

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ALAMO DRAFTHOUSE CINEMAS
HOLDINGS, LLC., *et al.*,

Debtors¹.

)
) Chapter 11

)
) Case No. 21-10474 (MFW)

)
) (Jointly Administered)

)
) **Objection Deadline: August 11, 2021 at 4:00 p.m. (ET)**

)
) **Hearing Date: September 8, 2021 at 10:30 a.m. (ET)**

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**FLAMUR KALLASHI AND GANO KALLASHI'S
MOTION FOR RELIEF FROM STAY**

Flamur Kallashi and Gano Kallashi (together, the “Movants”), by and through their undersigned counsel, submit this Motion for Relief from Stay (the “Motion”) pursuant to Section 362(d) of Title 11 of the United States Code, 11 U.S.C. §§ 101 - 1532 (the “Bankruptcy Code”), Federal Rule of Bankruptcy Procedure 4001, and Local Rule 4001-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of an Order granting relief from the automatic stay imposed by Section 362(a) of the Bankruptcy Code in order to permit Movants to prosecute a personal injury action pending in the Supreme Court of New York, Queens County against Debtor Alamo City Point, LLC (with the above-captioned

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Alamo Drafrhouse Cinemas Holdings, LLC (2205); Alamo Drafrhouse Cinemas, LLC (5717); Alamo Vineland, LLC (1626); Alamo League Investments GP, LLC (1811); Alamo League Investments, Ltd. (7227); Alamo South Lamar GP, LLC (3632); Alamo South Lamar, LP (4563); Alamo Drafrhouse Raleigh, LLC (5979); Alamo DH Anderson Lane, LLC (3642); Alamo Yonkers, LLC (4971); Alamo Mission, LLC (2284); Alamo Ritz, LLC (9465); Alamo Mueller, LLC (1221); Mondo Tees, LLC (6900); Alamo City Foundry, LLC (6092); Alamo Mainstreet, LLC (2052); Alamo City Point, LLC (3691); Alamo Liberty, LLC (5755); Alamo Satown, LLC (6197); Alamo Marketplace, LLC (7041); Alamo Stone Oak, LLC (8398); Alamo Westlakes, LLC (4931); Alamo Park North, LLC (1252); Alamo North SA, LLC (6623); Alamo Avenue B, LLC (8950); Alamo Slaughter Lane GP, LLC (6968); Alamo Slaughter Lane, Ltd. (5341); Alamo Cinema Group I GP, LLC (9537); Alamo Cinema Group I, LP (9656); Alamo Westminster, LLC (8906); Alamo Staten Island, LLC (7781); Alamo Aspen Grove, LLC (7786); Alamo Lakeline, LLC (5294); Alamo Sloans, LLC (9343). The location of the Debtors’ service address is: 3908 Avenue B, Austin, Texas 78751.

debtors, the “Debtors”) and to proceed to collect any award against the Debtor’s applicable insurance policies, to the extent insurance is available. In support of this Motion, Movants respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this judicial district is proper under 28 U.S.C. § 1408 and 1409.

2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).

3. The statutory predicate for the relief requested herein is 11 U.S.C. § 362(d)(1) and § 365(d)(2), Bankruptcy Rule 4001, and Local Bankruptcy Rule 4001-1.

BACKGROUND

4. On March 3, 2021 (the “Petition Date”), the debtors in each of the above captioned jointly administered cases (collectively, the “Debtors”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have managed their affairs and remained in possession of their assets as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

5. The underlying action arises from a construction accident that occurred at 445 Gold Street, Brooklyn, NY 11201 (the “Job Site”). Prior to the Petition Date, on or about January 6, 2016, Mr. Kallashi was working as a welder performing construction work at the Job Site—an Alamo Drafthouse movie theatre—and sustained serious personal injuries when he was caused to fall from a scissor lift while he was operating the scissor lift down a scissor lift ramp at the Job Site. Mr. Kallashi’s injuries include, among other things, a traumatic brain injury, a skull fracture, and an elbow fracture, requiring multiple surgeries.

6. As a result of, among other things, the Debtor's negligence, the Movants commenced a civil action on March 25, 2016 in the Supreme Court of New York for Queens County against Debtor Alamo City Point, LLC (the "State Court Action"). A true and correct copy of the Complaint is attached hereto as **Exhibit A** and incorporated herein by reference. Debtor Alamo City Point, LLC is one of eight defendants who were sued in the State Court Action.

7. The State Court Action has been delayed because of, among other things, the filing of these chapter 11 cases and the automatic stay provisions set forth in 11 U.S.C. §362(a).

8. By this Motion, Movants are requesting relief from the automatic stay to pursue claims against the Debtor Alamo City Point, LLC solely to the extent of applicable insurance coverage. Upon information and belief, Debtor Alamo City Point, LLC had general liability insurance at the time of the Movants' loss.

RELIEF REQUESTED

9. Through this Motion, Movants seek the entry of an Order pursuant to §362(d) of the Bankruptcy Code and 4001 of the Federal Rules of Bankruptcy Procedure, granting relief from the automatic stay so that they prosecute their claims to judgment in the State Court Action and satisfy any award or other resolution they may obtain against the Debtors, their insurers and any other responsible individual or entity.

BASIS FOR RELIEF REQUESTED

10. Movants are entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). Section 362(d) of the Bankruptcy Code provides in relevant part:

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, including the lack of adequate protection of an interest in property for such party interest.

11 U.S.C. § 362(d).

11. Because the automatic stay is not meant to be indefinite or absolute, the Court has authority to grant relief from the stay in appropriate circumstances. *In re Rexene Prods., Co.*, 141 B.R. at 576. Section 362(d)(1) provides that the automatic stay may be lifted where “cause” exists. After a *prima facie* showing by a movant, the debtor has the burden of proving that a movant is not entitled to relief from the stay. *Id.* at 577; 11 U.S.C. § 362(g).

12. “Cause” is not defined in the Bankruptcy Code; it must be determined on a case-by-case basis. *Int’l Bus. Machines v. Fernstrom Storage and Van Co.*, 938 F.2d 731, 735 (7th Cir. 1991). Courts have found that cause for lifting or modifying the automatic stay exists in order to permit litigation in another forum to liquidate a claim. *See, e.g., In re Rexene Products Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992) (noting that the legislative history of § 362(d) shows that cause may be established by a single factor such as “a desire to permit an action to proceed ... in another tribunal.”); *In re Drexel Burnham Lambert Group, Inc.*, 113 B.R. 830, 838 n.8 (Bankr. S.D.N.Y. 1990) (citing liquidation of a claim as “cause” for relief); *In re Holtkamp*, 669 F.2d 505 (7th Cir. 1982) (affirming the lifting of the automatic stay by the Bankruptcy Court to allow a personal injury suit against debtor to proceed to judgment).

13. Most courts employ an equitable balancing test to determine “cause.” *Rexene Prods., Co.*, 141 B.R. at 576. According to the *Rexene Prods.* case, this balancing test requires the Court to determine whether:

- a. any great prejudice to either the bankruptcy estate or the debtor will result.
- b. the hardship to the movant by maintenance of the stay considerably outweighs the hardship to the debtor.
- c. the movant has a probability of prevailing on the merits.

Id. at 576.

14. Cause exists in this case to grant Movants relief from the automatic stay. First, there will be no prejudice to the Debtors or their bankruptcy estates. To the extent that Movants are seeking a recovery from third parties, including but not limited to insurance coverage, and are not attempting to execute directly on assets of the Debtors' estates, the Debtors' assets will remain available for whatever disposition may ultimately be sought by the Debtors and/or ordered by the Court.

15. Second, "the balance of harms" further weighs heavily in favor of granting relief from the stay because, as set forth above, neither the Debtors nor its other creditors would be harmed by permitting Movants to proceed against Alamo City Point, LLC, as they seek recovery against the Debtors only to the extent of its available insurance coverage. Conversely, Movants will be severely prejudiced if relief from the stay is denied. Movants have already suffered significant harm due to the injuries sustained by Mr. Kallashi and the State Court Action has been delayed by the COVID-19 pandemic and these chapter 11 cases. Hardship to the Movants by maintaining the stay considerably outweighs the hardship to the Debtors due to, among other things, the State Court Action has been ongoing for over five (5) years.

16. Third, Movants have a strong probability of prevailing on the merits in the State Court Action. As long-term leaseholders of the property at which Mr. Kallashi's accident took place, Alamo City Point, LLC is charged with absolute liability under N.Y. Lab. Law § 240(1) "for any breach of the statutory duty which has proximately caused injury." *Gordon v. E. Ry. Supply, Inc.*, 82 N.Y.2d 555, 559, (1993). Moreover, as a result of his accident, Mr. Kallashi was caused to suffer serious and permanent personal injuries, including a traumatic brain injury requiring multiple surgeries and severe elbow fractures requiring surgeries. A reading of

Plaintiffs' Verified Bills of Particulars, attached hereto as **Exhibit B**, indicates that Movants have satisfied the third prong of demonstrating success on the merits, entitling them to relief from the automatic stay.

17. When weighing the above factors, the Court should lift the automatic stay to permit Movants to prosecute their claims against the Debtors and any other responsible individual or entity to judgment in the State Court Action and satisfy any award or other resolution they may obtain against the Debtors and any applicable insurance coverage.

NOTICE

18. Pursuant to Local Rule 4001-(a), notice of this Motion has been provided to: (i) counsel for the Debtors; (ii) counsel for the Official Committee of Unsecured Creditors; (iii) counsel for the debtor-in-possession financing lenders; and (iv) the Office of the United States Trustee. The Movant submits that no other or further notice need be provided.

WHEREFORE, Movants respectfully request then entry of an order: (a) lifting the automatic stay for cause to allow the State Court Action to continue through to judgment or other resolution; (b) permitting Movants to liquidate and satisfy such judgment or other resolution granted, if any, from applicable insurance coverage available to the Debtors, to the extent insurance is available; (c) directed that relief from the automatic stay be effective immediately upon entry of an order granting this motion and that the 14 day stay provided in Bankruptcy Rule 4001(a)(3) not apply; and (d) granting such other and further relief as the Court deems appropriate.

Dated: July 28, 2021
Wilmington, Delaware

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& ARONOFF LLP

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