

UNITED STATE BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE: )  
)  
CBL & ASSOCIATES ) CASE NO. 20-35226  
PROPERTIES, INC., )  
)  
Debtor. ) CHAPTER 11  
)  
)  
) JUDGE DAVID R. JONES

**CREDITOR SHEENA MANCINI'S MOTION FOR LIMITED RELIEF FROM  
AUTOMATIC STAY TO THE EXTENT OF INSURANCE PROCEEDS**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FIE A TIMELY RESPONSE, THE RELIEFE MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

To the Honorable David R. Jones, United States Bankruptcy Judge:

**Factual Background**

1. On July 11, 2020, Sheena Mancini ("Mancini") slipped and fell at Mid Rivers Mall in St. Peters, MO, and sustained serious injuries as a result of the fall.

2. Mid Rivers Mall is owned and operated by Mid Rivers Mall CMBS, LLC (“Mid Rivers”), a subsidiary of Debtor CBL & Associates Properties, Inc. and the debtor in Consolidated Case No. 20-35375.

3. Mancini maintains that her injuries were caused by the negligence of Mid Rivers and its employees and agents and desires to pursue damages against Debtor and Mid Rivers to compensate her for her damages.

4. Debtor’s liability, if any, for Mancini’s injuries will be covered by a policy of insurance underwritten by Heartland Coca-Cola.

5. Mancini seeks to recover her damages solely from the proceeds of the insurance policy. Therefore, the funds, if any, that are needed to satisfy Debtor’s obligations with respect to Mancini’s claim will not compete for any funds that are used to pay creditors in the Chapter 11 effort. Hence, Debtor’s estate will suffer no adverse effect financially from allowing Mancini’s claim to proceed under a lifted stay to litigation in Missouri state court to adjudicate those claims.

### **Legal Standards**

6. A motion for relief from an automatic stay provided by the Bankruptcy Code may be filed pursuant to Rule 4001 of the Bankruptcy Code.

7. Section 362 of the Bankruptcy Code sets forth the conditions which the Court may apply to a request for relief from an automatic stay when cause exists:

“On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (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 of such party in interest.” 11 U.S.C.A. §362(d)(1).

8. Cause is established through the Court's consideration of the following factors: (a) the estate or debtor will not suffer "great prejudice" due to the non-bankruptcy court proceedings; and (b) the "hardship" suffered by the movant is greater than the "hardship" of the Debtor if the stay is not modified. *In re Fowler*, 259 B.R. 856, 860 (Bankr. E.D. Tex. 2001).

### **Argument**

9. There is an insurance policy purchased for Debtor's protection that was in force and effect at the time of the incident and that would cover Debtor's liability, if any, for Mancini's claim of damages.

10. Debtor will not suffer great prejudice if Mancini is granted the relief sought. Debtor will be provided a defense from applicable insurance coverage. Furthermore, in Mancini establishes that Debtor caused her damages, insurance proceeds will issue from the insurance carrier as opposed to Debtor.

11. Conversely, Mancini will sustain hardship greater than any hardship sustained by Debtor if the stay remains in effect. Mancini has been detrimentally affected in numerous ways which necessitate the pursuit of her claim for damages.

### **Relief Requested**

12. Upon approval of this Motion by the Court, the automatic stay shall be modified, *nunc pro tunc*, to the extent of permitting Mancini to: (a) prosecute litigation to judgment against Debtor in Missouri state court with respect to her personal injury claim, and any subsequent appeals thereto, solely for the purpose of determining the liability and damages, if any, of Debtor with respect to the claim; and (b) collect any

such judgment solely from the proceeds of Debtor's insurance policy or policies to the full extent as may be available under such policy or policies.

13. Except to the extent set forth expressly herein, the provisions of Section 362 of the Bankruptcy Code, including, without limitation, those provisions prohibiting execution, enforcement, or collection of any judgment that may be obtained against Debtor from and against any assets or properties of Debtor's estate (as defined in Section 541 of the Bankruptcy Code), shall remain in full force and effect. Neither Mancini nor her agents, attorneys, or representatives shall take any action or attempt to cause any action to be taken to collect all or any portion of any such judgment from the assets or properties of Debtor's estate, without prejudice to Mancini's recovery, if any, from Debtor's insurer or insurers by way of compromise or settlement or otherwise, provided that such recovery is not made from the assets or properties of Debtor and would not result in any cost to Debtor. Nothing contained herein shall constitute or operate as a waiver or modification of the automatic stay so as to permit the prosecution against Debtor of any claims by any person or entity other than Mancini.

### **Conclusion**

WHEREFORE, Sheena Mancini hereby requests that the automatic stay be lifted as to insurance proceeds for her claims against Debtor, and for such other and further relief to which she may be entitled at law or in equity.

Respectfully submitted,

*/s/ Stephen D. Coffin*

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was filed electronically on September 11, 2021, with the United States Bankruptcy Court, and has been served on the parties in interest via e-mail by the Court's CM/ECF System as listed on the Court's Electronic Mail Notice List.

*/s/ Stephen D. Coffin*

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Printed: Stephen D. Coffin