

**United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 20, 2023

Hearing Room 1568

10:00 AM

2:23-11291 Jae Paul Pak

Chapter 11

- #1.00** Hearing
RE: [74] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Pak v. Rassman, 2020-01152149 .

Docket 74

Tentative Ruling:

6/16/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Opposition is **OVERRULED** and the Motion is **GRANTED**.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay [Doc. No. 74] (the "Motion")
 - a) Memorandum of Points and Authorities in Support of the Motion [Doc. No. 75]
 - b) Declaration of James N. Godes, Esq. in Support of the Motion [Doc. No. 76]
 - c) Declaration of Howard Goodman, Esq. in Support of the Motion [Doc. No. 77]
- 2) Opposition of Debtor Jae Paul Pak to the Motion [Doc. No. 80] (the "Opposition")
- 3) Reply to the Opposition [Doc. No. 86] (the "Reply")

I. Facts and Summary of Pleadings

On March 7, 2023, James Paul Pak (the "Debtor") filed a voluntary Chapter 11 Subchapter V petition (the "Petition Date"). On May 24, 2023, Dr. William Rassman (the "Movant") filed the Motion to proceed with an action bearing the caption *Jae Pak, M.D., New Hair Institute, Inc. vs William Rassman, M.D., et al*, Case No.

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30-2020-01152149-CU-BC-WJC (the "State Court Action"), pending in Orange County Superior Court (the "State Court").

The Movant makes the following arguments in support of relief from stay:

- 1) The claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum;
- 2) Relief from stay is sought only as to two post-trial motions; and
- 3) The Debtor filed the bankruptcy case in bad faith to delay or interfere with the State Court Action.

Per the Motion, trial in the State Court Action has been held. A judgment was entered in favor of the Movant in the amount of \$1,381,000 against New Hair Institute, Inc. ("NHI") and the Debtor (the "Judgment"). The Movant has filed an action to determine whether the Judgment is nondischargeable in the instant bankruptcy case (the "Nondischargeability Action").

Relief from stay is sought only as to two post-trial motions: (1) a motion for attorney's fees in the amount of \$1,249,000 (the "Attorney's Fees Motion"); and (2) a motion to amend the Judgment to add JPMD Medical Inc. ("JPMD") as the alter ego of NHI and the Debtor (the "Alter Ego Motion", and together with the Attorney's Fees Motion, the "Post-Trial Motions"). Both JPMD and NHI are non-debtor entities with respect to the instant bankruptcy case.

The Opposition

On June 6, 2023, the Debtor filed the Opposition. The Debtor does not object to the automatic stay being lifted with respect to the Attorney's Fees Motion. However, the Debtor contends that the Movant has failed to show any hardship or prejudice that he would suffer. Moreover, granting the Motion would require the Debtor to incur enormous expense by having to litigate in two forums simultaneously.

Additionally, the Debtor contends that granting the Motion would be harmful to the Debtor and his creditors. Per the Opposition, JPMD is the employer of the Debtor and a necessary element to funding the plan of reorganization (the "Plan"). The Alter Ego Motion would interfere with the Debtor's employment and jeopardize the Plan. The Debtor's concern is that if JPMD is deemed the alter ego of NHI, the Movant will levy against JPMD and its earnings, which are the primary source of funding for the Plan.

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The Reply

On June 13, 2023, the Movant filed the Reply. As the Debtor has stipulated to allowing the Attorney's Fees Motion to proceed, proceeding with the Alter Ego Motion would not substantially increase his expenses. The Debtor has fully briefed his side of the Post-Trial Motions and the only remaining briefing is the Movant's reply briefs. Although the Debtor incurs no prejudice, if the Post-Trial Motions cannot proceed, the Movant will not know the full amount of his claim against the estate or his corresponding remedies.

The Movant contends that granting the Motion will not jeopardize the Plan because (i) JPMD made approximately \$100,000 per month in net income; and (ii) the Movant seeks limited relief from stay to simply proceed with the Post-Trial Motions. Additionally, the Movant notes that as JPMD is not a debtor in the instant bankruptcy case, the Debtor should not be allowed to protect JPMD.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

Section 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 . . . (1) for cause . . ." 11 U.S.C. § 362(d)(1). "What constitutes 'cause' for granting relief from the automatic

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stay is decided on a case-by-case basis." *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). "To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1)." *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). "Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted." *Id.*

In the Ninth Circuit, courts consider 12 non-exclusive factors to determine whether "cause" exists to grant relief to allow an entity to continue pending litigation against a debtor in non-bankruptcy forum:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and

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12. The impact of the stay on the parties and the "balance of hurt[.]"

Plumberex, 311 B.R. at 559. Not all the factors are relevant in every case, and the Court is not required to give equal weight to each factor. *Id.* at 560.

The Court finds that the Movant has established a prima facie case that "cause" exists to grant relief from stay under § 362(d)(1). First, granting stay relief will promote interests of judicial economy and avoid piecemeal or redundant litigation. Second, the State Court is more intimately familiar with the parties' disputes and the applicable state law to move the litigation more expeditiously to final judgment. The State Court, rather than the Bankruptcy Court, is best equipped to decide these issues related to substantive non-bankruptcy law. Third, allowing the Movant to proceed with the Alter Ego Motion will best promote judicial economy. The State Court, which has great familiarity with the history of the State Court Action after years of litigation, the parties, and the underlying facts, is the appropriate court to hear the Alter Ego Motion.

The Court notes that the primary relief sought in connection to the Alter Ego Motion is against JPMD, which is a non-debtor entity in the instant bankruptcy case. The sole reason the Movant is required to obtain stay relief here is the procedural posture of the State Court Action, the Alter Ego Motion, and the Judgment against the Debtor and NHI, as co-judgment debtors. If the Motion was denied, the Court would in effect be extending the protection of the automatic stay under § 105 to JPMD, a non-debtor entity. However, the circumstances in which the automatic stay may be expanded to a non-debtor entity under § 105 requires a high standard of showing, which has not been met here.

Moreover, an extension of the automatic stay cannot remain in effect after the confirmation of a plan of reorganization. A § 105 injunction should not be granted lightly and the time in which such an injunction remains in effect may not extend beyond the confirmation of a Chapter 11 plan. *Indivos Corp. v. Excel Innovations, Inc., Ned Hoffman (In re Excel Innovations, Inc.)*, 502 F.3d 1086, 1095 (9th Cir. 2007). Therefore, even if the Court denied the Motion and extended the automatic stay to JPMD, the stay would be lifted after confirmation of the Plan and the State Court would rule on the Alter Ego Motion. The Alter Ego Motion will be heard either now or after confirmation of the Plan; therefore, denying the Motion would essentially only delay the inevitable. The Alter Ego Motion and its potential impact on the funding of the Plan will be at issue either now or following confirmation of the Plan. Whether JPMD is the alter ego must be determined sooner rather than later and there

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is no reason to delay such a determination. The determination as to the Alter Ego Motion will also resolve the Movant's claim against the Debtor, which will benefit the estate in the instant bankruptcy case.

The Court does not find that the Debtor filed the present case in bad faith. In support of a finding of bad faith, the Motion asserts that (i) the Debtor filed the instant bankruptcy case to delay or hinder the Alter Ego Motion, and (ii) the Movant is one of very few creditors listed in the Debtor's schedules. The Movant is among one of the Debtor's various scheduled creditors, including BMW Financial Services, American Express National Bank, Internal Revenue Service, and First Republic Bank. The factors alleged in the Motion do not warrant a finding of bad faith pursuant to § 362(d)(4).

The Opposition is overruled. The Debtor argues that he will be prejudiced and further burdened if the Motion is granted and he is required to litigate the Alter Ego Motion in the State Court. However, the Alter Ego Motion must be litigated in either the State Court or this Court. In either court, the Debtor will be required to appear and defend against the issues and pay the associated legal fees, which would not be materially affected by the choice of venue.

Lastly, as noted above, the issue as to whether JPMD is the alter ego of the Debtor or NHI must be determined either before or after confirmation of the Plan. As the State Court is intimately familiar with the parties and facts after years of litigation, the State Court is in a better position than this Court is to hear and rule on the Alter Ego Motion.

Based on the foregoing, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. Per the Motion, the Movant only seeks stay relief as to the Post-Trial Motions (not to execute against assets of JPMD): "Once they are heard and the State Court issues a ruling, Dr. Rassman will take no further action in the State Court and will return back to this Court to proceed with the Nondischargeability Complaint..." Stay relief is only granted with respect to the Post-Trial Motions, including any appeals. If the Movant wishes to enforce a judgment obtained against JPMD, if any, the Movant will have to file a separate motion for stay relief.

The Movant may not pursue any deficiency claim or any other claim against the Debtor or property of the estate, except that the Movant will retain the right to file a

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proof of claim, and the Movant's rights are preserved with respect to an adversary complaint filed under §§ 523 and 727 (to the extent applicable). This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

III. Conclusion

For the reasons set forth above, the Opposition is **OVERRULED** and the Motion is **GRANTED**. The Movant is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jae Paul Pak

Represented By
Jeffrey I Golden
Beth Gaschen
Sonja Hourany

Trustee(s):

Susan K Seflin (TR)

Pro Se