

Reimbursement of Claim [Doc. No. 170] (the “*Motion*”). In support of their Objection, the Debtors respectfully represent as follows:

The Motion

1. By their Motion, Prabhakar Thatte and Asha Thatte (the “*Movants*”) seek relief from the automatic stay to allow the payment of funds in the amount of \$8,015.25, relating to an uncleared pre-petition check (no. 33984) dated November 11, 2009, drawn on the account of Advanta Corp. with Republic First Bank, and made out to Prabhakar Thatte (the “*Claim*”). The Movants claim this relates to an unsecured prepetition obligation that was not paid as a result of an intervening chapter 11 filing. The Movants now seek to collect payment on a prepetition obligation ahead of all other unsecured creditors.

2. The Movants offer three arguments in support of their request for stay relief: first, that the Debtors have violated the U.S. Code and engaged in conduct which violates civil and criminal law by knowingly issuing a bad check; second, that the Movants are in need of the funds; and third that applicable case law in this District allows such a Claim to succeed.

Objection

3. The Debtors submit that the Movants have not established that “cause” exists to modify the automatic stay. The Movants have provided no compelling evidence to justify the lifting of the automatic stay and paying the Claim in full now, thereby giving the Movants priority ahead of all other similarly situated unsecured creditors in these chapter 11 cases. The policies underlying the Bankruptcy Code weigh in favor of the automatic stay continuing to apply to the Movants. There is absolutely no reason why the Movants should not wait to receive payment on their Claim just like all other general unsecured creditors. On this

basis, and as set forth herein, the Debtors respectfully request that the Court (i) deny the Motion; and (ii) grant such other and further relief as is just.

362(d) Standard

4. Section 362(d) of the Bankruptcy Code provides, in relevant part, as follows:

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). Though the Bankruptcy Code does not define “cause,” the legislative history of section 362 explains that “cause may be established by a single factor such as ‘a desire to permit an action to proceed ... in another tribunal,’ or ‘lack of any connection with or interference with the pending bankruptcy case.’” *Izzarelli v. Rexene Prods. Co. (In re Rexene Prods., Co.)*, 141 B.R. 574, 576 (Bankr. D. Del. 1992) (citation omitted). “Cause” is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re Wilson*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994); *In re Continental Airlines, Inc.*, 152 B.R. 420, 424 (D. Del. 1993). Courts have further supplemented the interpretation of “cause” in holding that:

There is no rigid test for determining when an unsecured creditor...has established cause to warrant relief from the automatic stay. Instead the cases recognize that the bankruptcy court’s exercise of discretion in resolving motions for relief for “cause” must appropriately consider the policies underlying the Bankruptcy Code as well as the competing interests of the creditor, debtor, and other parties in interest. Each request for relief for “cause” under § 362(d)(1) must be considered on its own facts. *In re Hohol*, 141 B.R. 293 (M.D.Pa. 1992); *In re Lincoln*, 264 B.R. 370 (E.D. Pa. 2001) (KJC).

5. The *Rexene* court established the following three-prong analysis for determining whether cause exists to modify the stay to allow an action to continue: (i) whether

the debtor or the estate will suffer great prejudice if the action is continued; (ii) balancing of the hardships faced by the debtor and the moving party; and (iii) the probability that the moving party will succeed on the merits in the action. See 141 B.R. at 576.

Prejudice to the Debtors

6. With respect to the first prong of the *Rexene* test, the Movants argue that lifting the automatic stay will not prejudice the Debtors' estates or impede administration of the estates. The Debtors submit that lifting the automatic stay and allowing payment of the Claim (assuming it is determined to be valid) ahead of the claims of similarly situated general unsecured creditors and creditors with a higher priority than the Claim will prejudice the Debtors' estates and impede their administration. The Debtors recently announced that they will be liquidating and at this time it is too early to tell the amount of recovery unsecured creditors will receive on account of their allowed claims. Allowing payment of the Claim may thus put the Movants in a better position than other general unsecured creditors, in violation of the Bankruptcy Code. In addition, this Court held in *Rexene* that one of the most important functions of the automatic stay is "to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it." 141 B.R. 574, 576 (Bankr. D. Del. 1992); see also, *In re Continental Airlines, Inc.* 152 B.R. 420, 426 (D. Del. 1993) ("the automatic stay is designed to protect the bankruptcy estate from being whittled away by creditors' lawsuits), citing *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991). Given the overall profile of the Debtors' unsecured creditors, a finding that the automatic stay may be lifted in this case will open the floodgates to a deluge of claims from similarly situated creditors, which will not only require substantial management time to deal with, but will also require the Debtors to incur additional expenses in defending the claims. These costs, both in time and expenses, along with

the depletion of the Debtors' estates that would occur should the automatic stay be lifted, weigh in favor of a finding that lifting the automatic stay will in fact prejudice the Debtors' estates and impede the administration of the Debtors' estates. Allowing the Claim also undermines the rationale for the automatic stay, which allows the Debtors the "breathing spell" afforded to them by section 362(a) of the Bankruptcy Code, as well as the equality of treatment of similarly situated creditors that is at the heart of the Bankruptcy Code.

Balance of the Hardships

7. With respect to the second prong of the *Rexene* test, the Movants argue that, on balance, the hardships faced by the Movants outweigh any hardship to the Debtors. The Movants argument in support of this claim is simply that they are willing to travel from Pennsylvania to Delaware for any hearings relating to the Claim, and that, as a result, the Debtors do not suffer any hardship. The filing of this Motion and the willingness to travel to present the arguments contained in the Motion do not present sufficient cause to allow the Movants to disrupt the Debtors' reorganization process and usurp the estates' resources at the expense of other creditors with a similar or higher priority to their own.

Probability of Success

8. With respect to the third prong of the *Rexene* test, notwithstanding the standard requiring the Movants to establish probability of success on the merits, the Movants do not provide any facts to support a finding of "probability of success" and simply asserts nothing more than that the required showing of probable success is "very slight" for this claim.

9. The Movants argue in the Motion that "the Debtors have violated the U.S. Code and have engaged in conduct which is violation of civil law and criminal law by knowingly issuing a bad check". The Movants do not provide any evidence to support this allegation. The

Debtors note that Republic First Bank was prevented by section 362 of the Bankruptcy Code from honoring pre-petition checks once the Debtors filed these chapter 11 cases on the Commencement Date. The Debtors therefore deny having issued a “bad check” and submit that Republic First Bank was required by the Bankruptcy Code to dishonor the check.

10. Based upon the foregoing, the Debtors respectfully submit that cause does not exist for modifying the automatic stay, and that any modification of the automatic stay would unduly burden the Debtors’ estates and would be prejudicial to the Debtors’ other creditors. The Debtors further submit that the Movants have failed to satisfy the threshold showing of “cause” for relief from stay under section 362(d) of the Bankruptcy Code for them to be given special treatment at the expense of other creditors in these chapter 11 cases who undoubtedly will be prejudiced if the Debtors’ resources are used to satisfy their claim.

WHEREFORE the Debtors respectfully request that the Court (i) deny the Motion; and (ii) grant such other and further relief as is just.

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