

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

IN RE:)	CASE NO.: 23-02871-TOM-11
PREMIER KINGS, INC.)	CHAPTER 11
)	
DEBTOR,)	
)	
)	
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CRISTAL COX)	
)	
CREDITOR,)	
)	
v.)	
PREMIER KINGS, INC.)	

MOTION FOR RELIEF FROM AUTOMATIC STAY

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

NOW COMES, CRISTAL COX (hereinafter “Movant”), an unsecured creditor of the Debtor, and files this Motion for Relief from Automatic Stay (the “Motion”), and in support thereof Movant respectfully shows the Court the following:

I.

STATEMENT OF FACTS

On November 10, 2021, Movant was an invitee at a Burger King located at 2807 Panola Road, in Lithonia, Georgia 30058. While at the counter, Movant



placed her order and requested that salt be omitted from her French Fries. Upon receiving her order, Movant became aware that her hamburger was not prepared correctly in accordance with the Display Menu and her French Fries were not prepared according to her specific request. Upon realizing this error, Movant informed the Manger and was subsequently told that her order would not be corrected. Dissatisfied that her order was not prepared according to the menu and her instructions, Moant returned the incorrect order and requested the return of her money. Thereafter a discussion ensued and escalated between Movant and the Manager on Duty, Defendant Jane Doe. Immediately thereafter, Defendant Jane Doe, without provocation, entered the counter service area and maliciously threw hot scolding grease from the French Fries pan onto the Movant, causing severe burns and injuries to Movant.

II.

ARGUMENT

1.

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).

2.

Movant is the holder of an unsecured claim against the Debtor arising from the pre-petition cause of action in the Superior Court of DeKalb County, State of Georgia, in the case of Cristal Cox vs. Premier Kings of Georgia, Inc. and Jane Doe Defendant (Civil Action No.: 23-CV-6528).

3.

Movant's claims are entirely covered by Debtor's liability insurance coverage through Trisura Specialty 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). The Bankruptcy Court may determine Movant's Motion based on the totality of circumstances. 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. In re R.J. Groover Construction, LLC, 411 B.R. 460 (Bankr. S.D. Ga. 2004). When considering the potential hardship to the Movant and the potential prejudice to the debtor, the Courts apply the following analysis:

- a. Whether relief would result in a partial or complete resolution of the issues;
- b. Lack of any connection with or interference with the bankruptcy estate;
- c. Whether the other proceeding involves the debtor as fiduciary;
- d. Whether a specialized tribunal with the necessary expertise has been establish to hear the cause of action;
- e. Whether the debtor's insurer has assumed full responsibility for defending it;
- f. Whether the action primarily involves third parties;
- g. Whether litigation in another forum would prejudice the interests of other creditors;
- h. Whether the judgment claim arising from the other action is subject to equitable subordination;
- i. Whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;
- j. The interests of judicial economy and the expeditious and economical resolution in litigation;
- k. Whether the parties are ready for trial in the other proceedings; and
- l. Impact of the Stay on the parties and the balance of harms. *Id.* at 464.

As referenced in the Statement of Facts herein above, Movant incurred a severe personal injury while she was a legal invitee at one of the Debtor's Georgia locations. Debtor's insurance carrier provides coverage for acts of negligence and

Movant's request for Relief of the Automatic Stay would:

1. Result in a partial or complete resolution of the issues;
2. Would not interfere with the Bankruptcy Estate;
3. Debtor would not be involved as a fiduciary;
4. Movant's civil action is within the venue and jurisdiction of the Superior Court of Dekalb County, State of Georgia;
5. Debtor's insurance carrier has the full responsibility of defending Movant's Civil Action;
6. Movant's Civil Action primarily involves third parties;
7. Litigation of Movant's Civil Action would not prejudice the interest of other creditors;
8. Any potential judgment of Movant's Civil Action would not be subject to equitable subordination;
9. Movant's success in the Civil Action would not result in a judicial lien avoidable by the debtor;
10. In the interest of judicial economy, Movant's Civil Action would relieve the Bankruptcy Court from any duties that may be handled elsewhere;
11. Movant's Civil Action can be negotiated prior to going to trial; however, in the event Debtor's Insurance carrier wishes to proceed to trial, Movant is ready to proceed accordingly; and

12. The impact of the Stay will greatly prejudice and cause undue hardship to the Movant.

The factors listed above demonstrates that Debtor's Bankruptcy Estate will not be unduly delayed or substantially prejudiced.

WHEREFORE, Movant request that this Honorable Court allows her to proceed forward with her civil action against Debtor and grant her Motion and further prays that she has such other and further relief, at law or in equity, to which she may show to be justly entitled.

Respectfully submitted this 9th day of July 2024.

/s/ Nathaniel J. Middleton
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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send an e-mail notification of such filing to all authorized to receive such notice.

Respectfully submitted this 9th day of July, 2024

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