

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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SUFFOLK READY MIX, LLC,

Debtor.

Case # 8-09-75473-reg


NOTICE OF MOTION UNDER
362 [a] TO LIFT STAY

-----X

S I R S:

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Lance Ehrenberg, Esq. dated September 25, 2009, and upon all of the proceedings had in this matter, Creditor Steven Pepper as Administrator of the Estate of Sheila Pepper, will move before Hon. Robert E. Grossman, USBJ, at the Courthouse, 290 Federal Plaza, Room 860, Central Islip, NY 11722-9013 on the 19th Day of October, 2009 at 1:30 PM, or as soon thereafter as counsel may be heard, for an Order lifting the stay as against said Creditor and permitting said Creditor to proceed with his personal injury and wrongful death lawsuit against the Debtor on condition that damages sought and received be confined to all available insurance coverage issued to the Debtor.

Dated: New York, N.Y.
September 25, 2009

/s/ 
LANCE EHRENBERG, ESQ. (LE6952)
Attorney for Creditor Steven Pepper as Admin.
122 East 42nd Street, Suite 4500
New York, NY 10168
[212] 730-0200

TO:

Michael G. McCaulliffe, Esq.
Attorney for Debtor
48 South Service Rd., Suite 102
Melville, NY 11747
[631] 465-0044

Francis G. Conrad, Esq.
Jagr Smith, PC
Counsel for Creditor's Committee
485 Madison Ave.

New York, NY 10022
[212] 683-3520

Hon. Stan Yang
Office of the US Trustee
560 Federal Plaza
Central Islip, NY 11722
[631] 715-7800

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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SUFFOLK READY MIX, LLC,

Case # 8-09-75473-reg

AFFIRMATION IN SUPPORT OF
MOTION UNDER
362 [a] TO LIFT STAY

Debtor.

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LANCE EHRENBERG, ESQ., an attorney duly admitted to practice in the Eastern
District of New York and the State of New York, hereby affirms the truth of the following:

- 1) Affirmant is the Attorney for Creditor Steven Pepper as Administrator of the Estate of Sheila Pepper, and as such and from a review of my file and fully familiar with the content of this Affirmation.
- 2) On July 11, 2008 Sheila Pepper sustained grievous personal injuries [resulting some 2 months later in her death] when the car she was driving was rear-ended by a truck owned by the Debtor and operated by one of its employees. An action was commenced to recover monetary damages for the personal injuries and wrongful death by the Administrator, Steven Pepper. That action is entitled Pepper vs. Suffolk Ready Mix, LLC et ano., EDNY Index # 09-CV-1818 [Platt, J] [Lindsay,MJ]. Approximately one year after the accident giving rise to this Creditor's lawsuit, a chapter 11 proceeding was filed by the Debtor Suffolk Ready Mix LLC.
- 3) This application is submitted to request an Order lifting the automatic stay of the claims of Creditor Steven Pepper, as Administrator, provided that said claims be satisfied solely out of the motor vehicle liability insurance policies of the Debtor.
- 4) A Stipulation [Exhibit "A" hereto] has been shown or provided to counsel listed on the Notice of Motion. The Stipulation also covers a companion case [brought by Creditor Romeo], although Affirmant believes that counsel for Romeo is bringing a separate Motion for the same relief. Neither counsel nor the US Trustee has registered or voiced any objection, although Affirmant has been unable to date to obtain signatures from said counsel. A copy of the Stipulation was faxed on September 15, 2009 to counsel for the Creditor's Committee, who responded that although he had no objection to same, he was forwarding the document to the Committee and expected their answer within 24 hours. It is now nearly 2 weeks later, and no answer has been received by Affirmant regarding the approval by the Committee.
- 5) It is respectfully submitted that a granting of this motion would not entail any

prejudice to the estate of the Debtor and would in fact improve the position of the other Creditors since the damages sought in Mr. Pepper's civil suit are \$6,000,000.00, making him one of the largest Creditors. On the other hand, if the stay were not to be lifted, this Creditor would be prejudiced by the delay in prosecuting his action, due to this bankruptcy proceeding.

WHEREFORE, it is respectfully requested that the Court issue an Order pursuant to section 362 [a] lifting the stay as against Creditor Steven Pepper as Administrator of the Estate of Sheila Pepper and permitting his lawsuit to proceed in US District Court, and providing that damages in that action be limited to the motor vehicle insurance coverage of this Debtor.

Dated: New York, NY
September 25, 2009


/s/ Lance Ehrenberg

LANCE EHRENBERG, ESQ. (LE6952)
Attorney for Creditor Steven Pepper as Admin.
122 East 42nd Street, Suite 4500
New York, NY 10168
[212] 730-0200

Exhibit "A"

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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SUFFOLK READY MIX, LLC,

Case # 8-09-75473-reg

STIPULATION LIFTING
STAY

Debtor.

-----X

IT IS HEREBY STIPULATED AND AGREED, Whereas 2 lawsuits against the Debtor have been filed in the Eastern District of New York, to wit: Pepper vs. Suffolk Ready Mix, LLC, EDNY Index # 09-CV-1818 [Platt, J] [Lindsay,MJ] and Romeo et ano. vs. Suffolk Ready Mix, LLC, EDNY Index # 09-CV-2253[Seybert, J] [Wall, MJ];

Whereas the Debtor and the aforesaid Plaintiffs in those 2 lawsuits agree that the damages claimed by the Plaintiffs are covered by the Debtor's automobile liability insurance carrier, provided however, that the Debtor neither admits liability nor the validity of any damages with respect to the Complaints; and

Whereas the Debtor has consented, pursuant to and in accordance with the conditions and agreements set forth herein, the Plaintiffs being granted limited relief from the automatic stay under section 362(a) of the Bankruptcy Code, so as to permit Plaintiffs to prosecute the Complaints in U. S. District Court.

NOW THEREFORE, IT IS HEREBY STIPULATED, by the undersigned parties, subject to the approval of the Bankruptcy Court, that:

1. Upon Bankruptcy Court approval of this stipulation, the Plaintiffs shall be permitted to prosecute the Complaint in U. S. District Court to and including the entry of judgment against the Debtor and/or conduct negotiations directly with the Debtor's automobile liability insurance carrier, provided however, that no judgment on the Complaint may be enforced against the assets of the Debtor other than the automobile liability insurance policies.

2. Debtor shall have no obligation whatsoever to make any distribution of any property on account of any proof of claim the Plaintiffs have filed, could have potentially filed, or could potentially file against the Debtor, his bankruptcy estate, and/or the reorganized Debtor in this Chapter 11 case.

3. The Plaintiffs agree to collect all monetary or other forms of remuneration or relief to which the Plaintiffs may be determined to be entitled in connection with the Complaints, if any, only from the Debtor's automobile liability insurance carrier under the Debtor's applicable automobile liability insurance policies, or from the automobile liability policies of any other responsible party who is not the Debtor.

4. The Plaintiffs agree to execute general releases in favor of the Debtor and the Debtor's automobile liability insurance carrier upon the resolution or satisfaction of the Complaints or settlement negotiations from the applicable automobile liability insurance policy as determined by the U. S. District Court or by the mutual agreement of the parties.

5. Nothing herein is intended or shall be construed to waive any defenses, setoffs, objections or counterclaims that the Debtor or the Debtor's automobile liability insurance carrier may have with respect to the Complaints.

6. Neither this Stipulation nor any terms contained herein shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the parties hereto, other than as may be necessary (i) to obtain approval of or to enforce this Stipulation (ii) to seek damages or injunctive relief in connection therewith; or (iii) to prove that the Stay has been modified to allow prosecution of the Complaint to proceed in U.S. District.

7. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation. The Plaintiffs consent to the jurisdiction of this Court to resolve any disputes or controversies between the parties hereto arising from or related to this Stipulation.

WHEREFORE, this Stipulation has been executed the day of September, 2009

LANCE EHRENBERG, ESQ. (LE6952)
Counsel for the Plaintiff Pepper
122 East 42nd Street
New York, NY 10168

Michael G. McCauliffe, ESQ.
Counsel for the Debtor

Goidel & Siegel, LLC [JG7385]
Attorneys for Plaintiff ROMEO et. ano.

Jager Smith, PC
Counsel for the Creditors Committee

Stan Yang, ESQ.
Bankruptcy Trustee

HON. Robert E. Grossman, USBJ

Dated: Islip, NY
September , 2009

AFFIRMATION OF SERVICE BY MAIL

LANCE EHRENBERG, ESQ., an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms the truth of the following pursuant to CPLR section 2106:

I am not a party to the within action, am over 18 years of age and reside in New York, New York.


*On September 25, 2009 I served the within **Notice of Motion and Supporting Papers** by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within the State of New York State, addressed to each of the following persons at the last-known address set forth after each name:*

Michael G. McCaulliffe, Esq.
Attorney for Debtor
48 South Service Rd., Suite 102
Melville, NY 11747

Francis G. Conrad, Esq.
Jagr Smith, PC
Counsel for Creditor's Committee
485 Madison Ave.
New York, NY 10022

Hon. Stan Yang
Office of the US Trustee
560 Federal Plaza
Central Islip, NY 11722

*DATED: NEW YORK, N.Y.
September 25, 2009*


LANCE EHRENBERG, ESQ.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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SUFFOLK READY MIX, LLC,

Case # 8-09-75473-reg

Debtor.

NOTICE OF MOTION and SUPPORTING PAPERS

LANCE EHRENBERG, ESQ. [LE 6952]
Attorney for Plaintiff(s)
122 East 42nd Street, Suite 4500
New York, New York 10168
(212) 730-0200

To: _____ Service of a copy of the within
_____ is hereby
admitted.

Dated: _____ Attorney(s) for Defendant(s)

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

That the within is a true copy of
an Order duly entered in the Office
of the Clerk of the within-named
Court on

NOTICE OF SETTLEMENT

That an Order, of which the within
is a true copy, will be presented
for settlement to the Honorable
_____, one of the
judges of the within-named Court,
on _____ at _____ .M.

Dated: _____

Yours, etc.,

LANCE EHRENBERG, ESQ.