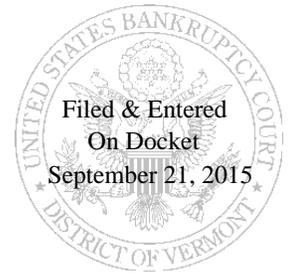


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Stacy J. Velardi,
Debtor.**

**Chapter 13
Case # 15-10307**

ORDER

**Denying Debtor's Motion for Application or Extension of Automatic Stay, Sanctions and TRO
and Directing Creditor to Release Lien on Certain Funds**

Just prior to 1:00 P.M. on Friday, September 18, 2015, the Debtor filed a motion for emergency hearing, for application or extension of automatic stay, and sanctions (doc. # 18, the "Emergency Motion"). In essence, the Emergency Motion averred that the Debtor needed emergency relief from this Court because US Foods, Inc. had levied against the Debtor's operating bank account earlier that day to enforce a judgment it had against the Debtor's corporate entity, Due Feminine, LLC. The levy resulted in a freeze of \$16,135, all of which the Debtor asserted she needed to make payroll, clear outstanding vendor checks, pay the 941[taxes] and meals & rooms obligations and the monthly Chapter 13 plan payment. In sum, she pleaded that release of these funds was essential for the plan's success and the Debtor's survival (doc. # 18, p. 2, ¶ 4). The Debtor insisted emergency relief was crucial because the creditors of the bankruptcy estate, and in particular the IRS, would suffer irreparable harm if the Court did not enjoin US Foods, Inc.'s collection efforts (doc. # 18, p. 3, ¶ 6).

The Court interpreted the Emergency Motion to request five types of relief:

- (i) an extension of the automatic stay to encompass certain assets of Due Feminine, LLC;
- (ii) an order directing US Foods, Inc. to release the funds it had frozen so the Debtor would be able to operate the pizza business this weekend and meet her obligations under the Chapter 13 plan;
- (iii) an injunction against US Foods, Inc. prohibiting it from seizing LLC assets in the future, on the basis that such seizure impeded the Debtor from complying with her obligations under the Chapter 13 plan and her agreement with the IRS;
- (iv) a determination that US Foods, Inc. had violated the automatic stay; and
- (v) an order imposing damages on US Foods, Inc. for violating the § 362 stay protecting the Debtor.

Approximately 90 minutes after the Debtor filed the Emergency Motion, in light of the dire consequences articulated by the Debtor and the totality of circumstances pled by the Debtor, the Court entered an Order (doc. # 19) granting the request for an emergency hearing, and set a telephonic hearing for 4:00 PM that afternoon. At the hearing, the Court heard arguments from the Debtor, US Foods, Inc., the IRS, and the Chapter 13 Trustee.

Based upon the record in this Chapter 13 case, the papers filed in connection with this contested

matter, the pertinent case law,¹ and the arguments put on the record at the emergency hearing, the Court denied the motion. This order is entered to memorialize the determinations made at that hearing.

THE COURT FINDS

- A. two aspects of the relief the Debtor seeks, namely, a temporary restraining order and the extension of the stay to a non-debtor party are extraordinary types of relief which require facts and circumstances that meet the high legal standards established by the case law in this circuit;
- B. US Foods, Inc.'s levy did not violate the automatic stay under 11 U.S.C. § 362 which came into effect upon the filing of this case since the account levied was not the Debtor's personal account;
- C. the Emergency Motion is procedurally deficient because the Debtor neither filed an adversary proceeding as required by Bankruptcy Rule 7001 nor met the requirements for a temporary restraining order under Bankruptcy Rule 7065;
- D. the Debtor did not demonstrate cause for an extension of the stay or a temporary restraining order under 11 U.S.C. § 105;
- E. neither the record nor applicable case law provides a basis to find cause for extension of the stay to encompass funds in an account in the name of Due Feminine, LLC, a non-debtor entity; and
- F. US Foods, Inc. is not required to release funds of Due Feminine, LLC subject to its judgment against that entity.

Accordingly, THE COURT ORDERED that

1. the Debtor's request for an extension of the stay to encompass the account of Due Feminine, LLC was DENIED;
2. the Debtor's request for a release of funds was GRANTED to the extent of any funds which were frozen in excess of the amount of US Foods, Inc.'s judgment against Due Feminine, LLC;
3. the Debtor's request for an injunction and/or temporary restraining order was DENIED;
4. the Debtor's request for a finding US Foods, Inc. violated the § 362 stay was DENIED; and
5. the Debtor's request that the Court impose sanctions upon US Foods, Inc. was DENIED.

In light of the Debtor's dire need for the funds in the subject operating account, and the fact that the funds frozen were nearly twice the amount needed to satisfy the judgment, pursuant to the Court's equitable powers under 11 U.S.C. § 105, THE COURT FURTHER ORDERED US Foods, Inc. to ensure release of all funds in excess of the judgment amount, immediately on September 18, 2015, so that those excess funds in Due Feminine, LLC's account could be available for the Debtor to use for her pizza operations that evening.

September 21, 2015
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge

¹ See Citizens Bank of Maryland v. Strumpf, 516 U.S. 16 (1995); Queenie, Ltd v. Nygard Int'l, 321 F.3d 282 (2d Cir. 2003); In re Holden, 236 B.R. 156 (Bankr.D.Vt. 1999), and most significantly, In re Weidenbenner, 521 B.R. 74 (Bankr.S.D.N.Y. 2014) (holding that stay will not be imposed to the debtor's operating LLC under facts quite similar to those presented here).