

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

FILED
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U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re § Case No. 09-12074 (KJC)
§
BUILDING MATERIALS HOLDING § Chapter 11
CORPORATION and BMC WEST §
CORPORATION, §
Debtors § Jointly Administered

JUANITA STACE, §
Movant §
§
VS. §
§
BUILDING MATERIALS HOLDING §
CORPORATION and BMC WEST §
CORPORATION, §
Debtors §

MOTION FOR RELIEF FROM AUTOMATIC STAY UNDER 11 USC §362

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW JUANITA STACE, Movant in the above-captioned matter, and moves this Court for an Order Granting Relief From Automatic Stay. In support thereof, Movant shows the Court as follows:

1. There currently exists a Texas State Court legal proceeding, Cause No. 231,253-B; *Juanita Stace v. Brandon Wayne Ponath, Building Materials Holding Corporation, BMC West Corporation d/b/a Texas BMC West Corporation, and BMC West Corporation South Central*, now pending in the 146th Judicial District, Bell County, Texas. Movant is the Plaintiff in the aforementioned state court action.

2. On August 7, 2006, Movant, JUANITA STACE was traveling westbound in the 4300 block of Watercrest in Killeen, Bell County, Texas. At the same time Brandon Wayne Ponath, a Defendant in the above state court action was also traveling westbound on Watercrest, some distance behind Movant. At the time of the incident in question, Brandon Wayne Ponath was acting within the course and scope of his employment with Debtors, BUILDING MATERIALS HOLDING CORPORATION, BMC WEST CORPORATION, BMC WEST CORPORATION d/b/a TEXAS BMC WEST CORPORATION, and Defendant in the above state action, BMC WEST CORPORATION SOUTH CENTRAL. On information and belief, Defendant Brandon Ponath failed to control the speed of his vehicle and rear ended Movant's vehicle causing Movant serious personal injuries. At the time of the incident in question, and at all times material, Debtors maintained a general liability insurance policy which, in part, insured Debtors and covered incidents such as that described herein.

3. As a direct and proximate result of the negligence of Debtors, Movant suffered injuries to her neck, back and body generally. Some of such injuries are, in reasonable probability, permanent in nature. Movant has suffered physical pain and mental anguish in the past, and will, in reasonable probability, continue to suffer the same in the future. Movant has been physically impaired and disfigured in the past, and will, in reasonable probability, be physically impaired and disfigured in the future. Movant has incurred reasonable and necessary medical expenses in the past, and will, in reasonable probability, incur such expenses in the future. Movant has suffered a loss of earnings in the past, and will, in reasonable probability, incur a loss of earnings in the future. As a result of the injuries described herein, Movant has been injured in a manner in excess of

the minimum jurisdictional amount of the state court in which it was filed, for which she now sues.

4. Movant believes that Debtors, Building Materials Holding Corporation and BMC West Corporation, Defendants in the state court action referred to herein, carry a policy or policies of insurance which would provide coverage for its liability, if any, in connection with the damages sustained by Movant. Movant seeks to modify the automatic stay for the limited purpose of continuing suit against Debtors to adjudicate Debtors' liability in connection with the injuries and damages sustained by Movant.

5. Movant, as a condition of the requested modification, agrees to limit the extent of Movant's recovery efforts against Debtors to the funds available under any and all insurance policies which may provide coverage for Respondent's adjudicated liability, if any.

6. By this Motion, Movant seeks authority from this Court, to the extent it may be necessary under 11 U.S.C. § 362, to proceed with the state court litigation to judgment to liquidate Movant's claim against the Debtors. Movant also seeks authority, to the extent it may be necessary, to execute, levy, and collect upon such judgment as may be obtained by Movant in the state court action from Debtors' insurance carrier or carriers, only.

7. Movant alleges that the Court should lift the automatic stay to permit the continuation of the State Court suit since no great prejudice to either the debtor or the bankruptcy estate would result from the continuation of the civil action. Additionally, the hardship to Movant caused by the continuation of the stay considerably outweighs the hardship caused to the Debtors by modification of the stay.

8. Movant alleges that the imposition of the automatic stay denies her the opportunity to litigate since further time delays will result on the aging of evidence and loss of witnesses.


9. Movant further alleges that cause exists to lift the automatic stay in order to continue with State Court litigation since a jury trial had been requested, discovery was pending, and all issues are based entirely on state law.

WHEREFORE, PREMISES CONSIDERED, Movant respectfully prays for an order modifying the Automatic Stay to permit Movant to continue to permit her to proceed to judgment in the State Court lawsuit styled and numbered Cause No. 231,253-B, *Juanita Stace v. Brandon Wayne Ponath, Building Materials Holding Corporation, BMC West Corporation d/b/a Texas BMC West Corporation, and BMC West Corporation South Central*, now pending in the 146th Judicial District, Bell County, Texas and to execute, levy, and collect upon such judgment as be obtained by Movant in the State Court action to the extent of available policies of insurance which provide coverage in such matters, and for any and all other such relief to which the Court finds Movant justly entitled.

Respectfully submitted,

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By:


Craig W. Carlson
SBN: 00792039
Attorney for Plaintiff

NOTICE OF OPPORTUNITY FOR HEARING

NO HEARING WILL BE CONDUCTED ON THIS MOTION FOR RELIEF UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH REQUESTS FOR HEARING. IF NO RESPONSE 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 A RESPONSE IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. THE COURT RESERVES THE RIGHT TO SET ANY MATTER FOR HEARING.

CERTIFICATE OF CONFERENCE


I do hereby certify that, my associate, Kathryn L. Knotts, telephoned Robert R. Martin, Esq., attorney for Building Materials Holding Corporation and BMC West Corporation at (713) 629-1580 on the 20th day of November 2009 and he indicated that he was in agreement with said motion and did not oppose the relief requested.



Craig W. Carlson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded via U.S. mail to the Debtor, Creditors, parties-in-interest, and to all parties listed on this page on this the 20th day of November 2009.



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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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| BUILDING MATERIALS HOLDING CORPORATION and BMC WEST CORPORATION, | § | Chapter 11 |
| Debtors | § | |
| | § | Jointly Administered |

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| JUANITA STACE, | § |
| Movant | § |
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| VS. | § |
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| BUILDING MATERIALS HOLDING CORPORATION and BMC WEST CORPORATION, | § |
| Debtors | § |

ORDER

BE IT REMEMBERED on the _____ day of _____, 2009, the Court reviewed the Motion for relief From Automatic Stay filed herein by JUANITA STACE, seeking to terminate the Automatic Stay pursuant to 11 U.S.C. § 362 as it applies to a pending state court proceeding, being Cause No. 231,253-B, now pending in the 146TH Judicial District, Bell County, Texas. Having reviewed the Motion and the argument of counsel, the Court is of the opinion that said Motion should be granted. It is therefore

ORDERED, ADJUDGED AND DECREED that the Automatic Stay of Proceedings in the above-styled cause of action is terminated as to prejudgment proceedings in the cause of action styled Cause No. 231,253-B, *Juanita Stace v. Brandon Wayne Ponath, Building Materials Holding Corporation, BMC West Corporation d/b/a Texas BMC West Corporation, and BMC West Corporation South Central*, now pending in the 146th Judicial District, Bell County, Texas effective upon entry of this Order, and as to post-judgment actions and proceedings to execute, levy, and collect upon such judgment as may be obtained by Movant in the aforementioned State Court action against and from any and all insurance carriers providing coverage under Movant's claims and as limited by the funds available under any and all such insurance policies which may provide coverage for Debtors' adjudicated liability and may not be abstracted against the Debtors.

Signed this ____ day of _____, 2009.

UNITED STATES DISTRICT JUDGE

Return copy to:

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