

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI**

In re:)	
)	
BOWLIN FUNERAL HOME, INC.,)	
)	
Debtor-in-Possession.)	
_____)	
)	Case No. 17- <u>20965</u> -drd11
Bowlin Funeral Home, Inc.,)	
)	
Movant,)	
vs.)	
)	
Commerce Bank,)	
)	
Respondent.)	

MOTION FOR ORDER AUTHORIZING USE OF CASH COLLATERAL

COMES NOW Bowlin Funeral Home, Inc. (ADebtor@ and "Movant"), by and through its attorneys, submits this Motion for Order Authorizing Use of Cash Collateral, and in support of this Motion, states as follows:

1. On October 3, 2017, (the APetition Date@), Debtor filed a voluntary petition in this Court for relief and protection under Chapter 11 of the Bankruptcy Code. Debtor continues to manage and operate its business as a debtor-in-possession pursuant to 11 U.S.C. ' ' 1107 and 1108.

2. This is Debtor's second bankruptcy filing. Debtor filed its first case (No. 17-20736-drd11) on July 21, 2017, which the Court dismissed on August 30, 2017 for Debtor's failure to achieve reinstatement of its corporate charter and show proof of insurance for property of the estate.

3. On September 20, 2017, Debtor's corporate charter was reinstated, and on

September 29, 2017, Debtor's commercial insurance policy was reinstated.

4. Debtor is a small business debtor, within the meaning of 11 U.S.C. § 101(51D).

5. No trustee or examiner has been appointed in this case, and no committees have been designated or appointed.

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. ' ' 157(b)(2) and 1334. Venue is proper pursuant to 28 U.S.C. ' ' 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. ' 157(b)(2).

7. Debtor is a Missouri general business corporation, which is in the business of providing funeral services. Debtor's corporate headquarters are located at 100 South Oak Street, California, Missouri.

8. The debtor corporation is wholly owned and operated by Mark R. Elliott, Jr. This funeral services business has been in Mr. Elliott's family for approximately 100 years. Mr. Elliott has operated the business for approximately 11 years.

9. Debtor's assets consist of cash, business equipment, motor vehicles and a funeral home, with furniture and fixtures, located at 100 South Oak Street, in the City of California, Missouri, including real property described as:

The North Half of Lot One (1) and all of Lot Two (2) in Smith and Howard's Addition to the City of California, Missouri, as shown by the recorded plat thereof recorded in Plat Book 1, Page 30, of the records of Moniteau County, Missouri.

10. When Debtor filed this case, Debtor's real estate was subject to the obligations of commercial security agreement and deed of trust liens in favor of Respondent Commerce Bank (Creditor), and all of Debtor's assets appear to be subject to the liens of Commerce Bank.

11. Upon information and belief, as of the petition date, Debtor owed Commerce Bank

approximately \$520,000.00.

12. On the date of filing, Debtor was approximately \$40,000.00 (or five months) in arrears in its secured obligations to Respondent.

13. Debtor's owner estimates that the liquidation value of Debtor's assets, which are secured to Respondent is approximately \$862,114.00.

14. Therefore, Respondent appears to be over-secured by approximately \$342,114.00.

15. In July 2017, Commerce Bank accelerated the indebtedness owed by Debtor, making this reorganization in bankruptcy necessary to the survival of Debtor's business.

16. Debtor's owner/manager intends to continue Debtor's funeral services business and to propose a Chapter 11 Plan, which will restructure its debts, as authorized by the Bankruptcy Code, while providing adequate protection to its secured creditor, Commerce Bank.

17. On the date of filing, Debtor was in possession of cash collateral, as follows:

a. Checking acct. at Central Bank	\$18,413.79
b. Accounts receivable	<u>\$70,000.00</u>
Total	\$88,413.00

18. The following table identifies Debtor's employees, their job duties, rates of pay and average monthly payroll:

EMPLOYEES AND WAGES			Average
EMPLOYEES AND WAGES	Gross Pay	Pay Period	Monthly
Mark Elliott, Jr., director/embalmer	3,570.00	semi-monthly	7,140
Chaz Elliott, asst. funeral director	1,213.33	semi-monthly	2,427
Branden Ash, asst. funeral director	953.33	semi-monthly	1,907
Donald Bowlin, apprentice	15.00	per hour	1,378
Jack Bowlin, director/embalmer	15.00	per hour	173
			13,024

19. Debtor also requests that this Court allow Debtor's current owner/manager, Mark R. Elliott, J., to manage and maintain its business operations during the pendency of this case.

20. Section 363(c)(2) of the Bankruptcy Code provides that the Debtor may not use, sell or lease cash collateral unless A(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section. 11 U.S.C. ' 363(c)(2). At the time of filing of this motion, Creditor Commerce Bank has not consented to Debtor=s use of cash collateral or accounts receivable and proceeds thereof.

21. It is essential to the continued business operations and the reorganization of Debtor that it be allowed to use the cash collateral and collect outstanding sums due from its customers. Absent the use cash collateral, Debtor would be forced to cease its business operations.

22. Debtor estimates that its operating expenses during the next 45 days, including payroll to employees, will be approximately \$58,632.00. Debtor=s estimated payroll obligation to employees during the next thirty days will be approximately \$19,536.00.

23. Debtor will not use cash collateral to pay pre-petition interest or principal on an existing indebtedness other than as ordered by the Court.

24. Debtor believes that the interests of Commerce Bank with respect to its collateral may be adequately protected. Continued operations will increase Debtor=s ability to pay its obligations to Commerce Bank and other creditors. Debtor respectfully suggest that \$4,000.00 per month would adequately protect Commerce Bank from diminution of its secured position pending confirmation of a plan.

25. Bankruptcy Rule 4001(b)(2) provides that a final hearing on a motion to use cash

collateral pursuant to 11 U.S.C. ' 363 may not be commenced earlier than fifteen (15) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize interim use of cash collateral to the extent necessary to avoid immediate and irreparable harm to the Debtor=s estate.

26. Pending the final hearing on use of cash collateral, Debtor requests authorization to immediately use cash collateral, receivables and proceeds thereof to enable the Debtor to maintain ongoing operations and avoid immediate and irreparable harm to the estate.

27. Attached hereto, and incorporated herein, is Debtor's proposed budget for the next 45 days.

28. Commerce Bank appears to be the only party in interest with respect to this motion. With respect to the debtor, Commerce Bank is currently represented by Trevin E. Wray, of the firm, Simpson, Logback, Lynch, Norris, P.A., 7400 West 110th St., Ste. 600, Overland Park, Kansas 66210.

29. Concurrently with the filing of this motion, a copy hereof has been served by mail, fax and e-mail on Creditor Commerce Bank, by serving a copy hereof on said counsel, by e-mail upon the United States Trustee and by mail to all unsecured creditors. (There are less than 20 creditors).

WHEREFORE, Debtor Bowlin Funeral Home, Inc. respectfully moves that this Court enter Orders under section 363 of the Bankruptcy Code, including,

a. a preliminary authorization for Debtor to use cash collateral for the 45-day period immediately following the date of filing, for the ordinary and necessary expenses of operating its business, in accordance with the Proposed Budget, attached hereto, which is attached

hereto,

- b. a final authorization for the use of cash collateral during the pendency of this case,
- c. an Order granting Commerce Bank a replacement lien on Debtor's post-petition cash and receivables,
- d. an Order determining the amount of post-petition payments Debtor shall be required to pay Commerce Bank, as adequate protection of its secured position, and
- e. an Order determining Debtor's obligation to provide Commerce Bank with periodic reports pending confirmation of a plan, and
- f. such other and further relief that this Court shall deem just and proper.

Dated: October 3, 2017

BOUL & ASSOCIATES, P.C.

/s/ Harry D. Boul
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ATTORNEYS FOR DEBTOR
BOWLIN FUNERAL HOME, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing motion was served by mail this day upon all interested creditors, the United States Trustee, and counsel for Creditor Commerce Bank, Trevin E. Wray, Esq., Simpson, Logback, Lynch, Norris, P.A., 7400 West 110th St., Ste. 600, Overland Park, Kansas 66210.

Dated: October 3, 2017

BOUL & ASSOCIATES, P.C.

 /s/ Harry D. Boul

Projected Annual Income and Expenses		Proposed 45-Day Budget
Projected Gross Receipts:	686,893	84,685
Projected Cash Expenses:		
Payroll	156,288	19,268
Monuments	36,000	4,438
Body preparation	30,000	3,699
Grave openings	30,000	3,699
Utilities	24,000	2,959
Embalming supplies	24,000	2,959
Caskets	24,000	2,959
Vaults	24,000	2,959
United Fire Group insurance	15,600	1,923
Gasoline	15,000	1,849
Obituaries	12,000	1,479
Telephone and internet	8,700	1,073
Cell phones	7,200	888
Supplies, linens and grave markers	6,600	814
Vehicle maintenance	6,000	740
Building maintenance	6,000	740
Honorariums (ministers, rabbi's, singers)	6,000	740
Register books	6,000	740
Death certificates	6,000	740
Accounting services	4,200	518
ASD	3,600	444
Cemetary charges	3,600	444
Licenses and miscellaneous	2,988	368
Janitorial supplies	2,400	296
Advertising	2,400	296
Flowers	2,400	296
Janitorial service	2,160	266
Waste disposal	1,920	237
Total Projected Expenses	469,056	57,829
Projected Net Income	217,837	26,857