

Sept 23, 2013
The motion is hereby
set down for hearing on Sept 25, 2013
at 10 AM
initials

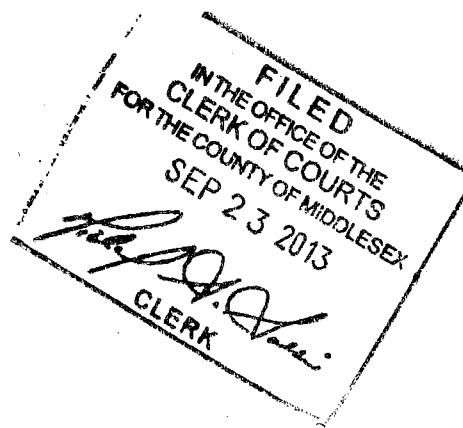
20092

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court Department
Civil Action No.

TOWN OF ACTON, and)
JANET K. ADACHI, MIKE GOWING,)
KATIE GREEN, DAVID CLOUGH AND)
JOHN SONNER AS THEY ARE THE)
MEMBERS OF THE)
BOARD OF SELECTMEN OF THE)
TOWN OF ACTON,)
Plaintiffs,)
v.)
W.R. GRACE & CO. — CONN.)
Defendant.)



PLAINTIFFS' EMERGENCY MOTION FOR DETERMINATION THAT THIS ACTION IS AN EXERCISE OF THE TOWN OF ACTON'S POLICE AND REGULATORY POWERS AND IS THEREFORE EXCEPTED FROM THE BANKRUPTCY CODE'S AUTOMATIC STAY PURSUANT TO SECTION 362(b)(4) THEREOF

Plaintiffs, the Town of Acton (the "Town") and its Board of Selectmen ("Board") (together, the "Plaintiffs"), hereby move for a determination that this action is an exercise of the Town's police and regulatory powers, and is therefore excepted from the Bankruptcy Code's automatic stay under section 362(b)(4) thereof.

In support thereof, the Plaintiffs refer to the Memorandum of Law filed herewith, and state as follows:

1. Concurrent with the filing of this Emergency Motion, the Plaintiffs filed a Verified Complaint seeking injunctive relief to prevent defendant W.R. Grace & Co. – Conn. ("Grace") from shutting down, decommissioning and/or removing a groundwater pumping and treatment remediation system (the active component of the so-called "Northeast Area Remedial

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court Department
Civil Action No.

TOWN OF ACTON, and)
JANET K. ADACHI, MIKE GOWING,)
KATIE GREEN, DAVID CLOUGH AND)
JOHN SONNER AS THEY ARE THE)
MEMBERS OF THE)
BOARD OF SELECTMEN OF THE)
TOWN OF ACTON,)
Plaintiffs,)
v.)
W.R. GRACE & CO. — CONN.)
Defendant.)
)

PLAINTIFFS' EMERGENCY MOTION FOR DETERMINATION THAT THIS ACTION IS AN EXERCISE OF THE TOWN OF ACTON'S POLICE AND REGULATORY POWERS AND IS THEREFORE EXCEPTED FROM THE BANKRUPTCY CODE'S AUTOMATIC STAY PURSUANT TO SECTION 362(b)(4) THEREOF

Plaintiffs, the Town of Acton (the "Town") and its Board of Selectmen ("Board") (together, the "Plaintiffs"), hereby move for a determination that this action is an exercise of the Town's police and regulatory powers, and is therefore excepted from the Bankruptcy Code's automatic stay under section 362(b)(4) thereof.

In support thereof, the Plaintiffs refer to the Memorandum of Law filed herewith, and state as follows:

1. Concurrent with the filing of this Emergency Motion, the Plaintiffs filed a Verified Complaint seeking injunctive relief to prevent defendant W.R. Grace & Co. – Conn. ("Grace") from shutting down, decommissioning and/or removing a groundwater pumping and treatment remediation system (the active component of the so-called "Northeast Area Remedial

Action") (hereafter the "Treatment System") in contravention of a Town Bylaw.

2. The sole objective of the Complaint is to enforce the Bylaw whose purpose "is to protect, preserve, improve and maintain the Town of Acton's existing and potential public drinking water sources and to assure public health and safety through the application of stringent environmental ground water quality clean up standards which assure restoration of any contaminated water resources area covered by this Bylaw to a fully useable condition." Bylaw § 2.

3. While Grace is a debtor in bankruptcy, the automatic stay does not apply to this action because this is an action to enforce the Town's police and regulatory powers, and Bankruptcy Code section 362(b)(4) excepts such actions from the stay.

4. Through the Complaint, the Plaintiffs are pursuing a matter of public safety and welfare and are effectuating their well-established public policy of protecting and improving the safety of the Town's public drinking water sources. This proceeding neither attempts to advance any pecuniary interest held by the Town nor adjust the private rights of any parties.

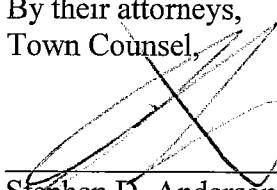
5. The Plaintiffs herewith file a Memorandum of Law in support hereof. As set forth in more detail therein, this Court has concurrent jurisdiction with the Bankruptcy Court where Grace's bankruptcy case is pending to determine whether the automatic stay applies to this action.

6. Pursuant to Mass. R. Super. Ct. Rule 9A(c)(2), the Plaintiffs hereby request a hearing on this Emergency Motion.

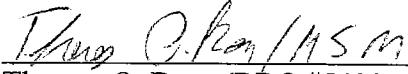
WHEREFORE, for the reasons stated above and contained in the attached Memorandum of Law, the Plaintiffs respectfully request that the Court enter an order in the form attached hereto:

- A. Determining that adjudication of this action requesting, *inter alia*, injunctive relief restraining and enjoining Grace and entities acting in concert with Grace from shutting down, decommissioning and/or removing the Treatment System until Grace has, on a permanent basis, met or surpassed the Groundwater Cleanup Standards established by the Town's Bylaw in the groundwater and aquifers contaminated by chemicals released at and from the Site is **not** barred by the automatic stay; and
- B. Granting the Plaintiffs such other and further relief as is just and proper.

The Plaintiffs,
By their attorneys,
Town Counsel,


Stephen D. Anderson (BBO #018700)
Mina S. Makarious (BBO #675779)
ANDERSON & KREIGER LLP
One Canal Park, Suite 200
Cambridge, MA 02141
Telephone: 617-621-6500
Fax: 617-621-6625
sanderson@andersonkreiger.com
mmakarious@andersonkreiger.com

AND
Bankruptcy Counsel,


Thomas O. Bean (BBO #548072)
Verrill Dana, LLP
One Boston Place - 16th Floor
Boston, MA 02108
617.309.2606 (phone)
617.309.2601 (fax)
tbean@verrilldana.com

Dated: September 23, 2013

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court Department
Civil Action No.

TOWN OF ACTON, and)
JANET K. ADACHI, MIKE GOWING,)
KATIE GREEN, DAVID CLOUGH AND)
JOHN SONNER AS THEY ARE THE)
MEMBERS OF THE)
BOARD OF SELECTMEN OF THE)
TOWN OF ACTON,)
Plaintiffs,)
v.)
W.R. GRACE & CO. — CONN.)
Defendant.)
)

**ORDER ALLOWING PLAINTIFFS' EMERGENCY MOTION FOR DETERMINATION
THAT THIS ACTION IS AN EXERCISE OF THE TOWN OF ACTON'S POLICE AND
REGULATORY POWERS AND IS THEREFORE EXCEPTED FROM THE
BANKRUPTCY CODE'S AUTOMATIC STAY PURSUANT TO
SECTION 362(b)(4) THEREOF**

This matter came before the Court on the Town of Acton's (the "Town")¹ and its Board of Selectmen's ("Board") *Emergency Motion for Determination that this Action is An Exercise of the Town of Acton's Police and Regulatory Powers and Therefore Excepted from the Bankruptcy Code's Automatic Stay Pursuant to Section 362(b)(4) Thereof* (the "Emergency Motion"). For good cause stated in the Emergency Motion and memorandum in support thereof, after due and adequate notice to defendant W.R. Grace & Co-Conn. ("Grace"), and after a hearing before this Court at which the Town, the Board, and Grace had the opportunity to present argument, this Court **FINDS**:

A. Grace is a debtor-in-possession under Chapter 11 of Title 11 of the United States Code;

¹ Capitalized terms not otherwise defined in this Order shall have the same meaning ascribed to them in the Emergency Motion and Memorandum in Support thereof.

B. This Court has jurisdiction to determine whether the automatic stay imposed by section 362(a) of Title 11 of the U.S. Code applies to this action by the Town and Board;

C. This action is designed to enforce the Town's police and regulatory powers by protecting the Town's drinking water aquifer for the residents of the Town, and has not been brought for a pecuniary purpose.

Based on such finding, the Emergency Motion is **ALLOWED**, and it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Under section 362(b)(4) of Title 11 of the United States Code, this action is not subject to the automatic stay imposed by section 362(a) of Title 11 of the United States Code.
2. This Court shall adjudicate this action in the ordinary course notwithstanding Grace's status as a debtor under Title 11.

BY THE COURT:

Dated: _____, 2013

_____, J.