

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: : **CHAPTER 11**
: **Wordworth Academy, et al.** : **No. 17-14463 (AMC)**
: **Debtors.** : **Jointly Administered**

MOTION OF TREQUAN RUSSELL FOR RELIEF FROM AUTOMATIC STAY UNDER SECTION 362 OF THE BANKRUPTCY CODE

Trequan Russell a/k/a Shayana Russell (“Movant”), by and through his Counsel, Jonathan M. Cohen, L.L.C., hereby request this Honorable Court to enter an Order lifting the Automatic Stay as to all proceedings as provided under Section 362 of the Bankruptcy Reform Act of 1978 (“the Bankruptcy Code”), 11 U.S.C. §362, in order to pursue their personal injury claims against the debtor, Wordsworth Academy¹ (“Debtor”) in their State Court Civil Action captioned as Trequan Russell a/k/a Shayana Russell v. Wordsworth Academy d/b/a Wordsworth at May Term, 2017, No.: 03133 in the Philadelphia County Court of Common Pleas, and, in support thereof, states as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(G).
3. The Relief requested herein may be granted in accordance with provision 362(d) of the Bankruptcy Code.

¹ Three (3) related bankruptcy actions were filed with this Court on the same date: In re: Wordsworth Academy (No. 17 – 14436), In re: Wordsworth CUA 5, L.L.C. (No. 17 – 14466), and In re: Wordsworth CUA 10, L.L.C. (No. 17 – 14467). These actions were consolidated under this caption at the request of the Debtors pursuant to the July 6, 2017 Order of this Court.

4. On or about May 19, 2017, Movant filed a Civil Action Complaint against Debtor in the Philadelphia County Court of Common Pleas, captioned as Trequan Russell a/k/a Shayana Russell v. Wordsworth Academy d/b/a Wordsworth at May Term, 2017, No.: 03133. A true and correct copy of Movant's Complaint is attached hereto, at Exhibit "A."

5. The State Court litigation arose from the rape and sexual assault of Movant, a resident of Wordsworth Academy d/b/a Wordsworth, on or about April 22, 2015. Movant's State Court Complaint alleges, among other things, that Debtor was negligent and reckless in failing to adequately supervise and monitor residents, as well as failing to employ proper employee training and implement reasonable measures to prevent sexual assault and/or rape in its facility. Movant's State Court Complaint alleges causes of action arising under negligence, recklessness, and negligent infliction of emotional distress, which are governed by state law. No Federal issues of law were alleged in Movant's State Court Complaint.

6. Debtor filed a Chapter 11 Petition in Bankruptcy in the Eastern District of Pennsylvania on June 30, 2017. A true and correct copy of the Face Sheet of Debtor's Petition is attached hereto as Exhibit "B."

7. Debtor filed a Notice of Suggestion of Bankruptcy in the State Court litigation on July 6, 2017. A true and correct copy of Debtor's Notice of Suggestion of Bankruptcy is attached hereto as Exhibit "C."

8. The State Court litigation has been stayed pursuant to 11 U.S.C. § 362.

9. The Bankruptcy Court lacks jurisdiction over personal injury claims pursuant to 11 U.S.C. § 157(b)(5). Thus, Movant cannot pursue her personal injury claims before this Bankruptcy Court.

10. By this Motion, Movant seeks relief from the automatic stay for the purpose of allowing the Movant to proceed with the State Court litigation against Debtor, or, if appropriate, Debtor's insurance carrier.

11. A bankruptcy estate "only includes property to which the debtor would have had a right if the debtor were solvent." First Fidelity Bank v. McAteer, 985 F.2d 114, 117 (3d Cir. 1993). Therefore, a debtor's liability insurance policy is not included in the debtor's bankruptcy estate. See id. (citing In re Louisiana World Exposition, Inc., 832, F.2d 1391, 1401 (5th Cir. 1907 (holding that the proceeds of a liability insurance policy are not part of a debtor's estate)).

12. Movant agrees to limit her collection of monetary damages to the insurance policy limits of all applicable insurance coverage and excess and umbrella coverage.^{2π}

13. Relief from the automatic stay of 11 U.S.C. § 362(a) is governed by 11 U.S.C. § 362(d), which states, in pertinent part:

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 . . .

11 U.S.C. § 362(d).

14. While the Bankruptcy Code does not define "cause," the Third Circuit has held that whether cause exists is determined on a case-by-case basis, based on the totality of the circumstances. Baldino v. Wilson (In re Wilson), 116 F.3d 87, 90 (3d Cir. 1997).

² A review of the docket in this matter shows this Court has granted Creditor-Plaintiffs the right to proceed in State Court upon their promise to limit recovery to proceeds of liability insurance coverage.

15. In considering whether to lift an automatic stay, a Court “may consider the policies reflected in the bankruptcy code, and the interests of the debtor, other creditors and any other interested parties.” In re Brown, 311 B.R. 409, 413 (E.D. Pa. 2004).

16. The determination of whether to lift an automatic stay “is by its very nature an equitable one that requires this Court to engage in a fact-sensitive inquiry as to whether the balance of hardships favors the movant.” In re Chandler, 441 B.R. 452, 463 (Bankr. E.D.Pa. 2010), (citing FRG, Inc. v. Manley, 919 F.2d 850,854 (3d Cir. 1990)); see also In re American Classic Voyages Co., 298 B.R. 222, 225 (D. Del. 20003) (“To establish cause, the party seeking relief from the stay must show that the balance of hardships from not obtaining relief tips significantly in its favor.”).

17. Granting Movant’s relief from the automatic stay will not prejudice Debtor or impede the administration of the bankruptcy proceedings, which will not be caused to be held in abeyance as a result of Movant’s continuation of the State Court litigation.

18. In addition, because Debtor’s insurance carrier will be tasked with the defense of the State Court litigation, it is unlikely that the continuation of the State Court litigation will require the attention of Debtor’s bankruptcy counsel.

19. More importantly, Movant is willing to limit any recovery from the State Court litigation to either the extent of the applicable insurance coverage or to any settlement obtained between Debtor’s insurance carrier and Movant.


20. Furthermore, the hardship to Movants if the stay is not lifted considerably outweighs any hardship to the Debtor if the stay is lifted because the Movant has been forced to bear the cost of the personal injuries suffered at the hands of Debtor and its employees and/or agents.

21. Unless the automatic stay is lifted and Movant is permitted to proceed with the State Court litigation against Debtor and its insurance carrier, Movant faces the prospect of no recovery and would be forced to bear the continued costs of her personal injuries.

WHEREFORE, Movant, Trequan Russell a/k/a Shayana Russell, requests this Honorable Court to enter an Order granting Movants relief from the Automatic Stay to permit Movant to pursue their State Court rights and remedies by allowing the Civil Action captioned as Trequan Russell a/k/a Shayana Russell v. Wordsworth Academy d/b/a Wordsworth at May Term, 2017, No.: 03133, in the Philadelphia County Court of Common Pleas, to proceed, subject to the agreement of Movants to limit any recovery against Debtor to Debtor's insurance coverage.

JONATHAN M. COHEN, L.L.C.

BY:



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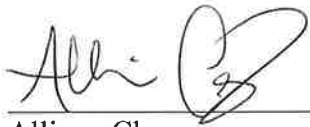
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: **Wordworth Academy, et al.** : **No. 17-14463 (AMC)**
: **Debtors.** : **Jointly Administered**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion of Creditor for Relief from the Automatic Stay Pursuant to Section 362 of the Bankruptcy Code was served on the date listed below via email and First Class Mail:

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