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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

D. RAY STRONG, as Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust, the Castle Arch Opportunity Partners I, LLC Liquidating Trust and the Castle Arch Opportunity Partners II, LLC Liquidating Trust,

Plaintiff,

v.

KIRBY D. COCHRAN; JEFF AUSTIN; AUSTIN CAPITAL SOLUTIONS; WILLIAM H. DAVIDSON; DOUGLAS W. CHILD; CHILD, VAN WAGONER & ASSOCIATES, PLLC, fka CHILD, SULLIVAN & ASSOCIATES, fka CHILD, VAN WAGONER & ASSOCIATES, LLC, fka CHILD VAN WAGONER & BRADSHAW, PLLC; ROBERT CLAWSON; HYBRID ADVISOR CROUP; and JOHN DOES 1-50,

Defendants.

Case No. 2:14-cv-00788-TC

Judge: Tena Campbell

**PLAINTIFF'S *EX PARTE* MOTION FOR
EXTENSION OF THE DEADLINE
TO SERVE DEFENDANT
KIRBY COCHRAN**

Plaintiff D. Ray Strong ("Plaintiff"), as the (i) post-confirmation estate representative of Castle Arch Real Estate Investment Company, LLC and affiliated entities, and (ii) Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust, Castle Arch Opportunity Partners

I, LLC Liquidating Trust and the Castle Arch Opportunity Partners II, LLC Liquidating Trust, as appointed in such capacities in the bankruptcy case styled as *In re Castle Arch Real Estate Investment Company, LLC et al.*, Case No. 11-35082, filed in the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”), moves this Court, *ex parte*, for entry of an Order in the form attached hereto as Exhibit A, extending the time for Plaintiff to serve Defendant Kirby Cochran (“Cochran”) until the later of: (a) thirty days after Plaintiff obtains relief from Cochran’s bankruptcy stay to proceed with litigating this action against Cochran; and (b) thirty days after Cochran’s bankruptcy case is dismissed or closed, if the Bankruptcy Court does not grant Plaintiff relief from Cochran’s bankruptcy stay.

BACKGROUND

1. Plaintiff commenced this action against Cochran and the other above-captioned Defendants on October 30, 2014.
2. After filing the Complaint, Plaintiff and Cochran entered into settlement discussions in an effort to resolve Plaintiff’s claims against Cochran. Due to the settlement discussions, Plaintiff did not serve Cochran with process.
3. The 120-day period for Plaintiff to serve Cochran with process under Fed. R. Civ. P. 4(m) expires on February 27, 2015 (the “Service Deadline”).
4. Recently, on February 4, 2015, Cochran filed a voluntary bankruptcy petition under Chapter 7 of the Bankruptcy Code with the Bankruptcy Court, Case No. 15-20831 (the “Bankruptcy Case”).

5. Due to Cochran's recent bankruptcy filing, Plaintiff is prohibited from serving Cochran with process in this action pursuant to 11 U.S.C. § 362(a)(1).¹

6. On even date herewith, Plaintiff will file a motion with the Bankruptcy Court pursuant to 11 U.S.C. § 362(d) to obtain relief from Cochran's bankruptcy stay to proceed with this action against Cochran.

7. However, under the applicable Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, Plaintiff will not be able to obtain relief from Cochran's bankruptcy stay prior to the February 27, 2015 Service Deadline.

8. Accordingly, Plaintiff requests that the Court enter the Order attached hereto as Exhibit A, extending the deadline for Plaintiff to serve Cochran with process in this action until thirty days after the Bankruptcy Court enters an Order granting Plaintiff relief from Cochran's bankruptcy stay to proceed with this action against Cochran. If, however, the Bankruptcy Court does not grant Plaintiff relief from Cochran's bankruptcy stay, Plaintiff requests that the Service Deadline be extended until thirty days after Cochran's Bankruptcy Case is dismissed or closed, to the extent Plaintiff is still able to prosecute this action against Cochran.

DATED this 24th day of February, 2015.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt
Milo Steven Marsden
Peggy Hunt
Nathan S. Seim
Attorneys for Plaintiff

¹ 11 U.S.C. § 362(a)(1) states: “[A] petition filed under this section . . . operates as a stay, applicable to all entities, of—(1) the commencement or continuation, including the issuance or employment of process, of a judicial . . . action or proceeding against the debtor[.]”

EXHIBIT A

Prepared and Submitted By:

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D. RAY STRONG, as Liquidating Trustee of
the Consolidated Legacy Debtors Liquidating
Trust, the Castle Arch Opportunity Partners I,
LLC Liquidating Trust and the Castle Arch
Opportunity Partners II, LLC Liquidating Trust,

Plaintiff,

v.

KIRBY D. COCHRAN; JEFF AUSTIN;
AUSTIN CAPITAL SOLUTIONS; WILLIAM
H. DAVIDSON; DOUGLAS W. CHILD;
CHILD, VAN WAGONER & ASSOCIATES,
PLLC, fka CHILD, SULLIVAN &
ASSOCIATES, fka CHILD, VAN WAGONER
& ASSOCIATES, LLC, fka CHILD VAN
WAGONER & BRADSHAW, PLLC;
ROBERT CLAWSON; HYBRID ADVISOR
CROUP; and JOHN DOES 1-50,

Defendants.

Case No. 2:14-cv-00788-TC

Judge: Tena Campbell

**ORDER GRANTING PLAINTIFF'S *EX*
PARTE MOTION FOR EXTENSION OF
THE DEADLINE TO SERVE
DEFENDANT KIRBY COCHRAN**

The Court, having considered *Plaintiff's Ex Parte Motion for Extension of the Deadline to Serve Defendant Kirby Cochran* (the "Motion"), and finding good cause appearing, it is hereby:

1. **ORDERED** that the Motion is **GRANTED**;
2. **ORDERED** further that the deadline for Plaintiff to serve Defendant Kirby Cochran ("Cochran") with process in this action is extended until thirty days after the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court") enters an Order in Cochran's bankruptcy case, Case No. 15-20831, granting Plaintiff relief from Cochran's bankruptcy stay to proceed with this action against Cochran; and
3. **ORDERED** further that if the Bankruptcy Court does not grant Plaintiff relief from Cochran's bankruptcy stay, then the deadline for Plaintiff to serve Cochran with process in this action is extended until thirty days after Cochran's bankruptcy case is dismissed or closed, to the extent Plaintiff is still able to prosecute this action against Cochran.

Dated this ____ day of _____, 2015.

BY THE COURT:

The Honorable Tena Campbell
U.S. District Court Judge