UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

BUANNO TRANSPORT COMPANY, INC.,	**Case No.: 18-60283-6**
Debtor.	**Chapter 11**

DEBTOR'S APPLICATION FOR AN INTERIM ORDER: (1) AUTHORIZING THE USE OF CASH COLLATERAL AND VARIOUS EQUIPMENT IN WHICH KEY BANK, N.A. MAINTAINS A SECURITY INTEREST; AND (2) ESTABLISHING ADEQUATE PROTECTION

Debtor-In-Possession, Buanno Transport Company, Inc. (hereinafter "Debtor") files this Application for an Interim Order and Final Hearing: (1) authorizing the use of cash collateral ("Cash Collateral") and the use of various pieces of equipment (the "Equipment") in which Key Bank ("Key") maintains a security interest; and (2) establishing the adequate protection to be afforded Key in connection with the use of the Cash Collateral and the Equipment.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 327(a). This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Sections 105(a), 361, 362 and 363 of the Bankruptcy Code, Bankruptcy Rules 4001 and 9014.

3. Debtor seeks (a) an Interim Order from this Court allowing Debtor, pending a final hearing on this application to use Cash Collateral and Equipment; and (b) a Final Order allowing Debtor to use Cash Collateral and Equipment during the pendency of Debtor's Chapter 11 proceeding.

II. BACKGROUND

4. Debtor is in the business of transporting goods via tractor trailers on behalf of various retailers and manufacturers.

5. In 2008, 2012 and 2013, Debtor obtained various commercial loans from First Niagara Bank in the respective amounts of $500,000.00, $500,000.00, $1,158,316.23 and $500,000.00. There is a current balance due to Key in the approximate amount of $1,250,000.00.

6. The repayment of such notes was collateralized via the grant of a security interest in, among other things, Debtor's accounts receivable and certain of the trucks and trailers owned by Debtor.

7. Upon information and belief, the notes held by First Niagara Bank were assigned to Key as a part of a merger between the two banks.

8. Debtor began to experience some financial issues in or around 2015 as a result of two factors: the unexpected termination of a line of credit by First Niagara Bank that had been used during times of cash flow shortages, and the mismanagement of the business by an individual engaged by Debtor to oversee the day-to-day operations of the company.

III. USE OF EQUIPMENT

9. Debtor seeks to utilize the Equipment that is the subject of Key's perfected security interest which consists primarily of various tractors and trailers. Key and Debtor have entered into a Stipulation for use of the Equipment and Cash Collateral which has been incorporated into a proposed Interim Order and Final Order substantially in the form attached hereto respectively as **Exhibits "A" and "B."**

10. Debtor is prepared to provide adequate protection payments to Key on a monthly basis for use of such Equipment equal to the monthly amount by which the Equipment will lose

value, together with interest at the rate of 5% per year against the value of the Equipment as of the petition date. The Stipulation entered into by Key and the Debtor does not establish an agreed-upon value of the Equipment for purposes of calculating the amount of the adequate protection payments.

11. The value of the Equipment that is the subject of Key's security interest is believed by Debtor to be less than $350,000 based upon: an appraisal conducted approximately one year ago by Key; an appraisal believed to have been conducted by Key in September of last year; and various dealer quotes recently obtained by Debtor.

12. Debtor also believes, based upon the age of the vehicles, that same are nearly fully depreciated and are approaching a residual value that will change only slightly over the next five (5) years. At the end of such period, Debtor believes the vehicles will have a residual value of $150,000, translating to a loss of value over that time period equal to $200,000. This represents an annual loss of value equal to $40,000 or $3,334 per month. During the period of time between the issuance of an Interim Order and a Final Hearing on the application, Debtor and Key have agreed to use an Equipment value of $750,000, but only on the condition that such amount is not to be considered evidence or an acknowledgment of the actual value of the Equipment, which is to be determined by the Court based upon the evidence adduced at a final hearing.

IV. USE OF CASH COLLATERAL

A. Debtor's Need for Use of Cash Collateral.

13. Without the use of cash collateral, Debtor will be unable to continue to operate its business. The cash generated from its receivables, which is the subject of Key's security interest, is the only source of operating capital available to the Debtor at this time.

14. The cash obtained from the collection of Debtor's receivables is used to pay the costs associated with the continued transportation of merchandise on behalf of Debtor's clients. This in turn will generate new receivables that will replace the receivables that have been collected.

B. Use of Cash Collateral is Warranted.

15. Pursuant to the terms of the Stipulation and proposed Interim Order, Key will be granted a post-petition security interest in Debtor's accounts receivable up to 110% of the amount of pre-petition accounts receivable. This provides Key with adequate protection on an interim basis and allows Debtor the opportunity to reorganize and benefit unsecured creditors under a plan of reorganization. Debtor's level of receivables has held steady over the course of the last couple of years and are highly unlikely to diminish prior to the filing of a proposed plan of reorganization.

16. Under the controlled process afforded by the protection of Chapter 11, Debtor should be able to increase its business and generate additional income and assets that will ensure Key maintains its current collateral position.

17. Debtor has also agreed to pay to Key an annual interest rate of 5% of the amount of the pre-petition accounts receivable on an annual basis in twelve equal monthly installments as and for adequate protection payments in connection with Debtor's use of cash collateral.

18. Attached hereto as **Exhibit "C"** is a projected budget for the first three (3) months of post-petition operations.

19. A steady or increasing level of receivables, the grant of a rollover lien up to 110% of prepetition receivables and the payment of 5% of the pre-petition receivables provides Key with adequate protection and allows Debtor to preserve the estate, continue in operations and benefit unsecured creditors.

C. The Interim Order Should Be Granted.

20. Upon request, the Court is empowered to conduct a preliminary expedited hearing on this motion and authorize the use of cash collateral on an interim basis to avoid immediate and irreparable harm to the Debtor's business pending a final hearing.

21. For the reasons set forth above, the Debtor requests the Court to conduct an expedited preliminary hearing on this Application and, pending a final hearing, authorize the Debtor to use the Cash Collateral and Equipment in accordance with the terms of the proposed Stipulation and Interim Order, to avoid immediate and irreparable harm to Debtor's business.

22. As set forth above, the Debtor has determined in its sound business judgment that there is an immediate need for use of Cash Collateral to preserve Debtor's business. In order to obtain the consent of Key to use the Cash Collateral and Equipment in which Key holds a perfected security interest, Debtor has agreed to include in the Interim and the Final Orders these provisions contained in the proposed orders that have been attached to this application. Without the use of Cash Collateral on an interim basis, the Debtor would be unable to preserve its business or continue in operation.

D. A Final Order Should Be Granted.

23. At a Final Hearing, the Debtor respectfully requests that the Court: (a) determine the extent of Key's perfected security interest; (b) establish the value of the Equipment subject to that perfected security interest; (c) establish the loss in value of the Equipment during the pendency of the chapter 11 proceeding; and (d) authorize the use of the Cash Collateral and the Equipment based upon the terms of the proposed Final Order. The Final Order will allow Debtor to continue its business operations until a plan of reorganization can be proposed, approved and implemented, thereby preserving Debtor's business and the opportunity to reorganize.

V. NOTICE

24. A creditor's committee has not been appointed in this Chapter 11 case. Notice of this Application has been provided in accordance with the terms of an Order Shortening and Limiting Notice in connection with Debtor's Application for an Interim Order. In light of the nature of the relief requested herein, Debtor submits that no other or further notice is required.

VI. CONCLUSION

25. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests entry of an Interim Order and a Final Order substantially in the forms annexed hereto as **Exhibit "A" and Exhibit "B,"** respectively: (1) authorizing Debtor's use of Cash Collateral and Equipment; (2) establishing adequate protection in connection with the use of cash collateral and equipment; (3) granting such other and further relief as the Court may deem appropriate.

Dated: March 15, 2018
Albany, New York

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