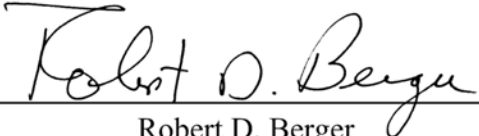


The relief described hereinbelow is **SO ORDERED**.

**SIGNED** this 8th day of August, 2022.



  
Robert D. Berger  
United States Bankruptcy Judge

---

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

In re:

**AMBER KAY SHANK,**

Debtor.

Case No. 21-20605

Chapter 13

---

**ORDER DENYING MOTION FOR STAY RELIEF**

Instant One Media, Inc., sued Amber Shank and her company, EZFauxDecor, LLC (“**EZF**”), for trademark infringement and breach of contract in the Northern District of Georgia in 2019.<sup>1</sup> Five days before trial, on May 28, 2021, Shank filed for

---

<sup>1</sup> Instant One and EZF both sell decorative peel-and-stick vinyl film for use on kitchen countertops and appliances.

Chapter 13 bankruptcy in the District of Kansas. Shank's Chapter 13 petition stayed the Georgia case as to Shank herself, *cf.* 11 U.S.C. § 362(a), but the case against EZF continued. The Georgia jury awarded Instant One a judgment of \$1,035,000 against EZF one week later.

This matter now comes before the Court on Instant One's motion for stay relief under § 362(d):

to pursue a permanent injunction in Georgia against [Shank] and EZF to: (a) halt the continued willful trademark infringement and bad faith breach of contract by [Shank]; and (b) halt the ongoing fraudulent transfers of approximately \$33,000 per month that is being transferred from EZF to [Shank's] \$561-Account.<sup>2</sup>

Section 362(d)(1) provides that a bankruptcy court shall grant stay relief "for cause." The Bankruptcy Code does not define "cause," but courts within the Tenth Circuit often consider the twelve factors identified in *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984),<sup>3</sup> to determine whether cause exists to modify the stay to

---

<sup>2</sup> ECF 55 at 5. Instant One defines "**\$561-Account**" as the Bank of America checking account reported on Shank's Schedule A/B at line 17.1 with a then-current value of \$561. *See* ECF 15.

<sup>3</sup> The twelve *Curtis* factors are (1) whether stay relief will result in 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 § 510(c); (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under § 522(f);

permit litigation against the debtor to proceed in another forum. *See Busch v. Busch (In re Busch)*, 294 B.R. 137, 141 (B.A.P. 10th Cir. 2003).

Shank, as the party opposing stay relief, has the burden of proof on all issues relevant to this motion. *See* 11 U.S.C. § 362(g). However, Instant One bears the initial burden of going forward, and must establish prima facie cause for stay relief before the ultimate burden of proof shifts to Shank. *See, e.g., In re Vita Craft Corp.*, 625 B.R. 491, 502 (Bankr. D. Kan. 2020) (citing *In re Elmira Litho, Inc.*, 174 B.R. 892, 900-02 (Bankr. S.D.N.Y. 1994)); *cf. In re Busch*, 294 B.R. at 140-41.

As to Instant One’s allegations of post-petition trademark infringement and breach of contract, the district court in the Northern District of Georgia has already issued a permanent injunction against EZF.<sup>4</sup> Because Instant One does not allege in its motion for stay relief that Shank conducts any business other than through EZF, it appears that Shank is already (via the EZF injunction) effectively enjoined. Moreover, the only specific allegation in Instant One’s motion is—in essence—that an Internet user will arrive at the Amazon detail page for an EZF product (here, “amazon.com/dp/B00O05UCKY”) even if the user adds allegedly infringing/breaching content (here, “Instant-Counter-Granite-Adhesive-Venetian”) to the

---

(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 whether the parties are prepared for trial; and (12) the impact of the stay on the parties and the “balance of hurt.” *Curtis*, 40 B.R. at 799-800.

<sup>4</sup> *See* Order, *Instant One Media, Inc., v. EZFauxDecor, LLC*, Case No. 1:19-cv-00540-WMR, ECF No. 197 (N.D. Ga. Mar. 17, 2022) (enjoining EZF); Order, *id.*, ECF No. 239 (N.D. Ga. July 26, 2022) (amending injunction to remove references to specific ASINs).

URL.<sup>5</sup> That allegation, standing alone, does not establish prima facie cause for stay relief against Shank.

As to Instant One's allegations of fraudulent transfers into the "\$561-Account," Shank admits that EZF's sales proceeds "flow[] through" that account, but adds that she also uses the account—which is held under her name and Social Security number—for her personal expenses, including her Chapter 13 plan payments.<sup>6</sup> This means that the threshold question presented by Instant One's fraudulent-transfer allegations is whether the money in the account belongs to EZF or Shank. Answering that question means determining the scope of Shank's bankruptcy estate under 11 U.S.C. §§ 541 and 1306. And as Shank points out: "What constitutes the bankruptcy estate is quintessentially a question for the bankruptcy court."<sup>7</sup>

For this Court to allow Instant One to pursue its fraudulent-transfer claims against Shank in another forum would leave many issues between Instant One and Shank unresolved (*Curtis* factor 1) while bringing Shank's bankruptcy case to a halt (factor 2). Stay relief would prejudice the interests of Shank's other creditors by diverting money out of Shank's bankruptcy estate into new litigation (factor 7). There is no indication that it would be more efficient to resolve Instant One's fraudulent-transfer claims against Shank, which are not even at the pleading stage,

---

<sup>5</sup> I.e., "[amazon.com/Instant-Counter-Granite-Adhesive-Venetian/dp/B00O05UCKY](https://www.amazon.com/Instant-Counter-Granite-Adhesive-Venetian/dp/B00O05UCKY)."

<sup>6</sup> See ECF 62 at 7.

<sup>7</sup> *Id.* at 8.

in district court rather than as a component of her bankruptcy case (factors 10 and 11). Because such claims involve a fundamental question of bankruptcy law (i.e., the scope of Shank’s bankruptcy estate under §§ 541 and 1306), a bankruptcy court is, in a sense, the “specialized tribunal” with expertise to resolve them (factor 4). And even if Instant One can afford to litigate in another forum, Shank—by all appearances—cannot (factor 12). Under these circumstances, in which all applicable *Curtis* factors weigh against stay relief, the Court holds that Instant One’s fraudulent-transfer allegations do not constitute cause for stay relief under § 362(d)(1).

Accordingly, Instant One’s motion for stay relief is hereby denied.

IT IS SO ORDERED.

###