UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT

BAP NO. XX11-xxx[1]

Bankruptcy Case
No. 09-xxxxx-XXX and No. 10-xxxxx-XXX
Jointly Administered
Chapter 11

IN RE: PETER RABBIT and WARREN PROPERTIES, INC.,

***Debtors*.**

PETER RABBIT and WARREN PROPERTIES, INC.,

***Appellants*,**

vs.

FARMER McGREGOR,

Appellee.

On Appeal from the United States Bankruptcy Court
for the District of Massachusetts—X Division

CORRECTED APPELLANTS' BRIEF

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[1]**Names, addresses, and other identifying information have been redacted to protect privacy.**

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JURISDICTIONAL STATEMENT

The U.S. Bankruptcy Court for the District of Massachusetts had jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(1). On Date 7, 2010, the U.S. Bankruptcy Court for the District of Massachusetts entered its final order. A bankruptcy court order granting or denying a motion for relief from the automatic stay is a final, appealable order. 28 U.S.C. § 158(a)(1); *see also In re Whispering Pines Estate, Inc.*, 369 B.R. 752 (B.A.P. 1st Cir. 2007). This Court has jurisdiction to hear the Debtors' appeal of the bankruptcy court's final order pursuant to 28 U.S.C. § 158(b).

STATEMENT OF THE ISSUE

Whether the bankruptcy court erred in granting Farmer McGregor's Motion for Relief from Stay.

STATEMENT OF APPELLATE REVIEW

This Court, on review of the bankruptcy court's order below, must independently examine the bankruptcy court's decision and apply the "clearly erroneous" standard to findings of fact. *In re Hill*, 387 B.R. 339 (B.A.P. 1st Cir. 2008). "'A finding [of fact] is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Id.* at 345 (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985)).

This Court must apply a de novo review to conclusions of law. *In re Pilavis*, 244 B.R. 173 (B.A.P. 1st Cir. 2000).

STATEMENT OF THE CASE

The Nature Of The Case And The Course Of The Proceedings Below

Debtor Peter Rabbit filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code on Date 2, 2009. Debtor Warren Properties, Inc., filed for bankruptcy protection under Chapter 11 on Date 3, 2010. The two related bankruptcies are currently being jointly administered in the U.S. Bankruptcy Court for the District of Massachusetts. The two debtors are collectively referred to herein as "the Debtor."

On Date 4, 2010, secured creditor Farmer McGregor moved for relief from the automatic stay to foreclose on real property located on Bunny Trail Road, Rabbit Hole, Massachusetts, and recorded in County Registry of Deeds in Book X, Page X. (Appellant's Appendix ("App.") at 1.) The Debtor filed an objection and response to the motion for relief from the automatic stay on or about Date 5, 2010, which response demonstrated that Farmer McGregor was adequately protected and that no cause existed to allow for relief from the automatic stay. (App. at 13.)

An evidentiary hearing on Farmer McGregor's motion for relief from the automatic stay was held on Date 6, 2010. (App. at 241.) The hearing was continued until Date 7, 2010. Following the hearing on Date 6, 2010, the bankruptcy court ordered the Debtor to pay Farmer McGregor adequate protection payments for the months of x, y, and z. (App. at 235.)

The parties also agreed that the motion for continued use of cash collateral would be extended until the later hearing. (App. at 235.)

On Date 7, 2010, the bankruptcy court entered an order granting Farmer McGregor's Motion for Relief from Stay. (App. at 300, 310.) On Date 8, 2010, the Debtor filed a Motion for Reconsideration of the order of Date 7, 2010 granting the Motion for Relief from Stay. (App. at 206.)

A hearing was held on Date 9, 2010 on Debtor's Motion for Reconsideration. (App. at 312.) The hearing was then continued until Date 10, 2011. The court also ordered the use of cash collateral through Date 10, 2011. (App. at 312.)

On Date 10, 2011, after the hearing, the bankruptcy court denied the Debtor's Motion for Reconsideration and affirmed its decision to grant Farmer McGregor's Motion for Relief from Stay. (App. at 235.) The bankruptcy court also allowed the Debtor to withdraw the amended disclosure statement and ordered the continued use of cash collateral through foreclosure. (App. at 235.)

The Debtor filed a notice of appeal on Date 11, 2011. (App. at 340.)

Statement Of The Facts

Debtor Peter Rabbit, as Trustee of Bunny Trail Realty Trust, Rabbit Enterprises, Inc., and Debtor Warren Properties, own a large parcel of real property on Bunny Trail Road in Rabbit Hole, Massachusetts. The site, known as "Rabbit Warren Resort," is situated on land which has been in the Rabbit family for more than 140 years. (App. at 21, 23-29.) The

property was originally developed by the family in the 1960s. It encompasses several acres of cranberry bogs, woodland, and water bodies, and the remaining land area is an RV and camping resort with some 400 campsites, most of which are equipped with utilities hookups. The site also includes numerous facilities and a sandy beach. (App. at 23-39.) As of late 2009, the fair market value of the property was considered to be $11.5 million by a professional appraiser who has valued more than 70 campgrounds and recreational sites. (App. at 137, 290.) The appraised value includes income from the cranberry bogs and other extractable materials, as well as from the well-established recreation park. (App. at 137.)

On Date 1, 2008, Rabbit Enterprises, Inc., Trustee of the Carrot Trust and Warren Properties, Inc., entered into a mortgage note with creditor and Appellee Farmer McGregor in the principal amount of $5.1 million. The mortgage note is guaranteed by Peter Rabbit. The note is secured by the real property and the leases and rental income from the property described above and known and operated as Rabbit Warren Resort.

The Debtor failed to make certain payments on the mortgage note, and Farmer McGregor accelerated the note and commenced foreclosure proceedings in late 2009. As of the date of the Debtor's petition for bankruptcy relief, filed on Date 2, 2009, the Debtor owed Farmer McGregor $5,049,933.97. Farmer McGregor's appraisal of the mortgaged property stated a going-concern value of $6.9 million. (App. at 241.) During the Chapter 11 proceeding, Rabbit Warren Resort has continued to operate and continued to meet its expenses, including adequate protection payments, tax payments, and payroll. Between 40

and 50 individuals work at the resort during the season and expect to continue working this summer.

ARGUMENT

I. THE BANKRUPTCY COURT ERRED IN GRANTING APPELLEE FARMER McGREGOR'S MOTION FOR RELIEF FROM STAY, BECAUSE FARMER McGREGOR FAILED TO MEET HIS INITIAL BURDEN OF PROOF FOR RELIEF UNDER 11 U.S.C. § 362(a) SINCE NO CAUSE FOR RELIEF EXISTS.

The bankruptcy court granted Farmer McGregor's motion for relief from the automatic stay during the second hearing on the motion on Date 7, 2010, but it did not file a memorandum opinion in support of the order or explain in any detail the legal basis for its decision at the time of the hearing. (App. at 300, 235.) In fact, the bankruptcy court had no legal basis for its decision, admitted that it did not have the Chapter 11 Plan for Reorganization at the time of the hearing, and refused to consider the facts that the Debtor had equity in the property at issue, that the creditors were being paid, that money was in the business account, that Farmer McGregor was adequately protected based on his own real estate appraisal, and that the property at issue was necessary to the Plan for Reorganization. The court even refused to take into consideration a capital investment into the property that will allow the owners to go forward with improvements to the recreational facility. The bankruptcy court's decision to grant relief from the stay was an abuse of discretion and should be reversed as being clearly erroneous in light of the facts in the record.

Title 11 U.S.C. § 362 of the U.S. Bankruptcy Code sets forth the scope of the automatic stay, which is the debtor's most fundamental protection to ensure a fresh start during a bankruptcy proceeding. Specifically, § 362(a) states:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—
>
> > (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
> >
> > (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
> >
> > (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
> >
> > (4) any act to create, perfect, or enforce any lien against property of the estate;
> >
> > (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
> >
> > (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
> >
> > (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

> (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

11 U.S.C. § 362(a).

Section 362(d) governs the narrow legal instances when a bankruptcy court may lift the important automatic stay. Section 362(d) states:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
>
> > (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
> >
> > (2) with respect to a stay of an act against property under subsection (a) of this section, if—
> >
> > > (A) the debtor does not have an equity in such property; and
> > >
> > > (B) such property is not necessary to an effective reorganization[.]

Id. § 362(d)(1)–(2).

Under § 362(d)(1) and (2) of the Code, when a creditor seeks relief from the automatic stay, it bears the burden of proving (1) that an obligation is owed by the debtor to the creditor; (2) that it has a valid security interest for which relief is sought; and (3) that cause exists to justify relief from the automatic stay. *In re Haines*, 309 B.R. 668 (Bankr. D. Mass. 2004). Without a showing of cause for relief from the stay, the creditor's motion must be

denied. *In re Downey Fin. Corp.*, 428 B.R. 595 (Bankr. D. Del. 2010); *In re Taub*, 438 B.R. 39 (Bankr. E.D.N.Y. 2010).

Cause for relief from the automatic stay under § 362(d)(1) means that the creditor lacks adequate protection in its interest in the property at issue. In *Haines*, the bankruptcy court held that the only issue a bankruptcy court should look at when considering a motion for relief from the automatic stay is whether the creditor has a colorable claim. 309 B.R. at 674 ("[A] decision to lift the stay is not an adjudication of the validity or avoidability of the claim, but only a determination that the creditor's claim is sufficiently plausible to allow its prosecution elsewhere." (citing *Grella v. Salem Five Cent Bank*, 42 F.3d 26 (1st Cir. 1994)). The *Haines* court applied the courts' decisions in *In re Fernstrom Storage & Van Co.*, 938 F.2d 731 (7th Cir. 1991), and *In re Pro Football Weekly, Inc.*, 60 B.R. 824 (N.D. Ill. 1986), in determining whether the creditor had established "cause" for seeking relief from the automatic stay to allow it to proceed with a pending case. The elements these courts had reviewed included balancing any "great prejudice" to the debtor resulting from the continuation of the civil suit with the hardship to the creditor imposed by the maintenance of the stay and the probability of the creditor's prevailing on the merits of his case. *Haines*, 309 B.R. at 674.

The bankruptcy court in the instant case committed reversible error in granting Farmer McGregor's Motion for Relief from Stay by failing to apply the basic requirements for relief from the automatic stay plainly set forth in the Bankruptcy Code. To the contrary, the bankruptcy court abused its discretionary authority by granting the creditor's motion on a "gut

feeling" that the Debtor's long-established seasonal recreational property was "failing." The court erroneously failed to apply the actual evidence in the record before it to the facts and the meritless request for relief from the stay.

First and foremost, Farmer McGregor did not show that he had "cause" for relief, because it is uncontroverted that his interest in the Debtor's property is adequately protected. The record shows that the appraisal performed by the Debtor's expert, B. Potter, LLC, concluded that the fair market value of the real property as of late 2009 was $11.5 million. This appraisal was based on net income, income from cranberry and sand sales, and expenses. The appraiser also looked at comparable properties. Significantly, the appraiser who conducted the study had experience appraising more than 70 similar campground facilities. (App. at 287.)

Farmer McGregor's appraiser, who admitted that he had never appraised a similar campground/recreational facility prior to Rabbit Warren Resort, concluded that as of late summer 2009, the property had a going-concern value of $6.9 million. (App. at 274.) Further, upon examination, the appraiser admitted to several calculation errors involving the sale of cranberries. In fact, the creditor's appraiser could not recall how he came up with the cranberry income and admitted it should be higher. (App. at 251.) Further, the income from the sale of sand and other coarse materials should have been at least 33% higher. (App. at 253.) Even accepting the appraiser's admittedly erroneous low appraisal, however, the court should have taken into consideration that the ongoing value of the property is greater than the amount owed by the Debtor and that the Debtor has equity in the real property. The court

did, in fact, concede during the Date 6 hearing that Farmer McGregor was adequately protected.

It is also important to emphasize that when secured collateral is valued for purposes of seeking relief from the automatic stay, the "ongoing-concern value" of the secured property is appropriate, not the liquidation value of the property. Farmer McGregor's appraiser concluded that the ongoing value of the Debtor's property was substantially greater than the debt owed to Farmer McGregor.

In *Associates Commercial Corp. v. Rash*, 520 U.S. 953 (1997), the U.S. Supreme Court reversed the Fifth Circuit Court of Appeals and rejected the foreclosure valuation method. The Court held that where collateral is retained by the debtor and used in the debtor's trade or business over the creditor's objection under the cramdown provision, the determination of value should include consideration of the proposed use of the collateral. Likewise, in Lucian A. Bebchek & Jesse M. Fried, *A New Approach to Valuing Secured Claims in Bankruptcy*, 114 Harv. L. Rev. 2386 (2001), the commentators argue that the restrictions of the automatic stay require courts to value a secured claim equal to the true value of the collateral up to the full amount of the secured claim. *Id.* at 2397.

Each of these authorities supports the Debtor's appraiser's report and conclusion that the market value of the Debtor's property must include the income stream from the ongoing operation of the property during the reorganization period. Thus, whether the bankruptcy court accepted the report by B. Potter, LLC, which concluded that the market value of the secured property was $11.5 million in late 2009, or the report by Farmer McGregor's

appraiser, which concluded that the property had a going-concern value of $6.9 million as of late summer 2009, Farmer McGregor cannot establish cause for seeking relief from the automatic stay.

The bankruptcy court therefore abused its discretion in granting relief from the automatic stay in that cause for relief from the stay does not exist since Farmer McGregor is adequately protected. Where the moving party fails to establish the requisite "cause" for relief from the automatic stay, the moving party's motion should be denied without any need for the debtor to show that it is entitled to protection from the stay. *In re Ice Cream Liquid., Inc.*, 281 B.R. 154 (Bankr. D. Conn. 2002).

Furthermore, in granting the motion for relief from the automatic stay, the bankruptcy court did not conclude, nor could it conclude from the record, that the balancing test for relief from the stay favored granting Farmer McGregor's motion. The bankruptcy court failed to make any findings of fact or conclusions of law that Farmer McGregor would suffer a greater hardship by not foreclosing in state court and proceeding with the Debtor's Plan for Reorganization than the extraordinary hardship the Debtor and its 50 employees will suffer if their 50-year-old ongoing family business is foreclosed and terminated. The bankruptcy court's failure to find actual cause as required under § 362(d)(1) to support the order to grant relief from the automatic stay requires reversal.

The record on appeal plainly demonstrates that there is no cause for relief from the automatic stay. Foreclosure would not only destroy the Debtor's business but would put scores of individuals out of a job and, of course, ruin the recreation plans of hundreds of New

Englanders who enjoy their time spent at Rabbit Warren Resort. It is uncontroverted that the prejudice to the Debtor and its employees and users in granting the Motion for Relief from Stay will far outweigh any prejudice to Farmer McGregor by the Debtor's Chapter 11 proceeding.

II. EVEN IF THE COURT CONCLUDED THAT FARMER McGREGOR MET HIS BURDEN OF PROOF UNDER § 362(a), THE COURT ERRED IN GRANTING RELIEF FROM THE AUTOMATIC STAY UNDER § 362(d)(2).

A. Farmer McGregor's Secured Interest Is Adequately Protected.

The bankruptcy court erred in granting Farmer McGregor's motion for relief from the automatic stay, because the Debtor demonstrated that Farmer McGregor's secured interest in the Debtor's collateral is adequately protected and that the property at issue is necessary for an effective reorganization plan. Therefore, even if the court concluded that Farmer McGregor met his burden of proof for seeking relief from the automatic stay, the relief cannot be granted where the Debtor has successfully rebutted Farmer McGregor's claims and demonstrated why the stay should be protected and enforced. *In re N. Carver Pine Corp.*, 69 B.R. 616 (Bankr. D. Mass. 1987); *In re Daly*, 167 B.R. 734 (Bankr. D. Mass. 1994).

As demonstrated above, relief from the automatic stay is not proper under § 362(d)(1) for cause, because Farmer McGregor cannot show that his secured claim lacks adequate protection. Adequate protection is determined by the value of the secured creditor's collateral relative to the amount of the debt owed. *Baybank-Middlesex v. Ralar Distribs.*, 69 F.3d 1200

(1st Cir. 1995). The stay should be continued and protected from attack where the collateral valuation exceeds the debt owed. *See In re Jug End in the Berkshires*, 46 B.R. 892, 899 (Bankr. D. Mass. 1985) ("The classic protection for a secured debt justifying continuation of the stay is the existence of an 'equity cushion.'").

Again, in the instant case, whether the court accepts the Debtor's appraisal report, which valued the Rabbit Warren Resort at more than $11 million in 2009, or Farmer McGregor's appraisal report, which determined that the going-concern value of the property was $6.9 million, it is uncontroverted in this case that the Debtor enjoys an equity cushion in the collateral of *at least* approximately $2 million. The bankruptcy court's decision to grant relief from the automatic stay is clearly erroneous and should be reversed. Relief from the automatic stay is not available under § 362(d)(1).

B. The Bankruptcy Court Erred By Relying On The Supreme Court's *Timbers* Decision And Failing To Conclude That The Property Is Necessary To An Effective Reorganization.

Additionally, under § 362(d)(2), the bankruptcy court may grant relief from the automatic stay only where the debtor has no equity in the property in question and the property is not necessary to an effective reorganization. Generally, the debtor has the burden of proving that the property is necessary to an effective reorganization. *In re Cohen*, 267 B.R. 39 (Bankr. D.N.H. 2001). Contrary to the factual circumstances in *Cohen*, where the debtor had no equity in the real property at issue, the record in the instant case demonstrates

that the property which Farmer McGregor seeks to foreclose continues to generate substantial income despite the bankruptcy filing and is the focus of the reorganization plan.

In this case, the bankruptcy court initially granted Farmer McGregor's motion for relief from the stay on Date 7, 2010 in defiance of the evidence against granting relief, specifically the facts that Farmer McGregor is adequately protected and that the Debtor enjoys a substantial equity cushion on the collateral. Later, at the hearing on Date 10, 2011, the court further abused its discretion and, citing *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates*, 484 U.S. 365 (1987), for support, denied the Debtor's Motion for Reconsideration on the ground that the Debtor's Plan for Reorganization was not feasible. The *Timbers* decision does not support the bankruptcy court's erroneous decision to grant Farmer McGregor relief from the stay.

In *Timbers*, an undersecured creditor moved for relief. The issue before the Court was whether a creditor's "interest in the property," which is protected by § 362(d)(1), includes the creditor's right to immediate foreclosure. The Supreme Court held that it does not and further held that the creditor was not entitled to interest on its collateral as compensation for the delay caused by the automatic stay. *Id.* at 375. The Court in *Timbers* also stated that once a creditor demonstrates under § 362(d)(2) that he is undersecured—which Farmer McGregor cannot show—the debtor has the burden of establishing that the collateral at issue is necessary to an effective reorganization.

> What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect.* This

> means . . . that there must be a reasonable possibility of a successful reorganization within a reasonable time.

Id. at 375-76 (Court's emphasis) (internal quotation marks omitted).

Even if this Court concludes that the bankruptcy court properly considered the issue of the feasibility of the Debtor's Plan for Reorganization, notwithstanding the facts that Farmer McGregor was *not* undersecured and that the Debtor enjoys an equity cushion in the real property, the bankruptcy court clearly erred in finding, based on its "gut feeling" only, that within a five-year period there was a "lack of any realistic prospect of effective reorganization [so as to] require[] § 362(d)(2) relief." *Id.* at 376.

C. The Bankruptcy Court Abused Its Discretion Because Its Judgment Was Based On Erroneous Findings Of Fact And Legal Conclusions.

Significantly, the bankruptcy court admitted at the time it raised its concern about the feasibility of the Debtor's reorganization plan that it did not have the plan before it and was not familiar with its contents. (App. at 308.) At that time, the hearing on the Debtor's Disclosure Statement and Plan for Reorganization had not yet taken place and was not specifically before the court. Furthermore, the testimony before the court, particularly at the Date 7, 2010 hearing and the Date 9, 2010 hearing, clearly demonstrated that the Debtor's counsel and its financial and business expert, Screech Owl from the firm Hoots and Howls, rebutted any general concerns Farmer McGregor's counsel expressed about the feasibility of the reorganization plan.

Specifically, during the Date 9, 2010 hearing, Mr. Owl testified about the projected income from the recreation resort and about the issues related to the resort's income arising from its seasonal character. (App. at 317-19.) In response to the court's concerns about short-term income and revisions to the income from gravel sales, Mr. Owl also testified about the off-season income from the property in the form of gravel sales and income from the cranberry bogs. Both Mr. Owl and the Debtor's attorney demonstrated that the short-term issues impacting on the income numbers, including weather issues, funding issues facing the municipalities that purchase the gravel, and, of course, issues arising from Farmer McGregor's threat of foreclosure, had to be put into perspective and that the long-term Plan for Reorganization was more than feasible. (App. at 319-20.) Importantly, at that time, Farmer McGregor had been paid each of his adequate protection payments as required by the court nearly six months earlier. The court failed to take this critical testimony into consideration.

Equally egregious, the bankruptcy court refused to take into consideration a capital investment in the Debtor's property in the amount of $500,000 plus an additional $250,000 by Wiley Fox. Mr. Fox testified at the Date 7, 2010 hearing about the investment and the importance of making capital investments into the resort to further increase the income from the property. (App. at 304-07.) This testimony was later explained further by the Debtor's attorney during the Date 10, 2011 hearing. (App. at 329-30.) In both instances, the bankruptcy court did not have the benefit of reviewing the amended disclosure plan or the

Debtor's Plan for Reorganization, and refused to accept the investment as relevant to the reorganization plan. (App. at 335.)

The standard the bankruptcy court should have applied in this case, but utterly failed to apply, is whether the Debtor's proposed reorganization plan is feasible and likely to be confirmed. Only after applying this standard may a bankruptcy court justify lifting the automatic stay and allowing the mortgagee to pursue its rights in the mortgaged property. *See In re Bowman*, 253 B.R. 233 (B.A.P. 8th Cir. 2000). A bankruptcy court therefore abuses its discretion when its judgment is based on erroneous findings of fact and legal conclusions. On appeal, the review court will conclude that a finding is "clearly erroneous" when there may be evidence to support it, yet, based on the entire record, the reviewing court is left with the definite conviction that a mistake has been made.

In the instant case, for the reasons stated, including the testimony of the Debtor and his experts, the bankruptcy court's basis upon which the motion for relief from the automatic stay was granted was clearly erroneous and an abuse of discretion. There are no factual or legal justifications in this case to allow Farmer McGregor to go forward at this time and proceed against the Debtor's property. Lifting the automatic stay when Farmer McGregor is adequately protected and the Debtor has a substantial equity cushion in the property is contrary to the standards set forth under § 362(d)(1). Furthermore, Farmer McGregor is receiving all of his adequate protection payments and all other payments are currently being made while the Debtor's business operations continue. Finally, it is uncontroverted that the property at issue is necessary to the Debtor's Plan for Reorganization, which the record

plainly shows is both feasible and likely to be confirmed at the confirmation hearing, which has not yet taken place.

CONCLUSION

For each of the reasons stated herein, the Debtor respectfully requests that this Court reverse the bankruptcy court's order granting Appellee Farmer McGregor's motion for relief from the automatic stay, because no cause exists for lifting the stay and allowing Farmer McGregor to proceed with foreclosure and because the Debtor has demonstrated that the property is necessary to its reorganization plan and that reorganization is both feasible and probable; order that the Debtor' Chapter 11 bankruptcy should proceed to confirmation of the Plans for Reorganization and the execution of the plans at this time; and grant whatever further relief this Court deems just and proper.

Respectfully submitted,

PETER RABBIT and
WARREN PROPERTIES, INC.,
DEBTORS

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Corrected Appellants' Brief is filed using the CM/ECF system and all interested parties are being served electronically by the Notice of Docket Activity.

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BAP NO. 11xx-xxx

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***Appellants*,**

vs.

FARMER McGREGOR,

Appellee.

STATEMENT REGARDING RELATED CASES
1st Cir. BAP L.R. 8010-1(b)(3)

The undersigned certifies that the undersigned knows of no related cases or appeals as that term is defined in 1st Cir. BAP L.R. 8010-1(b)(3)(A).

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UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT

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Appellee.

STATEMENT REGARDING INTERESTED PARTIES
1st Cir. BAP L.R. 8010-1(b)(4)

The undersigned certifies that the undersigned knows of no interested party as that term is defined in 1st Cir. BAP 8010-1(b)(4)(A).

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