

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9

Case No. 13-53846

City of Detroit, Michigan,

Debtor.

**MOTION FOR ORDER GRANTING RELIEF FROM STAY
FOR LIMITED PURPOSE OF HEARING ISSUES ON APPEAL**

NOW COMES Jerome Moore, Plaintiff-Appellant in the Michigan Court of Appeals, Case No. 310920, by his attorneys, Jerome D. Goldberg, PLLC, and for his Motion for Relief from the Automatic Stay for the limited purpose of allowing oral argument in this appeal to proceed and so the Michigan Court of Appeals can render its decision in this case, states as follows:

1. Jerome Moore filed his employment discrimination case alleging race and age discrimination against the City of Detroit and the Southeastern Michigan Health Association (SEMHA) in Wayne County Circuit Court, Case No. 10-006409-CD, on June 7, 2010.
2. On June 6, 2012, Wayne County Circuit Judge Amy Hathaway issued an order granting summary disposition in favor of both Defendants and dismissing Mr. Moore's case.
3. A Claim of Appeal with the Michigan Court of Appeals was timely filed on June 22, 2012, and the case was assigned Court of Appeals No. 310920.
4. Jerome Moore was employed as a security specialist by SEMHA pursuant to a contract between SEMHA and the City of Detroit.

5. However, Mr. Moore's direct supervisors were employees of the City of Detroit. Wayne County Circuit Judge Hathaway at the motion hearing on May 11, 2012, while granting summary disposition in favor of Defendants, held that there were questions of fact as to whether Defendant City of Detroit was an agent of Defendant SEMHA, so a proper adjudication of the issues in this case requires both parties.
Exhibit 2, attached.
6. After a long wait, oral argument is scheduled in Mr. Moore's appeal on November 13, 2013, at 11:00 a.m. **Exhibit 3, attached.** Briefs were filed by the parties months ago and briefing is completed.
7. Because of the question of the agency relationship between the City of Detroit and SEMHA, both parties need to participate in the argument for a complete adjudication of the issues.
8. If the Court of Appeals, after hearing oral argument, rules against Plaintiff-Appellant Moore, the case will be resolved.
9. Even if the Court of Appeals rules in favor of Mr. Moore's appeal, because of the agency relationship between the City of Detroit and SEMHA, as well as the Master Professional Services Contract between these parties, it is likely that SEMHA and not the City of Detroit will be liable for any damages in this case.
10. Mr. Moore is requesting relief from the Automatic Stay, for the limited purpose of allowing the City of Detroit to participate in oral argument in this case, and so that his appellate rights can be adjudicated.
11. Allowing relief from the stay for the limited purpose of permitting the City to participate in oral argument in this case and to allow the Court of Appeals to render

its decision, will serve this honorable Court's expressed directive to the City to wrap up as many pending lawsuits as they are able to do to relieve the burden from the Bankruptcy Court.

12. A similar limited order for Relief from Stay was issued by this honorable Court to allow the Court of Appeals to render a decision in a pending case on appeal (Docket 993), in the case of Ronald Cook.
13. A Copy of the Proposed Order is attached. **Exhibit 1, attached.** Mr. Moore sought concurrence from Jason McFarlane, attorney for the City of Detroit, and concurrence was denied pending the filing of this motion.

WHEREFORE: Jerome Moore respectfully requests that this honorable Court grant relief from the Automatic Stay for the limited purposes of allowing oral arguments on appeal scheduled for November 13, 2013, to proceed and to allow the Michigan Court of Appeals to render decision in Case No. 310920.

Respectfully submitted,

JEROME D. GOLDBERG, PLLC

By: /s/ Jerome D. Goldberg
Jerome D. Goldberg (P61678)
Attorney for Jerome Moore, Plaintiff-
Appellant in the Michigan Court of Appeals
2921 East Jefferson, Suite 205
Detroit, MI 48207
Phone: 313-393-6001
Fax: 313-393-6007
Email: apclawyer@sbcglobal.net

DATED: October 22, 2013

BRIEF IN SUPPORT

Jerome Moore relies on the facts as outlined in this motion, the discretion of this honorable Court and the interests of judicial economy in support of his Motion for Relief from the Automatic Stay for the Limited Purposes of allowing the City of Detroit to participate in Oral Argument on his appeal and for the Michigan Court of Appeals to render its decision.

Respectfully submitted,

JEROME D. GOLDBERG, PLLC

By: /s/ Jerome D. Goldberg
Jerome D. Goldberg (P61678)
Attorney for Jerome Moore, Plaintiff-
Appellant in the Michigan Court of Appeals
2921 East Jefferson, Suite 205
Detroit, MI 48207
Phone: 313-393-6001
Fax: 313-393-6007
Email: apclawyer@sbcglobal.net

DATED: October 22, 2013

EXHIBIT 1 – PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9

Case No. 13-53846

City of Detroit, Michigan,

Debtor.

ORDER GRANTING MOTION FOR RELIEF FROM AUTOMATIC STAY

This Motion of Jerome Moore having come before this Court [docket no. ___], and the Court being otherwise fully advised in the premises;

IT IS ORDERED:

1. Jerome Moore's Motion for Limited Relief from the Automatic Stay is granted.
2. The Automatic Stay is lifted for the limited purpose of allowing the City of Detroit to participate in Oral Argument in Mr. Moore's appeal, Michigan Court of Appeals No. 310-920, scheduled to be heard on November 13, 2013, and to allow for the Court of Appeals to render its decision on the Appeal.
3. If the Appeal is granted and the case is remanded for further proceedings to Wayne County Circuit Court, any further adjudication relative to the City of Detroit shall be subject to the automatic stay and to the jurisdiction of the Bankruptcy Court.

EXHIBIT LIST

- Exhibit 1 Proposed Order
- Exhibit 2 Pertinent portion of Circuit Court Judge Hathaway's ruling at May 11, 2012,
hearing
- Exhibit 3 Michigan Court of Appeals Schedule of Arguments notice

EXHIBIT 2

THIRD JUDICIAL
CIRCUIT COURT

12 JUN -6 AM 11:16

STATE OF MICHIGAN

OFFICE OF
COURT REPORTING
DIVISION

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

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JEROME MOORE,

Plaintiff,

-vs-

Case No. 10 006 409 CD

SOUTHEASTERN MICHIGAN HEALTH

ASSOCIATION,

Defendant.

-----/

MOTION HEARING

Friday, May 11, 2012, Detroit, Michigan

BEFORE THE HONORABLE AMY P. HATHAWAY, CIRCUIT JUDGE

APPEARANCES:

For the Plaintiff: EDWARDS & JENNINGS, P.C.
Alice B. Jennings (P29064)
65 Cadillac Square, Rm. 2710
Detroit, MI 48226
(313) 961-5000

For the Defendant,
SEMHA: NEMETH BURWELL, P.C.
Terry Bonnette (P67692)
200 Talon Centre, Ste. 200
Detroit, MI 48226
(313) 567-5921

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APPEARANCES: (cont'd)

Appearing for the City of
Detroit:

CITY OF DETROIT LAW
DEPARTMENT
Andrew Jarvis (P59191)
660 Woodward Ave. #1650
Detroit, MI 48226
(313) 237-5038

TABLE OF CONTENTS

WITNESSES:

(none)

EXHIBITS:

(none)

1 was reinstated in September is of 2008. And
2 then terminated again in February, of 2009.

3 He worked there for 13 months. He was
4 hired obviously as a black man, at a certain
5 age, which we won't go into, Mr. Moore, and 13
6 months later, he says he was fired because of
7 his race and his age. That's the first problem
8 we have to get over. Let's deal with the city
9 of Detroit.

10 First of all, the Court is satisfied that
11 there are questions of fact whether the
12 defendant city is an agent to apply under ELCRA
13 or whether it controlled a term, condition or
14 privilege of a nonemployee. That's the
15 McClemmons (phonetic) case that Miss Jennings
16 cited. And given the city's employment,
17 management and working relationship with
18 defendant SEMHA, especially in this case,
19 because of the two employees, I believe they
20 were King and Gregory; is that correct?

21 MS. JENNINGS: That's correct.

22 THE COURT: The Court is satisfied there
23 are questions of fact as to what control they
24 had over defendant employees relationship. So
25 for purposes of all these decisions that I have

1 to make, I'm going to address all counts to
2 both defendants.

3 I've already made a preliminary statement
4 regarding race and sex.

5 With respect to age discrimination, the
6 Court is satisfied that the comments that were
7 made were insufficient to get a claim for age
8 discrimination. There is no evidence that
9 satisfies this Court that the plaintiff was
10 treated differently. The comments do not go
11 directly to discriminate his age, but simply
12 that they were stray remarks as the defendant
13 calls them and the Court is satisfied that he
14 was not treated differently for the same or
15 similar conduct.

16 The defendant shows that the plaintiff was
17 terminated for not providing a quality product,
18 or not having the ability or understanding
19 necessary for the job. That's the memo from
20 King, which is March, 2009. But there's
21 nothing to establish that the alleged similarly
22 situated employees, which is required, were
23 performing their work unsatisfactory, or were
24 kept on anyway. The only real instance
25 plaintiff points to is McClainor, but she

EXHIBIT 3

MICHIGAN COURT OF APPEALS

Schedule of Arguments - MCR 7.213(D)

Wednesday, November 13, 2013 at **11:00 AM**

Detroit Courtroom, 3020 West Grand Boulevard, 14th Floor, Detroit
Karen M Fort Hood, PJ, and Henry William Saad and Stephen L Borrello, JJ

JEROME D GOLDBERG
2921 E JEFFERSON AVE
STE 205
DETROIT, MI 48207

Case Call Item 10

Mailed: October 4, 2013

COA.299

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- | | | |
|----|-----------|--|
| 9 | 307320-T* | MID MICHIGAN DIAGNOSTIC CORP V MICHIGAN INTERNAL MEDICINE
PC
<i>Attorneys</i>
PL-CD-AT DENNIS K EGAN Oral Argument Preserved
DF-CP-AE DONALD H ROBERTSON Oral Argument Preserved |
| 9 | 307863-T* | MID-MICHIGAN DIAGNOSTIC CORP V MICHIGAN INTERNAL MEDICINE
PC
<i>Attorneys</i>
PL-CD-AE JOVAN DRAGOVIC Oral Argument Preserved
PL-CD-AE DENNIS K EGAN Oral Argument Preserved
DF-CP-AT DONALD H ROBERTSON Oral Argument Preserved |
| 10 | 310920-D | JEROME MOORE V SOUTHEASTERN MICHIGAN HEALTH ASSOCIATION
<i>Attorneys</i>
PL-AT ALICE B JENNINGS Oral Argument Preserved
PL-AT JEROME D GOLDBERG Oral Argument Preserved
DF-AE DEBORAH L BROUWER Oral Argument Preserved
DF-AE JASON MCFARLANE Oral Argument Preserved |
| 11 | 311357-T | STEPHEN J DUNN V TIMOTHY M BENNETT
<i>Attorneys</i>
PL-AE-XT STEPHEN J DUNN
DF-AT-XE KEVIN L BENNETT Oral Argument Preserved |
| 12 | 315867-T# | IN RE L VANNESTE MINOR
<i>Attorneys</i>
AE SAMANTHA A LORD
PT-AE TIMOTHY K MORRIS
RS-AT BRANDON MCNAMEE Oral Argument Preserved |

NOTE: The tables in the courtrooms are reserved for counsel or parties *in propria persona* who are endorsed to present oral argument. The tables are not to be occupied by parties or amici curiae who are not endorsed.

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9

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Debtor.

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