

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE
Urban Brands, Inc., et. als
Debtor(s)

Carmen M. Fortuna-Vázquez
Movant

vs

Urban Brands, Inc. and
Chapter 11 Trustee

Respondent(s)

CASE NO. 10-13005 (KJC)

CHAPTER 11

INDEX

(X) of acts under 11 USC 362(d)(1)
"cause"

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U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

MOTION REQUESTING RELIEF FROM AUTOMATIC STAY

TO THE HONORABLE COURT:

COMES NOW Carmen M. Fortuna-Vázquez, ("movant"), through her undersigned counsel and very respectfully states and prays as follows:

I. Introduction

1. On September 21, 2010, Urban Brands, Inc., ("debtor/respondent"), filed a voluntary petition for relief pursuant Chapter 11 of the Bankruptcy Code and as of that date has been managing its affairs as a debtor in possession under the provision of section 1107 of the Bankruptcy Code.

2. "Movant" seeks a modification of the stay imposed by Section 362 of the Bankruptcy Code in order that the litigation pending in the Appellate Court of the Commonwealth of Puerto Rico, Judicial District of Carolina, be allowed to proceed. The case was commenced by "movant" in the Superior Court of the Commonwealth of Puerto Rico, Judicial District of Carolina, which court entered judgment against "debtor/respondent". "Debtor/respondent" appealed and the case is currently stayed because of the filing of the bankruptcy petition.

In the alternative, this Court should give "full faith and credit" to the Judgment entered by the Superior Court of the Commonwealth of Puerto Rico, Judicial District of Carolina.

II. Jurisdiction and Venue

3. This Court has jurisdiction to entertain this motion pursuant to 28 U.S.C. section 1334(a), 157(a)(b)(1) and (2)(G).

4. Venue lies with this Court pursuant to 28 U.S.C. section 1409(a).

III. Facts

5. On December 20, 2006, Carmen M. Fortuna-Vázquez, (“movant”), filed a complaint against Urban Brands Inc, (“debtor/respondent”), at the Superior Court of the Commonwealth of Puerto Rico, Judicial District of Carolina, Case Number FPE 2006-1332 (404) alleging damages for unlawful termination of employment and salaries owed.

6. “Movant” alleged that, on February 8, 2006, and after 35 years of service, “debtor/respondent” unlawfully terminated her employment.

7. After discovery had ended and after all the pre-trial meetings had taken place, on December 9, 10, and 11 of 2008, the Superior Court of the Commonwealth of Puerto Rico, Judicial District of Carolina, held the final hearing on the case.

8. After the hearing, parties filed their Memorandum of Law and the case was submitted to the Superior Court for its decision.

9. On December 16, 2009, the Superior Court of the Commonwealth of Puerto Rico issued its judgment on case Number FPE 2006-1332 granting the complaint in favor of Carmen M. Fortuna-Vázquez (“movant”) and against Urban Brands, Inc. (“debtor/defendant”), awarding “movant” the amount of \$1,492.40 per week for salaries owed since the termination of her employment on February 8, 2006; the amount of \$195,502.02 for severance pay; \$100,000.00 in damages; and awarding costs, expenses and attorney’s fees. The decision was based on the Labor Laws of the Commonwealth of Puerto Rico.

10. “Debtor/ respondent” filed an appeal from said judgment at the Appellate Court of the Commonwealth of Puerto Rico, Judicial District of Carolina.

11. "Movant" filed its response.

12. Before judgment was entered by the Appellate Court affirming, modifying or revoking the decision of the Superior Court, on September 21, 2010, "debtor/respondent" filed the present Voluntary Petition for relief pursuant to Chapter 11 of the Bankruptcy Court.

13. On November 1, 2010, the Appellate Court of the Commonwealth of Puerto Rico, issued an Order staying all the proceedings pursuant 11 USC 362.

14. "Movant" requests that Civil Case Num. KLAN 2010-0090 before the Appellate Court of the Commonwealth of Puerto Rico, Judicial Section of Carolina, continues so that she might obtain a final judgment either affirming, modifying, or revoking the decision of the Superior Court and therefore remove any possible contingent or disputed classification of the claim.

In the alternative, "movant" requests that this Court should give "full faith and credit" to the Judgment entered by the Superior Court of the Commonwealth of Puerto Rico, Judicial District of Carolina.

IV. Cause for Relief from Stay

15. The automatic stay of section 362 is intended to prevent the dissipation of debtor's assets so that an orderly and fair reorganization and/or asset distribution can occur. *Securities Exchange Commission v Brennan*, 230 F 3d 65, 71 (2d Cir 2000).

16. But the Stay is not unmovable. 11 U.S.C. Section 362(d) states that:

"On request of a party in interest and after notice and hearing, the court shall grant relief from stay provided under subsection (a) if this section, such as by terminating, annulling, modifying, or conditioning such stay-

(1) for cause, ..."

17. Though the Bankruptcy Court does not define what constitutes “cause” under Section 362(d)(1), courts typically consider several factors in determining whether cause exists to lift the stay and allow a local litigation to continue. Among these factors the courts consider:

- a. whether relief would result in a partial or complete resolution of the issues;
- b. whether a specialized tribunal with expertise can hear the cause of action;
- c. whether litigation in another forum would prejudice the interests of other creditors;
- d. the interests of judicial economy and the expeditious and economic resolution of a litigation;
- e. whether the foreign proceedings have progressed to the point where parties are prepared for trial;
- f. the impact of the stay on the parties and the balance of harms.

(In re Sonnax Indus., Inc. 907 F. 2d 1280 1286 (2nd Cir 1990); In re Curtis, 40 Bankr. 795 (Bankr D Utah 1984)).

18. In *In re Robbins*, 964 F 2d 342 (4th Cir 1992), the court decided that the bankruptcy court may properly lift the automatic stay in a suit if:

- a) the state court has special expertise in handling of domestic matters;
- b) judicial economy is promoted because the state proceeding may be completed quickly and inexpensively;
- c) the entry of the judgment in state court does no harm the estate or the interest of other creditors because the bankruptcy court retains jurisdiction to determine the amount to be paid on the claim.

19. When considering whether to modify the automatic stay the court should take into account the particular circumstance of the case, and ascertain what is just to the claimants, the debtor and the estate. *In re Keene Corp.*, 181 B.R. 180, 185 (S.D.N.Y. 1994).

20. "...[I]t will often be more appropriate to permit proceedings to continue in their place of origin, when no greater prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere". *H.R.Rep. No. 595, 95th Congress, 1st Sess., 341 (1977)*.

21. Considering these factors, cause clearly exists in the instant case to grant relief from the stay, because:

a) Judgment against "debtor/respondent" was already entered by the Superior Court of the Commonwealth Puerto Rico awarding "movant":

- 1) the amount of \$1,492.40 per week for salaries owed since the termination of her employment on February 8, 2006, for an approximate total of \$298,480 until date of judgment;
- 2) the amount of \$195,502.02 for severance pay;
- 3) the amount of \$100,000.00 in damages; and
- 4) awarding costs, expenses and attorney's fees.

The decision of the Superior Court was based on the Labor Laws of the Commonwealth of Puerto Rico, and as such the merits of the pending appeal at the Appellate Court of the Commonwealth of Puerto Rico, Judicial District of Carolina, will also be based on an analysis of local labor laws.

b) The continuation of Civil Case Num KLAN 2010-0090, at the Appellate Court of the Commonwealth of Puerto Rico, will quickly and satisfactorily resolve the pending dispute.

The Superior Court of the Commonwealth of Puerto Rico already issued judgment on the controversy among “movant” and “debtor/respondent”. “Debtor/respondent” filed an appeal at the Appellate Court of the Commonwealth of Puerto Rico; “movant” responded; the case was stayed before the Appellate Court issued its decision. The continuation of the case will quickly resolve the pending dispute. The interest of judicial economy would be better served by lifting the stay than by beginning an adversary proceeding in the bankruptcy case.

c) the conclusion of the case will not prejudice the interest of other creditors.

Rule 1007(a)(1) of the Federal Bankruptcy Rules and Local Rule 1007-2 of the Local Bankruptcy Rules for the District of Delaware impose on debtor the obligation and responsibility to make sure that all creditors are notified of the bankruptcy proceedings.

To that effect Rule 1007(a)(1) of the Federal Bankruptcy Rules indicates that “In a voluntary case, the debtor shall file with its petition a list containing the name and **address** (emphasis supplied) of each entity included or to be included on schedules D, E, F, G, and H...”. Local Rule 1007-2 of the Local Bankruptcy Rules for the District of Delaware establishes that “In all voluntary cases, the debtor shall file with the petition a list containing the name and complete **address** (emphasis supplied) of each creditor...”

But, in spite of knowing the address of “movant” and of knowing the address of “movant’s” legal representation in the local forum in the Commonwealth of Puerto Rico, “debtor/respondent” decided not to comply with the statute.

Instead of notifying “debtor/respondent” at the address of “movants” legal representation in the Commonwealth of Puerto Rico:

Mr. Pablo R. Álvarez, esq.
Ms. Angelik Rodríguez, esq.
101 San Patricio Ave.
Maramar Plaza, Suite 910
Guaynabo PR 00968,

a revision of the Master Creditors List of the bankruptcy case reveals that “debtor/respondent” decided to notify “movant” at “debtors/respondent’s” own mailing address:

“Fortuna, Carmen
Urban Brands, Inc.,
100 Metro Way,
Secaucus, NJ 07094”

Due to the fact that “debtor/respondent” did not comply with its responsibility under Rule 1007(a)(1) of the Federal Bankruptcy Rules and Rule 1007-2 of the Local Bankruptcy Rules for the District of Delaware, “movant “ has not received any notifications of the bankruptcy proceedings including, but not limited to, the notice of the bar date for the filing of a proof of claim. The only notification that “movant” received of the bankruptcy proceedings has been the Motion requesting to stay the case pending on the Appellate Court of the Commonwealth of Puerto Rico.

This is a chapter 11 case and as such creditors are not required to file a Proof of Claim unless the claim is classified as contingent or disputed. But “movant” has not been able to find in the schedules how “debtor/respondent” classified “movant’s” claim to challenge, if necessary, the classification.

Nevertheless, “The state court judgment is a fact of life that [debtor] cannot ignore. Although the lower’s court judgment is on appeal, it is nevertheless final ... it is fixed and liquidated for bankruptcy purposes, and cannot be liquidated or estimated in a different amount. The state court judgment fixes the claim”. *In re Keene Corp.*, 181 B.R. 180, 185 (S.D.N.Y. 1994). Thus “movant’s” claim is fixed and must be liquidated for bankruptcy purposes.

Furthermore, if “debtor/respondent” had classified “movant’s” claim as disputed or contingent, section 502 gives the Court’s the responsibility to address the issue of the amount of the claim.

Thus, in the instance case, the lifting of the automatic stay will result in an efficient, and final determination of the “debtor/respondent’s” and the estate’s liability to “movant”. In the alternative, this court can also give “full faith and credit” to the claims amount judgment issued by the Superior Court of the Commonwealth of Puerto Rico. So, it does not matter if the issue of the amount of “movant’s” claim is address by the Appellate Court of the Commonwealth of Puerto Rico, or address by this court, it must be assessed. Therefore no great prejudice to the interests of other creditors exists.

22. Thus, for the reasons described above, cause exits for the relief from the automatic stay provision of 11 U.S.C. section 362(d)(1) to permit that Civil Case Num KLAN 2010-0090, currently stayed at the Appellate Court of the Commonwealth of Puerto Rico, Judicial District of Carolina, be allowed to proceed. Judicial economy favors finalizing said case in the local forum as the controversies between “debtor/respondent” and “movant” arise under local law and have been already submitted to the Appellate Court of the Commonwealth of Puerto Rico.

In the alternative, this Court should give “full faith and credit” to the claims amount awarded “movant” in the Judgment entered by the Superior Court of the Commonwealth of Puerto Rico, Judicial District of Carolina.

WHEREFORE it is respectfully prayed that the Court enter an Order:

(a) modifying the automatic stay herein to permit Civil Case Num KLAN 2010-0090, filed at the Appellate Court of the Commonwealth of Puerto Rico, Judicial District of Carolina, to proceed until judgment is entered or,

(b) in the alternative, that this Court gives “full faith and credit” to the claims amount awarded “movant” in the Judgment entered by the Superior Court of the Commonwealth of Puerto Rico, Judicial District of Carolina, and

(c) granting any other and further relief as this Court may deem just and proper.