



The relief described hereinbelow is SO ORDERED.

SIGNED this 7th day of December, 2018.


Robert D. Berger
United States Bankruptcy Judge

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

In re:

JOHN Q. HAMMONS FALL 2006, LLC, et al.,

Debtors.

Case No. 16-21142

Chapter 11

Jointly Administered

**ORDER GRANTING MOTION TO CONFIRM INAPPLICABILITY OF
AUTOMATIC STAY AND PLAN INJUNCTION TO RECEIVERSHIP ACTION**

This matter comes before the Court on Lender's¹ motion for an order

¹ **"Lender"** is U.S. Bank National Association, successor-in-interest to Wells Fargo Bank, N.A., as Trustee for the registered holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2007-C34, by and through CW Capital Asset Management, LLC, in its capacity as Special Servicer.

confirming that the automatic stay does not apply to the Receivership Action (defined below) now pending against non-debtor JQH Springfield Tower, LLC, or in the alternative, for relief from the automatic stay.² Debtor JQH Trust and creditor JD Holdings, L.L.C. (the “**Joint Objectors**”), oppose Lender’s motion, arguing that the Receivership Action violates not only the automatic stay, but also certain provisions of this Court’s May 11, 2018, order confirming Debtors’ joint Chapter 11 plans (the “**plan injunction**”).³ For the reasons stated below, the Court holds that neither the automatic stay nor the plan injunction applies to the Receivership Action.

JQH Springfield Tower, LLC (“**Hammons Tower**”), is a subsidiary of the JQH Trust,⁴ a debtor in these jointly-administered Chapter 11 proceedings. Hammons Tower itself, however, is not a debtor. Its principal asset is an office building in Springfield, Missouri (the “**Property**”), that leases space to a variety of unaffiliated tenants. In 2007, Hammons Tower borrowed \$11,000,000 from Barclays Capital Real Estate, Inc., in a loan secured by a first-priority lien on the Property⁵ and guaranteed by the JQH Trust. Lender is the current holder of that secured loan, which went into maturity default on October 1, 2017.

On October 25, 2018, Lender filed a petition against Hammons Tower in the

² ECF 2572.

³ ECF 2579.

⁴ The “**JQH Trust**” is debtor The Revocable Trust of John Q. Hammons dated December 29, 1989, as Amended and Restated.

⁵ “Property” also includes all personal property associated with the office building.

circuit court of Greene County, Missouri, seeking the appointment of a receiver for the Property “to preserve and protect the Property pending foreclosure” (the “**Receivership Action**”). Lender filed an Application for Appointment of Limited Receiver the next day. Hammons Tower objected, arguing that the Application violated the automatic stay and plan injunction in the JQH Trust’s bankruptcy. The Missouri court continued its hearing on the Application pending a determination by this Court as to whether the automatic stay or discharge injunction precluded the Receivership Action. This motion followed.

1. The Automatic Stay Does Not Apply to the Receivership Action.

Section 362(a)(3) of the Bankruptcy Code⁶ operates as an automatic stay of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” The Joint Objectors argue that the Receivership Action violates § 362(a)(3) as an attempt to exercise control of the JQH Trust’s rights in Hammons Tower. However, the Receivership Action asks for a receiver over the *Property*, not over Hammons Tower.⁷ This distinction is an important one, for it is “well-settled” that the automatic stay “does not extend to the assets of a corporation in which the debtor has an interest, even if the interest is

⁶ All statutory references in this order are to Title 11, United States Code (the “**Bankruptcy Code**”).

⁷ For this reason, the cases cited by Joint Objectors are inapposite. *See, e.g., Edisto Res. Corp. v. McConkey (In re Edisto Res. Corp.)*, 158 B.R. 954, 957 (Bankr. D. Del. 1993) (holding that request for receiver over non-debtor *corporation* in which debtor was majority owner violated automatic stay, and finding unhelpful cases that “deal with attempts to exercise control over the non-debtor corporation’s assets, not over the management of that corporation”).

100% of the corporate stock.” *In re Furlong*, 660 F.3d 81, 89-90 & n.9 (1st Cir. 2011) (quoting *In re Furlong*, 437 B.R. 712, 721 (Bankr. D. Mass. 2010)); see *Kreisler v. Goldberg*, 478 F.3d 209, 214 (4th Cir. 2007) (holding that act to exercise control over property of non-debtor subsidiary was not automatically stayed by bankruptcy of parent corporation).⁸ Nor is a proceeding against a non-bankruptcy corporation automatically stayed by the bankruptcy of its principal. See *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1205 (3d Cir. 1991) (quoting *Marcus, Stowell & Beye v. Jefferson Inv. Corp.*, 797 F.2d 227, 230 n.4 (5th Cir. 1986)). Because an action against non-debtor Hammons Tower is not stayed by the bankruptcy of the JQH Trust, and because the automatic stay does not extend to the Property, the automatic stay does not apply to the Receivership Action.⁹

⁸ The JQH Trust stated at oral argument on December 6, 2018, that the present case is distinguishable because Hammons Tower is a single-asset real estate entity, such that the JQH Trust’s management rights in Hammons Tower are functionally equivalent to management rights in the Property itself. Therefore, the JQH Trust concludes, its bankruptcy estate—which includes the right to manage Hammons Tower—must also include the right to manage the Property. But what about an LLC that owns two assets, or five, or ten? Under the JQH Trust’s logic, an action against one asset of that LLC would be functionally equivalent to an action against a corresponding fraction of the LLC itself, and therefore equally violative of the automatic stay. The JQH Trust’s logic would thus erase the “well-accepted” distinction between a corporation and its assets for purposes of the automatic stay. For this reason, it cannot be the case that the present case is distinguishable from *Furlong* and *Kreisler* based on Hammons Tower’s status as a single-asset real estate entity.

⁹ Of course, this begs the question of whether the automatic stay continued at all after confirmation of the JQH Trust’s Chapter 11 plan on May 11, 2018. See, e.g., *NVF Co. v. New Castle County*, 276 B.R. 340, 348 (D. Del. 2002) (“The court recognizes that the confirmation of a plan of reorganization reverts the property of the estate in the reorganized debtor and that, as a result, the bankruptcy estate no longer exists.”) (citing 11 U.S.C. § 1141(b) and *Fairfield Cmtys., Inc. v. Daleske (In*

2. The Plan Injunction Does Not Apply to the Receivership Action.

The Joint Objectors also argue that the Receivership Action violates the plan injunction, which provides:

No Holder of any Claim or Equity Interest . . . (collectively, the “Representatives”) shall take, or cause to be taken, and each such Holder and each of its Representatives is hereby permanently enjoined from taking, any action that is intended or is reasonably likely to directly or indirectly prevent, impede, hinder, adversely affect, and/or delay any actions or efforts of the Debtors, as applicable, and/or their ability to: (i) consummate the Sale and the other Plans Transactions and implement the Plans¹⁰ including, without limitation, the Sale Financing Facility Documents; (ii) obtain any consents and/or approvals, achieve the expiration or termination of any waiting period, and/or take any actions necessary or appropriate to consummate the Sale and Plans Transactions contemplated by the Plans and this Order including, without limitation, [the] Sale Financing Facility Documents; or (iii) undertake any acts related to, or in furtherance of, the matters described in clauses (i) and/or (ii) in this paragraph.¹¹

The Plans provide that the JQH Trust will transfer its interest in Hammons Tower to JD Holdings. According to the Joint Objectors, “[r]emoving the JQH Trust from management and taking control of [Hammons] Tower will obviously interfere with the transfer.” However, this argument again fails to distinguish between Hammons Tower and the Property. Whatever the result of the Receivership Action (which

re Fairfield Cmtys., Inc.), 142 F.3d 1093, 1095 (8th Cir. 1998), *aff’d*, 61 Fed App’x 778 (3d Cir. 2003)).

¹⁰ The “**Plans**” are the Modified and Amended Chapter 11 Plans of Reorganization for all Debtors Filed by Creditor JD Holdings, L.L.C., which this Court confirmed on May 11, 2018. See ECF 1946; ECF 2188.

¹¹ ECF 2188 at 38-29.

addresses the management of and control over the Property, *not* Hammons Tower), the nature and extent of the JQH Trust’s interest in Hammons Tower—and its ability to convey that interest to JD Holdings—will remain unchanged. Therefore, the plan injunction does not apply to preclude the Receivership Action.

3. The Receivership Action Is Not an “End Run” Around Bankruptcy

The JQH Trust stated at oral argument that the Receivership Action is “an attempt to . . . make an end run around this Court.” It is true that the JQH Trust guaranteed the loan for which the Property serves as collateral, that Lender has accordingly filed a claim in bankruptcy against the JQH Trust, and that JD Holdings will pay 100% of all allowed claims in bankruptcy pursuant to the confirmed Plans. However, the Receivership Action is not about the JQH Trust’s debt, but rather the independent debt of Hammons Tower, which is not and has never been a party to these bankruptcy proceedings. The Receivership Action thus does not encroach upon the authority of this Court.

4. Conclusion

For the foregoing reasons, the Court holds that neither the automatic stay nor the plan injunction applies to the Receivership Action. Lender’s motion¹² is hereby granted.

IT IS SO ORDERED.

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¹² ECF 2572.