

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY**

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In re	: Chapter 11
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JOHN Q. HAMMONS FALL 2006, LLC, <i>et al.</i> ,	: Case No. 16-21142 (RDB)
	: <i>Jointly administered</i>
Debtors	:
	X

**MOTION FOR TURNOVER OF INFORMATION AND RECORDS PURSUANT TO 11
U.S.C. § 542 AND DIRECTING THAT ANY ATTEMPTS TO THWART THE
DELIVERY OF INFORMATION AND RECORDS TO JD HOLDINGS, L.L.C. IS A
VIOLATION OF THE AUTOMATIC STAY OF 11 U.S.C. § 362(a)(3) AND SHOULD
CEASE IMMEDIATELY**

The Revocable Trust of John Q. Hammons, dated December 29, 1989, as amended and restated ("JQH Trust" or "Trust"), together with its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), hereby file this Motion for Turnover of Information and Records pursuant to 11 U.S.C. § 542 and For An Order Directing That Any Attempts to Thwart the Delivery of Information and Records to JD Holdings, L.L.C. is a Violation of 11 U.S.C. § 362(a)(3) and Should Cease Immediately. In support thereof, the Debtors state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion under 28 U.S.C. § 1334(a) and (b).
2. This is a core proceeding in that this Motion affects the administration of these bankruptcy estates. 28 U.S.C. §§ 157(b)(1) & (2)(A).
3. Venue is proper in this Court. 28 U.S.C. § 1409(a).
4. Proceedings for turnover of property of the estate, and with respect to the

automatic stay are contested matters brought by a motion pursuant to Fed. R. Bankr. P. 7001.

BACKGROUND AND FACTUAL PREDICATE FOR RELIEF REQUESTED

5. The Trust is a 50% owner of WHR, LLC ("WHR"). The other owner of WHR is AJJ Hotel Holdings, Inc. ("AJJ"). One of the two co-managers of WHR is Jacqueline Dowdy ("Ms. Dowdy"). WHR owns and operates hotels.

6. The Debtors and JD Holdings, L.L.C. ("JDH") executed a plan support agreement and a settlement agreement (collectively the "PSA") pursuant to which JDH will acquire all of the Debtors' assets including the Trust's 50% ownership interest in WHR (the "Ownership Interest"). Pursuant to the PSA, the Debtors are required to cooperate with JDH, including providing information to JDH with respect to WHR.

7. The Court approved the PSA by order entered on March 6, 2018 (ECF Doc. 1856) (the "Settlement Order").

8. Pursuant to the Settlement Order, the Debtors were directed to perform under the PSA, necessarily to include fulfilling JDH's information requests with respect to WHR. *See* Settlement Order, ¶ 2.

9. The WHR operating agreement is attached hereto as Exhibit A (the "Operating Agreement").

10. By its terms, the Operating Agreement permits the sale of at least the economic benefits of the Trust's Ownership Interest to JDH.

11. By its terms, the Operating Agreement contains a very short confidentiality provision. *See* Exhibit A, ¶ 8.B (the "Confidentiality Provision").

12. JDH has delivered to the Debtors a number of information requests with respect to WHR as JDH is permitted to do under the PSA. The information requests are attached hereto collectively as Exhibit B (the "Information Requests").

13. Each of the Information Requests seeks relevant information to assist JDH in its due diligence of the Ownership Interest.

14. Some of the requested information is in the Debtors' possession (the "Debtors' Information"); some of the information is in the possession of JQH Accounting LLC ("JQHA"), a wholly owned subsidiary of the JQH Trust (the "JQHA Information"); and some of the information is in the possession of WHR (the "WHR Information").

15. As a 50% owner of WHR, the Trust is entitled to have possession of the WHR Information. *See* Exhibit A, ¶ 8.A.

16. To date, WHR has declined to provide the Trust with all of the WHR Information. Furthermore, and to date, AJJ has taken the position that the WHR Information, the Debtors' Information and the JQHA Information are subject to the Confidentiality Provision, and the necessary implication is that the Debtors and JQHA cannot share any of the requested information with JDH.

17. In effect, AJJ has implied that if the information in question is delivered to JDH, the Trust will be in violation of the Confidentiality Provision. Furthermore, WHR has asserted that Ms. Dowdy will be in violation of her fiduciary duties to WHR if any of the requested information is shared with JDH.

18. In June, 2017, the Debtors and JDH signed a non-disclosure agreement. The NDA is attached hereto as Exhibit C (the "NDA"). Under the NDA, all the information in question would be held in confidence by JDH and would be used for no purpose other than in the asset sale contemplated under the PSA.

19. WHR and AJJ have been advised of the NDA and notwithstanding the obvious and complete protection provided to WHR and AJJ under the NDA, to date, WHR and AJJ

continue to thwart all efforts of the Debtors to comply with the PSA, assist JDH in the sale process, and take the necessary steps to assure confirmation of JDH's plan of liquidation and payment of all allowed claims in these bankruptcy estates in full.

20. On March 12, 2018, the Trust received a response letter from counsel for AJJ to certain Information Requests (the "March 12 Letter"). The March 12 Letter is attached hereto as Exhibit D. While the March 12 Letter purports to permit the Trust to obtain information from JQHA, AJJ limits its consent to "information concerning only the JQH Trust's Membership Interest in WHR." *See* Exhibit D at p. 1. This limitation is completely inappropriate; no potential purchaser would be able to do its due diligence on purchasing the Trust's Ownership Interest unless the purchaser was provided with all relevant financial and operating information for WHR.

21. WHR's and AJJ's positions amount to nothing more than an improper attempt to exercise control over the property of the estate in violation of 11 U.S.C. § 362(a)(3).

REQUESTED RELIEF - TURNOVER

22. All of the requested information constitutes property in which the Debtors have an interest and therefore is property of the estate pursuant to 11 U.S.C. § 541(a).

23. Pursuant to 11 U.S.C. § 542(a), WHR is an entity in possession of property of the estate. Thus, WHR "shall deliver [such property] to the [debtor-in-possession]"

24. There is simply no basis under the Bankruptcy Code or, indeed, the Operating Agreement, for WHR to withhold the requested information or for AJJ to seek to prevent the Trust and JDH from obtaining this information.

25. The Confidentiality Provision is the sole basis upon which WHR and AJJ have heretofore denied the Trust and JDH with access to all of the requested information. That provisions states in its entirety: "Each Member and Co-Manager shall maintain the

confidentiality of confidential Company records and information.” Exhibit A, ¶ 8.B. By providing the requested information to JDH (the purchaser of the 50% interest in WHR) subject to the NDA, the Trust is maintaining the confidentiality of these provisions.

26. By this Motion the Debtors seek an order of the Court pursuant to 11 U.S.C. § 542(a) directing WHR to immediately provide all of the requested information to the Debtors for the Debtors to share with JDH.

REQUESTED RELIEF – AUTOMATIC STAY

27. In addition, and ancillary to a turnover of the requested information, the Debtors seek an order directing that the delivery to JDH of the Debtors' Information, the JQHA Information and the WHR Information is not a breach of fiduciary duty by the Debtors or Ms. Dowdy, but rather is the fulfillment of their duties under the PSA and the Bankruptcy Code, especially in light of the NDA which should completely allay any confidentiality fears of WHR and AJJ.

28. Furthermore, the Debtors seek an order of the Court ruling that any attempt by WHR and AJJ to block or thwart the Debtors' efforts to provide the requested information to JDH is a violation of the automatic stay of 11 U.S.C. § 362(a)(3) because it is an attempt to exercise control over property of the estate, is void, and should cease.

WHEREFORE, for the reasons set forth herein, the Debtors pray for the entry of an order, (a) directing turnover by WHR of the information described herein pursuant to 11 U.S.C. § 542(a), (b) directing that any efforts by WHR and AJJ to block the turnover of such information by any party in possession of the information is in violation of 11 U.S.C. § 362(a)(3), is void, and should cease immediately, (c) ruling that the turnover of the requested information in no way is a breach of the Debtors' or Ms. Dowdy's fiduciary duty to WHR or AJJ, and (d) granting such other relief as is just.

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