

**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	Related to Doc. No. 833

**JD HOLDINGS' LIMITED OBJECTION TO JOINT MOTION OF DEBTORS AND SFI
BELMONT LLC FOR ORDER AUTHORIZING TRANSFER OF CERTAIN ESTATE
PROPERTY AND RESERVATION OF RIGHTS**

The Joint Motion of Debtors and SFI Belmont LLC for Order Authorizing Transfer of Certain Estate Property and Reservation of Rights (ECF No. 833) (the “Motion), concerns two cashier’s checks representing the final distribution of proceeds by Atrium Hotels, L.P. (“AHLP”) to two of its partners, Debtor the Revocable Trust of John Q. Hammons, dated December 28, 1989, and Debtor Hammons, Inc. (the “Partners”). Under the terms of a loan with SFI Belmont LLC (“SFI Belmont”), the Partners were required to pay that money—approximately \$934,000—to SFI Belmont following AHLP’s liquidation. The Partners chose *not* to pay that money to SFI Belmont prepetition. It is that decision—the failure to pay over the cashier’s checks—that Debtors now claim was a primary reason for their bankruptcy filing. (*See Groves Tr.* at 265:6-269:25, attached hereto as Exhibit A.) Indeed, the Partners’ decision not to pay those funds was a default under the SFI Belmont loan agreement and resulted in an acceleration of the entire \$150 million loan. Now, however, the Partners want this Court to authorize them to deliver these cashier’s checks to SFI Belmont and for SFI Belmont to negotiate those cashier’s

checks and apply the amounts to SFI's claims even though they could have done so prepetition and avoided the default that Debtors contend precipitated their bankruptcy filings.

JD Holdings objects to the Motion to the extent the Partners and SFI Belmont request that this Court rule on matters not before it. Specifically, the Partners ask the Court to enter an order holding that the "implementation of the Check Process in no way constitutes an accord and satisfaction, release, waiver, or equitable estoppel, or prejudice any further attempts to seek and recover the remaining amounts owed by Atrium [on account of the Hammons' preferred interest in AHLP] and to enforce the Collection and Other Rights." The Delaware law issues raised by that request are *not* properly before this Court and the third-parties affected are not parties to the agreement between Debtors and SFI Belmont. Those issues arise out of the liquidation of AHLP and the Partners' pending third-party claims concerning the liquidation of AHLP that the Partners have already asserted against AHLP's General Partner, Atrium G.P., LLC ("Atrium GP") in the pending Delaware litigation for which Debtors have refused to stipulate to stay relief.

This request underscores the need for this Court to lift the automatic stay and allow the parties to complete the Delaware Litigation. The Debtors have now plainly stated that they inten[d] to seek and recover the remaining amounts owed in connection with the PEI" by pursuing their third-party claims in the Delaware litigation. (Motion ¶ 2.) These claims must be litigated in a court in Delaware in light of the AHLP Partnership Agreement, by and among Atrium GP and the Partners, which provides that "Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the parties only in the Courts of the State of Delaware or, if it has or can acquire jurisdiction, in the United States District Court for the District of Delaware, and each of the

parties consents to the exclusive jurisdiction of such courts.”¹ There is no reason to delay resolution of the Delaware litigation.

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¹ The bankruptcy court does not have jurisdiction to finally resolve the Debtors’ third-party claims against Atrium GP and the now-terminated AHLP because those are non-core disputes. *See In re Gardner*, 913 F.2d 1515, 1518 (10th Cir. 1990) (“Actions which do not depend on the bankruptcy laws for their existence and which could proceed in another court are not core proceedings”); *see also Stern v. Marshall*, 564 U.S. 462, 503 (2011). Pursuant to 28 U.S.C. § 157(c)(1), this court would only be empowered to submit proposed findings of fact and conclusions of law to the district court.