

The relief described hereinbelow is SO ORDERED.

SIGNED this 23rd day of January, 2023.




Robert D. Berger
United States Bankruptcy Judge

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

In re:

1 BIG RED, LLLC,

Case No. 21-20044

Debtor,

1 BIG RED, LLC,

Adv. Case No. 22-06001

Plaintiffs,

v.

**ANCHOR ASSETS II, LLLC,
ANCHOR LOANS, LP,
ANCHOR FUND, LLC, and
ACCESS INVESTMENT, LLC**

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO TEMPORARILY STAY PROCEEDINGS

Defendants, Anchor Assets II, LLC, Anchor Loans, LP, Anchor Fund, LLC, and Access Investment, LLC (“Anchor”) moves this Court, unopposed, to temporarily stay this adversary proceeding based on the main bankruptcy case converting from Chapter 11 to Chapter 7. The Court granted the motion to convert the main bankruptcy case on December 22, 2022.¹ The accompanying order is not due until sometime in January 2023. Once the case is converted, the cause of action no longer belongs to the Debtor; rather, it belongs to the estate and continued prosecution depends on the Chapter 7 Trustee’s discretion. *See* 11 U.S.C. §§ 323, 541, and 704. Meanwhile, there are upcoming deadlines in this proceeding. As such, Anchor seeks to stay this proceeding until a Chapter 7 Trustee is appointed, substituted, and able to determine whether continuing prosecution of this case is in the best interest of the estate.

Anchor suggests multiple inapplicable grounds for staying the proceedings: Fed. R. Bankr. P. 5011(b), 28 U.S.C. § 1334(c), and 11 U.S.C. § 105(d)(2). Fed. R. Bankr. P. 5011(b) governs motions for abstention pursuant to 28 U.S.C. § 1334(c). At its most general, abstention, whether mandatory or permissive, is a Court refraining from hearing a matter entirely “to deal with the pressures and conflicts of parallel federal and state court systems.” *See The Abstention Doctrine in Bankruptcy*, 116 U. Pa. L. Rev. 942, 942 (1968). Such a rule neither provides the

¹ Case No. 21-20044, ECF 490.

Court with authority to stay the proceedings, nor is abstention an applicable doctrine here. Additionally, 11 U.S.C. § 105(d)(2) provides the Court with the power to issue any orders prescribing “limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically” *at a* status conference, not upon motion. None of these grounds provide support to stay an adversary proceeding while waiting for developments in the main bankruptcy case.

Nevertheless, it is appropriate to stay the proceedings here. Under 11 U.S.C. § 105(a), the Court may issue any order necessary to carry out any matters arising under Title 11. Additionally, the Court has inherent power to stay proceedings to control the disposition of matters on its docket with economy of time and effort for itself, for counsel, and for litigants. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Generally, in exercising its discretion to enter a stay, a court considers the following factors:

- (1) the interest of the plaintiff in proceeding expeditiously and the potential prejudice to the plaintiff of a delay,
- (2) the burden on the defendant,
- (3) the convenience to the Court,
- (4) the interests of nonparties, and
- (5) the public interest.²

But, when “a movant seeks relief that would delay court proceedings by other litigants he must make a strong showing of necessity because the relief would

² *String Cheese Incident, LLC*, No. 1:02-CV-01934-LTB-PA, 2006 WL 894955, at *2 (D. Colo. March 30, 2006) (citing *FDIC v. Renda*, No. 85-22216-0, 1987 WL 348635, at *2 (D. Kan. Aug. 6, 1987)).

severely affect the rights of others.” *Commodity Futures Trading Comm’n v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484 (10th Cir. 1983). Here, the stay requested by Anchor will not impair the rights of the other litigants involved. In fact, it will benefit the Plaintiff as the cause of action changes hands from Debtor to the Chapter 7 Trustee, acting on behalf of the estate. The Trustee will have the opportunity to step into his role and examine the best path forward without missing any deadlines. This benefit extends to the first two factors weighing in favor of granting the stay—both Anchor and the changing Plaintiff will benefit as the cause changes hands. The remaining factors also weigh in favor of granting the stay; staying the proceeding is most convenient to the Court until the Chapter 7 Trustee can determine how to proceed with this case, if at all. Finally, the interest of nonparties and the public generally weighs in favor of the most efficient and just resolution, which the stay accomplishes. Anchor’s motion to temporarily stay the proceeding is granted, pending further order of the Court.

IT IS SO ORDERED.

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