UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Chapter 11
Body Contour Ventures, LLC,[1]	Case No. 19-42510-pjs
Debtors.	Hon. Phillip J. Shefferly

Body Contour Ventures, LLC,

Plaintiff, Adv. Case No.

v.

Fedor Fedorov,
ADM & NS Group MA Newbury, LLC,

[1] Debtors cases are being jointly administered for procedural purposes only and include Debtors Body Contour Ventures, LLC, Case No. 19-42510, BCA Acquisitions, LLC, Case No. 19-42511, American Aesthetic Equipment, LLC, Case No. 19-42512, Knoxville Laser Spa LLC, Case No. 19-42513, LRX Alexandria, LLC, Case No. 19-42514, LRX Birmingham, LLC, Case No. 19-42515, LRX Charlotte, LLC, Case No. 19-42516, LRX Chicago, LLC, Case No. 19-42517, LRX Colorado Springs, LLC, Case No. 19-42518, LRX Dearborn, LLC, Case No. 19-42519, LRX East Lansing, LLC, Case No. 19-42520, LRX Grand Blanc, LLC, Case No. 19-42833, LRX Hoffman Estates, LLC, Case No. 19-42521, LRX Las Vegas Summerlin, LLC, Case No. 19-42522, LRX Mesa, LLC, Case No. 19-42523, LRX Naperville, LLC, Case No. 19-42524, LRX Novi, LLC, Case No. 19-42525, LRX Orland Park, LLC, Case No. 19-42526, LRX Plymouth-Canton, LLC, Case No. 19-42527, LRX Stone Oak, LLC, Case No. 19-42528, LRX Towson, LLC, Case No. 19-42530, LRX Troy, LLC, Case No. 19-42531, Premier Laser Spa of Greenville LLC, Case No. 19-42532, Premier Laser Spa of Indianapolis LLC, Case No. 19-42533, Premier Laser Spa of Louisville LLC, Case No. 19-42534, Premier Laser Spa of Pittsburgh LLC, Case No. 19-42535, Premier Laser Spa of St. Louis LLC, Case No. 19-42536, and Premier Laser Spa of Virginia LLC, Case No. 19-42537.

ADM & NS Group PA King of Prussia, LLC,
ADM & NS Group MN Edina, LLC,
ADM & NS Group MA Natick, LLC,
ADM & NS Group TX Memorial, LLC,
ADM & NS Group NV Henderson, LLC,
The Alliance Construction Group, LLC,
Dr. Kevin M. Stockmaster,
Greenwood-Emerson, LLC, and
Merz North America, Inc.,

Defendants.
_____/

COMPLAINT

Plaintiff Body Contour Ventures, LLC ("BCV"), through counsel, Wolfson Bolton PLLC, for its Complaint, states:

INTRODUCTION

Defendants have filed lawsuits in state courts against Debtors' Manager and/or President, Richard C. Morgan. Mr. Morgan's services are critical to Debtors' success in the bankruptcy in the near term. Without him, Debtors will not survive to a sale of their assets. Mr. Morgan cannot focus his efforts on Debtors while simultaneously expending a significant amount of time and resources defending himself in the lawsuits filed by Defendants. BCV brings this lawsuit to extend the automatic stay to Mr. Morgan through the sale of Debtors' assets or May 31, 2019, whichever is later. Debtors also propose that any extension of the automatic stay to Mr. Morgan would

terminate in the unlikely event of a conversion of their cases to chapter 7.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff BCV is a Debtor in these jointly administered cases.

2. Defendant Fedor Fedorov is an individual residing in Emmet County, Michigan.

3. Defendants ADM & NS Group MA Newbury, LLC, ADM & NS Group PA King of Prussia, LLC, ADM & NS Group MN Edina, LLC, ADM & NS Group MA Natick, LLC, ADM & NS Group TX Memorial, LLC, ADM & NS Group NV Henderson, LLC, (collectively, "ADM & NS Group") are Michigan limited liability companies located in Oakland County, Michigan.

4. Defendant The Alliance Construction Group, LLC ("Alliance") is a Texas limited liability company located in Denton County, Texas.

5. Defendant Dr. Kevin M. Stockmaster is an individual residing in Allen County, Indiana.

6. Defendant Greenwood-Emerson, LLC ("Greenwood-Emerson") is an Indiana limited liability company located in Cook County, Illinois.

7. Defendant Merz North America, Inc. ("Merz") is a North Carolina corporation located in Raleigh, North Carolina.

8. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334.

9. This is a core proceeding under 28 U.S.C. § 157(b).

10. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

11. Debtors' cases are being jointly administered for procedural purposes only.

BACKGROUND

Debtors' Chapter 11 Cases

12. Debtors each commenced a voluntary case under Chapter 11 of Title 11 of the United States Code on February 22, 2019.

13. Debtors are continuing in possession of their property and are operating and managing their businesses as debtors-in-possession under 11 U.S.C. §§ 1107(a) and 1108.

14. On March 7, 2019, the United States Trustee appointed an official committee of unsecured creditors. [Case No. 19-42510-pjs, Docket No. 117].

15. Detailed facts about Debtors and the reasons for the commencement of their Chapter 11 cases are set forth in the *Declaration of Richard C. Morgan in Support of Chapter 11 Filings* [Case No. 19-42510-pjs, Docket No. 22].

16. On March 28, 2019, the Court entered the *Final Order*

Authorizing Debtors to Obtain Postpetition Financing on a Senior Secured, Superpriority Basis and for Other Relief [Case No. 19-42510-pjs, Docket No. 266], which granted final relief to Debtors to obtain post-petition financing to fund these Chapter 11 cases through a sale of Debtors' assets. That same day, the Court entered the *Order (I) Establishing Bidding Procedures, (II) Scheduling an Auction and a Sale Hearing in Connection with the Sale of Substantially all of Debtors' Assets, (III) Setting Certain Dates and Deadlines in Connection Therewith, (IV) Approving the Form of the Asset Purchase Agreement, Including the Termination Fee, and (V) Granting Relief* [Case No. 19-42510-pjs, Docket No. 267], which scheduled a hearing on the sale of Debtors' assets on May 17, 2019.

Mr. Morgan's Role in Debtors'
Businesses and Chapter 11 Cases

17. Mr. Morgan is the Manager and/or President of Debtors.

18. Mr. Morgan is solely responsible for all facets of the 28 Debtors' operations and oversees the day-to-day operations of the 25 stores owned by Debtors.

19. Mr. Morgan is also the point of contact for all of Debtors' professionals employed in this case and has been instrumental in, among other things, preparing Debtors' voluntary petitions and schedules and statements, obtaining financing, and pursuing a sale of Debtors' assets.

20. Debtors anticipate selling substantially all their assets by May 31, 2019. Mr. Morgan is critical to the sales process. Without Mr. Morgan's full attention, Debtors will not consummate a sale. Mr. Morgan cannot focus on all aspects of running Debtors' businesses, attending to Debtors' Chapter 11 cases, due diligence requests of potential purchasers, and otherwise seeking to maximize the value of Debtors' assets while simultaneously defending against Defendants' lawsuits.

21. Debtors' success depends entirely on Mr. Morgan.

Pending Lawsuits against Mr. Morgan

22. Mr. Fedorov brought a lawsuit against Body Contour Ventures, LLC Mr. Morgan, LRX Ann Arbor, LLC, LRX Arvada, LLC, LRX Austin, LLC, LRX Dearborn, LLC, LRX Livonia, LLC, LRX Plano, LLC, and LRX Troy, LLC in the Sixth Judicial Circuit Court, County of Oakland, State of Michigan, Case No. 2018-170606-CK, on December 18, 2018.

23. Mr. Fedorov's lawsuit is currently stayed as to all defendants. However, out of an abundance of caution, Debtors seek to extend the stay to Mr. Morgan in the event Mr. Fedorov seeks to reopen the case as to Mr. Morgan.

24. Alliance brought a lawsuit against Mr. Morgan, individually, Anthony Zanlungo, individually, Mr. Morgan and Mr. Zanlungo doing

business as LRX Frisco, LLC, and NEC Preston Gaylord, LTD in the 417th District Court in the County of Collin, State of Texas, Case No. 417-06610-2018, on December 17, 2018.

25. Alliance's lawsuit is pending and was not stayed as it does not involve a Debtor. Mr. Morgan filed a special appearance in the case.

26. Alliance also brought a lawsuit against Mr. Morgan, individually, Mr. Zanlungo, individually, LRX Fort Worth, LLC, ATC Investors, L.P., and ACT Retail GP, LLC in the 67th District Court in the County of Tarrant, State of Texas, Case No. 067-305380-19, on January 7, 2019.

27. Alliance's second lawsuit is pending and was not stayed as it does not involve a Debtor. Mr. Morgan filed a special appearance in the case.

28. ADM & NS Group brought a lawsuit against Mr. Morgan, Body Contour Ventures, LLC, LRX Boston Newbury, LLC, LRX King of Prussia, LLC, LRX Minneapolis Edina, LLC, LRX Boston Natick, LLC, LRX Memorial City, LLC, and LRX Las Vegas Henderson, LLC in the Sixth Judicial Circuit Court, County of Oakland, State of Michigan, Case No. 2018-169528-CZ, on December 12, 2018.

29. ADM & NS Group's lawsuit is currently stayed as to all defendants, but ADM & NS Group filed *Plaintiff's Motion to Reopen Case*

on March 6, 2019. The hearing on the motion is scheduled for April 10, 2019.

30. Dr. Stockmaster brought a lawsuit against Mr. Morgan, LRX Fort Wayne, LLC, LRX Indianapolis Plainfield, LLC, LRX Greenwood, LLC, Premier Laser Spa of Indianapolis LLC, and Body Contour Ventures, LLC in the Allen Superior Court No. 2, County of Allen, State of Indiana, Case No. 02D02-1901-PL-000023, on January 22, 2019.

31. Dr. Stockmaster's lawsuit is ramping up and is scheduled for a Case Management Conference on Thursday, May 9, 2019.

32. Greenwood-Emerson brought a lawsuit against Mr. Morgan doing business as LRX Indianapolis Greenwood, LLC, Light RX, Light RX Face & Body, and Body Contour Ventures, LLC in the Johnson County Superior Court No. 4, County of Johnson, State of Indiana, Case No. 41D04-1809-PL-000115, on September 20, 2018.

33. Greenwood-Emerson obtained a default judgment against Mr. Morgan in the amount of $242,398.65 on November 7, 2018 and has commenced collection efforts.

34. Merz brought a lawsuit against Mr. Morgan in the Sixth Judicial Circuit Court, County of Oakland, State of Michigan, Case No. 2019-172939-CZ, on April 2, 2019.

35. Merz's lawsuit seeks an award against Mr. Morgan in excess of $4.2 million dollars, and its factual allegations are significantly intertwined with two adversary proceedings already pending before this Court, Case No. 19-04098-PJS (BCV v. Merz) and Case No. 19-04112-PJS (BCV v. Med Auction, Inc.). For example, Merz alleges what BCV's contractual obligations are under purported contracts with Merz, that BCV had no right to transfer or sell certain equipment – including that sold to Med Auction for which BCV now seeks to collect over $500,000, that Merz owns certain equipment, and what BCV's intent was in connection with performance under Merz contracts, just to name a few.[2]

36. Mr. Morgan cannot simultaneously act as the contact person for 28 Debtors, oversee daily operations of 28 Debtors, and defend against multiple lawsuits while getting the Debtors through a successful sale.

COUNT I –
INJUNCTIVE RELIEF TO EXTEND THE AUTOMATIC
STAY TO NON-DEBTOR RICHARD C. MORGAN

37. BCV incorporates by reference the allegations contained in the previous paragraphs of the Complaint.

38. BCV seeks an injunction prohibiting the continued prosecution

[2] BCV and Debtors reserve all rights in connection with Merz's state court complaint, including the right to remove the case to this Court and to intervene.

of Defendants' lawsuits, including the execution of any judgments obtained in such lawsuits, against Mr. Morgan under 11 U.S.C. § 105(a) until the closing of the sale of substantially all of Debtors' assets or until May 31, 2019, whichever is later. Debtors propose that any extension of the automatic stay to Mr. Morgan would terminate in the unlikely event of a conversion of their cases to chapter 7.

39. Section 105(a) provides that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

40. "As instructed by the Sixth Circuit in *Patton v. Bearden*, 8 F.3d 343 (6th Cir. 1993), when the stay has been extended to non-debtors, it has been done by way of Section 105(a) injunctive relief afforded by the Bankruptcy Court after a full hearing." *Archambault v. Hershman (In re Archambault)*, 174 B.R. 923, 928 (Bankr. W.D. Mich. 1994).

41. The automatic stay may be extended to non-debtors in unusual circumstances. *In re Eagle-Picher Indus., Inc.*, 963 F.2d 855, 861 (6th Cir. 1992) (citing *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986), *cert. denied*, 479 U.S. 876, 877, 107 S. Ct. 251 (1986)). A non-debtor who is entitled to indemnity by the debtor constitutes an unusual circumstance in which the automatic stay may be extended to the non-debtor. *In re*

Eagle-Picher Indus., Inc., 963 F.2d at 860-61 (citing *A.H. Robins Co.*, 788 F.2d at 999).

42. Courts have utilized § 105 to

> issue injunctions on behalf of nondebtors under a variety of circumstances: (1) where the nondebtor owns assets which will either be a source of funds for the debtor or where the preservation of the nondebtor's credit standing will play a significant role in the debtor's attempt to reorganize; (2) where it can be shown that the nondebtor's time, energy, and commitment to the debtor are necessary for the formulation of a reorganization plan; or (3) where the relationship between the nondebtor and debtor is such that a finding of liability against the nondebtor would effectively be imputed to the debtor, to the detriment of the estate.

Archambault, 174 B.R. at 929.

43. "When issuing a preliminary injunction pursuant to its powers set forth in section 105(a), a bankruptcy court must consider the traditional factors governing preliminary injunctions issued pursuant to Federal Rule of Civil Procedure 65." *In re Eagle-Picher Indus., Inc.*, 963 F.2d 855, 858 (6th Cir. 1992).

44. The four factors that the bankruptcy court should consider are "(1) the likelihood of the plaintiff's success on the merits, (2) whether plaintiff will suffer irreparable injury without the injunction, (3) the harm to others which will occur if the injunction is granted, and (4) whether the

injunction would serve the public interest." *Id.*

45. "It is important to recognize that the four considerations applicable to preliminary injunctions are factors to be balanced and not prerequisites that must be satisfied." *Id.* at 859. Additionally, "[t]hese factors simply guide the discretion of the court; they are not meant to be rigid and unbending requirements." *Id.*

46. A court has discretion to grant a preliminary injunction even where "the plaintiff fails to show a strong or substantial probability of ultimate success on the merits of his claim, but where he at least shows serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if an injunction is issued." *Id.* at 860.

47. The Court should exercise its equitable powers under § 105 of the Bankruptcy Code to temporarily pause the lawsuits, including the execution of any judgments obtained in such lawsuits, against Mr. Morgan through the date of the sale of Debtors' assets or May 31, 2019, whichever is later. Any extension of the automatic stay to Mr. Morgan would terminate in the unlikely event of a conversion of their cases to chapter 7.

I. BCV is Likely to Succeed on the Merits

48. BCV is likely to prevail on this one-count Complaint for

injunctive relief under § 105. Debtors are in a good position to effectuate the sale of their assets and have been performing operationally. This Court has entered an order granting Debtors post-petition financing through the sale of the assets, which has been funding Debtors' operations. This Court has also established bidding procedures and a date for an auction of the Debtors' assets, which are being expeditiously and robustly marketed.

49. Debtors likelihood of sale success, however, is dependent on Mr. Morgan's ability to give the Debtors' bankruptcy cases his full attention. Debtors are well-positioned to maximize the value of their assets through a sale, but they need Mr. Morgan to assist them through the process.

II. Irreparable Injury to BCV and the Debtors Outweighs Any Harm to Defendants

50. The continuation of Defendants' lawsuits will seriously jeopardize a successful sale of Debtors' assets. Debtors have come this far and are in a position to effectuate a sale of their assets due to Mr. Morgan's time and efforts.

51. This is a crucial time in Debtors' bankruptcy cases. Maintaining Mr. Morgan's undivided attention on the Debtors' bankruptcy cases is essential to executing the sale. A successful sale requires Mr. Morgan's full commitment of time and energy.

52. BCV's Operating Agreement provides for indemnification of

Managers and officers. Accordingly, a judgment against Mr. Morgan would ultimately be a judgment against BCV and could diminish resources available to creditors. Mr. Morgan is entitled to indemnification by BCV and the automatic stay should extend to him.

53. As a practical matter, if the lawsuits against Mr. Morgan continue, BCV will likely be required to participate to protect its interests because of a) overlapping – and in some cases contradictory – factual allegations with pending adversary proceedings, rendering the cases significantly intertwined and BCV at risk for claim preclusion, and b) BCV's indemnity agreement with Mr. Morgan, thereby negating the benefits of the automatic stay and taking away the breathing room afforded to Debtors to attempt to sell their assets. Additionally, it is highly likely that plaintiffs in these cases will seek discovery from Debtors and Mr. Morgan, thereby diverting Debtors' and Mr. Morgan's resources and depriving Debtors of the automatic stay's benefits.

54. The likelihood of irreparable harm to Debtors in the absence of injunctive relief far outweighs any harm to Defendants.

55. If the lawsuits are not enjoined, Debtors will suffer harm and their sale efforts will be endangered by:

i. The risk that Debtors and Mr. Morgan will be exposed to onerous discovery that will require significant

administrative expense and will distract Mr. Morgan and retained professionals from pursuing a successful sale;

ii. The risk that as a practical matter BCV will have to participate in the lawsuits against Mr. Morgan to protect its interests, thereby depriving BCV of the benefits of the automatic stay; and

iii. The risk that BCV will face indemnification claims from Mr. Morgan.

56. BCV is requesting extension of the automatic stay for less than two months. This short time period will allow Mr. Morgan to fully focus on getting the Debtors through closing of the sale and will not result in any measurable harm to the Defendants. Not granting the injunction would result in irreparable harm to Debtors.

57. The impact of not extending the automatic stay would go far beyond Mr. Morgan. He is instrumental in the Debtors' sale process. Without his assistance, the sale would likely not occur, resulting in a conversion to chapter 7, the loss of up to one hundred jobs, and store closings. Customers would also not be able to continue treatments that are in process.

III. The Injunction Would Serve the Public Interest

58. As in *In re Eagle-Picher Indus., Inc.*, extension of the automatic stay to Mr. Morgan would serve the public interest. In *In re Eagle-Picher Indus., Inc.*, 963 F.2d 855, 857 (6th Cir. 1992), the automatic stay was

extended to two corporate officers who were co-defendants with the debtor in district court litigation. The officers were determined to be "inextricably intertwined" with the debtor corporation. *Id.* at 862. Therefore, it was determined that extension of the automatic stay was for the benefit of the debtor's creditors not the officers. *Id.* The extension was determined to serve public interest and was "not a distortion of Congressional purpose." *Id.* Mr. Morgan is inextricably intertwined with BCV, and the extension of the automatic stay to Mr. Morgan would protect BCV's creditors.

59. During this critical period in the Debtors' bankruptcy cases, Debtors require the full effort and commitment of Mr. Morgan. He will not be able to provide this commitment if he is simultaneously defending lawsuits outside of the bankruptcy cases. The public's interest would be served by allowing customers to continue treatments through the sale process and enabling the value-maximizing sale process to continue for the benefit of all creditors.

WHEREFORE, BCV respectfully requests that the Court (i) grant the injunctive relief and extend the automatic stay, through the sale of Debtors' assets or May 31, 2019, whichever is later, to non-debtor Richard C. Morgan; (ii) terminate any extension of the automatic stay to Mr. Morgan in the unlikely event of a conversion of their cases to chapter 7; and (iii) grant

BCV such additional relief as is just and equitable.

Respectfully submitted,

WOLFSON BOLTON PLLC
Counsel for Plaintiff

Dated: April 9, 2019

By: /s/ Scott A. Wolfson

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