

U.S. BANKRUPTCY COURT  
District of South Carolina

Case No. 09-02140-hb

The relief set forth on the following pages on the **ORDER DENYING MOTION FROM RELIEF FROM STAY FILED BY DAVID HORNE**, for a total of 4 pages including this page, is hereby **ORDERED**.

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**FILED BY THE COURT**  
**09/16/2009**



Entered: 09/16/2009

A handwritten signature in cursive script, appearing to read "John L. Currie".

US Bankruptcy Court Judge  
District of South Carolina

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

In Re: ) CASE NO. 09-02140-HB  
 )  
BI-LO, LLC *et al.* ) CHAPTER 11  
 )  
Debtors.<sup>1</sup> ) (Joint Administration)  
 )

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**ORDER DENYING MOTION FROM RELIEF FROM STAY  
FILED BY DAVID HORNE**

This matter is before the Court pursuant to the request of the David Horne ("Movant") for the entry of an order granting him relief from the automatic stay, for cause, Pursuant to 11 U.S.C. § 362(d)(1) and (2) in order to pursue his employment discrimination claim in Federal District Court (Docket nos. 1272, 1276 and 1309). BI-LO, LLC and its affiliates ("BI-LO" or the "Debtors") filed a timely Objection to the Motion, and the Official Committee of Unsecured Creditors ("Committee") timely filed a Reply in support of the Debtors' Objection. Based upon the pleadings, the arguments of counsel and the evidence presented at the hearing on the Motion, the Court hereby finds as follows:

1. While the Movant cited 11 U.S.C. § § 362(d)(1) and (d)(2), he made no arguments and presented no evidence that would justify relief under 11 USC §362(d)(2). Thus, grounds do not exist to grant the Motion under 11 U.S.C. § 362(d)(2) because the Movant failed to show it has an interest in any of the Debtors' property.

2. As to relief "for cause" under 11 U.S.C. § 362(d), the Debtors presented evidence that lifting the stay would be a burden to the debtors and interfere with the

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<sup>1</sup> The Debtors and the last four digits of their respective tax identification numbers are: BI-LO, LLC (0130); BI-LO Holding, LLC (5011); BG Cards, LLC (4159); ARP Ballentine LLC (6936); ARP James Island LLC (9163); ARP Moonville LLC (0930); ARP Chickamauga LLC (9515); ARP Morganton LLC (4010); ARP Hartsville LLC (7906); and ARP Winston Salem LLC (2540).

administration of their Estates. In *Robbins v. Robbins (In re Robbins)*, the Fourth Circuit developed the following test for determining whether to lift the automatic stay in order to allow litigation to proceed: "(1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in the bankruptcy court; and (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court." *Robbins v. Robbins (In re Robbins)*, 964 F.2d 342, 345 (4th Cir. 1992).

3. Applying the first *Robbins* factor, the Movant's lawsuit does not involve state law but solely concerns federal law, Title I of the American With Disabilities Act, and Movant purports to file it in federal court. Thus, this factor weights against the Movant.

4. As to the second *Robbins* factor, the Debtors presented evidence that granting the requested relief, and the resulting lawsuit pending elsewhere free of the automatic stay, would interfere with the administration of the Estates. Moreover, the Movant has not shown how judicial economy would be improved by granting the Motion at this time. Likewise, the Movant has not shown any hardship that he will suffer if the stay remains in effect through confirmation. Therefore, this factor also weighs against the Movant.

5. Finally, the Court finds that it is not necessary to address the third *Robbins* factor as the first two factors weigh against the Movant and justify denial of the Motion at this time.

6. Thus, the Court hereby finds that cause does not exist to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1) at this time.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion for relief from the automatic stay is denied.