

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
)	
Debtors.)	JOINTLY ADMINISTERED
_____)	
)	
FC ENCORE ST. CLOUD, LLC,)	
)	
Plaintiff,)	
v.)	Adv. Pro. No. 25-05008-pmb
)	
WILLIAM BURNHAM,)	
)	
Defendant)	
_____)	

**MOTION FOR ENTRY OF ORDER EXTENDING
 THE AUTOMATIC STAY AND/OR PRELIMINARILY ENJOINING
 CLAIMS AND CAUSES OF ACTION AGAINST NON-DEBTOR DEFENDANT**

FC Encore St. Cloud, LLC (“FCE”), a Released Party² under the Plan and the Confirmation Order (as defined herein) in the above-captioned Chapter 11 cases (the “**Chapter 11 Cases**”), hereby move (the “**Motion**”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), granting the relief described below. In support of thereof,

¹ The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 debtors (the “**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.kcellc.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.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in *Debtors’ Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*, filed on December 4, 2024 [Dkt. No. 730] (the “**Plan**”).



FCE submits (a) the *Complaint* (the “**Complaint**”) initiating this adversary proceeding (which is adopted and expressly incorporated herein by reference); and (b) the *Brief in Support of Motion for Entry of Order Extending the Automatic Stay and Preliminarily Enjoining Claims Against Non-Debtor Defendant* (the “**Brief**”), each of which is filed contemporaneously herewith and fully incorporated herein by reference.

RELIEF REQUESTED

1. FCE seeks entry of the Proposed Order, which includes the following relief: (a)(i) an extension of the automatic stay under Sections 105(a) and/or 362(a) of Title 11 of the United States Code (the “**Bankruptcy Code**”) to prohibit the continued prosecution of a state court action against FCE through and including the Effective Date of the Debtors’ confirmed Chapter 11 plan or, in the alternative, (ii) a preliminary injunction under Bankruptcy Code Section 105(a) and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) to enjoin the continued prosecution of said state court action and all claims and causes of action set forth therein against FCE until the Effective Date of the Debtors’ confirmed Chapter 11 plan; and (b) expedition of the proceedings.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The legal predicates for the relief requested herein are Bankruptcy Code Sections 105(a) and 362(a), Bankruptcy Rules 7001(7), 7007, 7019, and 7065, Rule 7007-1 of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia (the “**Local Rules**”), and the *Second Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 6, 2023 (the “**Complex Case Procedures**”).

BACKGROUND

3. FCE hereby incorporates the factual background set forth in the Brief as if set forth fully herein.

ARGUMENT

4. FCE hereby incorporates the arguments set forth in the Brief as if set forth fully herein.

RESERVATION OF RIGHTS

5. FCE reserves all rights, claims, causes of action, counter-claims, and defenses with respect to the subject state court action, and nothing contained herein shall constitute a waiver or release of the foregoing.

NOTICE

6. FCE will provide notice of the Motion to: (a) the U.S. Trustee; (b) counsel to the Committee; (c) counsel to Burnham; and (c) all parties entitled to notice pursuant to Bankruptcy Rule 2002. FCE submits that no other or further notice is required.

NO PRIOR REQUEST

7. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, FCE respectfully requests that the Court enter the Proposed Order, granting the relief requested in this Motion and any such other and further relief as may be just and proper.

This 7th day of January, 2025.

SCROGGINS, WILLIAMSON & RAY, P.C.

By: /s/ Matthew W. Levin

MATTHEW W. LEVIN

Georgia Bar No. 448270

4401 Northside Parkway

Suite 230

Atlanta, Georgia 30327

T: (404) 893-3880

E: mlevin@swlawfirm.com

and

Leighton Aiken (admitted pro hac vice)

Texas Bar No. 00944200

FERGUSON BRASWELL FRASER

KUBASTA PC

2500 Dallas Parkway, Suite 600

Plano, Texas 75093

T: (972) 378-9111

E: laiken@fbfk.law

Robert J. Lemons (admitted pro hac vice)

New York Bar No. 3892734

Yelizaveta L. Burton (admitted pro hac vice)

New York Bar No. 5411681

GOODWIN PROCTOR LLP

The New York Times Building

620 Eight Avenue

New York, NY 10018

T: (212) 813-8800

E: rlemons@goodwinlaw.com

lburton@goodwinlaw.com

Counsel to FC Encore St. Cloud, LLC

EXHIBIT A

Proposed Order

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
)	
Debtors.)	JOINTLY ADMINISTERED
_____)	
)	
FC ENCORE ST. CLOUD, LLC,)	
)	
Plaintiff,)	
v.)	Adv. Pro. No. 25-_____
)	
WILLIAM BURNHAM,)	
)	
Defendant)	
_____)	

ORDER

Upon the motion (the “**Motion**”) filed on [], 2025 at Adv. Docket No. [] by FC Encore St. Cloud, LLC (“**FCE**”), a Released Party² under the Plan and the Confirmation Order (as defined herein) in the above-captioned Chapter 11 cases (the “**Chapter 11 Cases**”), for entry of an order (this “**Order**”) (i) extending the automatic stay and preliminarily enjoining the claims and causes of action asserted against FCE by William Burnham (“**Burnham**”) in that certain lawsuit styled

¹ The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 debtors (the “**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.kcellc.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.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in *Debtors’ Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*, filed on December 4, 2024 [Dkt. No. 730] (the “**Plan**”).

as *William Burnham v. FC Encore St. Cloud, LLC and 4641 Old Canoe Creek Road Operations, LLC*, Case No. 23-CA-004407 (the “**State Court Action**”), and (ii) granting related relief, all as fully set forth in the Motion, the *Brief in Support of Motion for Entry of Order Extending the Automatic Stay and/or Preliminarily Enjoining Claims and Causes of Action Against Non-Debtor Defendants* [Adv. Docket No. [___]] (the “**Brief**”), filed on January 6, 2025, and the *Complaint* [Adv. Docket No. [___]] (the “**Complaint**”), filed on January 6, 2025; and the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “**Court**”) having jurisdiction to decide the Motion and to enter this Order pursuant to 28 U.S.C. § 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief; and it appearing that entry of this Order on an expedited basis is justified to avoid immediate and irreparable harm to FCE; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. The automatic stay is hereby extended to the claims and causes of action asserted against FCE in the State Court Action from the date of entry of this Order until the Effective Date of the Debtors’ Chapter 11 plan, which was confirmed by this Court on December 5, 2024 [Docket No. 735] (the “**Stay Period**”).
3. Burnham is hereby enjoined from continuing the State Court Action against FCE. Absent further order of this Court, Burnham shall not: (a) continue the State Court Action (including by prosecuting or defending the State Court Action through any new filings before the

court presiding over that action, except as authorized by this Court) during the Stay Period; or (b) continue or commence including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against FCE that asserts allegations or causes of action relating to those asserted in the State Court Action, unless that action is proceeding before this Court during the Stay Period.

4. During the Stay Period, all deadlines in the State Court Action, under any law, rule, regulation, or legal process, including any deadline for any party to (a) seek to transfer the State Court Action to any court, (b) seek to remove the State Court Action to federal court, or (c) respond to any motion or pleading in the State Court Action, are suspended and tolled for the duration of the Stay Period. Nothing herein shall prevent any party from requesting the court presiding over the State Court Action to reschedule any deadline applicable to such action following the expiration of the Stay Period. The failure of any party to seek, during the Stay Period, any relief subject to a deadline that has been suspended or tolled pursuant to this Order shall not constitute delay, laches, waiver, estoppel, or any similar defense.

5. This Order shall not affect the substantive rights of any party, nor create any rights, defenses, or arguments not otherwise available under applicable law. Specifically, this Order shall not affect the exceptions contained in Bankruptcy Code Sections 362(b), 365(b)(4), and 365(e)(2), the right of any party in interest to seek relief from the automatic stay in accordance with Bankruptcy Code Section 362(d).

6. Notwithstanding any provision of the Bankruptcy Rules or Local Rules, the terms of this Order shall be immediately effective and enforceable upon its entry.

7. FCE is authorized to take all steps necessary or appropriate to carry out this Order.

8. The Court retains jurisdiction over all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

END OF ORDER

Prepared and presented by:

SCROGGINS, WILLIAMSON & RAY, P.C.

By: /s/ Matthew W. Levin
MATTHEW W. LEVIN
Georgia Bar No. 448270

4401 Northside Parkway
Suite 230
Atlanta, Georgia 30327
T: (404) 893-3880
E: mlevin@swlawfirm.com

and

Leighton Aiken (admitted pro hac vice)
Texas Bar No. 00944200
FERGUSON BRASWELL FRASER
KUBASTA PC
2500 Dallas Parkway, Suite 600
Plano, Texas 75093
T: (972) 378-9111
E: laiken@fbfk.law

Robert J. Lemons (admitted pro hac vice)
New York Bar No. 3892734
Yelizaveta L. Burton (admitted pro hac vice)
New York Bar No. 5411681
GOODWIN PROCTOR LLP
The New York Times Building
620 Eight Avenue
New York, NY 10018
T: (212) 813-8800
E: rlemons@goodwinlaw.com
lburton@goodwinlaw.com

Counsel to FC Encore St. Cloud, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing document was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 Cases through CM/ECF. I further certify that I have this day served a true and correct copy of the foregoing document via email and U.S. Mail upon the following parties:

Alicia Smith, Esq.
Morgan & Morgan
20 North Orange Ave.
Suite 1600
Orlando, FL 32801
aliciasmith@forthepeople.com

David A. Geiger
Morgan & Morgan Atlanta PLLC
191 Peachtree Street NE, Suite 4200
Atlanta, Georgia 30303
dgeiger@forthepeople.com

Justin M. Luna, Esq.
Latham, Luna, Eden & Beaudine, LLP
201 S. Orange Ave., Suite 1400
Orlando, Florida 32801
jluna@lathamluna.com

This 7th day of January, 2025.

SCROGGINS, WILLIAMSON & RAY, P.C.

By: /s/ Matthew W. Levin
MATTHEW W. LEVIN
Georgia Bar No. 448270

4401 Northside Parkway
Suite 230
Atlanta, Georgia 30327
T: (404) 893-3880
E: mlevin@swlawfirm.com

Counsel to FC Encore St. Cloud, LLC