


SO ORDERED.

SIGNED this 30th day of May, 2025.




Mitchell L. Herren
United States Bankruptcy Judge

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

IN RE:

**AMERICAN WARRIOR
CONSTRUCTION, INC.**

Debtor.

**Case No. 24-11168
Chapter 11**

Order Granting Motion for Relief from Stay

Before the Court is the motion for relief from stay filed by The Board of Trustees for the Garden City Community College (hereinafter “the College”),¹ which seeks relief from the automatic stay of 11 U.S.C. § 362(a)² for cause under § 362(d)(1) to proceed with its prepetition Kansas state court case against Debtor American Warrior Construction, Inc. Debtor opposes the motion.³ The Court

¹ Doc. 108. The College appears by its attorney Wesley F. Smith.

² Future statutory references are to the Bankruptcy Code, title 11, unless otherwise specified.

³ Doc. 134. Debtor appears by its attorney Mark J. Lazzo.

concludes cause exists to grant relief from the automatic stay and grants the motion to the extent necessary for the College to obtain a final judgment in the Kansas state court action, but not to collect thereon from Debtor.

I. Background and Procedural Facts

As alleged in the College's motion for relief from stay, on April 15, 2021, Debtor and the College entered an agreement for Debtor to perform work on a mechanical tunnel lid replacement project on the College's campus.⁴ The company West Bend Mutual Insurance Company issued surety bonds for the project, including a performance bond that bound it for performance of the agreement.⁵

Two and a half years later, on October 26, 2023, the College filed a lawsuit in Finney County, Kansas, against both Debtor and West Bend Mutual Insurance Company. In this state court suit, the College seeks judgment against Debtor and West Bend Mutual Insurance Company for damages incurred as a result of Debtor's failure to perform under the parties' agreement.⁶

Debtor filed its Chapter 11 bankruptcy petition on November 14, 2024. On March 4, 2025, the College filed its motion for relief from stay, asking for stay relief "to prosecute its claim in the Lawsuit to judgment, including discovering its case, issuing discovery upon and deposing representatives of the Debtor and others, filing its Proof of Claim in the instant case, and pursuing a claim against the West Bend Performance Bond."⁷ Debtor filed an objection to the College's motion, generally

⁴ The parties' agreement is included as Exhibit A to the College's motion. [Doc. 108](#) Ex. A.

⁵ A copy of the performance bond is included within Exhibit B to the College's motion. *Id.* Ex. B.

⁶ The state court petition is attached as Exhibit C to the College's motion. *Id.* Ex. C.

⁷ *Id.* p. 2 ¶ 5.

denying the College's claims and stating the bankruptcy court should determine the validity and amount of the College's claim.⁸

At a hearing on the motion on May 21, 2025, the Court heard argument from the parties. The College contends litigation of the matter would be more expeditious by continuing the state court litigation and hopes to proceed against the bonding company there. Debtor has indicated it plans to file a liquidating Chapter 11 plan. The parties agreed to rest on the motion and objection filed, and also agreed the Court could consider the Exhibits attached to the College's motion. The Court took the motion under advisement and now issues this ruling.

II. Analysis

A motion to modify the automatic stay is a core matter under 28 U.S.C. § 157(b)(2)(G), over which this Court may exercise subject matter jurisdiction.⁹ Venue is proper in this District.¹⁰

Debtor's filing of its Chapter 11 petition instituted the broad automatic stay, preventing the College from continuing its prepetition state court action.¹¹ The College seeks relief from that stay under § 362(d)(1), which states: "(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from

⁸ Doc. 134.

⁹ 28 U.S.C. §§ 1334(b), 157(a), (b)(1) and (b)(2)(G), and Amended Order of Reference, D. Kan. S.O. 13-1.

¹⁰ 28 U.S.C. § 1409(a).

¹¹ *Pursifull v. Eakin*, 814 F.2d 1501, 1504 (10th Cir. 1987) ("The automatic stay generally prohibits . . . litigation, enforcement of liens, and other actions, be they judicial or otherwise, which would affect or interfere with property of the estate, of the debtor, or which is in the custody of the estate."); *In re Carbaugh*, 278 B.R. 512, 524 (10th Cir. BAP 2002) ("The filing of a bankruptcy petition under any chapter of the Bankruptcy Code initiates a broad automatic stay that prevents any attempts to enforce or collect prepetition claims or any actions that would affect property of the estate.").

the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--(1) for cause.”¹² “Because ‘cause’ is not further defined in the Bankruptcy Code, relief from stay for cause is a discretionary determination made on a case by case basis.”¹³ The College, as the moving party, “has the burden to show that ‘cause’ exists to lift the stay, after which the burden shifts to [the] debtor to demonstrate why the stay should remain in place.”¹⁴

One “example of cause is to permit litigation to be concluded in another forum.”¹⁵ Twelve factors, known as the *Curtis* factors after the bankruptcy case in which they originated, have been identified “as some of the issues a bankruptcy court might consider when determining whether to lift the stay to permit pending litigation in another forum.”¹⁶ The *Curtis* factors, which have been used in the Tenth Circuit, are:

¹² There is no dispute the College is a party in interest. *See In re Auld*, No. 14-20424, [2014 WL 2780302](#), at *11 (Bankr. D. Kan. June 11, 2014) (“In the context of a motion for relief from stay, a person or entity affected by the stay has an interest in the stay and should be entitled to seek relief from stay.”).

¹³ *In re Carbaugh*, [278 B.R. at 525](#); *In re Auld*, [2014 WL 2780302](#), at *11 (“Cause” is a discretionary, fact-based determination).

¹⁴ *Busch v. Busch (In re Busch)*, [294 B.R. 137, 140–41](#) (10th Cir. BAP 2003). *See also In re Wichita Hoops, LLC*, No. 23-10255, [2023 WL 4753616](#), at *8 (Bankr. D. Kan. July 24, 2023) (“The movant has the initial burden to produce evidence establishing a prima facie case for stay relief before the ultimate burden of proof shifts to debtor on all issues except equity in the property.”).

¹⁵ *In re Auld*, [2014 WL 2780302](#), at *11. *See also In re Dynamic Drywall, Inc.*, No. 14-11131, [2014 WL 5395722](#), at *1 (Bankr. D. Kan. Oct. 22, 2014) (“In general, pre-petition litigants can be granted [stay] relief if they can show that judicial economy would be served by allowing the non-bankruptcy court to complete its work, the parties are ready for trial, the non-bankruptcy proceedings may resolve issues critical to the bankruptcy case, the non-debtor parties are reasonably likely to succeed on the merits, and that the debtor will not be burdened by its defense costs during the pendency of its bankruptcy case.”).

¹⁶ *In re Busch*, [294 B.R. at 141](#). *See also In re Dampier*, No. BAP CO-15-006, [2015 WL 6756446](#), at *4 (10th Cir. BAP Nov. 5, 2015) (“The United States Court of Appeals for the Tenth Circuit . . . has not set forth a precise framework or exhaustive set of factors for analyzing whether cause exists In

(1) Whether the relief will result in a partial or complete resolution of the issues. (2) The lack of any connection with or interference with the bankruptcy case. (3) Whether the foreign proceeding involves the debtor as a fiduciary. (4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases. (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation. (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question. (7) Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties. (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c). (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f). (10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties. (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial. (12) The impact of the stay on the parties and the balance of hurt.¹⁷

After analyzing the above factors, the Court concludes the balance of factors weighs in favor of granting stay relief.

Many factors are in favor of lifting the stay. Allowing the state court action to proceed will completely resolve the issue of liability between the parties, and the damages amount (if any) can be fixed (factor 1), permitting the College or the bonding company to file a claim, if any, in Debtor's case. Establishing liability without allowing collection on a judgment will not interfere with Debtor's bankruptcy case (factor 2). Although the state court is not a "specialized tribunal" for this matter, the state court is already familiar with the litigation and the

the absence of a comprehensive Tenth Circuit test, a list of factors identified in *In re Curtis* is often relied on by courts in their determination of whether stay relief should be granted." (internal quotations and citations omitted)).

¹⁷ *In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (internal quotations and citations omitted).

parties, and a construction defect case is certainly not a core bankruptcy matter (factor 4, factor 10, factor 11). Establishing liability in the state court litigation will not prejudice any other creditors or interested party in this case (factor 7), and there is no creditors' committee. A judgement in favor of the College in the state court action would not be subject to equitable subordination or result in an avoidable judicial lien (factors 8 and 9). The Court concludes the College would be injured if not allowed to proceed with moving its claim to final judgment but there will be minimal impact to Debtor (factor 12).

Other factors are more neutral or inapplicable. Debtor is not a fiduciary in the state court litigation (factor 3). It is unclear whether Debtor will be liable for its defense costs (factor 5), because while the parties reported at the hearing on this matter there is an attorney in the state court litigation who has been retained by the bond company, it is unclear if that attorney represents both the bond company and Debtor. The state court action does involve third parties (the bond company) and the parties report the College will proceed against the bond company, who would then have a claim against Debtor if the College is successful (factor 6). The Court finds no bad faith from Debtor regarding this motion.¹⁸

Overall, the Court concludes the balance of the *Curtis* factors weighs in favor of finding cause to grant stay relief under § 362(d)(1).

¹⁸ One factor the Court may consider in the totality of the circumstances test is “the good or bad faith of the debtor and the injury to the movant if the stay is not modified.” *In re JE Livestock, Inc.*, 375 B.R. 892, 897 (10th Cir. BAP 2007). *See also In re Reg'l Evangelical All. of Churches, Inc.*, 592 B.R. 375, 390 (Bankr. D. Kan. 2018) (“Generally, courts hold that the filing of a Chapter 11 case in bad faith is ‘cause’ for termination of the automatic stay under § 362(d)(1).” internal quotations omitted). The Court has no basis to make a finding of good faith or bad faith as to Debtor’s bankruptcy filing based on the motion for relief from stay now being addressed.

III. Conclusion

The College's motion for relief from the automatic stay¹⁹ is granted to the extent necessary for the College to obtain a final judgment in the Kansas state court action, but not to collect thereon from Debtor.

It is therefore ordered that the automatic stay imposed by § 362(a) of the Bankruptcy Code is terminated for cause under § 362(d)(1), to permit the College to prosecute its claim(s) in the state-court lawsuit referenced herein to judgment.

It is so Ordered.

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¹⁹ [Doc. 108](#).