The relief described hereinbelow is SO ORDERED.

SIGNED this 22nd day of March, 2021.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

KENT LINDEMUTH,

Debtor.

Case No. 12-23060
Chapter 11

ORDER GRANTING MOTION FOR STAY RELIEF

This matter comes before the Court on a motion for relief from the automatic stay under 11 U.S.C. § 362(d)(1) by interested party Shannon Mesker, as Trustee of the Vikki Lindemuth Revocable Trust dated November 9, 2018 (the "Trust").[1] Debtor Kent Lindemuth opposes the Trust's motion.[2] For the reasons that follow,

[1] ECF 422.

[2] ECF 429.

the Trust's motion will be granted.

Kent and Vikki Lindemuth filed a joint Chapter 11 petition on November 9, 2012. Several of the Lindemuths' real-estate companies—Lindemuth, Inc. ("Lindemuth"); KDL, Inc.; Lindy's, Inc.; and Bellairre Shopping Center, Inc. (the "Debtor Companies," and together with Kent and Vikki, the "Debtors")—filed Chapter 11 petitions that same day. The cases were jointly administered, and this Court confirmed Debtors' Chapter 11 plan on January 20, 2015.

In 2017, after Kent was indicted on various criminal charges and Kent and Vikki began divorce proceedings, their joint bankruptcy case was deconsolidated into two separate cases. As part of her estate-planning efforts, Vikki transferred to herself, as trustee of her living revocable trust, 50% stock ownership in Lindemuth, KDL, and Lindy's (which is the sole shareholder of Bellairre Shopping Center), along with 50% stock ownership in A&A Mini Storage South, Inc., and A&A Mini Storage West, Inc. (the "A&A Companies," and together with the Debtor Companies, the "Companies"). The Trust thus owns 50% of the stock in each of those corporations (and indirectly through Lindy's, owns 50% of Bellairre). Vikki died on November 11, 2019, at which point the Trust became irrevocable.

Having concluded that Kent and the Trust cannot "co-exist" as equal owners of the corporate entities once they emerge from bankruptcy, and "deeply concerned that should Kent resume management of the real estate assets following the satisfaction of the Chapter 11 Plan obligations, the financial condition of the properties will deteriorate in a manner similar to that which led to the initial filing

of the Chapter 11 cases,"[3] the Trust provided Kent with a proposal under which the entities' assets would be equally divided between Kent and the Trust after Debtors' Chapter 11 plan obligations were satisfied and their bankruptcy cases closed. When Kent failed to respond, the Trust filed the motion currently before this Court. The Trust asks for stay relief to file a petition with the District Court of Shawnee, Kansas, seeking (i) dissolution of the Companies and (ii) equal distribution of those entities' assets to Kent and the Trust, on the condition that such relief not occur until after the payment in full of all Chapter 11 obligations, discharge of the individual debtors, and the final closure of Debtors' bankruptcy cases.

Section 362(d)(1) states that the court shall grant stay relief for "cause," which is not further defined by the Bankruptcy Code and is thus decided on a case-by-case basis. *See Busch v. Busch (In re Busch)*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003). The moving party has the initial burden of going forward with evidence that cause for stay relief exists, after which the burden shifts to the party opposing stay relief to prove that the stay should remain in place. *See* 11 U.S.C. § 362(g); *Busch*, 294 B.R. at 140-41.

Here, the Trust has met its burden of going forward because (1) it is undisputed that Kent and the Trust disagree on whether the Companies should be dissolved once the debtors' Chapter 11 cases are concluded, and (2) Kan. Stat. Ann. § 17-6804(g) provides:

> If the stockholders of a corporation having only two stockholders, each of which owns 50% of the stock therein,

[3] ECF 422 ¶ 9.

> are unable to agree upon the desirability of dissolving the corporation and disposing of the corporate assets, either stockholder may file with the district court a petition stating that it desires to dissolve the corporation and to dispose of the assets thereof in accordance with a plan to be agreed upon by both stockholders.

In response, Kent makes a number of non-persuasive arguments.

First, citing § 362(d)(2), he argues that he has equity in the Companies and that they are "necessary for an effective reorganization." That argument fails because the dissolution sought by the Trust would not take place until *after* the entities' Chapter 11 reorganization was concluded, and because § 362(d)(2) is not a defense to § 362(d)(1) in any event.

Next, citing subsections (a) through (c) of Kan. Stat. Ann. § 17-6804,[4] Kent

[4] Those subsections of § 17-6804 provide:

> (a) If it should be deemed advisable in the judgment of the board of directors of any corporation that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution to be mailed to each stockholder entitled to vote thereon as of the record date for determining the stockholders entitled to notice of the meeting.
>
> (b) At the meeting a vote shall be taken upon the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon shall vote for the proposed dissolution, a certificate of dissolution shall be filed with the secretary of state pursuant to subsection (d).
>
> (c) Dissolution of a corporation may also be authorized without action of the directors if all the stockholders entitled to vote thereon shall consent in writing and a

argues that the Trust "has not complied with the statutory requirements to dissolve a corporate entity." That argument fails because nothing in the language of subsection (g) of § 17-6804, the statutory vehicle through which the Trust seeks to dissolve the Companies, requires compliance with the earlier subsections Kent cites.

Next, Kent argues that the factors set forth in *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984),[5] weigh in favor of maintaining the automatic stay. Assuming *Curtis* applies to proposed litigation (as opposed to the pending litigation at issue in *Curtis*), that argument fails: stay relief will result in complete resolution of whether the Companies should be dissolved (factor 1); dissolution would not occur until after the entities' Chapter 11 reorganizations were concluded, so the proposed litigation will neither interfere with these bankruptcy cases nor prejudice the interests of creditors (factors 2 and 7); the Shawnee County district court, while not a specialized tribunal, has expertise as to the applicable Kansas law (factor 4); and whereas the parties have equal and opposite desires regarding the future of the corporate entities, the Trust has an additional interest in starting the dissolution process sooner rather than later, such that the "balance of the hurt" favors lifting the stay (factor 12). The applicable *Curtis* factors thus weigh in favor of stay relief.

Finally, citing *Chizzali v. Gindi (In re Gindi)*, 642 F.3d 865 (10th Cir. 2011)

> certificate of dissolution shall be filed with the secretary of state pursuant to subsection (d).

[5] The twelve *Curtis* factors have been "widely adopted by bankruptcy courts" in determining whether to lift the stay to permit litigation in another forum. *See Busch v. Busch (In re Busch)*, 294 B.R. 137, 141 (B.A.P. 10th Cir. 2003).

("But we do identify one factor that can be dispositive in determining whether a party can successfully move for relief from the automatic stay under § 362(d)(1)—namely, the likelihood that the movant would prevail in the litigation if the stay were lifted."), *overruled on other grounds by TW Telecom Holdings Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011), and pointing out that Vikki transferred her interests in the Companies to herself as trustee without prior court approval, Kent argues that Vikki's transfers to herself as trustee of the Trust violated orders of the Kansas divorce court and this bankruptcy court, that the transfers are thus void, and that the Trust is therefore not likely to prevail in its proposed dissolution action. However, Kent presents no authority to support his argument that such transfers are automatically void, and the Kansas caselaw cited by the Trust suggests otherwise. *See generally Nicholas v. Nicholas*, 83 P.3d 214 (Kan. 2004). Moreover, this Court is in the best position to interpret its own orders, *see, e.g.*, *In re Gawker Media LLC*, 581 B.R. 754, 761 (Bankr. S.D.N.Y. 2017), and holds that Vikki's transfers did not violate this Court's order confirming Debtors' Chapter 11 plan.[6] Therefore, and because Kan. Stat. Ann. 17-6804(g) facially authorizes the relief sought by the Trust, the Trust has demonstrated a likelihood of success on the merits sufficient to satisfy *Gindi*.[7] Kent's final argument thus fails.

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[6] Kent cites a provision in the confirmation order that prohibits entities with a "Claim or Equity Interest" from "creating, perfecting, or enforcing any encumbrance of any kind against the [Debtor Companies] on account of any such Claim or Equity Interest." Because Vikki did not make the transfers at issue on account of any Claim or Equity Interest, those transfers did not violate that provision.

[7] Although ruling that the Trust has satisfied *Gindi* to the extent it applies, this Court is not ruling on the ultimate merits of the Trust's proposed Shawnee County

For the reasons stated above, the Trust's motion for stay relief is granted pursuant to 11 U.S.C. § 362(d)(1), and the 14-day stay of this order waived pursuant to Fed. R. Bankr. P. 4001(a)(3), on the condition that any dissolution ordered by the District Court of Shawnee County, Kansas, will take effect only upon (1) Debtors' satisfaction of their Chapter 11 plan, (2) entry of discharge orders for Kent and Vikki, and (3) the final closure of Debtors' bankruptcy cases.

IT IS SO ORDERED.

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action. *Cf. Midwest Motor Supply Co. v. Hruby (In re Hruby)*, 512 B.R. 262, 271 (Bankr. D. Colo. 2014) ("[T]he relationship between the federal and state courts and the federal courts' respect for state law dictates that federal courts should tread lightly when it comes to rendering opinions as to likely resolution of the factual and legal issues involved in a case to be decided in a state court forum and should do so only where required.").