

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 01-13697

JUDGMENT

The relief set forth on the following pages, for a total of 2 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
02/11/2003



Entered: 02/11/2003

John E. Waites

US Bankruptcy Court Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Greenwood Supply Company,

Debtor.

C/A No. 01-13697-W

JUDGMENT

Chapter 11

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order, Greenwood Supply Company's ("Debtor") Motion to obtain credit for purposes of substituting collateral securing the \$100,000 letter of credit to Russell Athletic is denied.

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 01-13697

ORDER

The relief set forth on the following pages, for a total of 5 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
02/11/2003



Entered: 02/11/2003

John E. Waites

US Bankruptcy Court Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Greenwood Supply Company,

Debtor.

C/A No. 01-13697-W

ORDER

Chapter 11

THIS MATTER comes before the Court for a final hearing on Greenwood Supply Company's ("Debtor") Motion for Order Authorizing Debtor to Incur Post-Petition Secured Debt Pursuant to 11 U.S.C. §364(c)(2) (the "Motion").¹ Debtor requests that it be authorized to post letters of credit secured by a first mortgage on Debtor's main business property located on Highway 72 Bypass NE, Greenwood, South Carolina in order to obtain its spring inventory. In addition, Debtor requests that a first mortgage on its main business property be substituted as collateral for a \$100,000 letter of credit currently collateralized by a personal guaranty of Joe E. Adams, Jr. ("Mr. Adams"), CEO of Debtor. Debtor's Minority Shareholders object to the Motion.² On January 7, 2003, the Court entered an Order authorizing Debtor to post letters of credit in the total amount of \$176,000 secured by a first mortgage on Debtor's main business property; however, the issue of substituting collateral for the \$100,000 letter of credit remained under advisement. Upon consideration of the pleadings, the evidence presented at the hearing, and counsel's arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of

¹ Further references to the Bankruptcy Code shall be by section number only.

² The Minority Shareholders are Brantley M. Adams, Sr., Martha Adams, Brantley M. Adams, Jr., Christine Scott Adams, and Matthew Wilson Adams.

FINDINGS OF FACT

1. On December 19, 2001, Debtor filed a voluntary Chapter 11 Petition. Since that time, Debtor has managed its properties and operated its business as debtor-in-possession pursuant to §§1107 and 1108.
2. Since October 9, 2002, Debtor has employed Sunbelt Business Brokers, a business brokerage firm, to market Debtor as an ongoing concern.
3. To maximize Debtor's going concern value, Mr. Adams testified that Debtor needed to purchase spring inventory, specifically, baseball uniforms and equipment. Debtor placed its orders for baseball uniforms and equipment during the summer of 2002.
4. Russell Athletic ("Russell") is one of Debtor's main vendors of baseball uniforms and equipment. According to Mr. Adams, Russell demanded a \$100,000 letter of credit before it would ship spring inventory to Debtor.
5. In December 2002, Mr. Adams arranged for County Bank to issue a \$100,000 letter of credit. Mr. Adams collateralized the letter of credit with his personal guaranty.

CONCLUSIONS OF LAW

Section 364(c) provides that, if a trustee (or debtor-in-possession) is unable to obtain unsecured credit allowable under §503(b)(1) as an administrative expense, the court may authorize the obtaining of credit or the incurring of debt secured by a lien on property of the estate that is not otherwise subject to

³ The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any of the following Conclusions of Law constitute Findings of Fact, they are so adopted.

a lien. Most courts apply a three-part test to assess requests under §364(c), requiring a showing that (1) a debtor cannot obtain credit unencumbered or without superpriority status; (2) the credit transactions are necessary to preserve assets of the estate; and (3) the terms of the credit agreements are fair, reasonable, and adequate. See 3 Alan N. Resnick, et al., Collier on Bankruptcy ¶364.04[1] (15th ed. rev. 2002) (citing In re Crouse Group, Inc., 71 B.R. 544 (Bankr. E.D. Pa. 1987); aff'd 75 B.R. 553 (E.D. Pa. 1987)). “[C]redit should not be approved when it is sought for the primary benefit of a party other than the debtor or when funds are readily available from insiders or others without providing the lender with the benefits of any priority.” In re Aqua Associates, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991).

In this case, Debtor has already obtained the credit necessary to preserve assets of the estate for purposes of ordering spring inventory and maintaining or enhancing the value of Debtor as an ongoing concern. Mr. Adams obtained this credit by securing County Bank’s letter of credit with his personal guaranty. Although Mr. Adams apparently could not obtain this credit from County Bank by merely offering superpriority status, the fact remains that he was able to obtain financing by providing his personal guaranty, which is less intrusive credit than mortgaging Debtor’s real property. However, even if the Court were to conclude that Debtor could substitute the collateral for the letter of credit to Russell, the Court does not believe that the substitution of collateral will preserve the estate’s assets. The Court reaches this conclusion because (1) the preservation has already occurred and Debtor is able to order its spring inventory and (2) placing another \$100,000 lien upon the estate’s assets results in no benefit to Debtor or creates no further preservation opportunities. Instead, the only beneficiary of the substitution would be Mr. Adams, who would no longer be personally liable on the guaranty. The Aqua Associates Court specifically

cautioned against approving lending agreements in instances like these.⁴ See 123 B.R. at 196 (noting that credit should not be approved when it is sought for the primary benefit of a party other than the debtor).

CONCLUSION

For the reasons stated above,

IT IS ORDERED that Debtor's Motion to obtain credit for purposes of substituting collateral securing the \$100,000 letter of credit to Russell is denied.

AND IT IS SO ORDERED.

⁴ The Court does not believe a debtor's principal has a duty to obtain credit for the debtor by submitting a personal guaranty securing the credit. Although Debtor may have faced time limitations that caused Mr. Adams to personally guarantee the letter of credit to Russell, Debtor could have approached the Court on an expedited basis seeking credit that was secured by the estate's assets and not its principals'.