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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

In re Matterhorn Group, Inc.,)	
)	2:10-cv-02849-GEB-EFB
Debtor.)	
)	<u>ORDER DENYING UNION'S MOTION</u>
_____)	<u>FOR STAY*</u>
)	
Vitafreeze Frozen Confections,)	
Inc.,)	
)	
Debtor.)	
)	
_____)	
)	
Deluxe Ice Cream Company,)	
)	
Debtor.)	
)	
_____)	

On November 3, 2010, the Bakery, Confectionery, Tobacco Workers Union Local No. 85 and Teamsters Local 324 ("the Unions") filed a motion "for an order staying all Bankruptcy Court action with regard to the Unions' three collective bargaining agreements ("CBAs") and the Unions' rights under federal labor law" pending a decision by this Court on the Unions' two motions to withdraw reference. (Unions' Mem. of P.&A. in Supp. of Mot. to Stay ("Mot.") 1:2-7.) On November 3, 2010, the

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 Unions also filed an ex parte application for an order shortening time
2 requesting the stay motion be heard "prior to the hearing on the merits
3 of the matters [the Unions seek to withdraw] now set in the bankruptcy
4 court for November 8, 2010." (Ex Parte Appl. for Order Shortening Time
5 ("Appl.") 3:6-8.)

6 The Unions argue "[a] stay is appropriate here to permit this
7 Court to determine whether to withdraw the contested matters without
8 proceedings occurring in the bankruptcy court that would result in
9 prejudice to the Unions' position should the references be withdrawn."
10 (Mot. 5:12-14.)

11 Matterhorn Group, Inc., Vitafreze Frozen Confections, Inc. and
12 Delux Ice Cream Company (the "Debtors") oppose both the ex parte
13 application for an order shortening time and the stay motion. (Debtors'
14 Mem. of P.&A. in Opp'n ("Opp'n").) The Debtors argue the merits of the
15 motion and contend the Unions' emergency stay motion is unfair, arguing:

16 The Sale Motion was filed on October 8, 2010. The
17 Unions waited 26 days, until 3 court days before
18 the hearing on the Sale Motion, to seek a stay on
19 shortened time. This is unfair. The Unions cannot
create their own exigency by waiting until the last
minute to seek relief where there is not enough
time to conduct the hearing on proper notice.

20 (Opp'n 4:12-18.)

21 I. BACKGROUND

22 The Unions have filed Motions for Withdrawal of Reference
23 concerning two motions pending in the Bankruptcy Court: 1) the Debtors'
24 Motion to Reject Collective Bargaining Agreements ("Rejection Motion"),
25 and 2) the Debtors' Sale Motion ("Sale Motion"), which the Unions allege
26 seeks to make the sale of Debtors' assets expressly free and clear of
27 all union and pension liabilities.

1 The Debtors' original Rejection Motion was heard by the
2 Bankruptcy Court on October 25, 2010, and denied without prejudice on
3 October 26, 2010. (Debtors' Notice of Mootness, 2:11-16, Ex. A, ECF No.
4 2.) The Debtors filed a Renewed Motion to Reject Collective Bargaining
5 Agreements on October 28, 2010, which is scheduled to be heard in the
6 Bankruptcy Court on November 8, 2010. (Decl. of Emily Rich in Supp. of
7 Unions' Motion for to Stay ("Rich Decl.") ¶ 4.) The Debtors' Sale Motion
8 is also scheduled to be heard in the Bankruptcy Court on November 8,
9 2010. (Rich Decl. ¶ 2.)

10 The Unions filed a motion to stay the original Rejection
11 Motion in the Bankruptcy Court on October 21, 2010, seeking a stay
12 pending resolution of their related motion for withdrawal of reference.
13 (Rich Decl. ¶ 6.) The Bankruptcy Court denied the Unions' stay motion
14 without prejudice holding *inter alia*, "[i]f the debtors' [Rejection
15 Motion] is not denied at the hearing on October 25, the court will then
16 consider the issuance of a stay pending the District Court's
17 consideration of the motion to withdraw the reference filed by the
18 unions." (Order, 1:28-2:3, ECF No. 346 in the bankruptcy matter.)

19 The Unions also filed a motion to stay the Sale Motion in the
20 Bankruptcy Court on October 21, 2010, seeking a stay pending resolution
21 of their related motion for withdrawal of reference. (Rich Decl. ¶ 7.)
22 However, the Unions did not file the motion for withdrawal of reference
23 concerning the Sale Motion until November 1, 2010. (Rich Dec. ¶ 7.) The
24 Bankruptcy Court denied the Unions' stay motion on October 29, 2010,
25 holding *inter alia*, "[t]o the extent the unions are requesting a stay in
26 connection with a request that [the] District Court withdraw the
27 reference of the sale motion (LNB-16) still pending in this court, no
28

1 such withdrawal motion has been filed or docketed." (Order, 2:11-14, ECF
2 No. 410 in the bankruptcy matter.)

3 **II. DISCUSSION**

4 A party may move to stay a case or proceeding before the
5 bankruptcy court pending disposition of a motion for withdrawal under
6 Federal Rule of Bankruptcy Procedure 5011(c). The moving party has the
7 burden "to establish that a stay under the circumstances would be
8 appropriate." In re The Antioch Co., 435 B.R. 493, 496 (Bankr. S.D. Ohio
9 2010) (citation omitted). "The inquiry in determining if a stay is
10 proper pending a decision on [a] Motion to Withdraw is the same as on
11 any motion for stay." In re Price, No. 05-04807-TOM-13, 2007 WL 1125639,
12 at *7 (Bankr. N.D. Ala. 2007) (citation omitted).

13 [A] stay should be granted only if the moving party
14 can show (1) the likelihood that the pending motion
15 to withdraw will be granted (i.e. likelihood of
16 success on the merits); (2) that the movant will
17 suffer irreparable harm if the stay is denied; (3)
that the non-movants will not be substantially
harmed by the stay; and (4) the public interest
will be served by granting the stay.

18 In re The Antioch Co., 435 B.R. at 497; see also In re Price, 2007 WL
19 1125639, at *7.

20 The Unions do not argue their stay motion under this four
21 factor test, and have made no arguments in their stay motion which could
22 be construed as addressing the likelihood of success on the merits
23 factor.

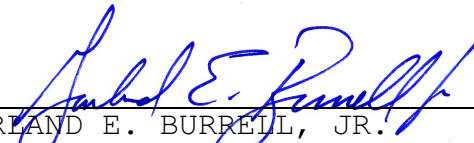
24 Further, a stay motion "ordinarily shall be presented first to
25 the bankruptcy judge. A motion for a stay or relief from a stay filed in
26 the district court shall state why it has not been presented to or
27 obtained from the bankruptcy judge." Fed. R. Bankr. P. 5011(c). The
28 Unions have not shown that they properly moved to stay the bankruptcy

1 proceedings in the Bankruptcy Court. Although the Unions moved to stay
2 the Debtors' original Rejection Motion in the Bankruptcy Court, it does
3 not appear that they moved to stay the renewed Rejection Motion in the
4 Bankruptcy Court. Further, when the Unions moved to stay the Sale Motion
5 in the Bankruptcy Court, they had not yet filed a motion for withdrawal
6 of reference of the Sale Motion.

7 **III. CONCLUSION**

8 For the stated reasons, the Unions' Motion to Stay Bankruptcy
9 Court Action is DENIED.

10 Dated: November 5, 2010

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GARLAND E. BURRELL, JR.
United States District Judge