LLC, 301 North Main, Suite 2000, Wichita, Kansas 67202, Attention: Edward J. Nazar (enazar@hinklaw.com); Emprise Bank, %Karl W. Swartz, Morris Laing Evans Brock & Kennedy, Chtd., 300 North Mead, Suite 200, Wichita, Kansas 67202, (kswartz@morrislaing.com); and (c) the Office of the United States Trustee for the District of Kansas, and which objections shall be filed with the Clerk of the Court, in the case so as to be received no later than 5:00 p.m. (Central Daylight Saving Time) on Tuesday, April 11, 2017.

IT IS SO ORDERED.

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APPROVED BY:

HINKLE LAW FIRM LLC

/s/Edward J. Nazar 

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SAMUEL K. CROCKER
U.S. TRUSTEE

/s/Marjorie J. Creasey

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Small Business Cash Flow (Projection) Sluss & Ray, LLC

	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	TOTAL
SALES REVENUE													
Cash sales	61,736	102,769	102,769	102,769	102,769	102,769	102,769	102,769	102,769	102,769	102,769	102,769	1,192,195
Returns and allowances	0	0	0	0	0	0	0	0	0	0	0	0	0
COGS	-16,866	-48,926	-48,926	-48,926	-48,926	-48,926	-48,926	-48,926	-48,926	-48,926	-48,926	-48,926	-555,152
Interest, other income													0
													0
	44,770	53,843	53,843	53,843	53,843	53,843	53,843	53,843	53,843	53,843	53,843	53,843	637,043
SALES RELATED													
Accounting/Book Keeping	0	0	0	0	0	0	0	0	0	0	0	0	0
Advertising	0	3,573	3,573	3,573	3,573	3,573	3,573	3,573	3,573	3,573	3,573	3,573	39,303
Bank Charges	0	2,055	2,055	2,055	2,055	2,055	2,055	2,055	2,055	2,055	2,055	2,055	22,605
Cell Phone	0	0	0	0	0	0	0	0	0	0	0	0	0
Commissions & Fees	0	0	0	0	0	0	0	0	0	0	0	0	0
Contract Labor	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit Card Merchant Fees	0	0	0	0	0	0	0	0	0	0	0	0	0
Dues & Subscriptions	184	660	660	660	660	660	660	660	660	660	660	660	7,444
Equipment Rental	0	0	0	0	0	0	0	0	0	0	0	0	0
Franchise Fees	11,116	6,166	6,166	6,166	6,166	6,166	6,166	6,166	6,166	6,166	6,166	6,166	78,942
Fuel Expense	224	750	750	750	750	750	750	750	750	750	750	750	8,474
Insurance - General	3,347	0	0	0	0	0	0	0	0	0	0	0	3,347
Insurance - Auto	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance - Life	0	0	0	0	0	0	0	0	0	0	0	0	0
Legal & Professional Fees	8,101	600	600	600	600	600	600	600	600	600	600	600	14,701
Meats and entertainment	633	0	0	0	0	0	0	0	0	0	0	0	633
Office expense	338	890	890	890	890	890	890	890	890	890	890	890	10,128
Payroll Expense	10,107	3,910	3,910	3,910	3,910	3,910	3,910	3,910	3,910	3,910	3,910	3,910	53,117
Payroll Taxes	0	2,782	2,782	2,782	2,782	2,782	2,782	2,782	2,782	2,782	2,782	2,782	30,602
Rent or Lease	2,073	6,806	6,806	6,806	6,806	6,806	6,806	6,806	6,806	6,806	6,806	6,806	76,939
Repairs and maintenance	417	450	450	450	450	450	450	450	450	450	450	450	5,367
Security Expense	1,186	106	106	106	106	106	106	106	106	106	106	106	2,352
Shipping and delivery expense	8	0	0	0	0	0	0	0	0	0	0	0	8
Shop Supplies	0	1,644	1,644	1,644	1,644	1,644	1,644	1,644	1,644	1,644	1,644	1,644	18,084
Taxes and licenses	10,924	0	0	0	0	0	0	0	0	0	0	0	10,924
Telephone /Internet Expense	971	1,056	1,056	1,056	1,056	1,056	1,056	1,056	1,056	1,056	1,056	1,056	12,587
Towing Expense	0	1,028	1,028	1,028	1,028	1,028	1,028	1,028	1,028	1,028	1,028	1,028	11,308
Misc Expenses	100	1,230	1,230	1,230	1,230	1,230	1,230	1,230	1,230	1,230	1,230	1,230	13,630
Uniform	400												400
Utilities	3,611	1,645	1,645	1,645	1,645	1,645	1,645	1,645	1,645	1,645	1,645	1,645	21,706
SUBTOTAL	53,742	35,351	35,351	35,351	35,351	35,351	35,351	35,351	35,351	35,351	35,351	35,351	442,603
Ask my Accountant	4,729	0											4,729
Capital purchases													0
													0
Owners withdrawal													0
NET INCOME	-13,701	18,492	18,492	18,492	18,492	18,492	18,492	18,492	18,492	18,492	18,492	18,492	189,711
OTHER OPERATING DATA													
Sales volume (dollars)													
Accounts receivable balance													
Bad debt balance													
Inventory on hand													
Accounts payable balance													
Depreciation													