

1 CHOI & ITO
Attorneys at Law

2 CHUCK C. CHOI (admitted *pro hac vice*)
3 ALLISON A. ITO (admitted *pro hac vice*)
700 Bishop Street, Suite 1107
4 Honolulu, Hawaii 96813
Telephone: (808) 533-1877
5 Fax: (808) 566-6900
Email: cchoi@hibklaw.com
6 aito@hibklaw.com

7 McDONALD LAW OFFICE
CHARLES McDONALD
8 2nd Floor ICC, Room 203
Gualo Rai, Saipan, MP 96950
9 Telephone: (866) 967-7567
10 E-Mail: charles@mcdonald.law

11 Attorneys for Debtor and Debtor-in-possession

12 UNITED STATES DISTRICT COURT
DISTRICT OF THE NORTHERN MARIANA ISLANDS
13 BANKRUPTCY DIVISION

14
15 In re

16 IMPERIAL PACIFIC
INTERNATIONAL (CNMI), LLC,

17 Debtor and
18 Debtor-in-possession.

Case No. 24-00002

(Chapter 11)

DEBTOR'S OPPOSITION TO MOTION OF
ADMINISTRATIVE CREDITOR SAIPAN
STEVEDORE COMPANY, INC. FOR RELIEF
FROM AUTOMATIC STAY

Hearing

Date: March 18, 2025
Time: 8:30 a.m. (ChST)
Judge: Hon. Robert J. Faris

[Relates to ECF 365]



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**OPPOSITION TO MOTION OF SAIPAN STEVEDORE COMPANY, INC. FOR
RELIEF FROM AUTOMATIC STAY**

Imperial Pacific International (CNMI) LLC, the above-captioned debtor and debtor in possession (the “Debtor”) by and through its undersigned counsel, hereby opposes the *Motion of Administrative Creditor Saipan Stevedore Company, Inc. for Relief from Automatic Stay* (“RFS Motion”), filed herein on February 11, 2025, by Saipan Stevedore Company, Inc. (“SSC”).

Pursuant to the RFS Motion, SSC seeks (1) relief from the automatic stay to allow it to seek compensation for administrative expenses incurred for post-petition storage of 28 containers and their respective contents (the “Containers”); (2) in the alternative, declaratory judgment that the Debtor has abandoned the Containers; or (3) in the alternative, the imposition of a warehouseman lien in favor of SSI on the Containers.

The RFS Motion must be denied because: (1) SSC does not require relief from the automatic stay to seek payment of an administrative claim; (2) improper service; and (3) SSC’s request for a “warehouseman lien” or declaratory relief is procedurally defective.

I. LIMITED FACTUAL AND PROCEDURAL BACKGROUND

The Debtor is a limited liability company organized under the laws of the Commonwealth of the Northern Mariana Islands (the “Commonwealth”).

On or about August 12, 2014, the Debtor, its parent, Best Sunshine International Ltd., and the Commonwealth Lottery Commission (“CCC”) entered into an exclusive casino license (the “Casino License”) for the island of Saipan which required, among other things, the payment of \$15 million in annual Casino License fees. The Debtor made \$90 million in Casino License fee payments from 2014 to 2019 to the Commonwealth.

1 On December 4, 2015, the Commonwealth enacted Public Law 19-24 which
2 imposed an annual “Casino Regulatory Fee” on the Debtor of \$3 million due on or before
3 October 1, 2015. The Debtor made \$15 million in Casino Regulatory Fee payments from
4 2015 to 2019 to the CCC.
5

6 The onset of the COVID-19 Pandemic forced the closure of the Debtor’s casino
7 operations in March, 2020, and in April, 2021, the CCC suspended the Casino License
8 for nonpayment of fees and other alleged monetary defaults. By this time, construction
9 on the hotel/casino had ceased. Construction materials shipped to the Northern Marianas
10 Islands are stored in the Containers.
11

12 On April 19, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for
13 relief under Chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”) in the
14 United States District Court for the District of the Northern Mariana Islands, bankruptcy
15 division (the “Bankruptcy Court”).¹
16

17 On May 14, 2024, the Office of the United States Trustee appointed the Official
18 Committee of General Unsecured Creditors (the “Committee”).

19 On November 29, 2024, SSI filed proof of claim # 112, asserting a general
20 unsecured claim in the amount of \$848,641.28 for all storage fees incurred up to the
21 Petition Date. SSC asserts that it is owed approximately \$167,560 in post-petition
22 storage charges.
23

24 On January 8, 2025, the Court approved bid procedures proposed by the Debtor
25 and the Committee.
26

27 ¹ Although the Debtor has no operations at this time, it has approximately 15 employees,
28 the majority of whom provide security services.

On February 14, 2025, the Debtor and the Committee filed their *Joint Motion Of Debtor And Official Committee Of General Unsecured Creditors For Order (I) Approving The Sale Of Substantially All Of The Debtor's Assets Free And Clear Of All Liens, Claims, And Encumbrances Pursuant To 11 U.S.C. § 363, Subject To Overbids; And (Ii) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Cure Amounts Associated Therewith* (the "Sale Motion"), seeking to sell substantially all of the Debtor's assets (including the Containers) free and clear of liens and encumbrances. The Sale Motion is set to be heard on March 25, 2025, with a proposed closing date of early April, 2025.

On February 28, 2025, the Debtor and Committee filed their *Notice of Successful Bidder and Back-Up Bidder* proposing to sell the Debtor's assets to Team King Investment (CNMI), LLC for \$12.9 million.

II. APPLICABLE LAW AND LEGAL STANDARD

When a debtor files for relief under the Bankruptcy Code, an estate is created. The scope of that estate is determined by the language of Section 541 which states in relevant part that the "commencement of a case . . . creates an estate . . . of all . . . property, wherever located and by whomever held . . including all legal or equitable interests of the debtor in property as of the commencement of the case..." 11 U.S.C. § 541.

The structure of the Bankruptcy Code, the policy behind it and the legislative history all suggest "that § 541(a)(1)'s scope is broad." *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205, 103 S. Ct. 2309, 2313 (1983) (footnote omitted) (holding that IRS could be required to return personal property seized pre-petition even though the IRS held a security interest in the property by virtue of its tax lien).

1 Section 541 also brings into the estate “any property made available to the estate
2 by other provisions of the Bankruptcy Code. Several of these provisions bring into the
3 estate property in which the debtor did not have a possessory interest at the time the
4 bankruptcy proceedings commenced.” *Whiting Pools*, 462 U.S. at 205, 103 S. Ct. at
5 2313-2314 (citation and footnote omitted). This includes property “in which the debtor
6 did not have a possessory interest at the time the bankruptcy proceedings commenced.”
7
8 *See Whiting Pools*, 462 U.S. at 205, 103 S. Ct. at 2313-14.

9 In proceedings under the reorganization provisions of the Bankruptcy
10 Code, a troubled enterprise may be restructured to enable it to operate
11 successfully in the future. . . . By permitting reorganization, Congress
12 anticipated that the business would continue to provide jobs, to satisfy
13 creditors' claims, and to produce a return for its owners. Congress
14 presumed that the assets of the debtor would be more valuable if used
15 in a rehabilitated business than if ‘sold for scrap.’ . . . Thus, to
16 facilitate the rehabilitation of the debtor's business, all the debtor's
17 property must be included in the reorganization estate.
18
19 *Whiting Pools, Inc.*, 462 U.S. at 203, 103 S. Ct. at 2312-13 (citations omitted).

20 The purpose of the automatic stay, which springs into existence upon the filing of
21 a voluntary petition for relief under the Bankruptcy Code, is to halt all actions and to
22 permit the debtor to manage its estate and restructure its obligations. It “has been
23 described as one of the fundamental debtor protections provided by the bankruptcy laws.”
24 *Midlantic Nat. Bank v. New Jersey Dep’t of Env’t Prot.*, 474 U.S. 494, 503 (1986)
(quotation omitted). The purpose of the automatic stay is to **protect both the debtor and
creditors.**

25 The automatic stay is one of the fundamental debtor protections provided by
26 the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It
27 stops all collection efforts, all harassment, and all foreclosure actions. It
28 permits the debtor to attempt a repayment or reorganization plan, or simply to
be relieved of the financial pressures that drove him into bankruptcy. . . .

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

Benedor Corp. v. Conejo Enters. (In re Conejo Enters.), 96 F.3d 346, 351-52 (9th Cir. 1996) (emphasis added).

The automatic stay is fundamental to bankruptcy law. ***It ensures that claims against the debtor will be brought in one place, the bankruptcy court.*** The stay protects the debtor by giving it room to breathe and, thereby, hopefully to reorganize. ***The stay also protects creditors as a group from any one creditor who might otherwise seek to obtain payment on its claims to the others' detriment.***

See Boucher v. Shaw, 572 F.3d 1087, 1092 (9th Cir. 2009) (emphasis added) (citations omitted); *In re First Alliance Mortgage Co.*, 264 B.R. 634, 645 (C.D. Cal. 2001) (“purpose of the stay is to centralize all litigation involving the debtor in one court in order to grant the debtor temporary relief from creditors, prevent needless dissipation of the debtor's estate, and allow for reorganization or liquidation to proceed in the most efficient manner possible”).

In the RFS Motion SSC cites to section 362(d), which provides as follows:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

11 U.S.C. § 362(d).

“A motion requesting relief from the automatic stay imposed by § 362(a) must state the basis under § 362(d) for the relief being sought. Except for related relief from a codebtor stay under § 1201(a) or 1301(a), the motion **may not** include requests for other relief.” LBR 4001-1(a)(1) (emphasis added).

III. **ARGUMENT**

A. **THE RFS MOTION AND NOTICE OF THE MOTION WERE NOT PROPERLY SERVED**

LBR 4001-1(d) governs motions for relief from automatic stay and requires any relief from stay motion and a notice to be served upon

(1) **the debtor**;

...

(5) if the motion seeks to enforce a lien, all other parties, known to the moving party, who claim an ownership or security interest in the same collateral;

...

(7) if the motion concerns the commencement or continuation of a judicial, administrative, or other action or proceeding, all parties to the action or proceeding.

LBR 4001-1(d) (emphases added).

There is no indication in the record that the Debtor was properly served with the RFS Motion or notice thereof. *See* RFS Motion at pdf 11 (indicating that the RFS Motion was “served on all counsel of record via the Courts CM/ECF System”). SSC has not, to date, filed a certificate of service for service of its notice of hearing on the RFS Motion.² Accordingly, the RFS Motion must be denied (or in the alternative continued) for improper service.

² The opposition deadline stated on the Notice of Hearing [on Motion] failed to comply with the applicable rules. *See* ECF 368; LBR 4001(e)(1)(A) (deadline to file and serve an opposition or other responsive statement is 14 days before the hearing).

1 B. CAUSE UNDER SECTION 362(D)(1) DOES NOT EXIST TO GRANT
 2 MOVANT RELIEF FROM THE AUTOMATIC STAY TO PURSUE
 3 COLLECTION EFFORTS.

4 SSC seeks relief from automatic stay to pursue “compensation for administrative
 5 expenses incurred for the post-Petition storage of the [Debtor’s Containers].” RFS
 6 Motion at pdf 2.

7 First, SSC does not need relief from the automatic stay to pursue allowance and
 8 payment of an administrative claim. However, it should be noted that allowance does not
 9 translate to payment in this case because the estate is administratively insolvent.

10 Second, even if SSC had properly sought relief from the stay to dispose of the
 11 Containers, the RFS Motion should be denied because there is a **pending** sale of
 12 substantially all the Debtor’s assets (including the Containers) for \$12.95 million to Team
 13 King Investments (CNMI), LLC, the high bidder or to Loi Lam Sit, the backup bidder.
 14 The proceeds of sale will create a fund from which creditors may be paid (in the order of
 15 priority and in accordance with applicable law). SSC’s lien (if any) against the
 16 Containers will attach to the sales proceeds attributable to the Debtor’s Containers.
 17

18 Third, SSC’s application of the Curtis factors is misplaced. “The *Curtis* factors
 19 have long provided guidance in assessing the merits of a motion for relief from stay **to**
 20 **allow the continued prosecution of litigation** pending at the time of the bankruptcy
 21 filing.” *In re VidAngel, Inc.*, 593 B.R. 340, 345-46 (Bankr. D. Utah 2018) (emphasis
 22 added). *See also Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R.
 23 915, 921 (B.A.P. 9th Cir. 2009) (“... the Curtis factors are appropriate, nonexclusive,
 24 factors to consider in deciding whether to grant relief from the automatic stay to allow
 25 pending litigation to continue in another forum.”); *In re PG&E Corp.*, 2020 Bankr.
 26
 27
 28

1 LEXIS 535, at *4-5 (Bankr. N.D. Cal. Feb. 25, 2020) (Many of the Curtis factors address
 2 the litigation of claims for trial, including the following: “whether a specialized tribunal
 3 has been established to hear the particular cause of action and that tribunal has the
 4 expertise to hear such cases; the interest of judicial economy and the expeditious and
 5 economical determination of litigation for the parties; whether the foreign proceedings
 6 have progressed to the point where the parties are prepared for trial[.]”).

8 C. SAIPAN STEVEDORE’S REQUESTS FOR ALTERNATIVE RELIEF
 9 ARE INAPPROPRIATE AND SHOULD BE DENIED.

10 In the RFS Motion SSC also seeks alternative relief in the form of (1) a
 11 declaratory judgment that the “Debtor has abandoned Debtor’s Containers and granting
 12 ownership of Debtor’s Containers to Saipan Stevedore, the holder of and in possession of
 13 Debtor’s Containers”, and (2) an order imposing a “warehouseman lien in favor of Saipan
 14 Stevedore against any entity that ultimately purchases Debtor’s Containers as part of the
 15 Auction or purchase by a Stalking Horse approved by this Court.” See RFS Motion at pdf
 16 9.
 17

18 As noted above, the Debtor is in fact seeking to sell the Containers and contents.
 19 The Debtor also identified the Containers in its *Schedules and Statement of Financial*
 20 *Affairs* and has not sought an order authorizing abandonment. See ECF 74 at pdf 4 of
 21 444.
 22

23 Furthermore, the alternative relief sought by SSC violates the local rules. “A
 24 motion requesting relief from the automatic stay imposed by § 362(a) must state the basis
 25 under § 362(d) for the relief being sought. Except for related relief from a codebtor stay
 26 under § 1201(a) or 1301(a), the motion **may not** include requests for other relief.” LBR
 27 4001-1(a)(1) (emphasis added).
 28

1 Finally, declaratory relief may only be sought through an adversary proceeding
2 and not through motion practice. *See* FRBP 7001(2) and (9) (a proceeding to determine
3 the validity, priority, or extent of a lien or a proceeding to obtain declaratory judgment
4 constitutes an adversary proceeding). The relief sought by SSC cannot be granted.
5

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Debtor respectfully requests that the RFS Motion
8 be denied.
9

10 Dated: March 3, 2025

CHOI & ITO ATTORNEYS AT LAW

11 By: /s/ Chuck C. Choi

12 Chuck C. Choi

13 Allison A. Ito

14 Charles McDonald

Attorneys for Debtor and Debtor-in-possession
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