

United States Courts  
Southern District of Texas  
FILED

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS

NOV 03 2021

In re:

COUNTRY FRESH HOLDING  
COMPANY, INC., *et al.*

Debtors.

:  
: CHAPTER 11  
:  
: Case No. 21-30574  
:  
:  
: AFFIRMATION AND  
: MEMORANDUM OF LAW  
: IN SUPPORT OF MOTION  
: TO LIFT STAY  
:

Nathan Ochsner, Clerk of Court

Seth D. Carson, an attorney duly admitted to practice law in the Commonwealth of Pennsylvania, in the United States District Court for the Eastern District of Pennsylvania and the Pennsylvania Court of Common Pleas, Montgomery County, affirms the following to be true to the best of his knowledge under the penalties of perjury:

**I. INTRODUCTION**

1. I am an Associate Attorney at the Derek Smith Law Group, PLLC.
2. I represent Joseph Enoy in the case of ENOY JOSEPH v. JOSEPH RUBIN, et al. No. 2021-01493, in the Pennsylvania Court of Common Pleas, Montgomery County.
3. This Affirmation is submitted pursuant to 11 U.S.C.S § 362 (d), in support of an Order to lift the automatic stay in the case of ENOY JOSEPH v. JOSEPH RUBIN, et al. No. 2021-01493, in the Pennsylvania Court of Common Pleas, Montgomery County.

## **II. FACTS NECESSARY TO DECIDE THIS MOTION**

4. Enoy Joseph commenced this action on February 8, 2021, in the Pennsylvania Court of Common Pleas, Montgomery County, predicated upon allegations that arose from an automobile accident. Plaintiff, Enoy Joseph claims negligence, carelessness, and recklessness against Defendants including Defendant, Country Fresh Holding Company Inc., which has resulted in Plaintiff sustaining severe and permanent injuries, and incurring large and various expenses for medical treatment for treating and curing his aforementioned injuries” A true and accurate copy of Plaintiff’s Civil Action Complaint is hereby attached and marked Plaintiff’s Exhibit “A”.

5. Your Affirmant was subsequently notified that debtor COUNTRY FRESH HOLDING COMPANY INC., was in bankruptcy upon receiving a “Notice of Bankruptcy Filing and Stay of Proceedings.” A true and correct copy of the Notice of Bankruptcy Filing and Stay of Proceedings is attached and marked Exhibit “B”.

6. The automatic stay went into effect as of February 15, 2021.

## **III. AUTOMATIC STAY SHOULD BE LIFTED**

7. Should the automatic stay in the above identified Civil Action be lifted, Plaintiff, Enoy Joseph will limit his monetary recovery against Country Fresh Holding Company Inc., to the limits of coverage provided for under any and all applicable insurance policies afforded to Country Fresh Holding Company, Inc. Accordingly, Plaintiff will not seek any assets of any of the Debtors named in Bankruptcy. Plaintiff will therefore forgo his right to collect on any judgment against Defendant, Country Fresh Holding Company, Inc., the debtor named in the Bankruptcy, in excess of the insurance policy limits. Claimant specifically maintains his right to collect from any other named party.

8. It is respectfully submitted that under the circumstances, and pursuant to 11 U.S.C.S. § 362 (d), this court should lift the automatic stay; as § 362(d), provides, in pertinent part that: “(d) 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.”

9. In determining whether to grant relief from stay for cause, the court must balance the potential prejudice to debtor against hardships that will be incurred by person seeking relief for stay if relief is denied. According to the court, factors to be considered include: (1) whether issues in pending litigation involve only state law, so that expertise of Bankruptcy Court is unnecessary; (2) whether modifying stay will promote judicial economy and whether there would be greater interference with bankruptcy case if stay were not lifted because matters would have to be litigated in Bankruptcy Court; and (3) whether estate can be protected properly by requirement that creditors seek enforcement of any judgment through Bankruptcy Court. In re Robbins, 1992, CA4 NC, 964 F.2d 342, 28 CBC2d 1279, CCH Bankr L Rptr P 74603.

10. Cause exists to lift automatic stay pursuant to 11 U.S.C.S. § 362 (d) where claimant brought an action in state court against a debtor for injuries sustained in an accident, the bankruptcy case is a Chapter 7 case, and neither debtor nor bankruptcy estate will suffer pecuniary loss since claimant's recovery against debtor is limited to amount of insurance coverage. Egwineke v. Robertson, 2000, BC ND Ga, 244 BR 880. According to the court, in fact, *the only party that stands to benefit if stay is not lifted is the insurer*, and debtor's “fresh start” will not be jeopardized by having to participate in state court litigation. Egwineke v. Robertson, 2000, BC ND Ga, 244 BR 880.

11. There is insurance coverage available and applicable to Plaintiff, Enjoy Joseph's Court of Common Pleas Action. We do not have a copy of the policy; however, Plaintiff has reason to

believe that Defendants maintained insurance applicable to Plaintiff, Enoy Joseph's claims in the Court of Common Pleas.

12. The belief that there is insurance coverage applicable to Enoy Joseph's claim is based on the Attorney for Country Fresh Holding, Inc.'s representations that Country Fresh maintained an insurance policy that would be applicable to Enoy Joseph's claim.

13. Accordingly, Enoy Joseph respectfully requests this court lift the automatic stay and allow Plaintiff, Enoy Joseph to proceed to the extent of the insurance coverage available.

14. No prior request has been made for the relief requested herein.

**WHEREFORE**, it is respectfully submitted that this Court enter an order allowing the automatic stay in the case of ENOY JOSEPH v. JOSEPH RUBIN, et al. No. 2021-01493, in the Pennsylvania Court of Common Pleas, Montgomery County, to be lifted, together with such other and further relief as this court deems just and proper.

**DEREK SMITH LAW GROUP, PLLC**

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DATED: October 27, 2021