

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

IN RE:

PICCADILLY RESTAURANTS, LLC DEBTOR	CASE NO. 12-51127 CHAPTER 11 JUDGE ROBERT SUMMERHAYS
PICCADILLY FOOD SERVICES, LLC DEBTOR	CASE NO. 12-51128 CHAPTER 11 JUDGE ROBERT SUMMERHAYS
PICCADILLY INVESTMENTS, LLC DEBTOR	CASE NO. 12-51129 CHAPTER 11 JUDGE ROBERT SUMMERHAYS

Jointly Administered

**RESPONSE TO
LIMITED OBJECTION TO
MOTION TO MODIFY STAY**

NOW INTO COURT, through undersigned Counsel, comes Cora Ann Ball and Elwyn Ball (sometimes hereinafter “Mr. & Mrs. Ball”) who file their Response to the Limited Objection to the Motion to Modify Stay (the “Response”) lodged by Piccadilly Restaurants, LLC, Piccadilly Food Services, LLC and Piccadilly Investments, LLC, (sometimes hereinafter “Piccadilly”), and respectfully assert the following:

1.

Jurisdiction and Venue

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

2.

Background Information

Pursuant to *§§ 1107 and 1108 of the Bankruptcy Code*, the Piccadilly has retained possession of its assets as a Debtor-in-Possession and a committee of unsecured creditors was appointed On October 23, 2012 (P-230) in the aforementioned Bankruptcy matters.

3.

Piccadilly Restaurants, LLC filed three Chapter 11 Bankruptcy proceedings, on September 11, 2012, more particularly, Piccadilly Restaurants, LLC, Case No. 12-51127, Piccadilly Food Services, LLC, Case No. 12-51128 and Piccadilly Investments, LLC, Case No. 12-51159. All three bankruptcy cases were filed with the United States Bankruptcy Court for the Western District of Louisiana, Lafayette Division. The Bankruptcy Court granted a Motion for Joint Administration of the Piccadilly cases referenced hereinabove, and an Order was entered into the record on September 12, 2012 (P-17) designating the lead case as Piccadilly Restaurant, LLC, Case No. 12-51127.

4.

Several years prior to the Chapter 11 filing for Piccadilly, a suit was initiated in the Twenty Second Judicial District Court, Parish of St. Tammany, State of Louisiana, Case No. 2009-11726, Division “A”, (hereinafter “22nd JDC Case”) entitled Cora Ann Ball and Elwyn Ball vs. Capital City Cornichon Corporation.¹ The basis of the 22nd JDC Case originated from a slip and fall incident occurring at the Piccadilly Restaurant located at 104 Gause Boulevard West, Slidell, Louisiana on July 26, 2008 involving Mrs. Cora Ann Ball.

5.

The facts providing the basis of the lawsuit in the 22nd JDC Case were sufficient to establish liability against Piccadilly under LSA-R.S. 9:2800.6. The 22nd Judicial District Court found that the Piccadilly knew or should have known of the hazardous condition which caused injury to Cora Ball, and also found that there was no comparable negligence established against Cora Ball, who was taking what she thought was a safe path in observance of a “wet floor” sign when the incident occurred.

6.

Written Reasons for Judgment (“Reasons for Judgment”) were entered into the record of the 22nd JDC Case on May 31, 2011. The Reasons for Judgment

¹ The 22nd JDC Case was subsequently amended by the Court to reflect Piccadilly Restaurants, LLC as the proper party Defendant and Judgment Debtor.

specifically stated that the facts were sufficient to establish liability against Piccadilly. Mrs. Ball sustained severe injuries which required medical intervention, surgery and prolonged medical treatment, all of which is detailed in the Reasons for Judgment. It was the Court's conclusion in its Reasons for Judgment that Mrs. Ball sustained past medical bills in the amount of \$99,115.00 for which recovery was entitled and the need for future medical care in the amount of \$ 5,000.00. In addition the sum of \$125,000.00 was granted for mental anguish, pain and suffering and loss of employment of life, sustained by Mrs. Ball. The Court opined that Mr. Ball was entitled to the sum of \$ 15,000.00 as a result of his loss of consortium.

7.

The Judgment (the "District Court Judgment") was entered into the record of the 22nd JDC Case on June 13, 2011, which awarded Mrs. Ball an amount of \$229,115.00 and Mr. Ball an amount of \$ 15,000.00 for a total amount of \$244,115.00, plus legal interest from the date of judicial demand as well as all costs, including expert fees and deposition costs for those depositions utilized at Trial.

8.

Subsequent to the District Court Judgment, it was determined that the Reasons for Judgment and the District Court Judgment entered in the 22nd JDC Case required an Amendment to substitute Piccadilly Restaurants, LLC in place of Capital City Cornichon Corporation as the owner and operator of the Piccadilly Restaurant in Slidell, Louisiana where the incident occurred. A Consent Judgment was entered into the record of the 22nd JDC Case dated July 12, 2011 which Amended the suit to substitute Piccadilly Restaurants, LLC as the Defendant and Judgment Debtor in place of Capital City Cornichon Corporation in addition to the Piccadilly insurer, American Home Assurance Company with all other pertinent parts remaining identical to the original District Court Judgment. This Amended Consent Judgment simply clarified the parties involved.

9.

An Appeal of the District Court Judgment in favor of Mr. & Mrs. Ball was timely filed with the Louisiana First Circuit Court of Appeals by Piccadilly Restaurants, LLC and American Home Insurance requesting relief from the Judgment rendered in the 22nd JDC Case. The Appeal with the 1st Circuit Appeal (sometimes hereinafter “1st Circuit Appeal”) was styled Cora Ann Ball and Elwyn Ball vs. Capital City Cornichon Corporation, Case No. 2011-CA-1862. Mr. & Mrs. Ball answered the

1st Circuit Appeal of Piccadilly, requesting that the award to Mrs. Ball be raised to \$250,000.00 and to Mr. Ball be raised to \$25,000.00. On May 2, 2012, the Court of Appeal, First Circuit denied the appeal of Piccadilly and American Home affirming the lower court Judgment in the 22nd JDC Case, leaving the awards of the District Court undisturbed.

10.

In response to the denial of their Appeal, on May 12, 2012 Piccadilly and American Home filed an Application to the Court of Appeal, First Circuit for Rehearing of the 22nd JDC Case Judgment which had been affirmed in favor of Mr. & Mrs. Ball. The Application for Rehearing was denied and the decision of the 22nd Judicial Court for the Parish of St. Tammany was once again affirmed and left undisturbed by the Court of Appeal, First Circuit on May 24, 2012.

11.

As a result of the First Circuit Court of Appeal ruling in favor of the Mr. & Mrs. Ball, Piccadilly Restaurants, LLC and American Home Assurance Company filed an Application for Writs of Certiorari and Supervisory Review on June 22, 2012 with the Supreme Court of Louisiana entitled Cora Ann Ball and Elwyn Ball Plaintiff/Respondent, vs. Piccadilly Restaurants, LLC and American Home

Assurance Company, Defendant/Applicants, Case No. 2012-C-1448. (“La. Sup Ct. Appeal”) The Piccadilly Application for Writs asserts that the decisions of the First Circuit Court of Appeal and the Trial Court have erroneously interpreted and applied Louisiana Revised Statutes and related jurisprudence. Piccadilly and American Home have requested the La. Sup Ct. overturn and reverse the lower Court rulings against them in favor of Mr. & Mrs. Ball.

12.

Mr. & Mrs. Ball responded to the Piccadilly Writs Application with a Writ Opposition to the La. Supreme Court Appeal on June 28, 2012 asserting Piccadilly Restaurants, LLC and American Home Assurance Company incorrectly argue that the First Circuit Court of Appeal has improperly affirmed the Trial Court’s Judgment in this matter, when in fact the First Circuit unanimously found the Trial Court committed no manifest error and was not clearly wrong in both its liability and quantum decisions.

13.

Piccadilly lodged a Notice of Bankruptcy Filing and Suggestion of Stay on September 12, 2012 into the La. Supreme Court Appeal record advising that on September 11, 2012 Piccadilly Restaurants, LLC , Piccadilly Food Service, LLC, and Piccadilly Investments, LLC filed Chapter 11 Case No.'s 12-51127, 12-51128 and 12-51129 with the United States Bankruptcy Court for the Western District of Louisiana, Lafayette Division invoking *Section 362 of the Bankruptcy Code* providing for an Automatic Stay in the proceedings. (the "B/R Stay") However, Piccadilly failed to notify the La. Supreme Court that there is no co-debtor stay in effect and that American Home Assurance Company and National Union Fire Insurance Company of Pittsburg, PA (the "Surety Bond Co.") were not afforded the protection of the Piccadilly Bankruptcy filing.

14.

Cora Ann Ball and Elwyn Ball filed a Response to the Piccadilly Suggestion of Stay into the La. Supreme Court Appeal on September 14, 2012 asserting:

- (1) The affirmed Judgment herein is against both Piccadilly Restaurants, LLC and American Home Assurance Company. While Piccadilly Restaurants, LLC may now have filed Chapter 11 Bankruptcy, defendant American Home Assurance Company has not and remains

a viable defendant capable of remaining cast in and satisfying this Judgment; and

- (2) The suspensive surety bond herein was posted at the First Circuit Court of Appeal by National Union Fire Insurance Company of Pittsburgh, PA. National Union Fire Insurance Company of Pittsburgh, PA is not a part of the Piccadilly Restaurants, LLC bankruptcy filing and remains a viable entity capable of satisfying this Judgment.

15.

The La. Supreme Court has improperly issued a Stay of all proceedings in the Writ Application matter initiated by Piccadilly and American Home in accordance with *Section 362* of the *Bankruptcy Code*. Mr. & Mrs. Ball, as respondents to the Piccadilly Writ Application seek a modification of the stay to allow only the liquidation of the claim against Piccadilly, but not the collection of the claim against the Bankruptcy Estate of Piccadilly; and to clarify the fact that the automatic stay pursuant to *Section 362* does not apply to American Home Assurance Company nor National Union Fire Insurance Company of Pittsburg, PA. As related hereinabove, there is no co-debtor stay applicable in a Chapter 11 Bankruptcy proceeding, so Mr.

& Mrs. Ball are not restrained by the *Bankruptcy Code* from proceeding with their action and Judgment against American Home and National Union. Such ruling would serve no harm or detriment to the Bankruptcy Estate of Piccadilly, and such is not sought.

Legal Argument

16.

Clearly the filing of a bankruptcy petition operates as a stay of, *inter alia*, "the commencement or continuation of a judicial proceeding against the Debtor that was or could have been commenced before the commencement under this title as well as any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case" in accordance with *11 U.S.C. § 362(a)*.

17.

A bankruptcy court is permitted to modify the automatic stay "for cause." *Id.* § 362(d)(1). The Code does not define the term "cause." *See Pursue Energy Corp. v. Miss. Tax Comm'n*, 338 B.R. 283, 291 (S.D. Miss. 2005). Regardless, courts in this circuit and around the country have granted relief from the stay when necessary to permit litigation to be concluded in another forum, especially when the suit involves

multiple parties or is ready for disposition. *See, e.g., In re Structural Software Inc., 117 F.3d 1418 (5th Cir. 1997); Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1285 (2d Cir. 1990); In re Dixie Broadcasting, 871 F.2d 1023 (11th Cir. 1989); In re Kemble, 776 F.2d 802 (9th Cir. 1985); In re Holtkamp, 669 F.2d 505 (7th Cir. 1982); Pursue Energy Corp., 338 B.R. at 292; In re Fowler, 259 B.R. 856, 858 (Bankr. E.D. Tex. 2001).*

18.

While the granting of relief from the stay is left to the discretion of the bankruptcy court and decided on a case by case basis, courts in this circuit have considered a multi-factored test in order to determine when the automatic stay should be lifted to permit existing litigation to proceed. *See Pursue Energy, 338 B.R. at 292.* Several courts consider the twelve factor test espoused in *Sonnax Indus., Inc.* That court listed the following twelve factors that should be weighed in deciding whether to lift the automatic stay:

- (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 proceedings; and
- (12) The impact of the stay on the parties and the balance of the harms.

SonnaxIndus., 907 F.2d at 1285.

19.

To allow the La. Supreme Court proceeding to continue will not harm the estate or other creditors. The Debtor and its insurance carrier has already spent time and money defending the Appeal and it is unlikely that it would be any more

cost effective for the estate to litigate the issues of liability before the bankruptcy court than it would to litigate the Writ Application in the La. Supreme Court. Indeed, the matter is ripe for adjudication before the La. Supreme Court and the cost of defending an action is but one factor for the court to consider but, standing alone, it does not constitute grounds for denying a movant relief from the automatic stay. *Fowler*, 259 B.R. at 861 (citing *Walker v. Wilde (In re Walker)*, 927 F.2d 1138, 1143 (10th 1991).

20.

The affirmed Judgment herein is against both Piccadilly Restaurants, LLC and American Home Assurance Company. While Piccadilly Restaurants, LLC may now have filed a Chapter 11 Bankruptcy, defendant American Home Assurance Company has not, and remains a viable defendant capable of remaining cast in and satisfying the Judgment in favor of Mr. & Mrs. Ball.

21.

The suspensive surety bond for the Defendants in connection with the affirmed Judgment against Piccadilly and American Home was posted at the First Circuit Court of Appeal by National Union Fire Insurance Company of Pittsburgh, PA. National Union Fire, Insurance Company of Pittsburgh, PA is not a part of the Piccadilly

Restaurants, LLC bankruptcy filing and remains a viable entity capable of satisfying this judgment.

22.

For these reasons, there is no prejudice to other creditors or to the Bankruptcy Estate of Piccadilly in permitting the modification of the stay in order that Mr. & Mrs. Ball might proceed with the La. Supreme Court Writ Application described hereinabove.

23.

Piccadilly in its response to Mr. & Mrs. Ball's Motion to Modify Stay asserts that allowing the La. Supreme Court Writ Application proceeding to go forward would "provide some harm to the estate" (P-241; pg. 3; paragraph 11) but does not elaborate or detail such alleged harm to the estate. Indeed, it is inconceivable that a collection effort against American Home Assurance Company and National Union Fire Insurance Company of Pittsburg, PA to satisfy the Ball's Judgment would impinge in any way, on or against the estate of the Debtor, Piccadilly Restaurants, LLC inasmuch as these companies are in no way part of the Piccadilly bankruptcy matter.

24.

Since the *11 U.S.C. § 362* stay is in effect for Piccadilly, the movers assert that the modification of the stay in regard to Piccadilly is for the limited purpose of determining liability and for liquidation of the claim of Mr. & Mrs. Ball.

25.

Movers contend that there is no stay pursuant to *11 U.S.C. § 362* or otherwise in effect in regard to American Home Assurance Company and/or National Union Fire Insurance Company of Pittsburg, PA inasmuch as these entities are not in bankruptcy and are not involved in the Piccadilly Bankruptcies. As such, an order of the Court should be issued to the effect that these entities are not subject to the bankruptcy stay as they are not under the jurisdiction of the Bankruptcy Court; and therefore the stay pursuant to *11 U.S.C. § 362* does not prevent movers from liquidating and collecting their judgment against these non-debtor entities.

WHEREFORE, Cora Ann Ball and Elwyn Ball pray that this Honorable Court deem their Response to the Limited Objection to the Motion to Modify Stay filed by Piccadilly Restaurants, LLC, Piccadilly Food Services, LLC and Piccadilly Investments, LLC, be deemed good and appropriate in this matter; and that movers be allowed to modify the *11 U.S.C. § 362* against the Debtors to the effect that

their claim be determined and liquidated, but not collectable; and to allow the Writ Application/Appeal process to continue against American Home and/or National Union Fire Insurance Company of Pittsburg, PA for liability and for collection; and for all other equitable relief in the circumstances.

Mandeville, this 25th, day of October, 2012.

Respectfully submitted,

/s/ Phillip K. Wallace

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CERTIFICATE OF SERVICE

I, Phillip K. Wallace do hereby certify that on October 25, 2012, I caused a copy of this forgoing Response to Limited Objection to Motion to Modify Stay to be served on the following listing via electronic mail or First Class Prepaid Mail.

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