

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re: *
* Chapter 11
AFTOKINITO RALLY, INC. *
* Case No. 17-10184-BAH
Debtor. *
*

**FIRST MOTION FOR ORDER
AUTHORIZING CONTINUED USE OF CASH COLLATERAL
AND PROVISION OF ADEQUATE PROTECTION**

The debtor in possession, Aftokinito Rally, Inc. (the “Debtor”), respectfully submits its First Motion For Order Authorizing Continued Use of Cash Collateral and Provision of Adequate Protection. This Court approved Debtor’s initial Ex Parte Motion For Use of Cash Collateral on February 28, 2017 allowing the Debtor to use cash collateral between February 24, 2017 and March 6, 2017 (Doc. 21). Additionally, the Debtor and the Internal Revenue Service (the “IRS”) have filed a stipulation memorializing the IRS’ consent to the Debtor’s use of cash collateral (the “IRS Stipulation”) (Doc. 26).

In support of the motion for continued use of cash collateral, the Debtor states as follows:

INTRODUCTION AND REQUESTED RELIEF

1. Pursuant to Code Sections 105, 363 and 361, the Debtor asks this Court for permission to use the cash, deposit accounts and other cash equivalents used in, or derived from its classic and antique car dealership (“Cash Collateral” and the “Business”) to pay for the costs and expenses incurred by the Debtor in the ordinary course of its business and in connection with

the ownership, operation and management of the Business for the period beginning on March 6, 2017 and ending on May 31, 2017 (the "Use Period"), all as detailed in the Budget attached hereto as Exhibit A (the "Budgeted Costs" and "Budget").

2. The following exhibit(s) are attached hereto and incorporated herein by reference:

a. Exhibit A: Budget

3. Accompanying this Motion is a proposed Order granting the Debtor the relief requested (the "Order"). The proposed Order, among other things:

a. Limits the amount of Cash Collateral which Debtor may spend during the Use Period to **\$666,950.00** (the "Maximum Use");

b. Requires the Debtor to pay the Internal Revenue Service the sum of **\$524.20** on the 15th day of each month during the Use Period pursuant to the IRS Stipulation. (the "Adequate Protection Payment").

c. Grants to each Record Lienholder a replacement lien on the Debtor's property to the same extent, scope and validity that each Record Lienholder held as of the Petition Date, unless and/or until avoided by an order entered by this Court.

d. Reserves to each Record Lienholder the right to contest in an appropriate proceeding the value of the Cash Collateral and any other collateral held or claimed by the Record Lienholder.

e. Reserves to Debtor the right to contest the validity, perfection, enforceability or value of any lien held or claimed by a Record Lienholder for any reason.

JURISDICTION AND PARTIES

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BASIS FOR REQUESTED RELIEF

6. Under Code Section 363(c)(2), a debtor may not use Cash Collateral without the consent of each “entity that has an interest in such Cash Collateral” unless this “court ... authorizes such use.”

7. The Debtor is a debtor in possession and trustee. It continues to own and operate the Business pursuant to Bankruptcy Code Sections 1107 and 1108.

8. Attached to this Motion as Exhibit A is the Budget for the management, operation and maintenance of the Business during the Use Period. The Budget was prepared for the Debtor by the Debtor’s President and equity holder, Stephan Condodemetraky, and was based upon his knowledge of the Debtor and its Business.

9. The Budget projects the amount of projected receipts and disbursements as required by LBR 4001-2(d) and shows that the Debtor will be able to meet its ordinary operating costs and expenses during the Use Period, including payroll, insurance and lease payments, and will have sufficient funds to make the Adequate Protection Payment due the IRS.

10. The Budget includes only costs and expenses which will be incurred in the ordinary course of the Debtor’s on-going Business and a pro rata share of the Debtor’s indirect costs and expenses. The Budget projects and summarizes fairly and accurately the expected results of Debtor’s Business operations on a cash flow basis based on the information available to the Debtor at this time. Although the Budget was prepared based on the Debtor’s knowledge

of, and experience with the Business, the actual results of operations may and probably will vary slightly.

11. The Budget includes a provision for a Consignment (GMSA)/Net Proceeds Escrow and Payments (Line 3 Under “Cash Out”). The Contracts give the Debtor 30 days to pay customers. The delay reflects the fact that post-sale disputes frequently occur. The disputes lead to creditors trying to stop credit card payments or otherwise rescind the transaction. Under the cash collateral order, the net proceeds due Consignors and Net Price sellers will not be used to fund the Debtor’s operating costs and expenses, but are accounted for in the Budget.

12. No significant diminution in the amount of the Debtor’s Cash Collateral is expected to occur during the Use Period. Cash Collateral should be stable. As a result, the Debtor should be able to reorganize its Business and affairs for the benefit of its creditors and equity holders.

13. The Debtor’s Business and assets have far more value in reorganization than in a liquidation.

14. The use of Cash Collateral is essential to an effective reorganization of the Debtor. The Debtor must provide the Record Lienholders with adequate protection. Like all operating businesses, the Debtor must pay its employees and vendors as payroll and invoices become due. Without the short-term use of Cash Collateral, the reorganization of the Debtor will be impossible resulting in a failed business and loss of jobs.

WHEREFORE, the Debtor respectfully requests this Court to grant the Debtor the relief requested herein by entering the proposed Order and grant the Debtor such further relief as may prove to be fair and equitable or lawful.

AFTOKINITO RALLY, INC.

By Their Proposed Attorneys,

SHEEHAN PHINNEY BASS & GREEN PA

Dated: March 3, 2017

By: /s/ James S. LaMontagne

James S. LaMontagne BNH 05483

Sheehan Phinney Bass + Green, PA

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March 2017, a copy of the foregoing was served upon the parties listed below via first class mail, postage prepaid, via electronic mail (where indicated) or electronically upon those served by the CM/ECF system.

IRS

Special Procedures

80 Daniel St., PO Box 9502

Portsmouth, NH 03802

Internal Revenue Service

Centralized Insolvency Operations

P.O. Box 7346

Philadelphia, PA 19101-7346

State of New Hampshire

Dept. of Employment Security

Attn: Arnold Rocklin-Weare

45 So. Fruit Street

Concord, NH 03301

Automotive Finance Corporation

13085 Hamilton Crossing Blvd, Suite 300

Carmel, IN 46032

Automotive Finance Corporation – via email

Jessica.young@autofinance.com

Internal Revenue Service
CCP Lien Unit
P.O. Box 145595
Stop 8420G Team 203
Cincinnati, OH 45250

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U.S. Department of Justice
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Washington, DC 20530-0001

The United States Attorney's Office
District of New Hampshire
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Michael McCormack, Assistant U.S. Attorney, District of NH – via email
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Gail A. Irving, IRS Bk. Specialist – via email
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20 LARGEST UNSECURED CREDITORS

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/s/ James S. LaMontagne

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