

FILED  
Clerk  
District Court

JUL 10 2024

for the Northern Mariana Islands  
By   
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS  
BANKRUPTCY DIVISION**

In re

IMPERIAL PACIFIC INTERNATIONAL  
(CNMI), LLC,

Debtor and  
Debtor-in-Possession.

Case No. 1:24-bk-00002

**MEMORANDUM DECISION  
DENYING WITHOUT PREJUDICE  
JOSHUA GRAY AND U.S.A. FANTER  
CORP., LTD.'S MOTION FOR RELIEF  
FROM STAY**

Judgment creditors Joshua Gray (“Gray”) and U.S.A. Fanter Corp., Ltd. (“Fanter”) (collectively “Movants”) filed a motion for relief from stay (ECF No. 48) supported with a memorandum of law (“Motion for Relief from Stay,” ECF No. 49) seeking an order declaring the Personal Property levied upon by the Movants pre-petition as not “property of the estate”; alternatively, for an order modifying and lifting the automatic stay to allow Movants to exercise their rights and remedies under prior orders of the District Court and other relief. The motion was supported by the Declaration of Aaron Halegua (ECF No. 50), and Declaration of Tim Shepherd (ECF No. 51). Debtor and Debtor-in-Possession Imperial Pacific International (CNMI), LLC (“IPI” and “Debtor”) filed an opposition (“Debtor Opposition,” ECF No. 78) along with Declaration of Howyo Chi (ECF No. 79). The Official Committee of Unsecured Creditors (“Committee”) also filed an opposition (“Committee Opposition,” ECF No. 81-1). Movants filed a reply in support of their Motion for Relief from Stay (“Reply,” ECF No. 85). Creditor Dotts Law Office (“Dotts”) filed a statement of non-opposition to

1 the Motion for Relief from Stay. (ECF No. 96.) After the Court held a hearing on the matter on May  
2 30, 2024, the undersigned DENIED without prejudice Movants' Motion for Relief from Stay. (Mins.,  
3 ECF No. 98.) The Court issues this memorandum decision detailing its rationale.

#### 4 I. PROCEDURAL HISTORY

5 In November 2022, default judgment was entered in favor of Fanter and against the Debtor in  
6 the amount of \$226,127.05 plus post-judgment interest. (Fanter Order Granting Writ Execution 1-2,  
7 *U.S.A. Fanter Corp. v. Imperial Pac. Int'l (CNMI), LLC*, No. 1:21-cv-00035 ("*Fanter*") (D. N. Mar.  
8 I. June 16, 2023) ECF No. 37.) In June 2023, the Court granted Fanter's motion for a writ of execution  
9 against Debtor's motor vehicles and heavy equipment pursuant to 7 CMC § 4204. (*Id.* at 5.) The U.S.  
10 Marshals Service executed the writ the next month. (Fanter Receivership Order 1, *Fanter* (D. N. Mar.  
11 I. Jan. 12, 2024) ECF No. 49.) In October 2023, the Court granted Fanter's motion to appoint a limited  
12 receiver to liquidate the motor vehicles and heavy equipment, and appointed Clear Management, Ltd.  
13 ("Clear") as the limited receiver. (*Id.*)

15 In May 2023, judgment was entered in favor of Gray against Debtor in the amount of  
16 \$5,686,182.20 plus attorneys' fees and costs. (Gray D&O Granting Writ Execution 1, *Gray v. Imperial*  
17 *Pac. Int'l (CNMI), LLC*, No. 1:19-cv-00008 ("*Gray*") (D. N. Mar. I. Aug. 16, 2023) ECF No. 247.) In  
18 August 2023, the Court granted Gray's motion for a writ of execution against Debtor's Personal  
19 Property<sup>1</sup> pursuant to 7 CMC § 4204. (*Id.* at 7-8.) The U.S. Marshals Service executed the writ that  
20 same month. (Gray Receivership Order 1, *Gray* (D. N. Mar. I. Oct. 23, 2023) ECF No. 275.) In October  
21

22  
23  
24 <sup>1</sup> Debtor's Personal Property includes "IPI's Vehicles, IPI's Liquor, IPI's Dragons, IPI's Computer Hardware, IPI's  
Furniture and Equipment, and IPI's Casino-Related and Security Equipment, as those terms are defined in the Halegua  
Declaration [ECF No. 231-3]," and "any other non-exempt personal property that are identified by Plaintiff, sold in an  
auction in order to pay Plaintiff and satisfy the Judgment." (Gray D&O Granting Writ Execution 6.)

1 2023, the Court granted Gray’s motion to appoint a limited receiver to liquidate Debtor’s Personal  
2 Property and appointed Clear as the limited receiver. (*Id.* at 1-2.)

3 Debtor filed its voluntary Chapter 11 bankruptcy petition on April 19, 2024. (ECF No. 1.)

4 **II. LEGAL STANDARD**

5 **A. Property of the Bankruptcy Estate**

6 Generally, filing a bankruptcy petition automatically institutes a stay of

7 (1) the commencement or continuation, including the issuance or employment of process, of a  
8 judicial, administrative, or other action or proceeding against the debtor that was or could have  
9 been commenced before the commencement of the case under this title, or to recover a claim  
against the debtor that arose before the commencement of the case under this title;

10 (2) the enforcement, against the *debtor or against property of the estate*, of a judgment obtained  
11 before the commencement of the case under this title[.]

12 11 U.S.C. § 362(a) (emphasis added). As Congress recognized,

13 [t]he automatic stay is one of the fundamental debtor protections provided by the  
14 bankruptcy laws. It gives the debtor a breathing spell from his [or her] creditors. *It stops*  
15 *all collection efforts, all harassment, and all foreclosure actions*. It permits the debtor  
to attempt a repayment or reorganization plan, or simply to be relieved of the financial  
pressures that drove him into bankruptcy.

16 *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992) (quoting H.R.Rep. No. 595, 95th Cong., 1st Sess.  
17 340 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5963, 6296–97). “The stay  
18 protects the debtor by allowing it breathing space and also protects creditors as a class from the  
19 possibility that one creditor will obtain payment on its claims to the detriment of all others.” *Hillis*  
20 *Motors, Inc. v. Haw. Auto. Dealers’ Ass’n*, 997 F.2d 581, 585 (9th Cir. 1993) (citations omitted).  
21 Further, the stay “assures that the debtor’s other creditors are not racing to various courthouses to  
22 pursue independent remedies that would drain the estate’s assets.” *In re Aquarius Disk Servs.*, 254  
23 B.R. 253, 259 (Bankr. N.D. Cal. 2000) (citations omitted).  
24

1 Here, Debtor filed a voluntary Chapter 11 bankruptcy petition under 11 U.S.C. § 301. The  
2 commencement of a case pursuant to § 301 creates an estate, which “is comprised of all the following  
3 property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in  
4 property as of the commencement of the case.” 11 U.S.C. § 541(a)(1).

5 **B. “For Cause” Per 11 U.S.C. § 362(d)(1)**

6 Section 362(d) of Title 11 of the U.S. Code dictates that “the court shall grant relief from the  
7 [automatic bankruptcy] stay . . . such as by terminating, annulling, modifying, or conditioning such  
8 stay-- (1) for cause, including the lack of adequate protection of an interest in property of such party  
9 in interest[.]”<sup>2</sup> The party seeking relief from an automatic stay “must first establish a prima facie case  
10 that ‘cause’ exists for relief under § 362(d)(1).” *In re Am. Spectrum Realty, Inc.*, 540 B.R. 730, 737  
11 (Bankr. C.D. Cal. 2015) (citation omitted). “Once a prima facie case has been established, the burden  
12 shifts to the debtor to show that relief from the stay is unwarranted. The decision whether to grant or  
13 deny stay relief is within the broad discretion of the bankruptcy court.” *Id.* (citations omitted).  
14 Bankruptcy courts within the Ninth Circuit apply the following twelve *Curtis*<sup>3</sup> factors—not all will  
15 be relevant and some may carry more weight—to determine if cause exists to warrant an entity to  
16 continue pending litigation in a non-bankruptcy forum against a debtor:  
17

- 18 1. Whether the relief will result in a partial or complete resolution of the issues;
- 19 2. The lack of any connection with or interference with the bankruptcy case;
- 20 3. Whether the foreign proceeding involves the debtor as a fiduciary;
- 21 4. Whether a specialized tribunal has been established to hear the particular cause of  
22 action and whether that tribunal has the expertise to hear such cases;
- 23

24 <sup>2</sup> Gray and Fanter are unsecured creditors; thus, they are not entitled to relief from stay on the basis of lack of adequate protection. See *Aquarius Disk Servs.*, 254 B.R. at 260 (citing *In re Microwave Prods. of Am., Inc.*, 94 B.R. 967, 970 n.10 (Bankr. W.D. Tenn. 1989)).

<sup>3</sup> *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984).

1 5. Whether the debtor’s insurance carrier has assumed full financial responsibility for  
2 defending the litigation;

3 6. Whether the action essentially involves third parties, and the debtor functions only  
4 as a bailee or conduit for the goods or proceeds in question;

5 7. Whether the litigation in another forum would prejudice the interests of other  
6 creditors, the creditors’ committee and other interested parties;

7 8. Whether the judgment claim arising from the foreign action is subject to equitable  
8 subordination under Section 510(c);

9 9. Whether movant’s success in the foreign proceeding would result in a judicial lien  
10 avoidable by the debtor under Section 522(f);

11 10. The interests of judicial economy and the expeditious and economical  
12 determination of litigation for the parties;

13 11. Whether the foreign proceedings have progressed to the point where the parties are  
14 prepared for trial; and

15 12. The impact of the stay on the parties and the “balance of hurt.”

16 *Id.* (citations omitted).

17 **C. Necessary for Effective Organization Per 11 U.S.C. § 362(d)(2)**

18 Section 362(d)(2) provides that “the court shall grant relief from the stay . . . (2) with respect  
19 to a stay of an act against property under subsection (a) of this section, if-- (A) the debtor does not  
20 have an equity in such property; and (B) such property is not necessary to an effective reorganization[.]”

21 While “the party requesting such relief has the burden of proof on the issue of the debtor’s equity in  
22 property[,] . . . the party opposing such relief has the burden of proof on all other issues.” 11 U.S.C. §  
23 362(g). Thus, reading these two subsections of § 362 in conjunction, the party opposing the relief from  
24 a stay—generally the debtor—bears the burden to demonstrate that such property is necessary to an  
effective reorganization. *See United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484  
U.S. 365, 375 (1988) (“Once the movant under § 362(d)(2) establishes that he is an undersecured

1 creditor, it is the burden of the *debtor* to establish that the collateral at issue is ‘necessary to an effective  
2 reorganization.’” (citing § 362(g)).

3 To demonstrate that the collateral is necessary for an effective reorganization requires more  
4 than “a showing that if there is conceivably to be an effective reorganization, this property will be  
5 needed for it;” the debtor must show “that the property is essential for an effective reorganization *that*  
6 *is in prospect*. This means . . . that there must be ‘a reasonable possibility of a successful reorganization  
7 within a reasonable time.’” *Id.* at 375-76 (citations omitted). If, during the four months that the debtor  
8 has the exclusive right to put together a plan pursuant to 11 U.S.C. § 1121, there is a “lack of any  
9 realistic prospect of effective reorganization[,]” relief pursuant to §362(d)(2) is required. *Id.* at 376.  
10 The burden of proof for motions pursuant to § 362(d)(2)(B) “is a ‘moving target which is more difficult  
11 to attain as the Chapter 11 case progresses.’” *In re Sun Valley Newspapers, Inc.*, 171 B.R. 71, 75  
12 (B.A.P. 9th Cir. 1994) (citation omitted). To clarify,

14 [i]n the early stage of the case, “the burden of proof . . . is satisfied if the debtor can  
15 offer sufficient evidence to indicate that a successful reorganization within a reasonable  
16 time is ‘plausible.’” Near the expiration of the exclusivity period, “the debtor must  
17 demonstrate that a successful reorganization within a reasonable time is ‘probable.’”  
18 After the expiration of the exclusivity period, “the debtor must offer sufficient evidence  
19 to indicate that a successful reorganization within a reasonable time is ‘assured.’”

20 *Id.* (citations omitted).

### 21 **III. ANALYSIS**

22 Movants requested an order finding that the “Personal Property” subject to Gray and Fanter’s  
23 writs is not property of the estate pursuant to 11 U.S.C. § 541. (Mot. Relief Stay 7.) If the Court found  
24 that the Personal Property is property of the estate, Movants requested an order lifting the stay. (*Id.*)  
If the stay is not lifted, Movants requested that Debtor make monthly cash payments to Movants for  
adequate protection. (*Id.* ¶ 78.) The Court addresses each argument in turn.

### A. Property of Bankruptcy Estate

1  
2 First, the Court concluded that the Personal Property is property of the estate. “In the absence  
3 of a controlling federal rule, [courts] generally assume that Congress has ‘left the determination of  
4 property rights in the assets of a bankrupt’s estate to state law,’ since such ‘[p]roperty interests are  
5 created and defined by state law.’” *Nobelman v. Am. Savs. Bank*, 508 U.S. 324, 329 (1993) (citations  
6 omitted). Here, the writs of execution were issued pursuant to 7 CMC § 4204. (Fanter Order Granting  
7 Writ Execution 5; Gray D&O Granting Writ Execution 7-8.) Section 4204 of Title 7 of the  
8 Commonwealth Code provides that a “person duly authorized receiving a writ of execution issued by  
9 any court, shall . . . levy execution as follows:”

10  
11 (a) Demand of Payment; Seizure of Property. He or she shall demand of the person  
12 against whom the execution is issued, if the person may be found on the island where  
13 the levy is being attempted, that the person pay the execution or exhibit sufficient  
14 property subject to execution. . . . *If the person against whom the execution is issued*  
15 *does not pay the execution in full*, including interest and costs and expenses thereof, the  
16 person making the levy *shall take into his or her possession property* of the person  
17 against whom the execution is issued, not exempt from execution, sufficient in his or  
18 her opinion to cover the amount of the execution . . . .

19  
20 (c) Sale: Procedure; Disposition of Proceeds. The person making the levy on the day  
21 and at the place set for the sale, *unless payment has been made of the amount of the*  
22 *judgment and interest and the costs and expenses in connection with the levy*, shall sell  
23 the property levied upon at public auction to the highest bidder. That person shall  
24 deduct from the proceeds of the sale sufficient money for the full payment of his or her  
fees and expenses, and shall then pay the person in whose favor the execution was  
issued, or his counsel, any balance that remains up to the amount due on the execution.  
*If there are any proceeds of the sale left after the deduction and payment directed above,*  
*the remaining proceeds shall be paid over to the person against whom the execution*  
*was issued.*

7 CMC § 4204 (emphasis added).

Movants conflate possession and ownership, which are distinct. *Saipan Achugao Resort*  
*Members’ Ass’n v. Wan Jin Yoon*, 2011 MP 12, ¶ 17 (noting that the trial court conflated possession  
with ownership); *see ownership*, Black’s Law Dictionary (11th ed. 2019) (“Possession is the *de facto*

1 exercise of a claim; ownership is the *de jure* recognition of one.” (citation omitted)). Thus, when the  
2 U.S. Marshals Service levied the writs of execution, they merely took *possession* of the property  
3 pursuant to 7 CMC § 4204.<sup>4</sup> Debtor still retains interests over the Personal Property. First, if Fanter’s  
4 and Gray’s judgments were satisfied and the costs and expenses of the sale were paid, the sale of the  
5 Personal Property would cease pursuant to 7 CMC § 4204(c) and Debtor could retake possession—  
6 assuming the Personal Property is not subject to other writs of execution.<sup>5</sup> Second, if the Personal  
7 Property is sold and funds disbursed such that there is excess, such excess shall be returned to Debtor.  
8 *See* 7 CMC § 4204(c). Because, at the time the bankruptcy estate was created, Debtor retained *interests*  
9 in the Personal Property after the execution of the writs, and the Court did not approve any sales, the  
10 Personal Property *is part of the bankruptcy estate* pursuant to § 541(a)(1).<sup>6</sup> Therefore, the bankruptcy  
11 stay applies to the Gray and Fanter proceedings because these two actions are post-judgment and only  
12 active to the extent that there are limited receiverships instated pursuant to the writs of execution on  
13 the Personal Property. *See* § 362(a)(2).

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18 <sup>4</sup> At the hearing, Movants argued that *In re Thena, Inc.*, 190 B.R. 407 (D. Or. 1995) supported a finding that the Personal  
19 Property is not part of the bankruptcy estate; however, as Debtor correctly recognized, that case involved 21 U.S.C. § 853,  
20 a *criminal forfeiture* statute, which is quite distinguishable from 7 CMC § 4204, a civil statute. Section 853 does not reserve  
21 any interest in the property for the convicted criminal defendant whose property was forfeited. In fact, § 853 dictates that  
a convicted defendant shall forfeit to the United States any property constituting proceeds from the crime and any property  
used to facilitate the crime and defines property to include “rights, privileges, interest, claims, and securities.” *Id.* § 853(a)-  
(b). Conversely, 7 CMC § 4204 does not strip the person who the writ of execution is levied against of all interests in the  
levied property.

22 <sup>5</sup> The Court recognizes that Kan Pacific Saipan, Ltd. (“Kan Pacific”) has a writ of execution against the Personal Property.  
23 (Order Granting Appl. Writ Execution, *Kan Pac. Saipan, Ltd. v. Imperial Pac. Int’l (CNMI), LLC*, No. 1:21-cv-00034 (D.  
N. Mar. I. Oct. 20, 2023) ECF No. 64.) If Debtor satisfied Gray, Fanter, and Kan Pacific’s judgments, it would be entitled  
to retake possession of the Personal Property.

24 <sup>6</sup> The Personal Property does not include Debtor’s liquor as the Court has already approved the sale of the liquor as well  
as the distribution of the proceeds. (Order Granting Joint Pet. To Approve Sale of Liquor, *Gray* (D. N. Mar. I. Jan. 24,  
2024) ECF No. 287; *see also* Mot. Relief Stay ¶ 25 (“As of the Petition Date, Clear has liquidated the Debtor’s liquor  
inventory that was part of the Personal Property.”).)



1  
2 **B. “For Cause” Per § 362(d)(1)**

3 At the outset, the Committee asserts that Movants lacked standing to seek relief from the stay  
4 as unsecured creditors (Committee Opp’n to Mot. Relief Stay 12), yet provided no authority. “[A]n  
5 unsecured creditor may seek relief from the automatic stay” pursuant to § 362(d)(1) as “[t]here is  
6 nothing in the Code which provides that only secured creditors may seek relief from the automatic  
7 stay.” *In re Westwood Broad., Inc.*, 35 B.R. 47, 48 (Bankr. D. Haw. 1983) (citing *In Re Holtkamp*  
8 *Farms, Inc.*, 669 F.2d 505 (7th Cir. 1982)). Thus, Movants are not precluded from seeking relief  
9 pursuant to § 362(d)(1).

10 Nevertheless, the *Curtis* factors weigh in favor of denying Movants’ request for relief. Because  
11 Movants concede that the third, fifth, ninth, and eleventh *Curtis* factors do not apply (Mot. Relief Stay  
12 ¶ 56), the Court addresses the remaining factors below.

13  
14 *a. First Factor: Whether relief will result in a partial or complete resolution of*  
15 *the issues*

16 Granting Gray and Fanter relief will not result in resolution of the issues as the Gray judgment  
17 is currently on appeal to the United States Court of Appeals for the Ninth Circuit. (Notice of Appeal,  
18 *Gray* (D. N. Mar. I. June 29, 2023) ECF No. 230.) Moreover, Debtor maintains that Century Estate  
19 Investment Ltd. (“Century”) has a secured<sup>7</sup> claim superior to Gray’s claim to Debtor’s Personal  
20 Property, which is the subject of Gray’s case.<sup>8</sup> (Debtor Opp’n 23.) Gray has disputed the validity of  
21 Century’s security interest. (*See Reply 7; see also Pl.’s Opp’n Century Mot. Intervene 3, Gray* (D. N.  
22  
23

24 <sup>7</sup> Debtor listed Century as one of the creditors who has the twenty largest unsecured claims and are not insiders. (ECF No. 3.)

<sup>8</sup> The Court previously denied Century’s motion to intervene in the *Gray* case. (Mins., *Gray* (D. N. Mar. I. Oct. 19, 2023) ECF No. 274.)

1 Mar. I. Oct. 2, 2023) ECF No. 268.) Thus, there is a dispute over some of the Personal Property.  
2 Therefore, granting Movants relief from the stay would not resolve the issues and this factor weighs  
3 against lifting the stay.

4 *b. Second Factor: Lack of connection with or interference with the*  
5 *bankruptcy case*

6 The second factor supports relief from stay if the litigation in the other forum is unrelated to  
7 the bankruptcy case—such as with state court adjudication of divorce, child custody and probate.  
8 *Curtis*, 40 B.R. at 804-05 (citation omitted). Here, the *Gray* and *Fanter* proceedings, which are post-  
9 judgment limited receiverships, do bear on the bankruptcy estate because, as discussed above, the  
10 Personal Property subject to those receiverships are part of the bankruptcy estate. Therefore, this factor  
11 supports maintaining the automatic stay.

12 *c. Fourth Factor: Whether a specialized tribunal has been established to hear*  
13 *the particular cause of action and whether that tribunal has the expertise to*  
14 *hear such cases*

15 Here, a specialized tribunal was not established to handle the *Gray* or *Fanter* matters.  
16 Additionally, the handling of the Personal Property is appropriately before the Bankruptcy Court as  
17 the Personal Property is subject to Debtor's bankruptcy estate. Therefore, this factor does not warrant  
18 lifting the stay.

19 *d. Sixth Factor: Whether the action essentially involves third parties, and the*  
20 *debtor functions only as a bailee or conduit for the goods or proceeds in*  
21 *question*

22 Movants assert that this liquidation request involves third parties, Clear, and potential buyers  
23 of the Personal Property, and that Debtor is merely a conduit for the Personal Property. (Mot. Relief  
24 Stay 22.) Neither Debtor nor the Committee has argued to the contrary. The Court finds that because  
there are third parties involved, this factor supports lifting the stay.

1                   e. *Seventh Factor: Whether the litigation in another forum would prejudice the*  
2                   *interests of other creditors, the creditors' committee and other interested*  
3                   *parties*

4                   Century, a listed creditor, would be prejudiced from the Movants' liquidation of any of the  
5                   Personal Property as Debtor asserts Century has a secured priority lien. Further, the proceeds of the  
6                   most recent sale of the liquor in the *Gray* receivership were only disbursed to one of Debtor's judgment  
7                   creditors, Gray. (Order Granting Joint Pet. To Approve Sale of Liquor 2-3.) Presuming that the future  
8                   liquidation follows similar lines, the Committee would be prejudiced. Dotts seems to implicitly  
9                   recognize this as he requested that future disbursements be made on a pro rata basis to the judgment  
10                  creditors. (ECF No. 96 at 2.) Therefore, this factor weighs heavily against lifting the stay.

11                  f. *Eighth Factor: Whether the judgment claim arising from the foreign action is*  
12                  *subject to equitable subordination under Section 510(c)*

13                  “[E]quitable subordination involves the question of a debtor's equity and may be properly  
14                  asserted as a defense to a motion seeking relief from the automatic stay.” *In re Palmdale Hills Prop.,*  
15                  *LLC*, 423 B.R. 655, 664 (B.A.P. 9th Cir. 2009) (citation omitted). Here, there are no allegations of  
16                  equitable subordination. (See Mot. Relief Stay 22-23.) Thus, this factor slightly weighs in favor of  
17                  lifting the stay.

18                  g. *Tenth Factor: The interests of judicial economy and the expeditious and*  
19                  *economical determination of litigation for the parties*

20                  Judicial economy is not particularly relevant here when the undersigned is presiding over the  
21                  *Gray* and *Fanter* cases as well as this bankruptcy case.

22                  h. *Twelfth Factor: The impact of the stay on the parties and the “balance of*  
23                  *hurt”*

24                  Here, the stay is preventing Gray and Fanter from collecting on their judgments. The Court is  
cognizant that Clear has expended time and money as the Limited Receiver, but it may possibly  
recover such expenses pursuant to 11 U.S.C. § 543(c)(2), which “provide[s] for payment of reasonable

1 compensation for services rendered and costs and expenses incurred by such custodian[.]” The  
2 Bankruptcy Code defines custodian as a “receiver or trustee of any of the property of the debtor,  
3 appointed in a case or proceeding not under this title[.]” 11 U.S.C. § 101(11)(A). Debtor would be  
4 prejudiced if the stay were lifted to allow the liquidation of the Personal Property, which is part of its  
5 bankruptcy estate. Moreover, granting the Motion for Relief from the stay to allow Gray and Fanter  
6 to pursue their collective judgments totaling approximately \$6 million, would trigger default of the  
7 debtor-in-possession (“DIP”) financing, (*see* ECF No. 47-1 at 3 (“granting of relief from automatic  
8 stay to any creditor with a claim in excess of \$250,000 relief” is an event of default)), which the Court  
9 has just approved on an interim basis. (Mins. 2). A default of the DIP financing when the Court just  
10 approved on an interim basis would be detrimental, if not fatal, to Debtor’s Chapter 11 petition.  
11 Bearing in mind the aforementioned policy considerations of the stay providing the debtor breathing  
12 space to avail itself to the benefits of bankruptcy, the Court concluded that the *Curtis* factors weigh in  
13 favor of denying Movants’ motion for relief from the stay.  
14

15 **C. Necessary to an Effective Reorganization Per § 362(d)(2)**

16 Movants’ alternative argument for lifting the stay pursuant to § 362(d)(2) was also  
17 unpersuasive. Because Debtor “concedes that it does not have equity in the Personal Property” (Debtor  
18 Opp’n 26), the only issue for determining whether the stay should be lifted pursuant to § 362(d)(2) is  
19 whether Debtor proved that the Personal Property is necessary to an effective reorganization. Section  
20 1121 explains that the debtor has the exclusive right to file a plan within 120 days from the filing of  
21 the petition. Because the petition was filed on April 19, 2024, Debtor’s exclusive right to file a plan  
22 pursuant to § 1121 lapses on August 17, 2024. Thus, the instant case is still in the early stages such

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24

1 that Debtor can meet its burden if it can offer sufficient evidence to indicate that a successful  
2 reorganization within a reasonable time is “plausible.” *See Sun Valley Newspapers, Inc.*, 171 B.R. at  
3 75. As the Committee recognized, the Personal Property, which consists of heavy machinery,  
4 automobiles, décor, furniture, equipment, casino-related and security equipment, is “integral not just  
5 for the resumption of day-to-day casino operations but [is] also critical for sustaining the Debtor’s  
6 business viability and for the successful formulation of a Chapter 11 reorganization plan.” (Committee  
7 Opp’n 16.) Debtor affirmed that it “intends to file a plan of reorganization to reinstate its exclusive  
8 casino license, re-opening of its casino and complete the construction of the hotel” and such operations  
9 would “necessarily require the use of the Personal Property.” (Debtor Opp’n 27.) Furthermore, the  
10 interim DIP financing order enables Debtor to file such a plan as its interim operations are now funded.  
11 Therefore, the Court concluded that Debtor has met its burden to demonstrate that a successful  
12 reorganization within a reasonable time is *plausible*.  
13

#### 14 **D. Monthly Cash Payments**

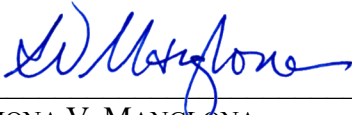
15 In the event that the Court denied their request for relief from stay, Movants requested monthly  
16 cash payments for adequate protection. (Mot. Relief Stay ¶ 78.) “[U]nsecured creditor[s], [are] not  
17 entitled to adequate protection.” *Love v. Wiseman*, 614 B.R. 573, 587 (N.D. Cal. 2020) (first citing  
18 *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 207 (1983); and then citing *In re Dairy Mart*  
19 *Convenience Stores, Inc.*, 351 F.3d 86, 90 (2d Cir. 2003)). Because Movants are unsecured creditors,  
20 the Court denied their request for adequate protection via monthly cash payments.  
21

#### 22 **IV. CONCLUSION**

23 Based on the foregoing, the Court DENIED without prejudice Movants’ Motion for Relief  
24 from Stay because the Personal Property is part of Debtor’s bankruptcy estate. Moreover, the relevant

1 *Curtis* factors and the plausibility of a successful reorganization within a reasonable time warrant  
2 against lifting the stay.

3 IT IS SO ORDERED this 10th day of July 2024.

4 

5 \_\_\_\_\_  
6 RAMONA V. MANGIONE  
7 Chief Judge