

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>IN RE:</b>	)	<b>CASE NO. 23-02871-TOM-11</b>
<b>PREMIER KINGS, INC,</b>	)	<b>CHAPTER 11</b>
	)	
<b>DEBTOR.</b>	)	
	)	
_____	)	
<b>COLETTE EVERSON,</b>	)	
	)	
<b>MOVANT.</b>	)	
	)	
<b>v.</b>	)	
<b>PREMIER KINGS, INC.</b>	)	

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE OF SAID COURT:**

**NOW COMES, COLETTE EVERSON** (hereafter referred to as “Movant”), an unsecured creditor of the Debtor, and files this its Motion for Relief from Automatic Stay (the “Motion”), and in support thereof would respectfully show the Court the following:

**I.**

This is a proceeding under Bankruptcy Rules 4001 and 9014 seeking relief under Section 362(d) of the Bankruptcy Code. The District Court has jurisdiction over this proceeding pursuant to 28 U.S.C. Section 1334(b) as it arises in or is related to a case under Title 11. Pursuant to 28 U.S.C. Section 157 and the local rules and/or the Order of the United States District Court, this proceeding will be referred to the bankruptcy judge for hearing. This proceeding constitutes a core proceeding as defined in 28 U.S.C. Section 157(b)(2)(G).



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## II.

Movant is the holder of a unsecured claim against the Debtor arising from the pre-petition cause of action in the State Court claims in the case of Colette Everson vs. Premier Kings of Georgia (Case No. 2023-cv-658-BJD-MCR) in the Middle District of Florida, Jacksonville Division.

## III.

Movant's claims are entirely covered by liability insurance coverage through Trisura Speciality Insurance Company. Movant seeks relief from the automatic stay to proceed forward against the insurance carrier only. Pursuant to § 362(d)(1) of the Bankruptcy Code, a Court shall grant relief from the automatic stay for cause. 11 U.S.C. §362(d)(1); *In re Dixie Broadcasting, Inc.*, 871 Fed.2d 1023, 1026 (11<sup>th</sup> Cir. 1989). Section 362(d)(1) does not define "cause". Therefore, it is up to the bankruptcy court to determine "cause" based on the totality of the circumstances. *In re R.J. Groover Construction, LLC*, 411 B.R. 460 (Bankr. S.D. Ga. 2004). In determining whether to lift the automatic stay to allow a party to continue litigation in another forum, a bankruptcy court must balance the equities involved by weighing the hardship to the Movant against the potential prejudice to the debtor, bankruptcy estate and other creditors. *Id.* At 46; *see also In re Caraway Methodist Health System*, 355 B.R. 853 (Bankr. N.D. Ala. 2006). When applying the balancing test, courts have considered numerous 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 estate;
- (3) whether the other proceeding involves the debtor as 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 in litigation;
  - (11) whether the parties are ready for trial in the other proceedings;
- and
- (12) impact of the stay on the parties and the balance of harms. *In re R.J. Groover*, 411 B.R. at 464; *In re Caraway Methodist Health System*, 355 B.R. 853 (Bankr. N.D. Ala. 2006).

The state court action involves tort claims against Premier Kings of Georgia, Inc. The case is filed in the Circuit Court of the Fourth Judicial Circuit Judicial Circuit, in and for Nassau, Florida, Case No. 2023-CA-000114. To force the Movant to travel to prosecute his claim as creditor in Bankruptcy Court will cause undue hardship and great prejudice to her. The Court in *In re Mack*, 347 B.R. 911, 915 (Bankr.M.D.Fla. 2006) stated

It will often be more appropriate to permit proceedings to continue in their place of origin, when no great 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.

Additionally, the Debtor will not be negatively affected by granting conditional relief from

the automatic stay to allow Movant's litigation to proceed as is set forth herein. Movant does not seek from Debtor any funds outside of the available liability limits and any additional insurance benefits available to Movant. Consequently, the Debtor will suffer no prejudice because of allowing the Movant to conclude her state court case against Debtor.

In *R.J. Groover Construction*, the court held,

I conclude that no great prejudice will befall the debtor or debtor's estate if this limited relief is granted. As of this time, the case is being defended by the insurer, and the relief sought is limited to the proceeds of any applicable coverage. Further the hardship to [the movant] is substantial. For as long as the stay remains in effect, she is being denied her day in court on a claim that has been in litigation for a long time. This hardship outweighs any inconvenience that debtor may suffer as a result of having to cooperate with the insurer in the defense of this case.

411 B.R. 460

Because the insurer providing coverage to the Debtor, there is no connection with or interference with the bankruptcy case. Therefore, the balancing test weighs heavily in favor of granting Movant's request to lift the automatic stay. Upon weighing the relevant factors, in balancing the equities, they weigh in favor of the Movant's request to lift the stay in this matter to allow liquidation of the claim in state court. The hardship to the Movant, if not allowed to continue in state court, outweighs any potential prejudice to the Debtor, the bankruptcy estate, or the creditors. Further, there are no bankruptcy issues present in the state court action that would impinge on this Court's jurisdiction. The paramount consideration for this Court is to determine whether any undue delay or substantial prejudice to the bankruptcy estate will occur. For all the foregoing cited reasons, the Movant would submit that neither delay nor prejudice would result from lifting the stay.

IV.

Pursuant to Section 362 of the Bankruptcy Code, Creditor is entitled to relief from the automatic stay for cause.

**WHEREFORE, PREMISES CONSIDERED,** Creditor requests Movant to proceed forward with the State Court claims in the case of Strappy-Daniels, Jacquelin vs. Premier Kings of Georgia (Case No. 2023-CA-000114) in the Fourth Judicial Circuit in and for Nassau County, Florida. Creditor further requests that Rule 4001 (a)(3) not be applicable in this case. Creditor further prays that it have such other and further relief, at law or in equity, to which it may show it to be justly entitled.

Respectfully Submitted,

/s/ Michael A. Harrison

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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the above and foregoing on the following electronically CM/ECF this the 11 day of June 2024.

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I certify that I have served a copy of the above and foregoing on the following by placing a copy of same in the United States mail, properly addressed, and first class postage prepaid this the 11 day of June 2024.

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7078 Peachtree Industrial Blvd #800

Peachtree Corners, GA 30071

Playland Maintenance Service Inc.

3935 Tamiami Trail

Cumming, GA 30041

M D Homes Alabama LLC

PO Box 6415

East Brunswick, NJ 08816

BK Collinsville LLC

4615 University Drive

Coral Gables, FL 33146

GAJ Realty Group Inc

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