

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

**PICCADILLY RESTAURANTS, LLC,
ET AL.,**

DEBTORS

* **CASE NO. 12-51127**
*
* **(JOINT ADMINISTRATION)¹**
*
* **CHAPTER 11**
*
* **JUDGE ROBERT SUMMERHAYS**

OBJECTION TO MOTION TO LIFT AUTOMATIC STAY

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”),² who submit this Objection to the Motion to Lift Automatic Stay (Dkt. No. 404) (“Watson’s Stay Motion”) filed by Vernon Hayes Watson (“Watson”), an individual acting pro se, and in support thereof, show as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

II. BACKGROUND

2. On July 28, 2011, Watson, acting pro se, filed a complaint pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, in the United States District Court for the Western District of Tennessee (the “District Court”), naming “Piccadilly Cafeteria” as a Defendant. See Watson v. Piccadilly Restaurants LLC, Case No. 11-cv-02642-STA-cgc (W.D.

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

² The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

Tenn., filed July 28, 2011) (hereafter citations to the docket of the Tennessee matter will be cited as Tenn. Dkt. No. ____).

3. By order of the District Court, on September 30, 2011, the name of the defendant in the District Court action was changed to “Piccadilly Restaurants LLC” and a summons was issued by the clerk of that court to Piccadilly Restaurants, LLC (hereafter “Piccadilly”). (Tenn. Dkt. No. 4).

4. In his District Court complaint, Watson states that on July 21, 2009, he was arrested by police at a Piccadilly restaurant where he was employed. Watson does not disclose why he was arrested. Watson alleged that he was incarcerated for eight days and was subsequently fired by Piccadilly management for failing to report to work. (Dkt. No. 404, Ex. A; Tenn Dkt. No. 1).

5. Watson asserts that he was fired not for his absence from work, but rather as an act of retaliation for a discrimination claim which he states he filed with the Equal Employment Opportunity Commission in December of 2008. According to Watson, that claim was settled through mediation resulting in his continued employment at Piccadilly, a \$1,400 cash payment, and a raise in his hourly salary from \$6.60 to \$8.00. (Tenn. Dkt. Nos. 1 and 6). In an Amended Complaint, Watson further alleges that his termination was an act of racial discrimination. (Tenn. Dkt. No. 6).

6. On August 9, 2012, Piccadilly filed an Amended Motion To Stay Proceedings Pending Arbitration in the District Court. In this Amended Motion and the accompanying Memorandum, Piccadilly argued that Watson had executed an arbitration agreement with Piccadilly, and that under the Federal Arbitration Act, the District Court was required to stay

further proceedings and direct all parties to arbitration in order to resolve the claims in Watson's District Court complaint. (Tenn. Dkt. No. 24).

7. In the Amended Motion, Piccadilly noted that Watson commenced voluntarily participation in an arbitration proceeding administered by the American Arbitration Association ("AAA") concerning the claims before the District Court. Specifically, Watson exchanged emails with AAA, and participated in initial discovery efforts coordinated through the AAA.

8. On September 11, 2012, the Debtors filed for relief in this Court under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

9. No trustee or examiner has been appointed. An Official Committee of Unsecured Creditors was appointed in these chapter 11 cases on October 23, 2012.

10. The Debtors' bankruptcy cases are being jointly administered for procedural purposes only, pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b). (Dkt. No. 43).

11. On December 4, 2012, the District Court granted Piccadilly's Amended Motion to Stay Proceedings Pending Arbitration, and ordered Watson's District Court case administratively closed. (Tenn. Dkt. No. 28).

12. The District Court stated that it had been demonstrated to the court's satisfaction that Watson was voluntarily participating in the aforementioned arbitration process, and that the court's decision was rooted in that fact, rather than on the contents of any particular written agreement. Id. at 3-4.

13. On December 5, 2012, Piccadilly's counsel in the District Court case filed a Notice of Bankruptcy Automatic Stay in the District Court. As of September 27, 2013, this Notice of Bankruptcy Automatic Stay was the last entry on the District Court docket.

14. Piccadilly's counsel in the District Court case has represented to the undersigned counsel that a similar Notice of Bankruptcy Automatic Stay was filed with the American Arbitration Association.

15. In response, the arbitrator has stayed the arbitration proceedings concerning Watson's claims.

16. Prior to the stay of the arbitration proceedings, a motion for summary judgment filed by Piccadilly was granted, dismissing Watson's racial discrimination claim. Thus, all that remained for adjudication in the arbitration was Watson's allegation that Piccadilly terminated his employment in retaliation for a prior EEOC charge.

16. At the moment the arbitration proceedings were stayed, the parties had only exchanged initial discovery in regard to the retaliation issue. A hearing date had not yet been set to address that claim.

17. On December 17, 2012, Watson filed the Stay Motion, asking this Court to "permit him to liquidate his claim in U.S. District Court against" Piccadilly, and stating that he "desires to continue prosecuting the pending civil action against the debtor *in district court* for the purpose of liquidating [his] claim." (Dkt. No. 404) (emphasis added). Watson asserts that this constitutes "cause" to lift the stay under 11 U.S.C. § 362(d)(1). (Dkt. No. 404). On the same day, Watson also filed a Request To Proceed *In Forma Pauperis* as he pursues his Stay Motion. (Dkt. No. 405).³

³At least one bankruptcy court has held that, under the relevant statutes, a bankruptcy court does not have the authority to allow a creditor to prosecute a motion to lift stay *in forma pauperis*. See In re McKenna, No. 10-

18. On December 17, 2012, Watson filed a Proof of Claim, stating that the amount of his claim was \$1,000,000 and that the basis for the claim was “pending civil suit matter in state court / arbitration.” (Claim No. 202).

III. LAW AND ARGUMENT

A. Legal Standards.

19. Upon the filing of a bankruptcy petition, Section 362 of the Bankruptcy Code automatically stays “the commencement or continuation, . . . , of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under the title,” and “any act to obtain possession or property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(1) and (3).

20. According to the Fifth Circuit:

The [Section 362] automatic stay is designed to protect creditors as well as debtors. Without the stay, creditors might scramble to obtain as much property of the debtor's limited estate as possible. The automatic stay prevents such a scramble by providing “breathing room” for a debtor and the bankruptcy court to institute an organized repayment plan. In re Stenbridge, 394 F.3d 383, 387 (5th Cir.2004). It allows for the equitable disbursement of estate property among creditors. See Reliant Energy Servs., Inc. v. Enron Can. Corp., 349 F.3d 816, 825 (5th Cir.2003) (“The purposes of the bankruptcy stay under 11 U.S.C. § 362 ... [include] ‘further[ing] equity of distribution among the creditors by forestalling a race to the courthouse.’ ” (quoting GATX Aircraft Corp. v. M/V Courtney Leigh, 768 F.2d 711, 716 (5th Cir.1985))).

Brown v. Chesnut (In re Chesnut), 422 F.3d 298, 301 (5th Cir. 2005).

10256, 2010 WL 1135732 (Bankr. D.R.I. March 19, 2010).

21. Another court has summarized:

The automatic stay affords “one of the fundamental debtor protections provided by the bankruptcy laws.” Midlantic Nat'l Bank v. New Jersey Dep't of Evntl. Protection, 474 U.S. 494, 503 (1986). It maintains the status quo and protects the [] ability to formulate a plan for the sale or other disposition of property of the estate. COLLIER ON BANKRUPTCY ¶ 362.03 (16th ed. rev.2012). The automatic stay is intended to “allow the bankruptcy court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas.” SEC v. Brennan, 230 F.3d 65, 71 (2d Cir.2000) (internal quotation omitted). In this regard, the automatic stay “promot[es] equal creditor treatment and giv [es] the debtor a breathing spell.” In re Pioneer Commercial Funding Corp., 114 B.R. 45, 48 (Bankr.S.D.N.Y.1990).

In re Residential Capital, LLC, No. 12-12020, 2012 WL 3249641, at *2 (Bankr. S.D.N.Y. Aug. 7, 2012).

22. Section 362(d)(1) provides, in pertinent part, that “[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as terminating, annulling, modifying, or conditioning, such stay – (1) *for cause, ...*” 11 U.S.C. § 362(d)(1) (emphasis added).

23. Because section 362 does not define what constitutes “cause,” courts considering motions to modify or to lift the automatic stay for “cause” must determine whether “cause” exists on a case-by-case basis. See Reitnauer v. Tex. Exotic Feline Found., Inc., 152 F.3d 341, 343 n.4 (5th Cir. 1998).

24. In determining whether “cause” exists to lift the stay, specifically to allow pre-bankruptcy litigation to continue after the bankruptcy case has been filed, courts consider twelve factors (the “Sonnax factors”). See In re Residential Capital, LLC, 2012 WL 3249641, at *3 (citing Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax Industries, Inc.), 907 F.2d 1280, 1286 (2d Cir. 1990)). Only the Sonnax factors which are relevant to a case need be

considered by the court, and each *Sonnax* factor reviewed does not need to be assigned equal weight in the court's analysis. See Lamarche v. Miles, 416 B.R. 53, 58 (E.D.N.Y. 2009). "In a request for stay relief, the moving party bears the initial burden to demonstrate, using the *Sonnax* Factors, that cause exists for lifting the stay, and the court may deny the motion if the movant fails to make an initial showing of 'cause.'"⁴ In re Residential Capital, LLC, 2012 WL 3249641, at *3 (citing Sonnax, 907 F.2d at 1285); see also In re Pioneer Commercial Funding Corp., 114 B.R. 45, 48 (Bankr. S.D.N.Y. 1990).

25. The twelve *Sonnax* factors are: (1) *whether relief would result in a partial or complete resolution of the issues*; (2) *lack of any connection with or interference with the bankruptcy case*; (3) *whether the other proceeding involves the debtor as a fiduciary*; (4) *whether a specialized tribunal with the necessary expertise has been established to hear the cause of action*; (5) *whether the debtor's insurer has assumed full responsibility for defending it*; (6) *whether the action primarily involves third parties*; (7) *whether litigation in another forum would prejudice the interests of other creditors*; (8) *whether the judgment claim arising from the other action is subject to equitable subordination*; (9) *whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor*; (10) *the interests of judicial economy and the expeditious and economical resolution of litigation*; (11) *whether the parties are ready for trial in the other proceeding*; and (12) *impact of the stay on the parties and the balance of harms*. See In re Residential Capital, LLC, 2012 WL 3249641, at *3 (emphasis added).

⁴ As the *Sonnax* and *Pioneer* courts explained, although 11 U.S.C. § 362(g)(2) places the burden of proof on the debtor to establish all issues other than lack of equity in property, [it is] peculiarly within the responsibility of the creditor moving for stay relief to present a prima facie case of "cause" for relief under 11 U.S.C. § 362(d)(1), although the debtor has the ultimate burden of persuasion to rebut this issue. See In re Pioneer Commercial Funding Corp., 114 B.R. 45, 48 (Bankr. S.D.N.Y. 1990) (citing In re Sonnax Industries, Inc., 907 F.2d at 1285).

B. Argument.

26. As explained in the background section of this Objection, Watson's Stay Motion is a request to continue prosecuting a case in the District Court which has been administratively closed while arbitration is pending. Accordingly, standing alone, Watson's request to return to the District Court to prosecute his case there does not constitute sufficient cause to lift the stay.

27. Furthermore, Watson fails to satisfy his burden to demonstrate, using the Sonnax factors, that cause otherwise exists for lifting the stay.

28. Under the twelfth Sonnax factor, there must be a balancing of harms; such a balance weighs in favor of denying Watson's Motion. Watson has not demonstrated that he will be unreasonably harmed if stay relief is not granted at this time; his claims may still be addressed, along with those of all other unsecured creditors, at a later point in these bankruptcy proceedings. Watson has filed a proof of claim, which constitutes prima facie evidence as to the validity and amount of his claim unless or until that claim is the subject of a successful objection by the Debtors. See *Piccadilly Restaurants, LLC, Claims Register, # 202-1*; Fed. R. Bankr. Proc. 3001(f). Furthermore, "[t]o allow the automatic stay to be lifted with respect to this action at this time would prompt similar motions and ... [t]he distraction and expense of defending such litigation would interfere with judicial economy and the Debtors' process of reorganization." In re Residential Capital, LLC, 2012 WL 3249641, at *6. Allowing such a deluge of litigation to proceed in foreign forums would conflict with one of the key policies underpinning the automatic stay, i.e., "allow[] a debtor to focus on its reorganization instead of litigation." In re Residential Capital, LLC, 2012 WL 3249641, at *3.

29. Considering the first and eleventh Sonnax factors, the Debtors note that the parties are far from ready for trial in the District Court proceeding, and the record does not

establish that the arbitration is anywhere near conclusion. These proceedings are only in their initial stages. See In re Residential Capital, LLC, 2012 WL 3249641, at *4. Thus, these Sonnax factors also weigh against lifting the stay. Id.

30. Finally the second Sonnax factor also weighs against lifting the stay since a portion of the Debtors' resources would be diverted from the resolution of the Debtors' chapter 11 cases to fund the arbitration or litigation concerning Watson's claims. Id. at *5.

IV. CONCLUSION

31. For the foregoing reasons, the Debtors pray that the Court sustain the Debtors' Objection and deny Watson's Motion To Lift Automatic Stay (Dkt. No. 404). The Debtors' also request all other general and equitable relief to which they may be entitled.

/s/ Mark A. Mintz

R. PATRICK VANCE (#13008)
ELIZABETH J. FUTRELL (#05863)
MARK A. MINTZ (#31878)
TYLER J. RENCH (#34049)
Jones Walker LLP
201 St. Charles Avenue, 51st Floor
New Orleans, Louisiana 70170
Telephone: (504) 582-8000/Direct: 582-8368
Direct Facsimile: (504) 589-8368
Email: pvance@joneswalker.com
Email: efutrell@joneswalker.com

PATRICK L. McCUNE (#31863)
Jones Walker LLP
Four United Plaza
8555 United Plaza Blvd.
Baton Rouge, Louisiana 70809
Telephone: (225) 248-2150
Facsimile: (225) 248-3350
Email: pmccune@joneswalker.com
**Attorneys for Piccadilly Restaurants, LLC
Piccadilly Food Service, LLC and
Piccadilly Investments, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November, 2013, I served the foregoing *Objection to Motion to Lift Automatic Stay* to those parties entitled to receive service through this Court's CM/ECF system, and I placed a copy in the U.S. Mail, postage prepaid, to those recipients as identified below.

/s/ Mark A. Mintz
MARK A. MINTZ

Via U.S. Mail

Vernon H. Watson, Jr.
4181 Millbranch Road, #11
Memphis, TN 38116