

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

IN RE:	§	Chapter 11
	§	
Vertex Energy, Inc.	§	Case 24-90507 (CML)
	§	
Debtor	§	

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PERMIT STATE
COURT CASE LITIGATION TO PROCEED**

Your rights may be affected by the relief sought in this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you oppose the relief sought by this pleading, you must file a written objection, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this Motion unless a written objection is filed with the Clerk of the United States Bankruptcy Court and served upon the party filing this pleading **WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE shown in the certificate of service unless the Court shortens or extends the time for filing such objection. If no objection is timely served and filed, this pleading shall be deemed to be unopposed, and the Court may enter an order granting the relief sought. If an objection is filed and served in a timely manner, the Court will thereafter set a hearing with appropriate notice. If you fail to appear at the hearing, your objection may be stricken. The Court reserves the right to set a hearing on any matter.**

This pleading requests relief that may be adverse to your interests. If no timely response is filed within 14 days from the date of service, the relief requested herein may be granted without a hearing being held. A timely filed response is necessary for a hearing to be held.

NOW COME, Helaie Noor and Rasool Noor as next friend of S.N. (“Movants” and/or “Plaintiffs”), who as the Plaintiffs in the state court litigation against a number of defendants, including Vertex Energy, Inc., and files this Motion for Relief from the Automatic Stay (the “Motion”), and in support thereof, respectfully states to the Court as follows:



I. JURISDICTION

1.1 This Court has jurisdiction over the parties and subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334, 157, and the Standing Order of Reference. This is a core proceeding pursuant to 157(b)(2)(G) and 11 U.S.C. § 362.

1.2 Movants request emergency relief from the automatic stay for “cause” in order to proceed with the state court litigation currently in the case styled: Cause No. 2023CI25724, Helaie Noor Individually and as next friend of S.N. vs. Vertex Energy, Inc., H&H Oil, LP and Christopher Thompson, pending in the 166th District Court, Bexar County, Texas (the “State Court Case”).

1.3 Movants seek relief from the stay to resume and litigate to completion the State Court Case pending in Bexar County. Plaintiffs seek relief from the stay to liquidate their claims against Vertex Energy, Inc., and H&H Oil, LP.

1.4 Movants request that this Court modify the automatic stay to allow all parties to proceed in the state court system with any and all issues that may arise in the State Court Case until final judgment, including but not limited to any amendments to pleadings, adding additional parties or claims, discovery, trial and appeals. Movants seek such relief to liquidate any and all of their claims related to the matters at issue in the State Court Case and any related claims it has that may exist or arise that are part of the same common nucleus of operative facts as the matters at issue in the State Court Case.

II. BACKGROUND

2.1 The Movants, Helaie Noor and Rasool Noor as next friend of S.N., are plaintiffs in a personal injury claim filed against the Debtors, Vertex Energy, Inc., and H&H Oil, LP, (as well as additional non-debtor defendants) within State Court proceeding. The case is styled Cause No.

2023CI25724; *Helaide Noor as next friend of S.N. v. Vertex Energy, Inc., H&H Oil, LP, and Christopher Thompson*; pending in the 166th District Court, Bexar County, Texas. Plaintiffs allege in their Petition that Debtors' employee Christopher Thompson crashed into the back of Plaintiff's vehicle causing Plaintiff Helaide Noor and her minor son to suffer injuries.

2.2 On September 24, 2024, Debtors Vertex Energy, Inc., and H&H Oil, LP, filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. Notice of the Chapter 11 filing was issued by counsel for H&H Oil, LP, on December 6, 2024, advising of the Chapter 11 filing and the effects of the automatic stay preventing prosecution of the State Court Proceeding, pending entry of an order granting relief by the Bankruptcy Court.

2.3 Debtor has available insurance coverage against liability for the claims in the civil court action. It is believed that Vertex Energy, Inc.'s, insurance policy in effect at the time of this accident was one or more policies issued by Zurich American Insurance Company, Endurance American Specialty Insurance Company, and Ascot Specialty Insurance Company. Movants believe Defendant/Debtor may be a necessary party to the litigation for the sake of determining remaining liability for claims at issue in the civil court action, and Movants may also pursue its claims against the other Defendants in the case who are not debtors in this bankruptcy case.

2.4 As such, the Movants herein seek to proceed with the civil litigation in Bexar County for discovery purposes and to liquidate its claims against Debtor, and to pursue its claims against the remaining defendants in the case to which the automatic stay does not apply.

2.5 For the foregoing reasons, and the judicial economy that will be served by adjudicating the Claimants' claims to a liquidated sum, the Court should lift the automatic stay

with regard to the State Court Action, and allow the Claimants to pursue their claim against Debtors in the State Court Action.

2.6 Based upon the foregoing, the Movants seek relief from the automatic stay “for cause” under § 362 to proceed to liquidate to liquidate in State Court claims against Debtor and non-debtor parties and to proceed with its claims against the remaining defendants.

III. ARGUMENTS & AUTHORITIES

A. The Automatic Stay Should be Modified for Cause Pursuant to 11 U.S.C. § 362(d)(1)

3.1 11 U.S.C. § 362(d)(1) of the Bankruptcy Code provides that, on request of a party in interest, the Court shall grant relief from the automatic stay “for cause.” *See, e.g., National Gypsum Co. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp.*, 118 F.3d 1056, 1068 n.20 (5th Cir. 1997). Such cause exists here. As the Fifth Circuit has explained, 11 U.S.C. § 362(d) does not delineate what constitutes “cause,” so “reviewing courts must determine whether cause exist[s] on a case-by-case basis.” *Reitnauer v. Texas Exotic Feline Found, Inc.*, 152 F.3d 341, 343 n.4 (5th Cir. 1998). In making these “case-by-case” analyses federal courts consider various equitable factors in determining whether to lift the automatic stay and allow state court actions to proceed against, or as in this case, by a debtor. Factors frequently considered in determining whether to lift the stay to allow a lawsuit to proceed with the debtor as plaintiff or defendant in a non-bankruptcy forum include the balancing of harm or prejudice to the debtor versus the non-debtors, trial readiness, judicial economy, involvement of state law issues, creditor’s right to a jury trial, presence of third parties over which bankruptcy court lacked jurisdiction, debtor having chosen the forum pre-petition, conservation of bankruptcy court resources, and whether bankruptcy is

being used to find a friendlier venue or avoid adverse rulings. *See, e.g., In re Marvin Johnson's Auto Service, Inc.*, 192 B.R. 1008 (Bankr. N.D. Ala. 1996); *In re Fay*, 155 B.R. 1009 (Bankr. E.D. Mo. 1993); *In re TriCare Rehabilitation Systems, Inc.*, 181 B.R. 569 (Bankr. N.D. Ala. 1994); and *In re Anton*, 145 B.R. 767 (Bankr. E.D.N.Y. 1992). Additionally, it is also instructive to review cases dealing with motions to remand bankruptcy cases to a state court, and abstention cases, where bankruptcy courts have addressed on a case-by-case basis the equitable factors used in determining whether to allow a pending state court proceeding to proceed. *See, e.g., In re A.S.M., Inc.*, 110 B.R. 802 (Bankr. W.D. Tex. 1990).

3.2 Neither the Movants nor any other party will suffer prejudice if the automatic stay is lifted to allow Movant to litigate the state law claims in the State Court Case.

3.3 In fact, the Movants could suffer substantial hardship if they are not allowed to prosecute their claims in the State Court Case. Movants have expended significant time and assets investigating this case. The claims at issue need prompt resolution and the state court is the best venue in which to resolve those claims. Because this Court lacks subject matter jurisdiction, the state court is the only forum in which this dispute can be resolved.

3.4 Considerations regarding judicial efficiency also merit the lifting of the automatic stay. All of the issues to be decided in the State Court Case are based on state law and do not require the specialized knowledge of the bankruptcy court. *In re Countryside Manor, Inc.*, 188 B.R. at 491. Modification of the stay will promote judicial economy by resolving all of the claims between Plaintiffs and Defendant in a single proceeding. *Pro Football Weekly, Inc.*, 60 B.R. 824, 826. The congressional history to 11 U.S.C. § 362 provides that, “it will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate

would result, in order to leave the parties in their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.” S. Rep. No. 989, 95th Cong., 2d Sess. 50, *reprinted in* 1978 U.S. Code Cong & Ad. News 5787, 5836. Here, as in *Countryside Manor*, “the administration of justice, convenience of the parties and judicial economy are better served by having all the claims resolved by the same court – in this instance, the state court.” *In re Countryside Manor, Inc.*, 188 B.R. at 491.

3.5 Modification of the automatic stay to allow state court proceedings to continue has consistently been held to constitute cause supporting the modification of the stay. *See e.g., In re Cummings*, 221 B.R. 814, 818 n.5 (Bankr. N.D. Ala. 1998)(citing numerous cases). The issues in the State Court Case involve state law, and the litigation will not require the expertise of a bankruptcy judge. *See Piombo Corp. v. Castlerock*, 781 F.2d 159 (9th Cir. 1986) (holding that congressional policy of having state law claimants have their state law claims decided in state court was a factor in modifying the stay for cause to allow state court proceeding to continue); *see also In re United States Brass Corp.*, 176 B.R. 11, 12 (Bankr. E.D. Tex. 1994). Prompt liquidation of Plaintiff’s claims will expedite the administration of the bankruptcy estate and will conserve the resources of the Bankruptcy Court. *See Smith v. Tricare Rehabilitation Systems, Inc.*, 181 B.R. at 577-578.

B. Lifting the Stay to Allow the State Court Litigation Will Completely Resolve the Issues Between the Debtor and the Movant

3.6 This Court can completely resolve the issues between the parties by lifting the automatic stay. The only issue that exists between the Movant and the Debtor is the underlying civil action in Bexar County, Texas. If the Court lifts the stay and allows the Movant to proceed and litigate its claims, including its claims against the remaining defendants in the state court

action, the disputed issues between the Movants and the Debtor will be resolved.

C. Lifting the Stay Will Not Interfere with the Bankruptcy Estate

3.7 Whether the state court proceeding is connected with or will interfere with the bankruptcy estate also supports lifting the stay. Movant seeks to liquidate their claims in the State Court. “Numerous courts have permitted the stay to be lifted when the Movant is simply seeking to establish the fact and amount of the Debtor’s liability. *In re Peterson*, 116 B.R. 247, 250-51 (D. Colo. 1990). In such cases, “there can be no legitimate complaint that the estates will be dissipated by allowing the litigation to move forward.” *In re 15375 Memorial Corp.*, 382 b.R. 652, 689 (Bankr. D. Del. 2008).

3.8 “The automatic stay was never intended to preclude a determination of tort liability and the attendant damages. It was merely intended to prevent prejudicial dissipation of a Debtor’s assets. A lifting of the stay to allow a Plaintiff-Creditor to determine liability will not affect the estate. It will only allow the Movants to establish the amount of (her) claim. . . In this respect, a relief from the stay, will not violate the purpose for which it was imposed.” *In re Bock Laundry Machine Co.*, 37 B.R. at 567. On the other hand, Movants believe the interest of judicial economy will be served by lifting the stay to permit the state court civil action in Bexar County to continue. For the reasons stated above, the Movants herein request that this Court grant their Motion.

IV. CERTIFICATE OF CONFERENCE

4.1 I certify that on January 23, 2025 and February 13, 2025, I conferred with Brian Nakhaimousa with regard to the relief requested. As of the date that this motion is filed, there has been no agreement.

CONCLUSION

WHEREFORE PREMISES CONSIDERED, Movants hereby request that this Court enter an Order granting relief from the automatic stay imposed by 11 U.S.C. § 362 and permit Movants to proceed in the state court action to liquidate all state court claims and to collect against any insurance coverage of the Debtors, and to proceed with its claims against the remaining non-debtor defendants in the case, and to grant Movants any such other and further relief as is just and proper.

Respectfully submitted,

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**ATTORNEYS FOR MOVANTS HELAIE
NOOR AND RASOOL NOOR**

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2025, I electronically file the foregoing with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the court's electronic filing system to all CM/ECF participants. I also certify that the above and foregoing has this date been forwarded by U.S. Mail, postage prepaid and properly addressed to the non CM/ECF participants.

/s/ Michael Jacobellis

Michael Jacobellis