

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re: Case No. 16-24179
GREEN BOX NA GREEN BAY, LLC Chapter 11
Debtor.

**SECOND RENEWED MOTION OF ABILITY INSURANCE COMPANY FOR RELIEF
FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(d) OR, IN THE
ALTERNATIVE, MOTION TO DISMISS PURSUANT TO 11 U.S.C. §1112(b)**

Ability Insurance Company (“Ability”) moves the court to grant it relief from the automatic stay with respect to real estate located at 2107 American Blvd., De Pere, Wisconsin (the “Real Estate”) or in the alternative, that the Court dismiss this action for the reasons stated below. In support of its Motion, Ability states as follows:

JURISDICTION

1. This court has jurisdiction over this matter under 28 U.S.C. § 1334.
2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (M).

BACKGROUND FACTS

3. Debtor commenced this case by filing a Voluntary Petition for Relief under Chapter 11 of Bankruptcy Code on April 27, 2016 (the “Petition Date”).
4. Ability filed, among other motions, a Motion for Relief from Automatic Stay on May 4, 2016 (the “Original Motion”). [Doc. 9]. This Court denied Ability’s Original Motion on July 27, 2016, but this Court ordered Debtor to make adequate protection payments to Ability. [Doc. 52].

5. Ability renewed the Original Motion on April 20, 2017, after Ability defaulted in its payment of adequate protection (the “First Renewed Motion”). [Doc. 234]. The First Renewed Motion was resolved by a stipulation filed on May 18, 2017 [Doc. 254] which required Debtor to cure certain payments to Ability. In exchange, Ability consented to Debtor’s request to extend the deadline for “rolling up” its business affairs until September 30, 2017.

6. The 3rd Amended Chapter 11 Plan, which was confirmed on February 17, 2017, provided:

...in the event that the “roll up” is unsuccessful, the case is either converted to Chapter 7 or dismissed, then the Debtor hereby consents to an immediate relief from the automatic stay, if one exists at the time, and hereby irrevocable waives its rights of redemption under the loan documents with [Ability] so that [Ability] may, in that event, proceed directly to judgment and sale of the property by the sheriff of Brown County, Wisconsin... [Doc 223, Art. 4.1].

7. Debtor did not successfully “roll up” the Plan by September 30, 2017.

RENEWED MOTION FOR RELIEF FROM STAY

8. Cause exists for relief from the automatic stay pursuant to Section 362(d)(1) of Bankruptcy Code. Specifically:

A. Debtor has failed to facilitate the “roll up” within the time period allowed in the confirmed Plan.

B. Debtor has no equity in the Real Estate, as evidenced by the terms of the Plan.

C. Debtor’s reorganization attempts have failed, so the Real Estate is no longer necessary for its successful reorganization.

D. Debtor consented to relief from the automatic stay in the Plan.

MOTION TO DISMISS

9. Debtor’s failure to facilitate the “roll up” evidences the absence of a reasonable

likelihood of rehabilitation.

10. Debtor has also failed to effectuate substantial consummation of its confirmed Plan.

11. Debtor is in material default with respect to its confirmed Plan.

12. Each of the above constitutes cause for dismissal of this action pursuant to 11 U.S.C. §1112.

Dated this 3rd day of October, 2017.

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.
Attorney for Ability Insurance Company

/s/ Michele M. McKinnon

Michele M. McKinnon (State Bar No. 1041053)

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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re: Case No. 16-24179
GREEN BOX NA GREEN BAY, LLC Chapter 11
Debtor.

CERTIFICATE OF SERVICE

I, Sarah M. Leupold, certify that I caused a copy of the foregoing Second Renewed Motion of Ability Insurance Company for Relief from Stay and or, in the Alternative, Motion to Dismiss to be served upon the following individuals by electronic filing through ECF on October 3, 2017:

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I, Sarah M. Leupold, certify that I caused a copy of the foregoing Second Renewed Motion of Ability Insurance Company for Relief from Stay and or, in the Alternative, Motion to Dismiss to be served upon the following individuals by U.S. Mail on October 3, 2017:

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See attached mailing labels

/s/ Sarah M. Leupold

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Label Matrix for local noticing
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