

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

In re	:	Chapter 11
	:	
CHRYSLER LLC., <i>et al.</i> ,	:	
	:	Case No. 09-50002 (AJG)
	:	
Debtors.	:	

---

**ORDER DENYING EMERGENCY MOTION OF THE INDIANA  
PENSIONERS FOR STAY OF PROCEEDINGS PENDING  
DETERMINATION OF MOTION TO WITHDRAW THE REFERENCE<sup>1</sup>**

Upon the Emergency Motion of the Indiana Pensioners for Stay of Proceedings Pending Determination of Motion to Withdraw the Reference (the “Emergency Stay Motion”) (ECF Docket No. 1269), the Court hereby denies the relief requested for the reasons set forth herein. Pursuant to Federal Rule of Bankruptcy Procedure 5011(c), the filing of a motion to withdraw the reference does not operate to stay proceedings unless the bankruptcy court so orders. *See* FED. R. BANKR. P. 5011(c) (“The filing of a motion for withdrawal of a case or proceeding . . . shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion.”); *Puritan Lace Mfg. Co. v. Perfect Home, L.L.C.* (*In re Perfect Home, L.L.C.*), 231 B.R. 358, 360 (Bankr. N.D. Ala. 1999). The rule clearly states that the Court is not required to stay proceedings pending the district court's decision on the motion to withdraw the reference. *In re Interco, Inc.*, 135 B.R. 359, 361 (Bankr. E.D. Mo. 1991).

---

<sup>1</sup> This Order substantially reflects, with minor stylistic, grammatical and citation alterations, what was read into the record at a hearing conducted on May 20, 2009 before the Court.

“The moving party bears the burden of proof in demonstrating that a stay of proceedings pending a determination of a motion to withdraw the reference would be proper.” *In re Dana Corp.*, No. 06-10354, 2007 WL 2908221, at \*1 (Bankr. S.D.N.Y. Oct. 3, 2007) (citing *Miller v. Vigilant Ins. Co. (In re Eagle Enterprises, Inc.)* 259 B.R. 83, 86 (Bankr. E.D. Pa . 2001)). To prevail on the Emergency Stay Motion, the movant must demonstrate (a) the likelihood of prevailing on the merits, (b) that the movant will suffer irreparable harm if the stay is denied; (c) that the Debtors will not be substantially harmed by the stay; and (d) that the public interest will be served by granting the stay.” *Id.* (citing *Issa Corp.*, 142 B.R. 75, 77 (Bankr. S.D.N.Y. 1992)); *see also In re Interco, Inc.*, 135 B.R. at 361.

### **Irreparable Harm**

The movant asserts that they will suffer irreparable harm if the Emergency Stay Motion is not granted because a final sale hearing is scheduled on May 27, 2009 to consider the motion of the Debtors for an Order Authorizing The Sale Of Substantially All The Debtor’s Assets, Free And Clear Of Liens, Claims, Interests And Encumbrances (the “Sale Hearing”) (ECF Docket No. 492). If the Sale Hearing is permitted to go forward and a sale authorized under § 363, the movant claims they will suffer irreparable harm because the validity of such sale would not be affected by any reversal or modification of such sale authorization on appeal. *See* 11 U.S.C. § 363(m).<sup>2</sup> The concern of the movant is that if a stay is not imposed, they could lose their ability to challenge the validity of sale before the district could adjudicate the Motion to Withdraw the Reference (ECF Docket No. 1267). The movant argues that even if the reference was withdrawn

---

<sup>2</sup> 11 U.S.C. § 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

after the Sale Hearing, any subsequent decision by the district court would have no effect on the validity of an authorized sale by operation of § 363(m).

In the Emergency Stay Motion, the movant is requesting preliminary relief to enjoin the proceedings before the Court pending resolution of the Motion to Withdraw the Reference. In order to succeed, the movant must demonstrate that “irreparable injury is *likely* in the absence of an injunction.” *Winter v. NRDC, Inc.*, 129 S. Ct. 365, 375 (2008) (internal citations omitted) (emphasis in original). The movant has failed to meet this standard. First, regarding § 363(m), the movant is permitted to seek stay any sale authorization pending appeal. If the movant takes this step, then the reversal or modification of any sale authorization on appeal can affect the validity of a sale, thereby preserving the movant’s rights. Second, the movant has already filed an objection to the Sale Hearing (ECF Docket No. 1259). If the movant or any other objector succeeds on its objection, issues raised by the movants are likely rendered moot. Since the movant has already taken steps to object to the Sale Hearing and because they have recourse under § 363(m), the Court finds that they have not proven that irreparable harm is likely in the absence of a stay of the proceedings.

Further, the Court finds that the movant has not established that the absence of a stay will result in a diminution in recovery of the value of their claim against the estate. Based upon the record before the Court, the movant has not established the value of their claim as of the petition date, nor have they established the value of the collateral that secures their claim. Therefore, they have failed to establish that the absence of a stay will result in a monetary loss. Further, monetary loss alone does constitute irreparable harm in the preliminary injunction context because “the party seeking an injunction may yet obtain monetary relief after the merits are heard.” *ACC Bondholder Group v. Adelpia Communs. Corp. (In re Adelpia Communs.*

*Corp.*), 361 B.R. 337, 354 n. 76 (S.D.N.Y. 2007) (citing *Borey v. National Union Fire Ins. Co.*, 934 F.2d 30, 34 (2d Cir. 1991)). As stated above, if the movant acts to stay the sale authorization under § 363(m), they can preserve any argument concerning the value of their claim.

### **Harm to the Debtor**

The next factor the Court considers is whether the movant has demonstrated that the Debtor will not be substantially harmed by imposition of a stay of the proceedings. “In the bankruptcy context, a court must concern itself not only with harm to the nonmovant from a stay, but harm to the interests of the entire bankruptcy estate. *In re Dana Corp.*, 2007 WL 2908221, at \*1 (citing *In re Leslie Fay Companies, Inc.*, 181 B.R. 156 (Bankr. S.D.N.Y. 1995)). The movant asserts that the Debtor will suffer little or no harm if a stay were imposed because the stay would only be effective until the district court rules on the Motion to Withdraw the Reference and that the district court is equally capable of conducting the Sale Hearing.

The movant’s argument ignores the situation as established by the record before the Court. The record clearly indicates that conducting the Sale Hearing on May 27, 2009 is imperative to the future of the Debtor and any delay could result in substantial and irreparable harm to the Debtor and the estate. Moreover, staying the proceedings would vitiate several vital agreements negotiated amongst the Debtor and various constituents; thereby augmenting the harm to the estate should the Sale Hearing not go forward as contemplated. Based on these facts, the Court finds that the movant has not established that the imposition of a stay would not result in substantial harm to the Debtor.

### **Likelihood of Prevailing on the Merits**

In order to impose a stay of the proceedings pending resolution of the Motion to Withdraw the Reference, the movant must also clearly demonstrate that it has a substantial

likelihood of succeeding on the withdrawal motion. *In re Dana Corp.*, 2007 WL 2908221, at \*1; *see also In re Adelpia Communs. Corp.*, 361 B.R. at 354. The movant asserts that they are likely to prevail on the Motion to Withdraw the Reference under 28 U.S.C. § 157(d) because “resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.” 28 U.S.C. § 157(d). The movant claims that there are several novel and constitutional issues of first impression raised by the proceedings before the Court that require withdrawal of the reference to the district court. First, the movant argues that the Treasury Department acted outside the statutory scope provided by Congress under the Troubled Asset Relief Program (“TARP”) and Emergency Economic Stabilization Act of 2008. Further, the movant alleges allowing the Sale Hearing to go forward would result in an unconstitutional taking of property under the Fifth Amendment of the Constitution.

However, the movant’s papers do not address the fundamental issue of whether they have standing to challenge any governmental action. There are substantial issues and disputes concerning the movant’s standing both under the Collateral Trust Agreement as well as the Supreme Court’s standing jurisprudence. Without having addressed these issues, the Court cannot say that the movant has clearly demonstrated that they have a substantial likelihood of succeeding on the withdrawal motion.

## **Conclusion**

For the reasons provided above and those articulated by the objectors at the hearing, the Court finds, after weighing the harm to the movant and the harm to the estate, that the movant has not established their burden to impose a stay on the proceedings pursuant to Bankruptcy Rule 5011(c).

Dated: New York, New York  
May 20, 2009

**s/Arthur J. Gonzalez**  
UNITED STATES BANKRUPTCY JUDGE