

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA  
Lynchburg Division

In re:	)	Chapter 7
	)	
MAXINE JONES,	)	Case No. <b>13-62570</b>
	)	
Debtor.	)	
_____	)	
	)	
WILLIAM E. CALLAHAN, JR., TRUSTEE	)	
FOR MAXINE JONES,	)	
	)	
Movant,	)	
	)	
v.	)	
	)	
CINDY BRAGGS,	)	
TERRY ELLIS,	)	
	)	
Respondents.	)	
_____	)	

**MOTION BY CHAPTER 7 TRUSTEE  
FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO  
11 U.S.C. § 362(d) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001**

William E. Callahan, Jr, Trustee for Maxine Jones, by and through his undersigned counsel, moves the Court for entry of an order granting relief from the automatic stay pursuant to section 362(d) of Title 11, United States Code (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 4001, and in support of his request, states as follows:

1. Maxine Jones (the “Debtor”) filed a voluntary petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Virginia, Lynchburg Division (the “Court”) on December 18, 2013 (the “Petition Date”), commencing the captioned case (the “Case”).

2. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in this district is

proper under 28 U.S.C. § 1408 and § 1409. The statutory predicates for the relief requested herein are section 362 of the Bankruptcy Code and Bankruptcy Rule 4001.

3. The Trustee was appointed the trustee in the Case at the first meeting of creditors pursuant to section 702(d) of the Bankruptcy Code and continues to serve in that capacity.

### **Facts**

4. From 1989 until approximately August 2012, the Debtor, Dawn Robinson (“Robinson”), Cindy Braggs, and Terry Ellis were members of a successful rhythm & blues/pop singing group called En Vogue. In 1997, Robinson left the group, giving up her rights to the “En Vogue” name (Robinson returned to the group as an independent contractor from 2009 to 2011). In June 2012, the Debtor was forced out of the group by the remaining members, Cindy Bragg and Terry Ellis, who continued use of the name En Vogue. After her departure from the group, the Debtor and Robinson joined together and began performing as Dawn Robinson and Maxine Jones of En Vogue.

5. Shortly after the Debtor left the group, Cindy Braggs & Terry Ellis (collectively, the “Plaintiffs”) commenced an arbitration proceeding seeking damages for the breach of the operating agreement to which the Debtor, Robinson, and the Plaintiffs were parties. In the arbitration, the arbitrator ruled that although the Plaintiffs had not shown they were entitled to money damages and even though they had not requested injunctive relief, they were entitled to injunctive relief barring the Debtor and Robinson from using the name “En Vogue.” The arbitrator’s decision was thereafter confirmed by the United States District Court for the Central District of California (the “District Court”).

6. The arbitrator’s decision and the subsequent confirmation by the District Court resulted in the forfeiture by the Debtor of a valuable asset. Prior to the Petition Date, the Debtor appealed the District Court’s decision to the United States Court of Appeals for the Ninth Circuit (the “Court of Appeals”). This appeal was pending on the Petition Date.

7. On the Petition Date, the automatic stay imposed by section 362(a) of the Bankruptcy Code became effective as to the Plaintiffs, preventing them from taking any action in the appeal that would constitute the continuation of a judicial action or proceeding against the Debtor. As a result of that stay, the estate has also been unable to pursue the appeal in the Court of Appeals that, if successful, would result in benefits to the estate.

#### **Relief Requested**

8. Pursuant to section 362(d)(1) of the Bankruptcy Code, the Court shall grant relief from the automatic stay for “for cause”. Cause exists to grant relief from the automatic stay pursuant to section 362(d)(1) as to the Plaintiffs to the extent necessary to permit each of them to assert their respective rights under the subject operating agreement in the appeal before the Court of Appeals and to thereafter assert their respective rights and claims in any subsequent action in which the Plaintiffs or the estate to assert their respective rights and claims under the subject operating agreement, including the right to the future use of the name “En Vogue”. Such relief would permit the appeal to the Court of Appeals to move forward and, if such appeal is successful, permit the estate to seek a judicial determination of the estate’s rights and claims under the subject operating agreement and to the use of the name “En Vogue”. If such litigation is successful, the estate could benefit from funds becoming available to pay the creditors in this Case. Conversely, because of the limited relief requested, if the litigation is not successful, the Plaintiffs will remain stayed from any further action to collect any debt from the estate or the Debtor. Thus, cause exists for the grant of the relief requested in this Motion.

#### **Notice**

9. Pursuant to Bankruptcy Rule 4001(a)(1), Bank has provided notice of this Motion to the Respondents, the Debtor, her counsel, and the United States Trustee as reflected in the certificate of service attached to the notice. The notice of this Motion complies with applicable

Bankruptcy Rules and Local Rules and is sufficient and appropriate notice under the circumstances.

**Waiver of Stay of Order Granting Relief**

10. To the extent that this Motion is uncontested or if relief is granted with the consent of the Respondents, cause exists for the waiver of the ten (10) day stay of the order granting relief, as provided in Bankruptcy Rule 4001(a)(3).

WHEREFORE, the Trustee, by counsel, respectfully moves the Court to enter an Order (1) granting the estate relief from the automatic stay of section 362(a) of the Bankruptcy Code to the extent necessary to permit the Plaintiffs to assert their respective rights under the subject operating agreement in the appeal before the Court of Appeals and to thereafter assert their respective rights and claims in any subsequent action in which the Plaintiffs or the Debtor assert their respective rights and claims under the subject operating agreement, including the right to the future use of the name "En Vogue", but not including the right to pursue any further action to collect any debt from the estate or the Debtor, (2) waiving the ten (10) day stay of the order granting relief provided by Bankruptcy Rule 4001(a)(3), and (3) granting such other relief as may be appropriate.

WILLIAM E. CALLAHAN, JR., TRUSTEE  
FOR MAXINE JONES

By: /s/ William E. Callahan, Jr.  
Counsel

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Counsel for the Trustee

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA  
Lynchburg Division

In re: ) Chapter 7  
)  
MAXINE JONES, )  
CONSULTING, LLC, ) Case No. **13-62570**  
)  
Debtor in Possession. )  
\_\_\_\_\_)  
)  
WILLIAM E. CALLAHAN, JR., TRUSTEE, )  
FOR MAXINE JONES, )  
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Movant, )  
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v. )  
)  
TERRY ELLIS, )  
CINDY BRAGGS, )  
)  
Respondents. )  
\_\_\_\_\_)

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that a hearing will be held in the United States Bankruptcy Court, United States Courthouse, 255 W. Main Street, Charlottesville, VA, on May 19, 2014 at 2:00 p.m. on the following matter, a copy of which is attached hereto:

**MOTION BY CHAPTER 7 TRUSTEE FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO § 362(d) OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001**

**PLEASE TAKE FURTHER NOTICE** of the Court's issuance of a Pre-Hearing Order in this matter and the deadlines by which you must file a response in this matter.

WILLIAM E. CALLAHAN, JR., TRUSTEE  
FOR MAXINE JONES

By: /s/ William E. Callahan, Jr.  
Counsel

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Counsel for the Trustee

Certificate of Service

I hereby certify that on April 23, 2014, I served a copy of the forgoing Notice of Hearing and the pleading referenced therein upon the United States Trustee, counsel for the Debtor, and all parties requesting notice in this case by the Court's CM/ECF electronic noticing system, and upon the Debtor at the address shown in the Court's records and upon the Respondents set forth below, by first class mail, postage prepaid.

Cindy Bragg  
c/o George L. Mallory, Jr., Esq.  
Counsel for Cindy Bragg  
1925 Century Park East, Suite 200  
Los Angeles, CA 90067-2701

Terry Ellis  
c/o George L. Mallory, Jr., Esq.  
Counsel for Cindy Bragg  
1925 Century Park East, Suite 200  
Los Angeles, CA 90067-2701

/s/ William E. Callahan, Jr.  
William E. Callahan, Jr.

UNITED STATES BANKRUPTCY COURT  
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Movant,	)	
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v.	)	
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CINDY BRAGGS,	)	
TERRY ELLIS,	)	
DAWN ROBINSON,	)	
	)	
Respondents.	)	
_____	)	

**DEFAULT ORDER GRANTING MOTION BY CHAPTER 7 TRUSTEE  
FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO  
11 U.S.C. § 362(d) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001**

The matter before the Court is the Motion by Chapter 7 Trustee for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d) and Federal Rule of Bankruptcy Procedure 4001 (the "Motion"), filed by William E. Callahan, Jr, Trustee for Maxine Jones, by and through his undersigned counsel.

Based on the Court having issued a Pre-Hearing Order for the Motion on April 25, 2014 that required the Respondents herein to file a pleading responsive to the Motion within fourteen (14) days thereafter, and the deadline established by the Pre-Hearing Order having passed and there being no response to the Motion filed with the Court, and the Court finding and concluding based on a review of the representations set forth in the Motion, the Notice of Hearing, and the Certificate of Service annexed thereto, that proper notice of the Motion was given to the

Respondents herein and that cause exists for the grant of the relief requested in the Motion, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. The Motion is GRANTED in its entirety. The automatic stay provisions of 11 U.S.C. § 362(a) are modified and relieved to the fullest extent necessary to permit the parties to this Motion to assert their respective rights under the subject operating agreement in the appeal before the United States Court of Appeals for the Ninth Circuit (the "Court of Appeals") and to thereafter assert their respective rights and claims under the subject operating agreement, including the right to the future use of the name "En Vogue", in any subsequent action including, without limitation, the commencement of a subsequent judicial proceeding to determine the estate's rights and claims under the subject operating agreement and to the use of the name "En Vogue".

2. This Order shall become effective immediately upon entry by the Court, and shall not be stayed by the provisions of Federal Rule of Bankruptcy Procedure 4001(a)(3) or any other applicable statute or rule.

3. The hearing on the Motion scheduled for May 19, 2014 at 2:00 p.m. in Charlottesville, Virginia is cancelled and removed from the docket.

4. This Order and the relief granted herein shall survive and remain in effect upon the conversion of this Case to any other Chapter of the United States Bankruptcy Code and shall be binding on any subsequently appointed trustee of the Debtor in this case under any Chapter of the United States Bankruptcy Code

Entered: May 14, 2014

  
UNITED STATES BANKRUPTCY JUDGE



I ask for this:

/s/ William E. Callahan, Jr.

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Counsel for the Trustee