

Objection Deadline: January 12, 2023 at 4:00 p.m. (Eastern Time)
Hearing Appearance Deadline: January 18, 2023 at 4:00 p.m. (Eastern Time)
Hearing Date: January 19, 2023 at 11:00 a.m. (Eastern Time)

SIMON LESSER PC
Leonard F. Lesser
100 Park Avenue, 16th Floor
New York, New York 10017
Office: (212) 599-5455

Counsel for Movant

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK, ¹	:	Case No. 20-12345 (MG)
	:	
Debtor.	:	

**NOTICE OF MOTION FOR LIMITED RELIEF
FROM THE AUTOMATIC STAY TO PROCEED WITH TRIAL**

PLEASE TAKE NOTICE that on January 5, 2023, Raymond Lewis (the “Movant”) filed the *Motion for Limited Relief From the Automatic Stay to Proceed with Trial in a New York State Court Action* (the “Motion”) with the United States Bankruptcy Court for the Southern District of New York (the “Court”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be in writing, conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York, be filed by January 12, 2023 at 4:00 p.m. (**Prevailing Eastern Time**), and shall be served on (a) the Debtor, c/o The Roman Catholic Diocese of Rockville Centre, New York, 50 North Park Avenue P.O. Box 9023, Rockville Centre, NY 11571-9023; (b) counsel to the Debtor, Jones Day, 250 Vesey Street, New York, New York 10281-1047 Attn: Corinne Ball, Esq., Todd Geremia, Esq., Benjamin Rosenblum, Esq., and Andrew Butler, Esq.; (c) William K. Harrington, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, NY 10014, Attn: Greg M. Zipes, Esq. and Shara Cornell, Esq.; and (d) counsel to the Movant, Simon Lesser PC, 100 Park Avenue, 16th Floor, New York, NY 10017, Attn: Leonard F. Lesser. Esq.

¹ The Debtor in this chapter 11 case is The Roman Catholic Diocese of Rockville Centre, New York, the last four digits of its federal tax identification number are 7437, and its mailing address is 50 North Park Avenue P.O. Box 9023, Rockville Centre, NY 11571-9023.

PLEASE TAKE FURTHER NOTICE THAT a hearing to consider such Motion and any objections related thereto (the “Hearing”) will be held on **January 19, 2023 at 11:00 a.m. (Prevailing Eastern Time)** before the Honorable Martin Glenn, Chief United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004.

PLEASE TAKE FURTHER NOTICE that the Hearing will be conducted via Zoom for Government. Any parties wishing to participate must do so by first making an appearance on eCourtAppearance (<https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>). The deadline to make an eCourtAppearance is **January 18, 2023, by 4 p.m. (Prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that copies of each pleading can be viewed and/or obtained by: (i) accessing the Court’s website at www.nysb.uscourts.gov, or (ii) from the Debtor's notice and claims agent, Epiq Corporate Restructuring, LLC, at <https://dm.epiq11.com/drvc> or by calling (888) 490-0633. Note that a PACER password is needed to access documents on the Court’s website.

Dated: January 5, 2023
New York, New York

Respectfully submitted,

By: Nathaniel Levy

Nathaniel Levy
SIMON LESSER PC
100 Park Avenue, 16th Floor
New York, New York 10017
Office: (212) 599-5455
Email: nlevy@simonlesser.com

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SIMON LESSER PC
Leonard F. Lesser
100 Park Avenue, 16th Floor
New York, New York 10017
Office: (212) 599-5455

Counsel for Plaintiff

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

THE ROMAN CATHOLIC DIOCESE OF
ROCKVILLE CENTRE, NEW YORK,¹

Debtor.

Chapter 11

Case No. 20-12345 (MG)

**MOTION FOR LIMITED RELIEF FROM
THE AUTOMATIC STAY TO PROCEED WITH TRIAL**

Raymond Lewis (the “Movant”) in a personal injury action entitled *A.L., by her guardian Raymond Lewis v. Holy Trinity Diocesan High School, et al.*, No. 0602927/2018 (N.Y. Sup. Ct.) (the “State Court Action”) in the New York Supreme Court (Nassau County) (the “Trial Court”), respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtor in this chapter 11 case is The Roman Catholic Diocese of Rockville Centre, New York, the last four digits of its federal tax identification number are 7437, and its mailing address is 50 North Park Avenue P.O. Box 9023, Rockville Centre, NY 11571-9023.

Relief Requested

2. Pursuant to section 362(d)(1) of the Bankruptcy Code, Bankruptcy Rules 4001(d), and Local Rule 4001-1, the Movant submits this Motion (the “Motion”) for entry of a joint stipulation and order (the “Order”) substantially in the form attached as Exhibit A for limited relief from the automatic stay. The Debtor consents to the relief requested in this Motion

Background

3. On August 7, 2018, Movant commenced the State Court Action in the Trial Court, asserting claims arising out of injuries sustained in connection with a swimming pool accident. The Roman Catholic Diocese of Rockville Centre, New York as debtor and debtor in possession (the “Debtor” or the “DRVC”) and Holy Trinity Diocesan High School, among others, are named as defendants in the State Court Action (collectively, the “Defendants”).

4. On January 13, 2020, the Trial Court issued an order, entered on February 19, 2020, denying a motion for summary judgment submitted by the Defendants. On February 21, 2020, the Defendants filed an appeal of the Trial Court’s denial of their motion for summary judgment to the Appellate Division of the New York Supreme Court (Second Department) (the “Appellate Court”).

5. On August 19, 2020, briefing with respect to the Appeal was completed in the Appellate Court, and the Appeal was submitted to the Appellate Court for the scheduling of oral argument.

6. On October 1, 2020, the Debtor commenced its bankruptcy case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage its organization as a debtor in possession under Sections 1107(a) and 1108 of the Bankruptcy Code.

7. Under 11 U.S.C. § 362(a), the filing of the Debtor's chapter 11 petition operated as an automatic stay of the further prosecution as against the Diocese in the State Court Action and the Appeal. Consequently, on October 1, 2020, the Appellate Court issued notice staying the further prosecution of the Appeal pending instruction from the Bankruptcy Court.

8. This Court previously entered a *Joint Stipulation and Agreed Order Granting Limited Relief from the Automatic Stay* [Docket No. 312], for the exclusive purpose of permitting the completion of the Defendants' appeal to the Appellate Division of the New York Supreme Court (Second Department), including the scheduling of oral argument and the issuing of a decision and judgment by the Appellate Division with respect to the Defendants' appeal, and for no other purposes.

9. By its Decision and Order dated March 25, 2022, the Appellate Division issued its Decision affirming the denial of Defendants' summary judgment motion as to Movants' claims against them.

10. The parties to the Order attached hereto as Exhibit A have met and conferred and agree that it is appropriate to enter a limited modification to the automatic stay for the purpose of scheduling and allowing a trial to be held and judgment to be entered in the State Court Action.

11. To the extent the resolution of the State Court Action does not result in a final judgment with respect to the entirety of the claims against the Debtor in the State Court Action, the automatic stay shall remain in effect to preclude any further proceedings in the State Court Action that impact the Debtor absent further order of this Court.

12. Nothing in this Motion or the proposed Order will authorize the Plaintiff, after entry of judgment in the State Court Action, to seek to execute on any assets of the Debtor, and

the automatic stay will continue to bar any attempts to collect on any judgment entered in the State Court Action against the Debtor.

Argument

13. Section 362(d)(1) of the Bankruptcy Code provides that, after notice and a hearing, the Stay may be modified if “cause” exists. Neither the Bankruptcy Code nor its legislative history define cause. In the seminal case of *In re Sonmax Industries*, the United States Court of Appeals for the Second Circuit established a twelve factor test to determine whether cause exists, pursuant to Section 362(d)(1) of the Bankruptcy Code, to continue an ongoing litigation in another forum. *See In re Sonmax Indus.*, 907 F.2d 1280, 1286 (2d Cir. 1990); *In re Lyondell Chem. Co.*, 402 B.R. 596, 608 (Bankr. S.D.N.Y. 2009) (analyzing the *Sonmax* factors in determining whether to grant the non-debtor appellee's motion for relief from the stay to continue a pending appeal).

14. In determining whether to grant relief from the Stay as to the Pending Appeal, the Court must analyze the twelve *Sonmax* factors:

- (1) whether relief would result in a partial or complete resolution of the issues;
- (2) lack of any connection with or interference with the bankruptcy case;
- (3) whether the other proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- (5) whether the debtor's insurer has assumed full responsibility for defending it;
- (6) whether the action primarily involves third parties;
- (7) whether litigation in another forum would prejudice the interests of other creditors;
- (8) whether the judgment claim arising from the other action is subject to equitable subordination;
- (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;
- (10) the interests of judicial economy and the expeditious and economical resolution of litigation;
- (11) whether the parties are ready for trial in the other proceeding; and
- (12) impact of the stay on the parties and the balance of harms.

In re Sonmax, 907 F.2d at 1286.

15. “In a given case, however, not all of the factors will be relevant, and the court may disregard irrelevant factors.” *In re Dana Corp.*, 2007 Bankr. LEXIS 3923 *10 (Bankr. S.D.N.Y. Nov. 6, 2007) (citing *Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 143 (2d Cir. 1999)). “When applying these factors and considering whether to modify the automatic stay, the Court should take into account the particular circumstances of the case, and ascertain what is just to the claimants, the debtor and the estate.” *In re Keene Corp.*, 171 B.R. 180, 183 (Bankr. S.D.N.Y. 1994) (citation omitted).

16. By the parties’ Joint Stipulation and Order, Movant and Debtor is seeking limited relief from the automatic stay to allow a trial to be held and judgment to be entered, including appeals, if any, and for no other purpose at this time. As set forth below, cause exists in this case because all of the *Sonnax* factors favor relief from the automatic stay to allow the State Court Action to proceed to trial.

17. Most significantly, the State Court Action involves claims for a horrific injury suffered by A.L. on October 11, 2016 when she was a 15-years old. The October 11, 2016 incident occurred at the Chaminade High School pool in which A.L. suffered a spinal fracture of her cervical vertebra requiring spinal fusion surgery. At the time, A.L. was a 15-year-old freshman and novice member of Holy Trinity girls swim team which used the pool as its training pool and as one of several swim meet pools. Holy Trinity is a school operated by Debtor. When A.L. attempted a headfirst entry off a starting block located at the shallow end of the Chaminade pool in four (4) feet of water, she struck the bottom and fractured her spine. A.L. has asserted negligence claims against Debtor and Chaminade based on her allegations that that she did not have proper training or experience in competitive headfirst entries, also known as “racing starts,”

and should not have been permitted by her Holy Trinity coaches to use the starting blocks at the Chaminade pool.

18. The State Court Action has been already substantially delayed by the bankruptcy, and allowing relief from the automatic stay is necessary in the interest of fairness and justice to Movant. Only by permitting the relief from the stay will the State Court Action proceed to pretrial proceedings that will involve mandatory settlement discussions, and ultimately jury trial, so that Movant can finally have her day in Court. The State Court Action was commenced in 2018, and had already been substantially delayed.

19. Second, the trial and any subsequent appeal should not interfere with the pending bankruptcy case. There are no remaining tasks for the parties to complete with respect to the trial aside from holding it, and trial counsel for the Debtor in the State Court Action is not involved in proceedings before this Court. Thus, there should be little to no interference on the administration of this bankruptcy case. Moreover, the Debtor is among the parties seeking relief from the stay.

20. Third, permitting the State Court Action to be tried will not prejudice any of the Debtor's other creditors. Besides the Movant, no other creditor is party to the State Court Action. The issues in the State Court Action are not central issues in the pending bankruptcy case. Granting the relief requested in this Motion should not affect any other matters in this Court.

21. Fourth, the trial will determine the amount of Movant's monetary claim against Debtor.

22. Fifth, the parties' dispositive motions in the State Court Action have previously been decided and the interests of judicial economy favor granting relief from the automatic stay for the purpose of allowing Movant's claims to be tried.

23. As noted above, Movant's case has been pending since 2018, and Movant will continue to be prejudiced by a continued stay for an undetermined and indefinite period.

24. Sixth, insurance is available to satisfy a jury verdict judgment against Debtor in the State Court Action, and indeed, upon information and belief, such insurance has been covering, and continues to cover, the fees and expenses incurred in the State Court Action, and it has been represented to Movant in the State Court Action that there is insurance available to indemnify a jury verdict and judgment awarded to Movant if she is successful at trial.

25. As stated above, the Court need only consider the relevant *Sonnax* factors in determining whether to grant relief from the automatic stay. *In re Dana Corp.*, 2007 Bankr. LEXIS 3923 *10 (Bankr. S.D.N.Y. Nov. 6, 2007) (citing *Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 143 (2d Cir. 1999)). Accordingly, cause exists under many of the *Sonnax* factors to lift the Stay for the limited purpose of permitting a trial to be held, a jury verdict reached, and judgment to be entered, including appeals, if any.

Notice

26. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the Committee; and (c) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested herein, the Plaintiff respectfully submits that no further notice of this Motion is required.

No Prior Request

27. This Court previously entered a *Joint Stipulation and Agreed Order Granting Limited Relief from the Automatic Stay* [Docket No. 312], for the exclusive purpose of permitting

the completion of the Defendants' appeal to the Appellate Division of the New York Supreme Court (Second Department), including the scheduling of oral argument and the issuing of a decision and judgment by the Appellate Division with respect to the Defendants' appeal, and for no other purposes. No additional or other request for the relief from the automatic stay has been made to this Court or any other court.

WHEREFORE, Movant respectfully requests that the Court: (i) enter the Order granting the relief requested herein and (ii) grant such other and further relief to the Plaintiff as the Court may deem proper.

Dated: January 5, 2023
New York, New York

Respectfully submitted,

By: *Nathaniel Levy*

Nathaniel Levy
SIMON LESSER PC
100 Park Avenue, 16th Floor
New York, New York 10017
Office: (212) 599-5455
Email: nlevy@simonlesser.com

EXHIBIT A

(JOINT STIPULATION AND PROPOSED ORDER)

WHEREAS, pursuant to 11 U.S.C. § 362(a), the filing of the Debtor's chapter 11 petition operates as an automatic stay of the further prosecution against the Debtor in the State Court Action;

WHEREAS, the Bankruptcy Court previously entered a *Joint Stipulation and Agreed Order Granting Limited Relief from the Automatic Stay* [Docket No. 312], which modified the State Court Action for the exclusive purpose of permitting the completion of the Defendants' appeal to the Appellate Division of the New York Supreme Court (Second Department), including the scheduling of oral argument and the issuing of a decision and judgment by the Appellate Division with respect to the Defendants' appeal, and for no other purposes;

WHEREAS, the Appellate Division issued a decision affirming in part and reversing in part the trial court's decision and order on March 25, 2022;

WHEREAS, the parties have met and conferred and agree that it is appropriate to enter a limited modification to the automatic stay for the sole purpose of allowing a trial to be held and judgment to be entered in the State Court Action; and

WHEREAS, the Plaintiff has filed a *Motion for Entry of Joint Stipulation and Agreed Order Granting Limited Relief from the Automatic Stay* (the "Motion"), seeking entry of this Order.

After due deliberation and sufficient cause appearing therefor, **THE COURT FINDS AND CONCLUDES THAT:**

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012.
- B. This is a core proceeding under 28 U.S.C. § 157(b)(2).
- C. Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

D. The Court has authority pursuant to 11 U.S.C. § 362(d) to order the limited modification to the automatic stay sought by the Plaintiff.

E. Sufficient cause exists to modify the automatic stay for the sole purpose of holding a trial and entering judgment in the State Court Action; and

F. Due and proper notice of the Motion has been given, and no other or further notice is necessary or required.

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The automatic stay is modified with respect to the State Court Action for the sole purpose of permitting pre-trial proceeding and a trial to be held and judgment to be entered, including appeals, if any, and for no other purpose at this time.
3. Except as expressly provided in this Order, the automatic stay remains in effect with respect the State Court Action.
4. Nothing in this Order authorizes the Plaintiff, after entry of judgment in the State Court Action, to seek to execute on any assets of the Debtor, and the automatic stay continues to bar any attempts to collect on any judgment entered in the State Court Action against the Debtor.
5. By agreeing to entry of this Order, (i) the Debtor is not waiving and will not be deemed to have waived any right to assert the automatic stay as a bar to continued prosecution of the State Court Action, including in response to any motion to lift or modify the automatic stay made by the Plaintiff, and (ii) the Plaintiff is not waiving and will not be deemed to have waived any right to seek to lift or modify the automatic stay to allow further prosecution of the State Court Action after resolution of the trial and entry of judgment.

6. Nothing in this Order waives any available claims or defenses, including at law, equity, or otherwise with respect to the State Court Action.

7. Neither this Order nor any negotiations and writings in connection with this Order will in any way be construed as or deemed to be evidence of or an admission on behalf of any party regarding any claim or right that such party may have against the other party.

8. This Order shall be promptly filed in the clerk's office and entered into the record.

9. The Debtor is authorized to take all actions necessary or appropriate to carry out this Order.

10. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

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STIPULATED AND AGREED TO BY:

JONES DAY

MULHOLLAND MINION DAVEY

By: Christopher DiPompeo
Corinne Ball
Todd Geremia
Benjamin Rosenblum
Andrew Butler
JONES DAY
250 Vesey Street
New York, NY 10281-1047
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
Email: cball@jonesday.com
trgeremia@jonesday.com
brosenblum@jonesday.com
abutler@jonesday.com

By: Brian R. Davey
Brian R. Davey
MULHOLLAND MINION DAVEY
374 Hillside Ave.
Williston Park, NY 11596
Telephone: (516) 248-1200
Email: bdavey@mmlaw.us.com

Counsel for Defendants

-and-

Christopher DiPompeo (*pro hac vice*)
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001
Telephone: (202) 879-7686
Facsimile: (202) 626-1700
Email: cdipompeo@jonesday.com

SIMON LESSER PC

By: Nathaniel Levy
Nathaniel Levy
100 Park Avenue, 16th Floor
New York, New York 10017
Office: (212) 599-5455
Email: nlevy@simonlesser.com

Counsel for Plaintiff

*Counsel for the Debtor and
Debtor in Possession*

SO ORDERED:

New York, New York
Dated: January __, 2023

THE HONORABLE MARTIN GLENN
CHIEF UNITED STATES BANKRUPTCY JUDGE