IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

633 SMITHFIELD LLC, *Debtor*	:	Case No. 21-21550-TPA
	:	Chapter 11
GLICKMAN REALTY, INC., *Movant*	:	Related to Doc. No. 140
v.	:	
633 SMITHFIELD, LLC, *Respondent*	:	

MEMORANDUM OPINION AND ORDER

On December 15, 2021, the Debtor filed a Notice of Appeal from the Court's orders granting relief from stay to Glickman Realty, Inc., ("Glickman"), and then subsequently denying the Debtor's motion seeking reconsideration. *See* Doc. No. 126. The Debtor then filed a ***Motion to Stay Proceedings Pending Appeal*** ("Motion") at Doc. No. 140, the matter presently before the Court.[1] Glickman filed a Response in opposition to the *Motion* at Doc. No. 149. No other responses were filed. After having reviewed the *Motion* and Response and heard argument from the Parties, the Court will grant the *Motion* and impose a stay, but conditioned on the Debtor making an adequate protection payment to Glickman before the stay will go into effect, and other security-related duties imposed on the Debtor going forward such that its failure to comply with them at any time in the future will lead to a subsequent lifting of such stay.

[1] The Court has subject matter jurisdiction in this matter pursuant to *28 U.S.C. §1334.* The *Motion* is a core proceeding under *28 U.S.C. § §157(b)(1)* and *157(b)(2)(G)*, and *Fed.R.Bankr.P. 8007(a)*.

LEGAL STANDARD

In considering a motion for a stay pending appeal, the Court is required to consider the following four factors: (1) the stay applicant's likelihood of success on appeal, (2) whether the applicant will suffer irreparable injury if a stay is not granted, (3) whether a stay would harm other parties in the litigation, and (4) whether a stay is in the public interest. *See generally In re Countrywide Home Loans, Inc.*, 387 B.R. 467, 471 (Bankr. W.D. Pa. 2008).

When the *Countrywide* opinion was issued it was unclear as to exactly how these four factors should be applied in deciding whether to grant a stay, with some courts finding that all of the factors must be satisfied by the moving party before a stay could be granted, while others (including *Countrywide* itself) employed a more flexible "balancing" test such that a movant's failure to demonstrate one or more of the factors would not necessarily be fatal to the request for a stay. Since that time the Third Circuit has provided clarification as to the proper approach to be taken. *See In re Revel AC, Inc*., 802 F.3d 558 (3d Cir. 2015).

The *Revel* court first explained that the familiar four stay factors were not created equal because the first two, likelihood of success on appeal and irreparable harm to the movant, are the most critical, and a positive showing as to both by the movant is a necessity for a stay to be granted. 802 F.3d at 568. That then leads to the next question: how strong of a likelihood of success on appeal must the stay applicant show? The *Revel* court here adopted what it termed a "sliding scale" approach under which the movant must at least show that it has a "significantly better than negligible" chance of prevailing on the appeal in order to establish that the first factor has been met. Furthermore, the stronger the showing of a likelihood of success that the moving party makes

beyond that bare minimum, the more likely a stay will be permissible even if the "balance of harms" (*i.e.*, joint consideration of factors 2 and 3) and public interest weigh against issuing a stay.

While this all sounds somewhat confusing in the abstract, the *Revel* court offered the following helpful explanation:

> To sum up, all four stay factors are interconnected, and thus the analysis should proceed as follows. Did the applicant make a sufficient showing that (a) it can win on the merits (significantly better than negligible but not greater than 50%) and (b) will suffer irreparable harm absent a stay? If it has, we "balance the relative harms considering all four factors using a 'sliding scale' approach. However, if the movant does not make the requisite showings on either of these [first] two factors, the [] inquiry into the balance of harms [and the public interest] is unnecessary, and the stay should be denied without further analysis." ... But depending on how strong a case the stay movant has on the merits, a stay is permissible even if the balance of harms and public interest weigh against holding a ruling in abeyance pending appeal.

802 F.3d at 571 (*citation omitted*). The Court will thus proceed to analyze the *Motion* in accordance with the directions for doing so as set forth in *Revel*.

DISCUSSION

(1) Likelihood of success on appeal

As indicated above, the Debtor has appealed an order granting relief from the automatic stay to Glickman, and a subsequent order denying reconsideration of such decision. Whether to annul the automatic stay is a decision committed to the bankruptcy court's discretion and may be reversed only for an abuse of that discretion. *In re Myers*, 491 F.3d 120, 128 (3d Cir. 2007).

See also, e.g., Cardiello v. Casale, 2006 WL 1455590 * 1 (W.D. Pa. May 23, 2006) (The standard of review from a bankruptcy court order lifting the automatic stay is abuse of discretion, with the reviewing court exercising plenary review over the legal findings of the bankruptcy court and applying a clearly erroneous standard as to findings of fact).[2]

The Debtor here has identified two issues it will be presenting on the appeal. First, it will argue that the Court abused its discretion in granting the relief from stay because the Debtor's approximately one-hour delay in making a required adequate protection payment to Glickman was only a *de minimus* violation of the Court's previous order requiring the payment to be made by no later than Noon. Second, it will argue that the Court violated F.R.E. 404 when it *sua sponte* took into consideration character evidence as to the Debtor's principal, Prasad Bandhu (hereinafter, "Bandhu"), arising from prior bankruptcy filings by other entities owned by Bandhu and then based its decision to grant relief from stay to Glickman in material part on such evidence. *See* Debtor's *Designation of Record and Statement of Issues for Appeal*, Doc. No. 143. The Court must therefore evaluate the Debtor's likelihood of success on appeal as to those issues.

As to the first issue, the Court acknowledges that on its face the grant of relief from the automatic stay due to an adequate protection payment being made approximately one-hour late by the Debtor might appear excessive. The bland recitation of facts as presented by the Debtor in

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[2] At the hearing on the *Motion*, Counsel for the Debtor argued that the standard of review on appeal would actually be somewhat stricter than abuse of discretion. When the Court asked for any authority to support that contention, Counsel cited to *U.S. v. Boyd*, 55 F.3d 239 (7th Cir. 1995) and *Direx Israel, Ltd. v. Breakthrough Medical Corp.* 952 F.2d 802 (4th Cir. 1991). The Court has reviewed those cases. The first is a criminal matter and the second an appeal from the grant of a preliminary injunction in a trade secret case. The Court finds them too far off point to be of any significance to the present matter.

framing the issue in its *Statement of Issues for Appeal*, however, omits all of the important preceding events in the case that were considered by the Court in reaching that decision. A comprehensive recitation of those events is set forth in the Order of October 22, 2021, Doc. No. 96, which granted relief from stay to Glickman, and the Order of December 2, 2021, Doc. No. 122, which denied Debtor's motion for reconsideration. That complete history is incorporated by reference herein and need not be repeated here, but a brief recap may be helpful.

The case was filed on July 5, 2021, and the next day Glickman filed a motion to dismiss at Doc. No. 6. The Court informed the Debtor at the very first hearing in the case held on July 29, 2021 on Glickman's motion to dismiss that it had serious concerns about the case. That was reiterated in the August 9, 2021 Order scheduling a trial on the motion to dismiss, Doc. No. 41. While the Court ended up denying the Glickman motion to dismiss, the September 9th Order doing so further put the Debtor on notice that it had been a close call, and that the Court would be closely monitoring the case going forward to make sure the Debtor met all of its obligations to remain in bankruptcy. The September 9th Order further made clear that dismissal, though justified, was not being granted because there was a less extreme alternative in that the Debtor could be required to make adequate protection payments pending confirmation of a plan and could be kept on a "very short leash" and face a further dismissal inquiry should it "miss any required payment or engage in any other sort of misconduct."

Despite being put on such clear notice that its actions would be closely scrutinized, the Debtor thereafter failed to file required monthly operating reports on a timely basis, resulting in

the issuance of a *Rule to Show Cause* being issued scheduling a hearing for October 18th.[3] That violation, which again could have been a ground for dismissal of the case in and of itself given the prior admonitions and the September 9th Order, instead resulted in the issuance of the October 18th order that imposed the "October 20th at Noon" deadline for the Debtor to make an adequate protection payment to Glickman. The Debtor was informed in no uncertain terms both at the October 18th hearing itself, and then again in the written Order that followed, that this was a "last chance" and that no further violations would be tolerated in the absence of exceptional circumstances beyond the Debtor's control. It was in this overall context that the Debtor's late payment of the adequate protection on October 20th should be considered.

The circumstances surrounding the late payment are revealing. The Debtor was under a strict obligation to make the payment to Glickman's attorney ***"On or before Wednesday, October 20, 2021 at 12:00 Noon."*** October 18, 2021 Order, Doc. No. 90 (emphasis in original). Knowing the Debtor's precarious situation, Prassad Bandhu, the Debtor's Principal, chose to make this absolutely essential payment by depositing it in the U.S. Mail on the afternoon of October 19th — at a postal facility that was less than two blocks away from the office of Glickman's attorney. Why Bandhu would choose such a risky form of delivery rather than simply deliver it personally can only be explained in the Court's view by an attitude of deliberate defiance or reckless disregard on his part — a "thumbing of his nose" to the Court and its Order in either event, and the proverbial final straw.

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[3] The Court notes that the pattern of late filing of monthly operating reports by the Debtor has continued. The report for November was due by December 20, 2021, but was not filed until January 3, 2022. This will be addressed in the Court's Order.

The Court thus believes that the facts in this case, when viewed on a cumulative basis, were such that the Court was well within its discretion in granting relief from stay to Glickman. The Court also believes that the integrity and credibility of the court as an institution was on the line given the repeated prior warnings the Debtor had been given, and that if a strong sanction had not been imposed, its authority would have been harmed and undermined. The Court thus finds it unlikely that the Debtor will carry its burden on appeal of showing an abuse of discretion. That having been said, however, the Court recognizes that a reviewing court could potentially conclude that it was an abuse of discretion to consider the entirety of what had happened thus far in the case in deciding to grant relief from stay, rather than to more narrowly focus on the specific incident of the late adequate protection payment on October 20th. The Court also recognizes that, however unlikely, a reviewing court might disagree with its conclusion that Bandhu's decision to make the payment by mail rather than personally deliver it was indicative of someone who was not acting in good faith. Again, the Court thinks it unlikely that a reviewing court would do so, but it is at least possible, and probably something more than a mere negligible possibility. The Court therefore finds that the Debtor has made a sufficient showing under the first factor with respect to its abuse of discretion issue, albeit barely.

The second issue raised by the Debtor on appeal is with respect to the alleged improper use of character evidence, and the Court finds that the Debtor has only a negligible likelihood of success as to that issue. There are two main reasons for that conclusion. First, the Court believes its analysis to be correct that consideration of other bankruptcy filings made by Bandhu-related entities was proper under *F.R.E. 404(b)(2)* as a means of probing motive, intent or

plan – relevant factors in determining whether the present case was filed in good faith– and not the improper "character" evidence that Debtor seeks to portray it as. In addition to the authorities to that effect previously cited by the Court at pages 12-13 in its September 9, 2021 Order, Doc. No. 70, *see also, e.g., In re LeGree*, 285 B.R. 615, 620 (Bankr. E.D. Pa. 2002) ("The precise weight given to a debtor's pre-petition conduct, including a history of serial bad faith filings, is within the bankruptcy court's discretionary power in making a determination of good faith, as long as the court sufficiently considers the prior conduct under the totality of circumstances test."), *In re Ang*, 2017 WL 344474 *4 (9th Cir. BAP, August 10, 2017) ("...a debtor's history of filings and dismissals is a salient factor in determining bad faith.").

Second, and even more importantly, the Court's consideration of past filings by entities owned by Bandhu ultimately played no part in the decision to grant relief from stay which is the subject of the appeal. The Court discussed the prior filings in its September 9th Order and pointed to some concerning features of them, but that Order ended up denying the motion to dismiss that Glickman had filed, thereby allowing the case to continue. In other words, even assuming the prior related filings should not have been considered, it was a mere harmless error to do so. It was the Debtor's subsequent failure to comply with the Order of October 18, 2021, requiring payment of the adequate protection to be made by no later than Noon on October 20th that led to the grant of relief from stay, not any improper character evidence arising from prior bankruptcy cases.

To sum up the first stay factor, the Court finds that the Debtor has passed the threshold of sufficiency with respect to one of its issues on appeal, though barely, while it has failed to do so as to the other issue. The analysis must therefore proceed to the second stay factor.

(2) Irreparable harm to Debtor

The Debtor argues that it will be irreparably harmed if a stay pending appeal is not granted because Glickman has scheduled a sheriff sale on the 633 Smithfield property for February 7, 2022. If no stay is entered and that sheriff sale is allowed to proceed the Debtor states that its rights in the property will be irretrievably lost, and the appeal will be rendered moot. *Motion* at ¶6.

The Court agrees that the Debtor would be irreparably harmed in the absence of a stay. An irreparable harm is "harm that cannot be prevented or fully rectified" by a successful appeal. *In re DNIB Unwind*, 2017 WL 3396468 *5 (D. Del. August 8, 2017) (quoting *Revel*, *supra*). If the sheriff sale were to proceed the Debtor will lose its rights in the property. Moreover, since the property is the only significant asset owned by the Debtor, that result would almost certainly also doom any chance for a viable reorganization and lead ultimately to a dismissal of the case. None of this could be prevented or rectified by a successful appeal since any decision by the appellate court will not occur until after the sheriff sale has taken place.[4] This factor thus strongly supports the grant of a stay.

(3) Balance of harm

The Debtor has thus made a sufficient showing with respect to the first two critical

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[4] The Court takes judicial notice that the District Court has issued a scheduling order in Debtor's appeal which calls for the appellant brief to be filed by January 18, 2022, the appellee brief to be filed by February 18, 2022, and the appellant reply brief to be filed by March 4, 2022. *See* Case # 2:21-cv-01833-WSS, Doc. No. 2. Since the sheriff sale is scheduled for February 7, 2022 it is clear there will be no decision on the appeal by then.

stay factors. In accordance with the procedure as outlined in *Revel*, the Court must therefore proceed to balance the relative harms considering all four stay factors while using a sliding scale approach. In that regard the Court first finds that the only other party to the litigation who would be significantly harmed by a stay is Glickman. The harm Glickman would suffer is obvious since its efforts to have the property sold at a sheriff sale to go toward the satisfaction of its mortgage would be thwarted, at least temporarily, by the imposition of a stay pending appeal. However, while such harm is real, it is not irreparable. Glickman will retain its lien on the property at all times during a stay and will ultimately be free to reschedule a sheriff sale of the property should it choose to do so if the Debtor is unsuccessful in its appeal. Any harm to Glickman caused by a stay can also be ameliorated by the requirement for the Debtor to make periodic adequate protection payments to Glickman as a condition for a grant of the stay, and in fact, as will be discussed further below, that is exactly what the Court will do. It was also brought up at the hearing that the Pittsburgh Water and Serer Authority ("PWSA") has a claim and may have a statutory right to be paid out of proceeds from a sheriff sale of the property. PWSA will thus suffer some harm if a stay is granted, but nothing that is irreparable. PWSA will continue to maintain whatever rights it has and the only harm would be a delay in the effectuation of such rights while the appeal is decided.

When the irreparable harm that the Debtor will experience in the absence of a stay is compared with the much lower level of harm that Glickman and PWSA will experience if a stay is granted, it is clear that the balance of harms weighs in favor of granting the stay.

The last factor to be considered is the public interest. The Court must assess where the public interest lies by considering whether and how the grant of a stay will have consequences beyond the immediate parties. *See In re Butko*, 2021 WL 510233 *11 (Bankr. W.D. Pa., February 10, 2021). There does not appear to be any direct, strong public interest involved here as this is a dispute between two private parties over a commercial property with no significant impact on the larger public. At most, the public may be said to have an interest here in that it always has an interest in the correct application of the bankruptcy laws, especially where property rights are at stake. *See e.g., In re Scott*, 605 B.R. 372, 384 (Bankr. W.D. Pa. 2017) (quoting *Revel*). That limited interest would likely best be served by a grant of the *Motion* and entry of a stay since only the imposition of a stay will allow for the correct application of the law respecting this property in the event the Debtor were to succeed on its appeal.

(4) Summary of balancing of factors

The Debtor has met its burden with respect to the first two necessary stay factors, arguably showing a somewhat more than negligible likelihood of winning its appeal and that it will suffer irreparable harm if the *Motion* is denied and there is no stay pending the appeal. The overall balance when considering all four stay factors favors the grant of a stay since the harm that Glickman and PWSA will experience if a stay is granted is easily outweighed by the harm the Debtor will suffer if there is no stay, and since the public interest also tips slightly toward the grant of a stay. The end result is that a stay pending appeal is appropriate under the procedure as outlined in *Revel*, though it will be conditioned on a security component as discussed below.

(5) Security

If a stay pending appeal is warranted, the Court may condition the stay on the posting of "a bond or other security." *Fed.R.Bankr.P. 8007(a)(1)(B); In re 160 Royal Palm, LLC*, 2020 WL 4791964 * 2 (Bankr. S.D. Fla. February 13, 2020). Glickman opposes the entry of a stay, but says that if a stay is entered then the Debtor should be required to make the adequate protection payments that would have come due if relief from stay had not been granted, to make like adequate protection payments on a monthly basis going forward, and to post a bond in favor of Glickman in the amount of the judgment that Glickman obtained in state court on the mortgage foreclosure, that being $330,340.46 as of April 16, 2021, plus continuing costs and interest.

The Court agrees that some sort of security is warranted for a stay pending appeal to be entered. As of now, the Debtor has stopped making any adequate protection payments since the Court's October 22nd Order granting Relief from Stay but has retained possession of the Glickman collateral. This is not fair to Glickman and could continue for a considerable period of time as the instant appeal is pending. Allowing the Debtor to continue its possession of the property during the appeal without making any payment to Glickman would be especially unfair if Glickman prevails in the appeal and the Debtor then decides to abandon the property without further payment.

The Debtor was required to make adequate protection payments to Glickman as compensation for its use of the property prior to the grant of relief from the automatic stay. That was mandated initially by the Court on a *sua sponte* basis as part of its September 9th Order issued in response to Glickman's motion to dismiss, and done as a less extreme step than a dismissal of the

case as Glickman had sought. The September 9th Order set the amount at $1500 per month and noted that such amount appeared *prima facie* reasonable to the Court, although the Court was willing to consider whether it should be raised or lowered from that figure upon the filing of a proper motion by either Party. *Id*. at note 10.

Glickman subsequently filed such a motion on October 4, 2021 at Doc. No. 73, seeking relief from stay, or in the alternative an increase in the amount of the adequate protection payment. In that motion Glickman pointed out that since this is a single-asset real estate case it is subject to *11 U.S.C. §362(d)(3)*. That provision states that in a single-asset real estate case the court shall grant relief from stay to a creditor whose claim is secured by an interest in the real estate unless within 90 days after the order for relief the debtor has filed a plan with a reasonable possibility of being confirmed, or the debtor has commenced making payments to the creditor in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the property. Glickman's motion noted that the 90-day period had passed, that the Debtor had not yet filed a plan with a reasonable possibility of being confirmed, and that the $1500 payment the Debtor was to be making pursuant to the September 9th Order was less than the $2,231.25 payment that would be required to meet the applicable nondefault contract rate of interest as specified by *Section 362(d)(3)*. In responding to Glickman's motion, the Debtor did not contest the substance of Glickman's legal analysis of the situation, and it stated it was "willing to increase the adequate protection payment as indicated to $2,231.25 or in such other amount as the Court may order." *See* Doc. No. 84 at ¶36. The October 18th Order denied Glickman's request for relief from stay, but to meet the requirements of *Section 362(d)(3)* required the Debtor to make the catch-up

adequate protection payment of $1,464 by Noon on October 20th, and then subsequently make monthly payments of $2,232 thereafter.

In short, following the filing of Glickman's October 4th motion, and the Debtor's response thereto, the need for, and amount of, the adequate protection payment the Debtor was required to pay in order to maintain possession and use of the property became a matter of a positive legal requirement under the Bankruptcy Code and not merely an imposition made by the Court in its discretion as a way for the Debtor to avoid a dismissal of the case. In the Court's view this counsels strongly in support for that same requirement to be in place as a condition of a stay pending appeal because the Debtor would need to be making that same payment in the absence of an appeal, at least until such time as it filed a plan with a reasonable chance of being confirmed.[5]

Requiring the adequate protection payment to continue as a condition for granting a stay pending appeal also recognizes and helps compensate Glickman for the loss it would otherwise experience during the appeal if the Debtor were permitted to continue using the property without compensating Glickman in any way. This conclusion was strengthened at the hearing on the Motion with information that the Debtor anticipates an opening of a restaurant on the property very soon, which indicates it is definitely using and benefitting from the property.

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[5] And while the appeal remains pending, and the status of the property that would be the linchpin of any plan is thus in legal limbo, it is difficult to see how the Debtor could ever file such a plan, meaning as a practical matter that the adequate protection obligation based on *Section 362(d)(3)* would continue throughout the appeal.

Finally, there is considerable case law supporting the requirement for continued adequate protection payments to be made in connection with a stay pending appeal. *See, e.g., Matter of Rothermel*, 32 B.R. 42 (Bankr. S.D. Ohio 1983) (debtor required to continue making monthly adequate protection payments to creditor until appeal decided); *In re Booth*, 18 B.R. 816 (Bankr. E.D. Ark. 1982) (condition for imposing stay pending appeal would include updating arrearages and maintaining monthly payments on property); *Village Green I, GP v. Federal National Mortgage Association*, 2014 WL 2589444 (W.D. Tenn. June 10, 2014) (monthly payments to be maintained as part of terms of stay pending appeal); *In re Premier Automotive Services, Inc*., 2006 WL 4748706 (Bankr. D. Md. June 13, 2006) (a bond would not be required as condition of stay pending appeal, but debtor would be required to continue making monthly payments of rent). There is thus no reason why the Debtor here should not be required to catch up on its past "missed" adequate protection payments, and to make such payments going forward as a condition to the grant of a stay.

On the other hand, the Court does not agree that a bond should also be required. As indicated above, even if there is a stay pending appeal, Glickman will maintain its lien on the property at all times during the appeal so its secured status will not be impaired. To require the Debtor to make adequate protection payments in addition to posting a bond in these circumstances would be an overreach going well beyond any reasonable security concerns of Glickman and verge on a windfall.

As to the amount of the adequate protection payments that should be required, in its October 18th Order, and based on information that had been provided by Glickman at a hearing, the

Court found that the proper amount of monthly adequate protection payment going forward under the standard of *11 U.S.C. §362(d)(3)(B)(ii)* was $2,232. In responding to the *Motion*, Glickman asserted that the proper monthly adequate protection payment should be $2,964 instead of $2,232. It is not entirely clear to the Court the reason for the change in the amount, but Debtor, through its attorney, agreed to the amount at the January 13th hearing, so that is the amount that will be required.

Two, final security components will also be required, even though not requested by Glickman. The Court believes it is important that the Debtor keep the property insured and in good condition and timely file monthly operating reports if it wants to maintain the stay and it will therefore impose that requirement strictly as well. Furthermore, the Debtor will once again be required to make full and complete adequate protection payments going forward on a certain date each month.

AND NOW, this ***18th*** day of ***January, 2022***, for the reasons stated above and on the record at the time of hearing on the *Motion*, and consented to by the Debtor after an extensive colloquy, it is ***ORDERED, ADJUDGED*** and ***DECREED*** that the *Motion* is ***GRANTED***, as follows:

(1) A stay pending appeal is ***GRANTED***, resulting in the reimposition of the automatic stay in this bankruptcy case pending the outcome of the appeal taken by the Debtor, provided that ***on or before Noon on Wednesday, February 2, 2022*** the Debtor causes to be hand-delivered to the office of Glickman's attorneys a payment in the amount of $8,892 in cash or a cashier's check, representing adequate protection payments for November 2021, December 2021,

and January 2022, and files an Affidavit with the Court ***on or before February 3, 2022*** affirming that the payment has been made on a timely basis along with a signed receipt from the office of Glickman's attorney**.**

(2) If the Debtor fails to make timely payment and/or file the Affidavit as required by Paragraph 1 of this Order then no stay pending appeal will go into effect, with prejudice.

(3) Once the stay pending appeal has become effective, in order to maintain such stay the Debtor must: (a) cause to be hand-delivered to the office of Glickman's attorneys a payment in the amount of $2,964 in cash or a cashier's check ***on or before Noon on February 15, 2022, and then on or before Noon on the 15th day of each month thereafter***, along with a signed receipt from Glickman's attorney affirming payment, and keep such property in good condition and repair; (b) ***on or before February 2, 2022*** provide proof of appropriate and reasonable commercial grade insurance for the premises with Glickman as loss payee and maintain such insurance on the property located at 633 Smithfield Street, Pittsburgh, Pa.; and (c) timely file all monthly operating reports.

(4) If the stay pending appeal has become effective and at any time thereafter the Debtor fails to meet the obligations as set forth in Paragraph 3 of this Order, time being of the essence, then upon the filing of an Affidavit of Default by Glickman the Court will promptly schedule a hearing to determine whether the stay pending appeal should be terminated, with prejudice.

(5) The October 2021 adequate protection payment made to Glickman by Debtor, which Glickman has been holding in escrow, may be negotiated by Glickman immediately with no prejudice to its position on appeal.

(6) The deadlines as set forth in this Order will be strictly enforced and any missed deadline will not be excused in the absence of extraordinary circumstances beyond the control of the Debtor or its principal and will result in the immediate lifting of the stay entered herein.

(7) The Court retains jurisdiction to hear and decide any issues related to the stay pending appeal ordered herein, or the modification or vacation of such stay.

Thomas P. Agresti, Judge
United States Bankruptcy Court

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Case administrator to serve:
Jeffrey Morris, Esq.
William Price, Esq.
Larry Wahlquist, Esq.
Debtor