

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

**Café Holdings Corp., et al.,
Debtors.**

**Case # 18-05837-hb
Chapter11**

(Jointly Administered)

NOTICE OF MOTION FOR RELIEF FROM AUTOMATIC STAY (11 U.S.C. § 362(a))

TO: DEBTOR AND UNSECURED CREDITORS COMMITTEE

PLEASE TAKE NOTICE THAT a hearing will be held on the attached motion on:

Date: January 15, 2019

Time: 10:30 AM

Place: Donald S. Russell Federal Building & U.S. Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306

Within fourteen (14) days after service of the attached motion, the notice of motion, the movant's certification of facts, any party objecting to the relief sought shall:

- (1) File with the Court a written objection to the 11 U.S.C. § 362 Motion;
- (2) File with the Court a certification of facts;
- (3) Serve on the movant items 1 and 2 above at the address shown below; and
- (4) File a certificate of such service with the Court.

If you fail to comply with this procedure, you may be denied the opportunity to appear and be heard on this proceeding before the Court.

Date of Service: December 21, 2018

Signature of Attorney
/s/ Christine E. Brimm
Christine E. Brimm #6313
BARTON BRIMM, PA
3955 Hwy 17 Bypass, Suite D
Post Office Box 2746
Murrells Inlet, South Carolina 29576
(803) 256-6582
cbrimm@bartonbrimm.com

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MOTION FOR RELIEF FROM AUTOMATIC STAY

B & T Sand Company, Inc., Joel A. Tyson, Robert D. Barrier, William L. Barrier, and Betty B. Tyson (collectively "Movant"), by and through the undersigned counsel, hereby moves this Court, pursuant to 11 U.S.C. § 362(d), for relief from the automatic stay for cause, and, in support thereof, states the following:

1. Debtors filed a voluntary petition pursuant to Chapter 11 of the United States Bankruptcy Code on November 15, 2018 ("Petition Date").
2. Jurisdiction of this matter is granted to the Bankruptcy Court pursuant to 28 U.S.C. § 1334, 11 U.S.C. § 362(d), Fed. R. Bankr. P. 4001(a), and all other applicable rules and statutes affecting the jurisdiction of the Bankruptcy Courts generally.
3. On or about November 20, 2006, Debtor executed a Commercial Lease Agreement ("Lease") with Movant for property located at 2494 Church St, Conway, SC 29526 ("Property").
4. At the time of the Petition Date, the Lease had not been terminated.
5. On November 16, 2018, the Debtor moved this Court for an order rejecting certain unexpired leases, including the Lease with Movant.
6. On December 19, 2018, the Court approved the rejection of the Lease, *nunc pro tunc* to the Petition Date. The Order identifies the Property as "Fatz Café # 0031 2494 Church Street, Conway, SC 29526."

7. Because the rejection of a lease is not the same as termination of a lease, out of abundance of caution, Movant respectfully requests the Court grant it relief from the Automatic Stay in this matter pursuant to § 362(d)(1), for cause, namely that the Lease has been rejected by the Debtor and lack of adequate protection to Movant for its interest in the above Property.

WHEREFORE, Movant prays this Honorable Court enter an order granting relief from the stay to Movant under 11 U.S.C. § 362(d) to permit Movant to take any and all steps necessary to exercise any and all rights it may have in the Property described herein, to gain possession of said Property and to any such further relief as this Honorable Court deems just and appropriate.

RESPECTFULLY SUBMITTED on this the 21st day of December, 2018, at Murrells Inlet, South Carolina.

BARTON BRIMM, PA

BY: /s/Christine E. Brimm, #6313
Christine E. Brimm
Barbara George Barton
3955 Hwy 17 Bypass, Suite D
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CERTIFICATION OF FACTS

In the above-entitled proceeding, in which relief is sought by Joel A. Tyson, Robert D. Barrier, William L. Barrier, and Betty B. Tyson (collectively "Movant") from the automatic stay provided by 11 U.S.C. § 362, I do hereby certify to the best of my knowledge the following:

- (1) Nature of Movant's Interest. Commercial Lease (Movant is the Landlord)
- (2) Brief Description of Security Agreement, copy attached (if applicable). Commercial Lease
- (3) Description of Property Encumbered by Stay (include serial number, lot and block number, etc.). Lease of property located at 2494 Church St, Conway, SC 29526.
- (4) Basis for Relief (for cause, property not necessary for reorganization, debtor has no equity, property not property of estate, etc.) include applicable subsection of 11 U.S.C. § 362). For cause. The Lease has been rejected by Debtor.
- (5) Prior Adjudication by Other Courts, copy attached (Decree of Foreclosure, Order for Possession, Levy of Execution, etc., if applicable). N/A
- (6) Valuation of Property, copy of Valuation attached (Appraisal, Blue Book, etc.):

Fair Market Value: The Lease has no value to Debtor

Senior Liens : N/A

Movant's Lien: N/A (Lease)

Net Equity: N/A

Source/Basis of Value: N/A

- (7) Amount of Debtor's Estimated Equity (using figures from paragraph 6, supra). N/A

(8) Month and Year in Which First Direct Post-petition Payment Came Due to Movant (if applicable).

December 2018

(9)(a) For Movant/Lienholder (if applicable): List or attach a list of all post-petition payments received directly from debtor(s), clearly showing date received, amount, and month and year for which each such payment was applied.¹ N/A

(b) For Objecting Party (if applicable): List or attach a list of all post-petition payments included in the Movant's list from (a) above which objecting party disputes as having been made. Attach written proof of such payment(s) or a statement as to why such proof is not available at the time of filing this objection.

(10) Month and Year for Which Post-petition Account of Debtor(s) is Due as of the Date of this Motion:

December 2018

RESPECTFULLY SUBMITTED on this the 21st day of December, 2018, at Murrells Inlet, South Carolina.

BARTON BRIMM, PA

BY: /s/Christine E. Brimm, #6313
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Barbara George Barton
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¹ This requirement may not be met by the attachment of a payment history generated by the movant. Such attachment may be utilized as a supplement to a complete and detailed response to (9)(a) above, which should be shown on this certification.

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CERTIFICATE OF SERVICE

I, Connie Fraser, hereby certify that I, on behalf of Christine E. Brimm, District Court I.D. #6313, Counsel for **B&T Sand Company, Inc.; Joel A. Tyson; Robert B. Barrier; William L. Barrier and Betty B. Tyson**, served a copy of the **Notice and Motion for Relief from Automatic Stay, filed December 21, 2018** on the Office of the United States Trustee via electronic filing and electronic transmission through CM/ECF, pursuant to SC LBR 9036-1, and on the parties in interest as shown below, via U.S. Mail, as indicated, on December 21, 2018.

TO THE DEBTOR:

Café Holdings Corp.
4324 Wade Hampton Blvd., Suite b
Taylors, SC 29687
Via Regular Mail

TO THE UNSECURED CREDITORS COMMITTEE:

Bradley J. Sandler, Esq.
Shirley Cho, Esq.
Steven Golden, Esq.
Pachulski, Stang, Ziehl & Jones, LLP
919 North Market Street, 17th Floor
Wilmington, DE 19801
Via Regular Mail

B. Keith Poston, Esq.
Nelson, Mullins, Riley & Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Via Regular Mail

BARTON BRIMM, PA

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