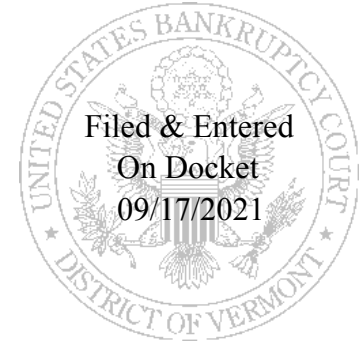


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**Koffee Kup Bakery, Inc.,
Putative Debtor.**

**Involuntary Case # 21-10168
Chapter 7**

ORDER

**(1) GRANTING KEY BANK RECEIVER RELIEF FROM STAY TO PAY PTOs,
(2) SUSPENDING BANKRUPTCY PROCEEDINGS UNTIL KEY BANK RECEIVER IS DISCHARGED,
AND (3) EXPLAINING SCHEDULE FOR ADDRESSING THE ADJUDICATION OR DISMISSAL OF PETITION**

The matter before the Court is a stipulation asking this Court to authorize a state court receiver to disburse funds to pay certain claims of the Putative Debtor's former employees (the "PTOs"). * Before addressing that, the Court sets forth the procedural status of this involuntary chapter 7 case: On September 14, 2021, the Court held a hearing on the AGO's motion to intervene (doc. # 7) at which the Court also considered the best and most efficient way to move forward in this case, in light of the pending state court proceedings. At that hearing, David J. Reier, Esq., appeared on behalf of Petitioner Lily Transportation Corp. and the other Petitioners, Timothy M. Netkovick, Esq., appeared on behalf of Petitioner Bernardino's Bakery, Inc., Barbara R. Blackman, Esq., appeared as local counsel on behalf of Petitioner Lily Transportation Corp., Tavian M. Mayer, Esq., appeared on behalf of Petitioner Hillcrest Foods, Inc., Alexandra E. Edelman, Esq., appeared on behalf of the Putative Debtor, Justin Kolber, Esq., appeared on behalf of the AGO, Heather Z. Cooper, Esq., appeared on behalf of Mr. Teplitsky, David N. Dunn, Esq., appeared on behalf of Ms. Sullivan, and Lisa Penpraze, Esq., appeared on behalf of the Office of the United States Trustee, and they all had an opportunity to present their positions, both with respect to the AGO Motion and the schedule for moving this case forward.

At the conclusion of that hearing, the Court (a) granted the AGO's motion to intervene, (b) declared it would treat the portion of the AGO's filings requesting this Court permit Mr. Teplitsky to make the PTO payments (see doc. ## 7-3, 28), along with the related filings pertaining to the PTO

* All capitalized terms in this Order have the same meaning as the Court ascribed to them in the September 15th Order, unless otherwise indicated.

(see doc. ## 20, 22, 25, 26, 27, 28, 29), as a request for a determination by this Court, on an emergency basis, under § 362 of the Bankruptcy Code, as to whether the PTO funds constitute property of the estate such that the automatic stay applies and, if so, whether relief from the automatic stay is warranted (the “Automatic Stay Matter”); (c) declared it would first address the Automatic Stay Matter and the portion of the Putative Debtor and Ms. Sullivan’s filings requesting suspension or abstention with respect to all proceedings in this case under § 305 (see doc. ## 23, 24, 25, the “Suspension/Abstention Matter”); and set a schedule for moving forward. Specifically, the Court set a September 21st hearing to address (i) the pending motion for relief from stay with respect to distribution of the PTOs, and (ii) the request that this Court abstain or suspend hearings under § 305. The Court also set deadlines for the parties to file certain documents from the state court proceedings, file supplemental memoranda of law on the stay and suspension issues, and report to the courtroom deputy with respect to how much time they would need, with respect to that hearing.

On the morning of September 15th, the Court entered an order to memorialize the Court’s bench ruling at the September 14th hearing (doc. # 32, the “September 15th Order”).

On September 17, 2021, the parties filed two crucial documents. First, Ronald Teplitsky (the “Receiver”) filed a declaration, in which he gives a detailed explanation for why he was not able to pay the PTOs prior to the date the Petitioning Creditors filed the instant involuntary petition, and supplements his prior filings with a clarification regarding the impact of his payment of the most recent payroll (doc. # 32, the “Receiver’s Declaration”). Second, in lieu of filing supplemental memos of law, Bernardino’s Bakery, Inc., Lily Transportation Corp., Hillcrest Foods, Inc., and Ryder Truck Rental, Inc. (collectively, the “Petitioners”), along with the intervenor, the Attorney General’s Office (the “AGO”) (together, the “Stipulating Parties”) filed a “Stipulation to Allow Payment of Employee Payroll Obligations” (doc. # 33, the “Stipulation”), stating they all consent to having this Court permit the Receiver to immediately pay the PTOs. This is significant since the Petitioning Creditors had previously opposed the Receiver’s immediate payment of the PTOs (see doc. # 22).

Based on the entire record in this case and the terms of the Stipulation, THE COURT FINDS the record is sufficient for it to rule on both the Automatic Stay Matter and the Abstention/ Suspension Matter, without further hearing, and none of the Parties oppose entry of an Order without further hearing.

THE COURT FURTHER FINDS that the Stipulation of the Parties, alone, is insufficient to support entry of an Order granting relief on either the Automatic Stay or the Abstention/ Suspension Matters, as the Court must make certain legal determinations in connection with that relief; and that time is of the essence in issuing an Order on those two matters.

After careful consideration of the undisputed facts and legal arguments the Parties have presented, the applicable statutory requirements, and the controlling case law,

THE COURT HEREBY ORDERS

1. With respect to the Automatic Stay Matter: The Court finds the PTO funds are not part of the bankruptcy estate because the state court had made a final determination pre-petition that the Receiver was to pay them from the proceeds of the sale in the Key Bank action, and no further acts of judicial deliberation, discretion or involvement were required. Therefore, the Receiver's distribution of those funds is now a ministerial act not prohibited – or even encompassed – by the bankruptcy stay described in 11 U.S.C. § 362. See Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522, 527 (2d Cir. 1994), see also Chey v. Cohen, 2010 Bankr. LEXIS 5099 (B.A.P. 9th Cir. Apr. 12, 2010), aff'd, 591 Fed. Appx. 623 (9th Cir. Jan. 21, 2015) (collecting cases, with cite to Rexnord), Capgro Leasing Assocs, 169 B.R. 305 (Bankr. E.D.N.Y. 1994).
2. With respect to the Abstention/ Suspension Matter: The Court finds, based on the Stipulation, that it is in the best interest of the creditors – as well as the Putative Debtor – to temporarily suspend these proceedings pursuant to 11 U.S.C. § 305. See Trina Assoc, 128 B.R. 858 (Bankr. E.D.N.Y. 1991). This Court will therefore suspend all proceedings in this involuntary case, to allow the Receiver to pay the PTOs and complete his responsibilities in the Key Bank foreclosure action. This Court will resume the bankruptcy proceedings and address the Turnover and Adjudication / Dismissal of the Petition matters promptly thereafter.
3. With respect to moving this case forward: The Court finds it is crucial for this case to move forward expeditiously and that the interests of judicial economy would be best served by allowing the Receiver to complete the work he has commenced in state court before adjudicating the involuntary petition or ruling on the motion to dismiss with request for sanctions. Therefore, the Court (a) authorizes the Receiver to pay the PTOs immediately, and (b) requests he thereafter promptly file his final report in the state court with a plea to be discharged from that role, and file in this Court a copy of the state court order discharging him from his responsibilities in that proceeding within three business days of entry in state court.

THE COURT FURTHER ORDERS that Receivers Mr. Teplitsky and Ms. Sullivan shall remain exempted from the obligation to turnover any funds or other alleged property of the bankruptcy estate pursuant to § 543 until after the Court lifts the suspension it imposes in this Order, and either addresses the merits of the Turnover Matter or enters an order directing otherwise.

THE COURT FURTHER ORDERS that the hearing scheduled for September 21st on the Automatic Stay and Abstention/ Suspension Matters is canceled, and a status hearing will be set promptly after the Receiver files the state court order discharging him from his role, in order to establish a schedule for determining whether to continue the suspension of the involuntary bankruptcy proceedings and address the Abstention and Adjudication / Dismissal Matters.

SO ORDERED.

Burlington, Vermont
September 17, 2021



Colleen A. Brown
United States Bankruptcy Judge