SO ORDERED.

SIGNED this 15th day of January, 2026.

Mitchell L. Herren
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:	
Rock Regional Hospital, LLC,	Case No. 25-11362-11
Debtor.	

Order Granting Motion of CBC Derby, LLC for Order Confirming Absence or Inapplicability of Automatic Stay, or in the Alternative, Granting Relief from the Automatic Stay to Complete Eviction (Doc. 21) and Denying Debtor's Motion to Reimpose Automatic Stay (Doc. 97)

CBC Derby, LLC ("Landlord") is the landlord of a commercial lease with the Rock Regional Hospital, LLC, the debtor in this Chapter 11 case ("Debtor"). Landlord moved for an order confirming the absence of the automatic stay, or alternatively, relief from that stay,[1] and Debtor objected to the motion.[2] In addition, after Landlord filed a Notice of Breach of the Interim Cash Collateral Order and

[1] Doc. 21.

[2] Doc. 84. Landlord filed a reply in support of its motion at Doc. 101.

Automatic Granting of Stay Relief,[3] Debtor filed a Response and Motion to Reimpose Automatic Stay.[4] The Court held an evidentiary hearing on these automatic stay issues and issued an oral ruling at the close of evidence.[5] This written Order memorializes the Court's oral ruling and contains its findings of fact and conclusions of law. The Court grants Landlord's motion and denies Debtor's motion.

I. Findings of Fact

Debtor and Landlord executed a build to suit lease agreement on August 28, 2017 (the "Lease"). The Lease specified "Events of Default" in § 20.1, which included "any failure of Tenant to pay any rent or other amount for more than five (5) days after written notice of such failure."[6] Upon an Event of Default, the Lease gave the Landlord "the right to pursue any one or more" of the remedies outlined in § 20.2, including termination of the lease (§ 20.2.1) or repossession without terminating (§ 20.2.2).[7] The Lease's language governing Termination specifically stated no grace period was necessary for Termination, other than the five-day grace period for the payment of rent previously specified.

A First Amendment to the Lease was entered on April 19, 2019, at the time the construction of the building was completed, to set the base rent amount. Debtor

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[3] Doc. 94.

[4] Doc. 97.

[5] Landlord appears by its attorneys Andrew Nazar and Jason Bush. Debtor appears by its attorney David Prelle Eron.

[6] Landlord Ex. 2 p. 28 § 20.1

[7] *Id.* § 20.2

began full operations in July 2019. Debtor made monthly rent payments for most of 2019, but by the end of 2019 began to miss payments. Thereafter and for the next several years, Debtor consistently failed to make its monthly rent payment obligations.[8]

On April 1, 2022, the parties executed a Second Amendment to the Lease, which would have reduced Debtor's monthly rent obligation. As conditions precedent to the Second Amendment, however, Debtor had to raise an irrevocable infusion of capital of $13 million and had to pay *ad valorum* taxes. Debtor did not raise the $13 million of capital.

On December 15, 2022, Landlord sent a Notice of Default to Debtor, addressing Debtor's rent default and failure to satisfy the recapitalization event required as a condition precedent of the Second Amendment (the "December 2022 Notice of Default").[9] The December 2022 Notice of Default stated Debtor's rent default at that point, without late payment charges or interest accrual, was $9,367,965.45 and gave Debtor fifteen days to "pay all outstanding rent payment arrearages and get current on the payment of rent."[10] It is undisputed Debtor did not catch up on its rent payments after receiving the December 2022 Notice of Default.

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[8] *See* Landlord Ex. 1 p. 11 (state court judgment) ("The parties formed a lease agreement, and after paying rent for most of 2019, [Debtor] quit paying. For two-and-a-half years (2020, 2021 and part of 2022), the evidence shows that [Landlord] waited patiently for rent."). The testimony at the evidentiary hearing in this Court confirmed this rent payment history.

[9] Prior notices had been provided, but the Court concludes they are not necessary to its analysis herein.

[10] Landlord Ex. 7.

On January 10, 2023, Landlord then sent Debtor a "Notice of Lease Termination and Demand for Surrender" (the "January 2023 Termination Letter"). The January 2023 Termination Letter referenced the December 2022 Notice of Default and indicated Landlord was "exercising its remedy under Section 20.2.1 of the Lease to terminate the Lease and demand that Tenant surrender the Premises no later than March 17, 2023."[11] The January 2023 Termination Letter gave Debtor sixty days to wind down operations, although it noted there was no obligation to do so under the Lease. Debtor did not pay the rent backlog, did not wind down operations, and did not surrender.

On March 17, 2023, Landlord filed a state court action against Debtor, seeking eviction. Debtor filed counterclaims and defenses, and the state court held a trial, during which it excluded some of Debtor's propounded evidence because of a violation of discovery rules. On October 18, 2023, the state court entered a Journal Entry of Judgment, ruling for the Landlord and against Debtor (the "October 2023 Judgment").

In the October 2023 Judgment, the state court made conclusions that included the following:

- Debtor violated the Lease and was in default;[12]

[11] Landlord Ex. 8.

[12] Landlord Ex. 1 p. 8 (Debtor "did not pay rent to [Landlord] as [Debtor] agreed to do in the lease," "Non-payment of the rent by [Debtor] is a violation of the lease agreement," and ""non-payment of rent results in [Debtor] being in default"), p. 9 ("the Court finds that [Landlord] has shown, by a preponderance of the evidence that rent has not been paid during a substantial period of the lease, and the Court finds [Debtor] in default.").

- Debtor failed to cure its default, Landlord had the right to remove Debtor, and Landlord was "entitled to possession of the property;" and[13]
- The conditions precedent for the Second Amendment were not fulfilled, and rent had to be calculated under the original Lease terms.[14]

The Judgment concluded by stating: "[Debtor] is in default for non-payment of rent and is ordered evicted forthwith."[15] Landlord was also awarded $15,178,843.35 in unpaid rent, penalties, and fees, and awarded attorneys' fees.

After entry of the October 2023 Judgment and resolution of post-judgment motions, Debtor appealed the Judgment. No bond or stay of the October 2023 Judgment was sought or entered by the trial court or the appellate court.[16]

Again, Landlord on November 5, 2025, demanded Debtor vacate the premises, this time by December 10, 2025. Debtor responded by filing its Chapter 11 petition on December 7, 2025. On December 9, 2025, Landlord filed a motion seeking an order confirming the absence or inapplicability of the automatic stay, or in the alternative, granting it relief from the automatic stay to complete an eviction

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[13] *Id.* p. 8 (Debtor "has failed to cure its default," Landlord "had the right under the lease to remove [Debtor] if [Debtor] was in default," and Landlord "is entitled to possession of the property").

[14] *Id.* (Debtor "failed to carry its burden of proof to show that the conditions precedent in the Second Amendment were fulfilled in order to trigger the operation of the Second Amendment," and "Rent must be calculated under the First Amendment because the Second Amendment failed to operate").

[15] *Id.* p. 12.

[16] The parties fully briefed the appeal and were awaiting a decision at the time of the filing of Debtor's petition and the evidentiary hearing on the stay issues herein.

(the "Landlord's Stay Motion").[17] On its Schedule E/F, Debtor lists a debt of $23,197,369.84 to Landlord.[18]

In an Interim Order granting Debtor's motion for interim use of cash collateral and approving certain financing, Debtor and Landlord agreed Debor would make weekly rent payments to Landlord of $85,000 during the period governed by the Interim Order, and pay a balloon payment of $108,000 on January 2, 2026, in anticipation of a January 6, 2026 final hearing on cash collateral and an evidentiary hearing on the Landlord's Stay Motion. The Interim Order stated: "If any of the above payments is not timely received on the date stated in full by [Landlord] with no grace period, [Landlord] shall be granted immediate and final stay relief without further order of the Court or any stay o[f] the order pursuant to Fed. Bankr. P. 4001 or otherwise."[19]

Debtor timely made all weekly payments of $85,000 required by the Interim Order. Regarding the balloon payment of $108,000, Debtor's Chief Operating Officer had an employee initiate the transfer on January 2, and he then approved the transfer just before three o'clock on the afternoon of January 2, 2026. Later in the evening on January 2, Debtor became aware the wire transfer was not received. The Chief Operating Officer checked the account and from Debtor's end saw no problem; from Debtor's view, the transaction had been marked complete and there were sufficient funds in the account to cover the transfer. Debtor was later informed that

[17] Doc. 21.
[18] Doc. 90 p. 59.
[19] Doc. 43 p. 16-17.

the wire transfer had not been received, and that Debtor's bank said Debtor had insufficient cleared funds in its account to fund the transfer. Although there was no clear evidence about why the wire transfer was not completed or what amount in Debtor's account was uncleared and therefore not subject to being transferred to Landlord on January 2, there is no dispute Landlord did not receive the money on January 2, 2026.

The next day, on January 3, 2026, Landlord filed a "Notice of Breach of the Interim Cash Collateral Order and Automatic Granting of Stay Relief."[20] Debtor then filed a response and "Motion to Reimpose Automatic Stay."[21]

At the evidentiary hearing, the Court heard substantial evidence about the history of Debtor's attempts to renegotiate its rent obligations, the Landlord's efforts to work with Debtor while Debtor attempted a reorganization or sale, and likelihood of Debtor's reorganization or a potential sale going forward. The Court concludes Debtor's hopes hinge on the occurrence of one (or both) of two possibilities. First, Debtor has been pursuing certain CARES Act funding it was unable to previously receive because as a new hospital in 2019, it did not have historical data in which to apply for the funding. Debtor has hired a lobbyist who is pursuing the funding on Debtor's behalf. The lobbyist's belief is Debtor may be able to pursue as much as $16 to $20 million in funding under the CARES Act, and it was "more likely than not" Debtor would be successful in obtaining the funding.

[20] Doc. 94.

[21] Doc. 97.

That said, the lobbyist acknowledged there was not yet an application process in place for the funds, and there was not yet any legislation or appropriation in place to make an award if an application was successful.

Second, Debtor's appeal of the October 2023 Judgment argues the state court made evidentiary errors by excluding evidence concerning the applicability of the Second Amendment. Under that Second Amendment, the monthly rent payment from Debtor to Landlord would have been substantially reduced, to what Debtor believes would be a more realistic fair market value. Other than Landlord admitting the appeal briefs, the Court heard very little about the likelihood of success of Debtor's appeal efforts, and nothing to convince the Court Debtor would be successful on appeal or Debtor could make ongoing monthly rent payments at even the lower amount that would have been in place if Debtor had infused additional capital under the conditions precedent to the Second Amendment.[22] Debtor's witnesses acknowledge the question of whether the Lease was terminated was not at issue in the appeal.

Finally, Debtor's current Chairman of its Board of Managers testified about Debtor's plan for reorganization. Debtor hopes in the next 60 to 120 days to find a buyer or partner to address both its operations and the building/real property.

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[22] The Court makes no finding concerning Debtor's likelihood of success on appeal, but simply notes Debtor presented no evidence that could permit the Court to reach such a finding. Regardless, after conclusion of the evidentiary hearing, Landlord filed a Notice on January 9, 2026, informing the Court that the October 2023 Judgment was affirmed on appeal on that date. Doc. 127. An Agreed Order had been entered on January 5, 2026, permitting the parties to "have relief from the stay to file any appropriate briefs, motions, documents, or other matters as necessary to bring the Appeal Case to conclusion." Doc. 114 p. 2.

There was no testimony that there were any realistic plans in progress, although Debtor does intend to hire a Chief Restructuring Officer to help it find potential buyers. Debtor acknowledges it cannot assume the $23 million debt it lists as owing to Landlord, but hopes a smaller amount based on the Second Amendment could be assumed and then assigned to a buyer. The Court is not persuaded of Debtor's ability to operate and stay current on its obligations. In addition to its rent deficiencies, Debtor has not stayed current on its real property taxes, which it was obligated to pay under the Lease. Debtor paid no taxes in 2024 and had not yet paid its 2025 taxes, although it indicated it included provision for payment of those taxes in its budget under its Interim Order on cash collateral. The Interim Order on cash collateral, however, itself acknowledged a budget deficiency, which Debtor planned to address through DIP lending via its investors.[23] The Court finds Debtor cannot cash flow and has insufficient revenue to cover its operations.

II. Conclusions of Law

A motion regarding the automatic stay is a core proceeding under 28 U.S.C. § 157(b)(2)(G) (core proceedings include "motions to terminate, annul, or modify the automatic stay"), over which this Court may exercise subject matter jurisdiction.[24] Venue is proper in this District.[25]

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[23] *See, e.g.*, Doc. 43 p. 4 ("The total requested usage [of cash collateral] during the Specified Period is approximately $9,000,000 (though Debtor projects only $7.2 million of actual revenues during the Specified Period).").

[24] 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.

[25] 28 U.S.C. § 1409(a).

Landlord has the initial burden on its motion to show grounds are present to lift the automatic stay.[26] Debtor, as the party opposing the motion, as the burden of proof on all issues other than its equity position.[27]

A. The Lease Was Terminated Prepetition

The Court first concludes the lease was terminated prepetition: first, by the January 2023 Termination, and second, by the October 2023 Judgment. As a result, the Court concludes there is no automatic stay in place as to Debtor's interest in the Lease.

If a lease is terminated pre-bankruptcy, neither a debtor nor the Court may revive it.[28] The automatic stay found in § 362(a) does not apply if the property at issue is not property of the estate. Here, the Court concludes under § 541(b)(2), the Lease is not property of the estate. Section 541(b)(2) states:

> Property of the estate does not include--. . . (2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case.

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[26] *In re DB Cap. Holdings, LLC*, 454 B.R. 804, 816 (Bankr. D. Colo. 2011) ("Upon filing a relief from stay motion, the initial burden going forward to show the grounds that compel the lifting of the stay rests with the creditor. Once grounds have been established, the moving party need only prove the issue of lack of equity in the property. The burden of proof rests with the debtor as to all other issues.").

[27] Per § 362(g), the party seeking relief from stay has the burden of proof on the debtor's equity in the property at issue, and the party opposing the stay has the burden of proof "on all other issues."

[28] *See, e.g.*, *In re Terrabella Studios, LLC*, No. 24-40268-11, 2025 WL 1426497 (Bankr. D. Kan. May 5, 2025).

Actions to enforce such terminated leases are not subject to the automatic stay under § 362(b)(10). Under § 362(b)(10):

> The filing of a petition . . . does not operate as a stay-- . . . (10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property.

The key inquiry here is whether the lease was terminated prepetition.[29]

First, the Lease was terminated prepetition by the January 2023 Termination Letter. The term of the lease is for "240 months, unless earlier terminated as herein provided."[30] In other words, the Lease could terminate by its express terms or by a "termination" accomplished in accordance with the Lease terms. Under the Lease, upon payment default, § 20.1 required written Notice of Default. It is undisputed that written Notice of Default was given in December 2022.[31] No cure was made. A termination letter was then issued in January 2023, as permitted by the Lease, in section 20.2. The Lease was clear the Landlord had the option to terminate or to repossess without termination. The January 2023 Termination Letter was clear the Landlord specifically chose to terminate under § 20.2.1. The letter gave Debtor more than a 60-day period to wind down out of

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[29] The question of prepetition termination of the lease controls assumption as well. Under § 365(c)(3), "The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if--. . . (3) such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief."

[30] Landlord Ex. 2 p. 2.

[31] Again, there were other notices of default given, and addressed at the evidentiary hearing, but regardless, Debtor does not dispute Notice of Default was given in December 2022, which is the operative default preceding the January 2023 Termination Letter.

concern for patients, but nothing in the Lease required Landlord to do so. By the January 2023 Termination Letter's terms, that termination was final "not later than March 17, 2023."[32] Final notice to vacate was then given to vacate by March 23, 2023. Again, Debtor did not do so and therefore a state court suit was filed on March 27, 2023. Per Kan. Stat. Ann. § 58-2507, which permits termination prior to a stated term for nonpayment of rent upon written notice to quit, the Lease was properly terminated by the January 2023 Termination Letter.

Second, the Lease was terminated prepetition by the October 2023 Judgment. The October 2023 Judgment, while not using the word "terminate," is clear as to effect. That October 2023 Judgment for the Landlord overruled all Debtor's counterclaims and formative defenses to the state court action. The October 2023 Judgment found the parties were bound by the terms of Lease and the state court would enforce the Lease as written, the nonpayment of rent was a violation of the Lease, Debtor was in default of the Lease and had not cured, and the Landlord had the right to remove Debtor and was entitled to possession and an award of damages. Although the Lease did not use the Code's word "termination," it effectively so concluded.

The October 2023 Judgment specifically stated Debtor was "in default for non-payment of rent and is ordered evicted forthwith."[33] There was no stay of that state court termination (*i.e.*, posting of a bond), and Landlord was free to proceed

[32] Landlord Ex. 8.

[33] Landlord Ex. 1 p. 12.

with eviction any time it wanted to.[34] In fact, Landlord had proceeded with its eviction plans, with a demand to vacate on December 10, 2025.

Debtor asks this Court to first conclude the Lease was not terminated, because the October 2023 Judgment was on appeal. First, case law is conclusive that the state court judgment is a final judgment entitled to res judicata effect regardless of the pending appeal.[35] This Court is bound by the state court determination that the lease was terminated. The state court issued a final judgment on the merits of the Landlord's claims and rejected Debtor's defenses. The parties fully and fairly litigated all aspects of their lease agreement, and the state court issued a decision thereon. This Court is prevented from relitigating those same issues between the parties.

Second, Debtor quotes language from a Tenth Circuit BAP decision, *In re C.W. Mining Co.*,[36] where the BAP discussed cure rights and automatic termination. The BAP stated:

> [I]in the oft-cited Seventh Circuit case of *Moody v. Amoco Oil Co.*, certain dealership agreements executed by the debtors were subject to

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[34] *See, e.g.*, *In re Terrabella Studios, LLC*, 2025 WL 1426497, at *1 n.1 ("Under K.S.A. 2021 Supp. 61-3905(c), a court may allow a losing defendant in an eviction action to pay the periodic rent otherwise due from the defendant to the plaintiff under the rental agreement pertaining to the real property or to post a supersedeas bond. If the defendant posts a bond or complies with a pay-in order, the proceedings are stayed on appeal. Execution of the eviction order is then held in abeyance, so the defendant retains possession of the premises. Conversely, if the defendant fails to post a bond, as is the case here, the eviction order is not held in abeyance and the defendant cannot retain possession of the premises.").

[35] *See, e.g.*, *Phelps v. Hamilton*, 122 F.3d 1309, 1318 (10th Cir. 1997) ("the Kansas courts have adopted the now-majority view regarding the pendency of appeals which provides that the fact that an appeal is pending in a case does not generally vitiate the res judicata effect of a judgment").

[36] *C.O.P. Coal Devel. Co. v. C.W. Mining Co. (In re C.W. Mining Co.)*, 422 B.R. 746 (B.A.P. 10th Cir. 2010).

> automatic termination ninety days after notice was provided to the debtors. The ninety-day termination notices issued to debtors prepetition gave the debtors no right to cure once the notices were issued. The Seventh Circuit concluded that the debtors had no right to assume or reject the dealership agreements because the automatic stay did not toll the automatic termination of the dealership agreements at the end of the ninety-day period. In both these cases, it is important to note that the contract in question explicitly provided for automatic termination upon default. No action by the non-debtor party was required to terminate the contract, only the passage of time. Further, neither contract provided the debtor an opportunity to cure and none of the debtors had a pending right to cure on their respective petition dates. As noted by the Seventh Circuit, "the termination must be complete and not subject to reversal, either under the terms of the contract or under state law."[37]

Debtor relies on the quoted language from the Seventh Circuit case, that the "termination must be complete *and not subject to reversal*"[38] and argues because the October 2023 Judgment was on appeal, the termination was "subject to reversal."

For multiple reasons, Debtor's argument is not persuasive. First, neither the Tenth Circuit BAP nor the Seventh Circuit addressed the question here: whether a lease terminated by a state court order prepetition is "terminated" under § 541(b)(2). Both cases focused on cure rights, not an issue here. The Tenth Circuit BAP said nothing about the impact of an appeal on a state court termination of a lease. Second, the express language of the Code asks whether a lease is "terminated." There is nothing in the Code permitting a bankruptcy court to assess whether a terminated lease is "subject to reversal." Third, as noted above, the Kansas Court of Appeals has now affirmed the October 2023 Judgment. Factually,

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[37] 422 B.R. at 755.

[38] *Moody v. Amoco Oil Co.*, 34 F.2d 1200, 1212 (7th Cir. 1984) (emphasis added).

there is no longer a basis for Debtor to argue the October 2023 Judgment is subject to reversal. And finally, even if the decision had not already been affirmed, one of Debtor's own witnesses testified the appeal concerned evidentiary decisions that could impact the amount of rent owed by Debtor, not whether the Lease was terminated.

The Court concludes the Lease was terminated prepetition and the Court grants the Landlord's Stay Motion for that reason and the other reasons stated herein.

B. The Automatic Stay Was Terminated via Debtor's Actions under the Court's Interim Order

The Court next concludes, even if the automatic stay was in place as to the Lease on the petition date, that the automatic stay terminated by operation of Debtor's failure to comply with the parties' agreement in the Interim Order on cash collateral.

As indicated, the Interim Order required that Landlord "receive" a $108,000 wire transfer on January 2, 2026.[39] The Interim Order is admittedly harsh: if payments committed by Debtor to the Landlord are not received by the dates stated, the Landlord is "granted immediate and final stay relief without further order of the Court."[40]

Debtor argues it attempted to make the wire transfer on January 2 but failed because of an issue with a deposit in its account not clearing in time. Debtor asks

[39] Doc. 43 p. 16.
[40] *Id.* p. 17.

the Court to modify the Interim Order to either forego the payment entirely or permit Debtor to cure its default via a late payment.

The Court's Interim Order on cash collateral was not final, and therefore the Court can exercise its discretion to modify it anytime under Fed. R. Civ. P. 54(b).[41] Under Rule 54(b), a non-final order "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." In the Tenth Circuit, a court may reconsider an earlier interlocutory order[42] and courts generally consider factors such as how thoroughly the parties and the Court addressed a point in the interlocutory order, a case's overall posture, the motion's timeliness, the reliance on the order at issue, whether new controlling authority or new evidence is present, or whether there is a clear indication the Court made an error.[43]

Here, the Court declines to modify the Interim Order, and denies Debtor's motion. The Interim Order, the key terms at issue here which the parties negotiated and proposed to the Court, is not ambiguous. Landlord had to *receive* the funds on January 2, 2026. There was evidence presented that there were amounts deposited on December 31, 2025, sufficient in number to make the January 2, 2026, payment. But there was no evidence about the makeup of deposits made into that account, when they were made, and when they would normally be expected to clear so as to

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[41] Because the Interim Order was not a final order, the Court concludes Fed. R. Civ. P. 60(b) does not apply, as it governs relief "from a final judgment, order, or proceeding."

[42] *Been v. O.K. Indus.*, 495 F.3d 1217, 1225 (10th Cir. 2007).

[43] *See Anderson Living Tr. v. WPX Energy Prod., LLC*, 308 F.R.D. 410, 433 (D.N.M. 2015) (addressing cases with various factors).

be available for a wire transfer. In addition, there was a holiday on January 1, 2026, and for whatever reason, the deposits did not clear in time for Debtor's $108,000 wire transfer to complete on January 2, 2026. The Interim Order, docketed on December 11, 2025, had clear deadlines. Debtor knew about the January 2 deadline weeks in advance of the payment being due and knew about the language in the Interim Order requiring it to be "received" by Landlord on that date. Debtor should have been prepared for the possibility that funds deposited on or shortly before January 2, 2026, may not clear as quickly as they normally would. The Court finds no basis to modify the terms of the Interim Order, which both parties justifiably relied on throughout the month of December.

Because Landlord did not receive the $108,000 wire transfer on January 2, 2026, by the terms of the Interim Order, any stay in place was automatically lifted. For this additional reason, the Court grants the Landlord's Stay Motion.

C. Even if the Automatic Stay in in Place, Relief from Stay is Warranted

Finally, again assuming the presence of an automatic stay as to the Landlord and the Lease, relief from that stay is warranted under § 362(d).

Section 362(d) sets forth the grounds for relief from the automatic stay:

> (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—
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
> (2) with respect to a stay of an act against property, if—
> (A) the debtor does not have an equity in such property; and
> (B) such property is not necessary to an effective reorganization.

The Court concludes relief from stay is warranted under both subsections (d)(1) and (d)(2) of § 362.

First, relief from stay is warranted under § 362(d)(1) for cause. "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."[44] The Court concludes cause is shown here based on the Landlord's lack of adequate protection and the inability of Debtor to maintain rent payments and keep up its obligations on the real property at issue.[45]

Although Debtor disputes the fair market value of the monthly rent that would be required to ensure Landlord remains adequately protected, and disputes whether the Second Amendment was operative and therefore claims it should pay only a lower base rent mount, there is no dispute, and cannot be any dispute that the state court concluded in the October 2023 Judgment that the Second Amendment was *not* operative. This Court is bound by that state court determination. Kansas case law is clear the state court judgment is a final judgment entitled to res judicata effect, regardless of the pending appeal.

It is also clear the Landlord has not received regular rent payments under the Lease, even at a lower rate. And although Debtor did make weekly payments in December 2025 after filing its petition, there is no evidence Debtor is paying any

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[44] *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003).

[45] *In re DB Cap. Holdings, LLC*, 454 B.R. 804, 816–17 (Bankr. D. Colo. 2011) ("Adequate protection is, essentially, protection for the creditor to assure its collateral is not depreciating or diminishing in value and is evaluated on a case-by-case basis.").

taxes at all, as it is obligated to do under the Lease.[46] The budget supporting this Court's Interim Order on cash collateral acknowledges Debtor will operate at a deficit.[47] Debtor simply cannot maintain its operating expenses with its existing income, and its only hope is to either reduce expenses (via the October 2023 Judgment being reversed, despite the Kansas Court of Appeals issuing its decision affirming the Judgment) or increase income through a lobbying effort (based on CARES funding that has not been appropriated). Neither option is realistic in the near term, and the Landlord has carried its burden to show cause exists to grant stay relief.

Second, relief from stay is warranted under § 362(d)(2). The burden is on Debtor to show the property at issue is necessary to an effective reorganization.[48] This requires "not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect."[49] Under this standard, "there must be a reasonable possibility of a successful reorganization within a reasonable

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[46] Debtor did not pay its 2024 real property taxes and has not yet paid any 2025 real property tax.

[47] *See, e.g.*, Doc. 43 p. 4 ("The total requested usage [of cash collateral] during the Specified Period is approximately $9,000,000 (though Debtor projects only $7.2 million of actual revenues during the Specified Period).").

[48] *In re DB Cap. Holdings, LLC*, 454 B.R. at 819 ("[T]he burden is on the Debtor to prove the Real Property is 'necessary to an effective reorganization.'").

[49] *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375-76 (1988). A property "is only 'necessary' in the context of § 362(d)(2) if the debtor can show the reasonable possibility of an effective reorganization." *In re RIM Dev., LLC*, No. 10-10132, 2010 WL 1643787, at *12 (Bankr. D. Kan. Apr. 21, 2010).

time."[50] "In assessing whether a debtor can prove 'a reasonable possibility of a successful reorganization within a reasonable time,' courts generally apply a lesser standard in determining whether the debtor has met its burden early in a case."[51]

Debtor did not carry its burden under § 362(d)(2) to show its interest in the Lease is necessary to an effective reorganization under § 362(d)(2). Debtor's case is admittedly still in its very early stages. But it is already clear from Debtor's own witnesses that Debtor cannot reorganize its affairs and there is no reasonable possibility of a successful reorganization within a reasonable time. Debtor simply does not have the income to support its operations, and the Court has already addressed how Debtor's hopes of a balanced budget (either through reduced rent payments or CARES Act funding) are either entirely not realistic or are at least not realistic in the near future. The evidence regarding the CARES Act funding was speculative, and although Debtor is hopeful (with its lobbyist testifying the funding was "more likely than not"), there is not yet even a process in place to award these funds. Debtor expected an answer on whether a process would be put in place within sixty days but had no answer on when any money could potentially hit its account.

The Court heard evidence of Debtor's efforts to reorganize or find a buyer or investment group for many years prepetition. Debtor has never been successful in these efforts. The reality acknowledged by Debtor, is that it must liquidate, and the

[50] *Timbers of Inwood Forest Assocs., Ltd*, 484 U.S. at 376 (internal quotations omitted).
[51] *In re DB Cap. Holdings, LLC*, 454 B.R. at 819.

Court concludes Debtor's interest in the Lease is not necessary to that effort. As a result, Landlord is entitled to relief from stay under § 362(d)(2).

For these additional reasons, the Court grants the Landlord's Stay Motion.

III. Conclusion

The Court concludes there is no automatic stay in place as to the Lease based on the January 2023 Termination Letter and the October 2023 Judgment. Even if there was a stay in place, relief from stay was granted to Landlord by operation of this Court's Interim Order, and the parties' agreement therein on payments to the Landlord. And finally, if the automatic stay was in place despite the prior conclusions, relief from stay is warranted under § 362(d).

The Court grants the Landlord's Stay Motion.[52] As requested in Landlord's Stay Motion, Landlord is permitted to return to state court and resume its eviction efforts and deal with any corresponding personal property at the premises. Landlord's collection of its monetary judgment will continue to be stayed at this time because of the bankruptcy.

In addition, the Court denies the motion made by Debtor within its Response and Motion to Reimpose Automatic Stay.[53] The automatic stay, to the extent there was one, was lifted automatically when the designated payment was not received on January 2, 2026, and Landlord was granted "immediate and final stay relief without further order of the Court or any stay or the order pursuant to Fed. Bankr.

[52] Doc. 21.

[53] Doc. 97.

P. 4001 or otherwise"[54] upon its filing of its Notice on January 3, 2026. The Court declines to modify that Interim Order.

It is so Ordered.

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[54] Doc. 43 p. 17.