

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

HITZ RESTURANT GROUP, LLC, ) Case No. 20-05012  
 )  
 Debtor ) Chapter 11  
 )  
 ) Honorable Donald R Cassling

**MOTION OF KASS MANAGEMENT SERVICES, INC. AND  
THE SOUTH LOOP SHOPS, LLC FOR RELIEF FROM THE AUTOMATIC STAY**

Creditors, KASS MANAGEMENT SERVICES, INC. AND THE SOUTH LOOP SHOPS, LLC (collectively “Landlord”), by and through their attorneys, Mario A. Sullivan, Johnson & Sullivan, Ltd., moves this Court to modify the automatic stay to permit it to take possession of the residential real estate commonly known as 825 South State Street, Chicago, Illinois 60605 (“Premises”). In support of its motion, Creditor states as follows:

1. On February 24, 2020, Debtor filed a voluntary petition for relief under Chapter 11 of the United States Code (“Code”).
2. Debtor continues to reside in the Premises as a Debtor and Debtor in Possession pursuant to the 11 USC §§1107 and 1008 of the Code.

**Background**

3. The South Loop Shops, LLC is the owner of record for the Premises.
4. Kass Management Services, Inc. is the agent for the owner of the Premises and has full authority to proceed in all matters pertaining thereto.
5. Debtor is engaged in the operation and management of restaurant and bar at the Premises.

6. On or about February 26, 2019, Debtor and Landlord entered into that certain agreement for the use and occupancy of the Premises (“Lease). A copy of the Lease is attached hereto as Exhibit “A”.

7. Section 1.4 of the Lease provides that upon taking possession of the Premises, Debtor accepts it in an AS-IS, WHERE-IS condition.

8. Section II of the Lease provides that Debtor agrees to pay monthly rent monthly rent, CAM, Taxes, and late fees in the amount of \$15,736.93 (“Monthly Rent”).

9. Section 2.4(A) of the Lease provides that Debtor’s duty to pay Monthly Rent is independent of any obligation of Landlord thereunder and shall be paid without abatement, reduction, demand, or set-off.

10. Section 5.1 of the Lease provides that it is Debtor’s obligation to maintain Premises and to maintain, replace and repair all equipment, including heating, ventilating, and air conditioning facilities.

11. Section 12.3 of the Lease provides that Debtor is to install and maintain all fixtures, furnishings, and equipment for the operation of its business.

12. Debtor has failed pay the full amount of Monthly Rent and other charges for its use and occupancy of the Premises since before July, 2019.

13. Landlord served on Debtor a Five-Day Notice of Termination pursuant to the *Illinois Forcible Entry and Detainer Act* (“Act”) on December 19, 2019 (“Notice”).

14. The Notice provided that if Debtor failed to tender the sums demanded therein within five (5) days, his Lease would be terminated.

15. Debtor did not tender the sums as demanded in the Notice nor vacate the Premises as required therein.

16. On January 2, 2020, Creditor was forced to file its joint action pursuant to the *Illinois Forcible Entry and Detainer Act* for possession of the Premises and money damages (“Forcible Action”) against Debtor and Guarantor.

17. Since the filing of this Chapter 11 Bankruptcy, Debtor has failed to pay post-petition Monthly Rent for the months of March and April, 2020, in the amount of \$31,293.86.

18. As of April, 2020, Debtor has failed to pay Monthly Rent in the amount of \$94,804.95.

19. Debtor brings this Chapter 11 Bankruptcy, meanwhile, Debtor remains in possession of the Premises, continues to fail to tender Monthly Rent Creditor, and continues to fail to remediate its breach and default of the Lease.

**DEBTOR HAS FAILED TO TENDER POST-PETITION MONTHLY RENT,  
LACKS EQUITY IN THE PREMISES, AND  
THE PREMISES IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION**

20. Section 365(d)(3) of the Code requires that a debtor in possession shall timely perform all obligations under any unexpired lease, until such time as it is assumed or rejected.

21. Under Section 365(d)(3) of the Code, a debtor “has the duty, prior to the assumption or rejection of a lease of nonresidential real property, to make timely payment of the full rent due...”*In re Telesphere Communications*, 148 B.R. 525, 531 (U.S. Bankr., Northern Dist. IL, 1992).

22. Section 362(d)(1) of the code provides that a court shall grant relief from the stay for cause, including the lack of adequate protection of an interest in property.

23. Section 362(d)(2)(a)(b) of the Code provides that a court shall grant relief from the stay if the Debtor has no equity in the Premises and the Premises is not necessary to an effective reorganization

24. A court can grant relief from the stay for cause pursuant to Section 362(d)(1) of the Code for a debtor's failure to tender post-petition rent. *In re Consolidated Indus. Corp.*, 234 B.R. 84, 87 (U.S. Bankr., Northern Dist IL., 1999).

25. Pursuant to Section 365(d)(3) of the Code, Debtor has a duty to timely tender payment of post-petition Monthly Rent.

26. To date, Debtor has failed to make any payments of post-petition Monthly Rent.

27. If Creditor is not legally permitted to proceed with the Forcible Action, to protect its interest in the Premises, it will suffer irreparable injury, loss, and damage. This Honorable Court can and should terminated the stay for cause pursuant to Section 362(d)(1) of the Code. *In re Consolidated Indus. Corp.*, 234 B.R. 84, 87 (U.S. Bankr., Northern Dist IL., 1999).

28. Creditor's action to regain possession is not prohibited by the automatic stay pursuant to Sections 362(d) of the Code because the Debtor has failed to make post-petition Monthly Rent payments, has no equity in the Premises, and the Premises is not necessary to an effective reorganization.

29. By reason of the foregoing, an order should be entered modifying the automatic stay to permit Creditor to take possession of the Premises.

WHEREFORE, Creditors, KASS MANAGEMENT SERVICES, INC. AND THE SOUTH LOOP SHOPS, LLC, respectfully requests that this Court grant it relief from the automatic stay in order to proceed with the Forcible Action for possession of the Premises, and awarding any other relief this Court deems just and equitable.

Respectfully submitted,  
KASS MANAGEMENT SERVICES, INC. AND  
THE SOUTH LOOP SHOPS, LLC  
Creditor

By: /s/Mario A. Sullivan  
One of Their Attorneys

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