

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IN RE:)	CHAPTER 11
)	
LAVIE CARE CENTERS, LLC, <i>et al.</i> ¹)	CASE NO. 24-55507-pmb
)	
)	Cases Jointly Administered
Debtors)	
_____)	Hearing Date:
)	September 4, 2024 at 9:30 a.m.
GINGER ORMOND, AS PERSONAL)	
REPRESENTATIVE OF THE ESTATE)	
OF SUSAN JAMES)	
)	CONTESTED MATTER
Movant,)	
)	
v.)	
)	
3825 COUNTRYSIDE BOULEVARD)	
OPERATIONS, LLC D/B/A)	
COUNTRYSIDE REHAB AND)	
HEALTHCARE CENTER,)	
)	
Respondent)	
_____)	

MOTION TO MODIFY AUTOMATIC STAY TO (1) LIQUIDATE PERSONAL INJURY TORT CLAIM IN PENDING LITIGATION, (2) PURSUE RECOVERY TO THE EXTENT OF INSURANCE COVERAGE, AND (3) GRANT RELATED RELIEF

COMES NOW Ginger Ormond, as Personal Representative of the Estate of Susan James (“Movant”), and hereby seeks a modification of the automatic stay to allow Movant to liquidate personal injury tort claims against 3825 Countryside Boulevard Operations, LLC d/b/a Countryside Rehab and Healthcare Center (“Respondent”) in a pending state court proceeding and,

¹ The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.



among other things, pursue recovery to the extent of insurance coverage. In support, Movant shows as follows:

Background

1. Respondent is a Florida limited liability company authorized and licensed to do business as a nursing home for the rendering of skilled nursing and long-term care to patients in Pinellas County, Florida.

2. On or about October 23, 2022, Susan James was admitted to the Respondent's facility for long term care. On or about January 7, 2023, Susan James was transferred to Mease Countryside Hospital ("Mease") for swelling of her bilateral upper extremities, a sacral pressure ulcer, and developing pressure ulcers to her bilateral buttocks with decubitus cellulitis.

3. Upon arrival at Mease, Susan James' initial round of evaluations revealed that she was critically ill. She was already in septic shock, her white blood count exceeded 43,000, she had a urinary tract infection, she was hypotensive, she had a platelet count of 677, and she was experiencing atrial fibrillation with RVR. She was in acute renal failure, experiencing anasarca, and she had an infected left axillary wound which had formed at Respondent's facility in addition to the previously mentioned sacral and bilateral buttock pressure wounds.

4. During the January 7, 2023, admission to Mease, Susan James was also noted to have multiple other wounds on her body including skin tears, a severe groin rash, as well as ecchymosis of her right wrist. She was also septic, hypothermic, experiencing lactic acidosis, and unable to provide history due to being encephalopathic with significant cognitive impairment. None of these conditions noted at Mease upon arrival were noted, assessed, or addressed at Respondent's facility in the days or weeks before her transfer to Mease.

5. Susan James died on January 9, 2023.

6. Movant is the surviving daughter and putative Personal Representative of the Estate of Susan James.

7. On or about September 20, 2023, Movant served a notice of intent to initiate litigation against Respondent in compliance with Fla. Stat. § 400.0233. Respondent confirmed receipt of such notice.

8. Respondent failed to provide any response within the statutory 75-day pre-suit period, and failed to agree to the statutorily required and requested pre-suit mediation. Respondent failed to participate in pre-suit discovery as outlined in Fla. Stat. § 400.0233(6) and § 400.0233(7).

9. On April 2, 2024, Movant commenced litigation against Respondent in the Circuit Court of the 6th Judicial Circuit in and for Pinellas County, Florida, Civil Division, Case No. 24-001472-CI, styled *Ginger Ormond, as Personal representative of the Estate of Susan James v. 3825 Countryside Boulevard Operations, LLC d/b/a Countryside Rehab and Healthcare Center* (the “Litigation”).

10. Respondent filed a voluntary Chapter 11 petition, Case No. 24-55664-pmb, on June 2, 2024, which case is jointly administered under the above captioned case.

Relief Requested

11. By this Motion, Movant requests that the stay be modified to allow Movant to (i) liquidate her claim in the Litigation, (ii) pursue recovery to the extent of insurance coverage, and (iii) assert claims against Respondent to the extent the claims exceed any insurance coverage.

Basis for Relief

12. “On 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....” 11 U.S.C. § 362(d)(1).

13. "Cause" is not defined in the Bankruptcy Code. "Therefore, it is up to the judiciary to ascribe meaning to the term. What constitutes 'cause' is based on the 'totality of the circumstances in the particular case.'" *Egwineke v. Robertson (In re Robertson)*, 244 B.R. 880, 882 (Bankr. N. D. Ga. 2000). *See also, e.g., In re Brown*, 311 B.R. 409, 412 (E. D. Pa. 2004) ("cause" for relief from stay is broad and flexible concept that must be determined on a case-by-case basis).

14. "The Bankruptcy Code does not define "cause" for lifting the stay. However, it is well-established that the existence of pending litigation against the debtor in a nonbankruptcy forum may constitute cause." *In re Coachworks Holdings, Inc.*, 418 B.R. 490, 492 (Bankr. M.D. Ga. 2009) (citing *Smith v. Tricare Rehab. Sys., Inc. (In re Tricare Rehab. Sys., Inc)*, 181 B.R. 569, 572 n.7 (Bankr. N.D. Ala. 1994)).

15. Courts focus on three factors: (i) whether any great prejudice to either the bankruptcy estate or the debtor will result from prosecution of the lawsuit; (ii) whether the hardship to the non-debtor party by continuation of the automatic stay considerably outweighs the hardship to the debtor; and (iii) whether the creditor has a probability of success on the merits of his case. *Schuler v. Sandalwood Nursing Ctr., Inc. (In re Sandalwood Nursing Ctr., Inc.)*, 2018 Bankr. LEXIS 2526 (Bankr. N. D. GA 2018)(citing *In re Robertson*, 244 B.R. at 882). The last factor has little applicability, here, however. The Litigation is not "entirely and unquestionably frivolous (as in a suit brought against the wrong party or beyond the statute of limitation)" and therefore the likelihood of success on the merits is not a relevant factor. *Groover v. R. J. Groover Constr., L.L.C. (In re R. J. Groover Constr.)*, 411 B.R. 460, 466 (Bankr. S. D. GA 2008).

16. Courts also look to other factors: (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. *Sonnax Industries, Inc. v. Tri Components Products Corp. (In re Sonnax Industries, Inc.)*, 907 F.2d 1280, 1286 (2d Cir. 1990).

17. The decision to lift the stay is committed to the court's discretion. *In re Sonnax Industries, Inc.*, 907 F.2d at 1286. Not all of the factors are relevant in every case. *Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 142 (2d Cir. 1999); see *In re Touloumis*, 170 B.R. 825, 828 (Bankr. S.D.N.Y. 1994), and the court need not assign equal weight to each factor. *In re Keene Corp.*, 171 B.R. 180, 183 (S.D.N.Y. 1994); *In re Touloumis*, 170 B.R. at 828.

18. The factors favor relief from the stay in this case. The claim cannot be adjudicated in the bankruptcy court, but instead it would have to be heard, if heard here at all, in the District Court. See 28 U.S.C. § 157(b)(5). The Litigation will not interfere with the administration of the bankruptcy case. Other creditors will not be prejudiced by the prosecution of the Litigation.

19. Proceeding against any insurance coverage will not deplete the estate. The proceeds of liability insurance policies payable to the injured parties are not property of the estate because the debtor or its estate has no right to retain the funds. *In re Scott Wetzel Servs.*, 243 B.R. 802

(Bankr. M. D. FL 1999)(“[A] debtor will not have a cognizable interest in the proceeds of the typical liability policy because the proceeds will normally be payable only for the benefit of those harmed by the debtor under the terms of the insurance contract.”)(citing *Matter of Edgeworth*, 993 F.2d 51, 55 -56 (5th Cir. 1993)).

WHEREFORE, Movant requests that the Court modify the stay to allow Movant to (i) liquidate her claims in the Litigation, (ii) recover from insurance to the extent of coverage, and (iii) assert claims against Respondent to the extent the award exceeds the insurance coverage. Movant further requests that the Court grant such other relief as is appropriate.

Dated: August 15, 2024

LAMBERTH, CIFELLI,
ELLIS & NASON, P.A.
Counsel for Movant

By: /s/ G. Frank Nason, IV
G. Frank Nason, IV
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Suite 435
Atlanta, Georgia 30328
(404) 262-7373

Certificate of Service

This is to certify that on this date a true and correct copy of the forgoing *Motion to Modify Automatic Stay to (1) Liquidate Personal Injury Tort Claim in Pending Litigation, (2) Pursue Recovery to the Extent of Insurance Coverage, and (3) Grant Other Relief* was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 cases through CM/ECF.

A separate certificate will reflect service on additional parties.

Dated: August 15, 2024

/s/ G. Frank Nason, IV
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Georgia Bar No. 535160

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NOTICE OF HEARING ON MOTION TO MODIFY STAY

PLEASE TAKE NOTICE that Ginger Ormond, as Personal Representative of the Estate of Susan James (“Movant”), filed her *Motion to Modify Automatic Stay to (1) Liquidate Personal Injury Tort Claim in Pending Litigation, (2) Pursue Recovery to the Extent of Insurance Coverage, and (3) Grant Other Relief* (the “Motion”) on August 15, 2024. In the Motion, Movant seeks an order modifying the automatic stay to liquidate personal injury tort claims in pending litigation, seek recovery to the extent of insurance coverage, and assert claims for any amounts in excess of insurance coverage.

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PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on **September 4, 2024, at 9:30 a.m.** in Courtroom **1202**, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303, which may be attended in person or via the Court's Virtual Hearing Room. You may join the Virtual Hearing Room through the "Dial-In and Virtual Bankruptcy Hearing Information" link at the top of the homepage of the Court's website, www.ganb.uscourts.gov, or the link on the judge's webpage, which can also be found on the Court's website. Please also review the "Hearing Information" tab on the judge's webpage for further information about the hearing. You should be prepared to appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge's webpage.

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleadings with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the hearing. The address of the Clerk's Office is: Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, SW, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the Motion cannot be held within thirty (30) days, Movants waive the requirement for holding a preliminary hearing within thirty days of filing the Motion and agree to a hearing on the earliest possible date. Movants consent to the automatic stay remaining in effect until the Court orders otherwise.

Dated: August 15, 2024

LAMBERTH, CIFELLI,
ELLIS & NASON, P.A.
Attorneys for Movant

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Certificate of Service

This is to certify that on this date a true and correct copy of the forgoing *Notice of Hearing on Motion to Modify Stay* was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 cases through CM/ECF.

A separate certificate will reflect service on additional parties.

Dated: August 15, 2024

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