

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
COACH AM GROUP	)	Case No. 12-10010 (KG)
HOLDING CORP., <u>et al.</u> ,	)	Jointly Administered
	)	
Debtors.	)	Hearing Date: March 19, 2012 at 2:00 p.m.
		Objections Due: March 12, 2012 at 4:00 p.m.

**MOTION OF JOHN SWITALSKI FOR  
RELIEF FROM STAY PURSUANT TO 11 U.S.C. § 362(d)**

John Switalski (“Movant”), by and through undersigned counsel, files this motion for relief from stay to allow prosecution of a suit pending in the Circuit Court of the Ninth Judicial Circuit In and For Orange County, Florida.

**FACTUAL BACKGROUND**

1. On April 24, 2008, Movant was struck and injured by a motor vehicle operated by an employee of the Debtor ACL Leasing, LLC (the “Debtor”) while in the Debtor’s service (the “Accident”). As a result of the accident, Movant suffered bodily injury necessitating medical treatment and has suffered numerous other harms including pain and suffering, loss of capacity for the enjoyment of life, loss of earnings and loss of ability to earn money.

2. On November 23, 2010, Movant filed a lawsuit (the “Circuit Court Action”) against Debtor and Debtor’s employee (together, “Defendants”) in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida (the “Circuit Court”). A copy of the complaint (the “Complaint”) commencing the Circuit Court Action is attached hereto, and incorporated herein by reference, as Exhibit A.

**RELIEF REQUESTED AND REASONS THEREFOR**

3. By virtue of 11 U.S.C. § 362(a), the Circuit Court Action as it pertains to the Debtor has been stayed pending a hearing on this Motion.

4. Section 362(d) of the Bankruptcy Code provides:

(d) On 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 by terminating, annulling, modifying, or conditioning such stay-

(1) for cause, including lack of adequate protection of an interest in property of such part in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

(A) the debtor does not have an equity in such property;  
and

(B) such property is not necessary to an effective reorganization

5. In determining whether cause exists to lift the stay to permit a party to pursue an action outside of the Bankruptcy Court, this court may consider whether:

- (a) Any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit,
- (b) The hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship of the debtor, and
- (c) The creditor has a probability of prevailing on the merits.

In re Rexene Prods. Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992); see also American Airlines, Inc. v. Continental Airlines, Inc. (In re Continental Airlines, Inc.), 151 B.R. 420, 424 (D. Del. 1993); Levitz Furniture Inc. v. T. Rowe Price Recovery Fund, L.P. (In re Levitz Furniture Inc.), 2000 Bankr LEXIS 1322, \*15 (Bankr. D. Del. 2000); Save Power Limited v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.), 193 B.R. 713, 718 (Bankr. D. Del. 1996).

Further, courts are directed to consider the following legislative history:

It will often be more appropriate to permit proceedings to continue in their place of origin, where no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen

forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.

Rexene Products, 141 B.R. at 576; In re Wilson, 85 B.R. 722, 728-29 (Bankr. E.D. Pa. 1988) (citing S. Rep. No. 989, 95<sup>th</sup> Cong., 2d. Sess. 50, reprinted in [1978] *U.S. Code Cong. & Ad. News* 5836).

6. The legislative history of section 362 indicates that cause may be established by a single factor such as “a desire to permit an action to proceed ... in another tribunal,” or “lack of any connection with or interference with the pending bankruptcy case.” H.R. Rep. No. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., 343-344 (1977) *U.S. Code Cong. & Admin. News*, pp. 5787, 6300. See also In re Rexene, 141 B.R. at 576 (“cause” for relief was found in order to allow civil plaintiffs to proceed with a class action against the debtor because discovery was nearly complete, both parties were nearly ready for trial prior to the bankruptcy filing, trial of the claim in bankruptcy court would be burdensome to plaintiffs and risk unnecessary, duplicative litigation, and plaintiffs had at least some probability of success on merits of suit); see also In re Drexel Burnham Lambert Group, Inc., 113 B.R. 830, 838 n. 8 (Bankr. S.D.N.Y. 1990) (citing various examples of “cause” to permit litigation in another forum such as liquidation of a personal injury, arbitration or specialized jurisdiction claims).

7. This Court, in the *Continental Airlines* decision referred to above, set forth the following framework for analyzing motions for relief from the automatic stay:

There is no rigid test for determining whether sufficient cause exists to modify an automatic stay. Rather, in resolving motions for relief for “cause” from the automatic stay courts generally consider the policies underlying the automatic stay in addition to the competing interests of the debtor and the movant. In balancing the competing interests of the debtor and the movant, Courts consider three factors: (1) the prejudice that would be suffered should the stay be lifted; (2) the balance of the hardships facing the parties; and (3) the probable success on the

merits if the stay is lifted. See Intl Business Machines v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.), 938 F. 2d 731, 734-37 (7th Cir. 1991).

In re Continental Airlines, 152 B.R. at 424.

8. In determining whether a debtor will endure prejudice if the automatic stay is lifted and litigation is allowed to continue, courts examine the status of the underlying non-bankruptcy court action. In In re SCO Group, Inc., 395 B.R. 852, 856-859 (Bankr. D. Del. 2007), this Court provided guidance for determining the issues the instant case presents—when should the court lift the automatic stay to allow for litigation to proceed on an issue essential to the administration of the bankruptcy case. In that case, SCO had filed its petition for bankruptcy more than three and a half years after it had filed suit against Novell, and after the district court had denied its motion for summary judgment, while granting in part defendant Novell's motions for summary judgment, and only three days before the pending litigation was scheduled to begin trial. Id. at 855-856. Novell filed its motion for relief from stay to proceed in the district court litigation to apportion revenue from certain licenses and to determine SCO's authority to enter into the license agreements. Id. at 854. The motion "matche[d] the fundamental protection of the automatic stay against the necessity and timing of the adjudication of an issue that [was] "essential to the administration of the bankruptcy case." Id.

9. The court applied the three pronged balancing test to determine whether relief from stay should be granted, as well as the 12 factors set forth in In re Sonnax Indus., Inc. v. Tri Component Prods. Corp., 907 F.2d 1280, 1287 (2d Cir. 1990). The court noted that the circumstances surrounding the case were unusual, both because the bankruptcy petition had been filed just before trial; and because another court had extensive knowledge of the facts and

issues and had already made detailed findings. Id. at 857. Further, relief from stay may be granted when necessary to permit litigation to be concluded in another forum, particularly if the non-bankruptcy case involves multiple parties or is ready for trial. Id., citations omitted. Finally, the legislative history of § 362(d)(1) emphasizes the importance of allowing a case to continue in the original court so long as there is no prejudice to the estate.

10. The court found that neither the debtors nor the estate would be prejudiced by lifting the stay, since SCO had separate litigation counsel who had already prepared for trial and the bankruptcy court would determine whether a constructive trust would be appropriate. Id. at 858. In addition, the longer trial was delayed the more burdensome it would be for both parties to ready themselves again. Id. Perhaps the most significant factor in lifting the stay was that the debtors could not file a confirmable plan of reorganization until they knew what liability they had to Novell. Id. at 859. Therefore, the resolution of the issues in the district court would assist debtors, not burden them. Id.

11. Regarding the second prong of the balancing test, the court found that the equities favored Novell, since hardship would result to it from denying relief since Novell had already prepared extensively for trial. In addition, without a ruling on the liability issues, Novell's rights in the bankruptcy cases would remain undetermined and the value of Novell's claim would remain a troubling issue for the court, Novell and the debtors. Id. at 859. The Court also determined that based on the successful rulings that Novell had already obtained in the district court, it had "a reasonable probability of success on the merits." Id.

12. Finally, the Court held that it would be unreasonable and economically inefficient and unnecessarily time consuming for the bankruptcy court to spend a significant amount of time learning and resolving the liability issues when the district court already had

that knowledge. *Id.* at 860. Therefore, the court granted relief from the stay and permitted the district court to determine the amount of royalties to which Novell was entitled and whether SCO was authorized to enter into the license agreements at issue. Id.

13. Application of the standards set forth in the case law here weighs strongly in favor of granting stay relief. The prejudice to Movant in forcing him to pursue his claim in Delaware is manifest. Movant resides thousands of miles away and travel to Delaware is both expensive and impractical.

14. By contrast, the allowance or disallowance of Movant's claim in a large commercial bankruptcy such as this would have no discernable effect on the administration of the Debtors' cases, or confirmation, consummation or implementation of their plan, particularly as Movant has agreed to limit his recovery from the Debtor to available insurance proceeds. Furthermore, as Florida law applies and no bankruptcy issues are involved, this Court's special expertise would not be of assistance in adjudicating this matter. Further, as the Circuit Court Action had been pending for several months before the bankruptcy filing, the Circuit Court has some familiarity with that action.

15. As to probability of success on the merits, there is little doubt that the Accident was the result of negligence of Debtor.

16. Finally, Movant submits that the interests of both Movant and Debtors would be protected by granting stay relief. All material witnesses are located in Florida. None are in Delaware. A Florida court already is familiar with this case. Hence, litigating this matter in Delaware would result in greater expense to all parties.

WHEREFORE, Movant requests that the Court approve the order attached hereto, granting relief from the automatic stay to permit the prosecution of the Circuit Court Action

against Debtor along with any subsequent appeals, and granting such other and further relief as this Court deems just and proper.

Dated: February 17, 2012

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