UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY

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

AMERICAN TOWERS LLC'S MOTION TO LIFT OR MODIFY THE AUTOMATIC STAY PURSUANT TO U.S.C. § 362(d)(1) AND FED.R.BANKR.P. 4001 AND MEMORANDUM OF LAW IN SUPPORT THEREOF

COMES NOW American Towers, LLC (hereinafter "American Towers" or "Movant") by and through its undersigned counsel, as plaintiff in a multi-count lawsuit against multiple defendants, certain of which are debtors (the "Debtor Defendants"), which is styled *American Towers LLC v. Hammons Inc., et al.* and pending in the Circuit Court of the Thirty-First Judicial Circuit, Green County, Missouri bearing cause no.: 1431-CC01234; American Towers moves this Court pursuant to 11 U.S.C. § 362(d)(1) and Fed. R. Bankr. P. 4001 to enter an Order lifting the automatic stay as to the Debtor Defendants in this case so that Movant may proceed against such Debtor Defendants to the point of judgment, but not collection, in the Missouri state court action (the "Motion").

I JURISDICTION

1. This Court has jurisdiction to hear and determine this Motion pursuant to 28 U.S.C. § 157(b)(2)(A) and (G).

2. This venue is proper for this Motion pursuant to 28 U.S.C. §§ 1408 and 1409.

II BACKGROUND AND PROCEDURAL HISTORY

3. On June 26, 2016 (the "Petition Date"), John Q. Hammons Fall 2006, LLC (the "Lead Debtor") and multiple affiliated debtors (collectively as set forth in Footnote 1 and 2, "Debtors")[1] filed Chapter 11 petitions.[2]

4. Prior to the Petition Date, American Towers filed a complaint against Hammons, Inc., John Q. Hammons Hotels, John Q. Hammons Hotels, Inc., John Q. Hammons Hotels, L.P., John Q. Hammons Hotels Two, L.P., Atrium TRS II, L.P., Atrium TRS III, L.P., Atrium TRS IV, LP, Atrium TRS V, LLC, Atrium Finance II, LP, Atrium Finance V, LLC, and Hammons of

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[1] The Debtors in this case are: ACLOST, LLC, Bricktown Residence Catering Co., Inc., Chateau Catering Co., Inc., Chateau Lake, LLC, Civic Center Redevelopment Corp., Concord Golf Catering Co., Inc., Concord Hotel Catering Co., Inc., East Peoria Catering Co., Inc., Fort Smith Catering Co., Inc., Franklin/Crescent Catering Co., Inc., Glendale Coyotes Catering Co., Inc., Glendale Coyotes Hotel Catering Co., Inc., Hammons, Inc., Hammons of Colorado, LLC, Hammons of Franklin, LLC, Hammons of Huntsville, LLC, Hammons of Lincoln, LLC, Hammons of New Mexico, LLC, Hammons of Oklahoma City, LLC, Hammons of Richardson, LLC, Hammons of Rogers, Inc., Hammons of Sioux Falls, LLC, Hammons of South Carolina, LLC, Hammons of Tulsa, LLC, Hampton Catering Co., Inc., Hot Springs Catering Co., Inc., Huntsville Catering, LLC, International Catering Co., Inc., John Q. Hammons 2015 Loan Holdings, LLC, John Q. Hammons Fall 2006, LLC, John Q. Hammons Hotels Development, LLC, John Q. Hammons Hotels Management I Corporation, John Q. Hammons Hotels Management II, LP, John Q. Hammons Hotels Management, LLC, Joplin Residence Catering Co., Inc., JQH – Allen Development, LLC, JQH – Concord Development, LLC, JQH – East Peoria Development, LLC, JQH - Ft. Smith Development, LLC, JQH – Glendale AZ Development, LLC, JQH - Kansas City Development, LLC, JQH – La Vista Conference Center Development, LLC, JQH - La Vista CY Development, LLC, JQH - La Vista III Development, LLC, JQH - Lake of the Ozarks Development, LLC , JQH – Murfreesboro Development, LLC, JQH – Normal Development, LLC, JQH – Norman Development, LLC, JQH – Oklahoma City Bricktown Development, LLC, JQH – Olathe Development, LLC, JQH – Pleasant Grove Development, LLC, JQH – Rogers Convention Center Development, LLC, JQH – San Marcos Development, LLC, Junction City Catering Co., Inc., KC ResidenceCatering Co., Inc., La Vista CY Catering Co., Inc., La Vista ES Catering Co., Inc., Lincoln P Street Catering Co., Inc., Loveland Catering Co., Inc., Manzano Catering Co., Inc., Murfreesboro Catering Co., Inc., Normal Catering Co., Inc., OKC Courtyard Catering Co., Inc., R-2 Operating Co., Inc., Revocable Trust of John Q. Hammons Dated December 28, 1989 as Amended and Restated, Richardson Hammons, LP, Rogers ES Catering Co., Inc., SGF – Courtyard Catering Co., Inc., Sioux Falls Convention/Arena Catering Co., Inc., St Charles Catering Co., Inc., Tulsa/169 Catering Co., Inc., and U.P. Catering Co., Inc., City Centre Hotel Corporation, Hammons of Arkansas, LLC, Hammons of Frisco, LLC, and John Q. Hammons Center, LLC.

[2] Debtors, City Centre Hotel Corporation, Hammons of Arkansas, LLC, Hammons of Frisco, LLC, and John Q. Hammons Center, LLC., filed petitions on July 5, 2016.

Sioux Falls, LLC (collectively, "Defendants") in an action styled *American Towers LLC v. Hammons Inc., et al.*, in the Circuit Court of the Thirty-First Judicial Circuit, Green County, Missouri (cause no.: 1431-CC01234) (the "State Court Action"). A true and correct copy of the proof of claim against Hammons, Inc. is attached hereto as Exhibit B. A copy of the Amended Petition in the State Court Action is attached as Exhibit 1 to Exhibit B. The proof of claim (Exhibit B) and the Amended Petition in the State Court Action (Exhibit 1 to Exhibit B) are both attached to the *Declaration of Edward W. Zeidler, Esq. (the "Zeidler Decl.")*, which is submitted herewith and identified as Exhibit A.

5. The State Court Action has been stayed because certain of the Defendants are Debtors. *See Zeidler Decl* at ¶5. Although the State Court Action could proceed against the non-debtor Defendants as there is no automatic stay barring such action, the Court in the State Court Action has declined to allow the case to proceed. Based on the interrelatedness of the Defendants and the State Court's decisions thus far, it is likely that the State Court would not allow any portion of the State Court Action to continue without the Debtor Defendants.

6. American Towers filed five separate proofs of claims in this case against different Debtor entities which appear on the Lead Debtor case docket as Docket Entry Numbers: 446, 447, 448, 449 and 450.[3]

[3] Specifically, American Towers filed the following claims which are listed in the Lead Case Docket: Doc. No. 446 against Revocable Trust of John Q. Hammons Case No. 16-21140-11; Doc. No. 447 against Hammons, Inc. Case No., 16-21143-11; Doc. No. 448 against Aclost LLC, Case No. 16-21145-11, Doc. No. 449 against John Q. Hammons Hotel Management, LLC, Case No. 16-21153-11; and Doc. No. 450 against Hammons of Sioux Falls LLC, Case No. 16-21172-11.

7. A true and correct copy of the proof of claim against Hammons, Inc. is attached hereto as Exhibit B. A copy of the Amended Petition in the State Court Action is attached as Exhibit 1 to Exhibit B. The proof of claim (Exhibit B) and the Amended Petition in the State Court Action (Exhibit 1 to Exhibit B) are both attached to the *Declaration of Edward W. Zeidler, Esq. (the "Zeidler Decl.")* submitted herewith and identified as Exhibit A.

8. After the Debtor's exclusive period to file a Plan ended, JD Holdings, LLC filed a Plan and Disclosure Statement on February 6, 2018. On February 13, 2018, the Debtors filed a motion to enter into a settlement and plan support agreement with JD Holdings, LLC. Thus, this case appears to be on the road to confirmation and the claims resolution process.

III REQUEST FOR RELIEF

9. 11 USC § 362(d)(1) provides 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 by terminating, annulling, modifying, or conditioning such stay--(1) for cause, including the lack of adequate protection of an interest in property of such party in interest."

10. Cause is not defined in the Bankruptcy Code and the decision of whether to grant stay relief is made on a case by case basis within the discretion of the bankruptcy court. See *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1285 (2d Cir. 1990). As set forth in *In re Busch*, 294 B.R. 137, 141 (10th Cir. 2003)

> Courts have found that one of the factors to consider when determining whether to modify the stay is whether doing so would permit pending litigation involving the debtor to continue in a nonbankruptcy forum. *Blan v. Nachogdoches County Hosp. (In re Blan),* 237 B.R. 737, 739 (8th Cir. BAP 1999) (finding that Congress intended such a result because "'[i]t will often be more appropriate to permit proceedings to continue in their place of origin, when 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 duties that may be handled elsewhere'").

11. Courts look to a series of factors in assessing whether there is "cause" to grant relief from the automatic stay to continue with litigation in a separate forum. As explained by the Court in *In re Curtis,* 40 B.R. 795, 799–800 (Bankr. D.Utah 1984), the factors consist of the following:

(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 Sonnax Industries, Inc., 907 F.2d 1280, 1286 (2d Cir. 1990)(citing *In re Curtis*, 40 BR at 799-800). *See Also In re Dryja,* 425 B.R. 608, 611 (Bankr. D.Colo. 2010) (finding that although "only some of the factors" were met, "those factors weigh in favor of stay relief").

12. In this case, several factors including, but not limited to factors 1, 10, 11 and 12 above, are applicable and weigh heavily in favor of an order granting stay relief so the State Court Litigation may proceed to judgment (but not collection) against the Debtor Defendants and to judgment and collection against non-debtor Defendants.

13. As set forth in detail below: a) American Towers' claims against the Debtor Defendants are ready for summary proceedings in a separate forum; b) resolution in that forum will quantify American Towers' claims against Debtors; c) judicial efficiency weighs in favor of having the claims quantified in the state court where American Towers' claims against the Debtor Defendants are already pending and ready for summary proceeding; and d) the balance of harms weighs in favor of granting stay relief as the Debtors should need to spend only minimal resources given the stage of the State Court Action. However, if stay relief is denied, American Towers will effectively lose its right to pursue its claims against all the Defendants, including the non-debtor Defendants, absent an action in the Bankruptcy Court that will duplicate the proceeding in the State Court Action.

14. American Towers has filed claims against the Debtor Defendants in this bankruptcy which require quantification. Given the State Court's familiarity with the case and its procedural posture, it serves judicial economy to have it continue in that forum. *See In re Touchstone Home Health LLC*, No. 17–11134 TBM, 2017 WL 3669541, at *16 (Bankr. D.Colo., Aug. 21, 2017) ("[T]he bankruptcy claims allowance and disallowance process is not the only way to liquidate a claim in a bankruptcy case. Instead, creditors routinely request relief from stay for cause under Section 362(d)(1) to liquidate claims outside of bankruptcy through pending federal and state court proceedings.")

15. Discovery was underway in the State Court Action at the time of the bankruptcy filings and, as to claims by American Towers against the Debtor Defendants, the matter is ready for summary proceedings. *See Zeidler Decl.* at ¶10. Such summary proceedings may result in a complete resolution of American Towers' claims against the Debtor Defendants in the State

Court Action and will determine American Towers' claims against the Debtors in the bankruptcy.

16. If stay relief is granted, it will allow the determination of American Tower's claims to continue where the matter has already started, rather than starting over in the Bankruptcy Court. Judicial efficiency is supported by allowing the State Court Action to continue to the point of judgment as to the Debtor Defendants.

17. If Movant is not allowed to proceed it will be harmed because the State Court Action will not likely be permitted to continue against any of the Defendants, including the non-debtor Defendants, since the entities and the issues are so intertwined. Further the State Court has indicated that the matter will not continue without the Debtor Defendants. Thus, if stay relief is not granted, American Towers will, in effect, be precluded from pursuing its claims and seeking recourse against the non-debtor Defendants.

18. In contrast, the Debtors would not be harmed if stay relief were granted as the Debtor Defendants would not be required to expend significant resources since American Towers' claims against the Debtor Defendants in the State Court Action are at the point of summary proceedings. In *In re Jim's Maintenance & Sons Inc.*, 418 Fed.Appx. 726, 728-29 (10th Cir. 2011)(unpublished), the Tenth Circuit affirmed a bankruptcy court's granting of relief from stay based, among other things, that the motion for summary judgment had already been briefed by both sides when the case was stayed by the bankruptcy.

19. The stage of these bankruptcy cases further favors stay relief. A plan and disclosure statement have been filed by JD Holdings, LLC and the Debtors have sought to settle with them and enter into a plan support agreement. The resolution of claims against the estate,

such as those asserted by American Towers, is timely and allowing such resolution to continue in the State Court Action where the matter is already pending is efficient.

20. In addition to an order granting stay relief, American Towers further requests that the 14-day stay period set forth in Fed. R. Bankr. P. 4001(a)(3) be waived and that an order granting stay relief be effective immediately.

IV CONCLUSION

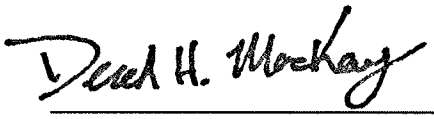
21. Thus, American Towers asserts that there is cause to lift the automatic stay under 11 U.S.C. § 362(d)(1) and the *Curtis* factors. American Towers has filed claims against the Debtor Defendants that need to be quantified. The process of quantifying these claims had already commenced before the bankruptcy filings in the State Court Action in which an Amended Petition was filed in August of 2015 against Defendants. The matter has been stayed as to the Debtor- and non-debtor defendants alike since the Petition Date, and it is likely the State Court Action will continue to be stayed. If stay relief is not granted, American Towers will be precluded from pursuing its claims against the non-debtor Defendants.

22. Further, American Towers' claims against the Debtor Defendants in the State Court Action are ready for summary proceeding. Judicial efficiency weighs in favor of having American Towers' claims against the Debtor Defendants quantified in the State Court Action as said claims are already pending and ready for summary proceeding. The balance of harms weighs in favor of granting stay relief to American Towers to proceed against the Debtor Defendants in the State Court Action to the point of judgment, but not collection. The Debtors should not be harmed as only limited resources would be required given the stage of the State Court Action.

WHEREFORE American Towers seeks entry of an Order pursuant to 11 U.S.C. § 362(d)(1) and Fed R. Bankr. P. 4001 lifting the automatic stay as to the Debtor Defendants so it may proceed against such Debtor Defendants to the point of judgment, but not collection, in the State Court Action, and may proceed to judgment and collection against the non-debtor Defendants. American Towers further requests that the 14-day stay period set forth in Fed. R. Bankr. P. 4001(a)(3) be waived and that an order granting stay relief be effective immediately and for such other and further relief as the Court deems proper and just.

Respectfully Submitted,

BROWN & JAMES PC



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