

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
ADVANTA CORP., et al.	:	Case No. 09-13931 (KJC)
	:	
Debtors.	:	Jointly Administered

**MOTION OF PRABHAKAR THATTE AND ASHA THATTE  
FOR RELIEF FROM STAY AND REIMBURSEMENT OF CLAIM**

COMES NOW, Prabhakar Thatte and Asha Thatte (the “Thattes”) who hereby move this Honorable Court pursuant to 11 U.S.C. § 362(d) for an Order modifying the stay to allow the Thattes to require payment by Debtors to Movants in the stated amount as well as granting such other and further relief as is just and proper. In support hereof, Movants state as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicate for the relief requested herein is 11 U.S.C. § 362(d) and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

**Bankruptcy Proceedings**

2. On November 8, 2009 Debtors filed their petition for relief under Chapter 11 of the Bankruptcy Code. Debtors continue to operate their business and manage their property. Movant had a retirement fund in which his savings were placed in an account with Debtor. Movant communicated with Debtors representative prior to the filing of the Petition and requested to close his account and without any knowledge that the debtor was about to file for bankruptcy. (See Exhibit “A”.) Thereafter, Movant received a check constituting the full amount of his account which he had placed with Debtor and appropriate interest. (See Exhibit “B”.) The check dated

November 4, 2009 in the amount of \$8,015.25 was received and immediately deposited in Movant's account whereupon it did not clear. (See Exhibit "C".) Debtor has violated the U.S. Code and has engaged in conduct which is a violation of civil law and criminal law by knowingly issuing a bad check. Movant is in financially desperate straits. These funds are needed in the current economically challenging times. Despite requests to issue a valid replacement check no relief has been voluntarily forthcoming from Debtor.

### **Relief Requested**

3. By this Motion, Movants seek relief from the automatic stay and for immediate repayment of funds in the amount of \$8,015.25 plus interest as described in the preceding paragraphs of this Motion.

4. Relief from the automatic stay of 11 U.S.C. § 362(a) is governed by 11 U.S.C. § 362(d) which reads, in pertinent part, as follows:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under the subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay - (1) for cause...

11 U.S.C. 362(d). Although Movants bear the initial burden to show that "cause" exists, once shown, the Debtors (as the party opposing stay relief) have the ultimate burden of disproving the existence of "cause." In re New York Medical Group, P.C., 265 B.R. 408, 412 (Bankr. S.D.N.Y. 2001) citing 11 U.S.C. § 362(g)(2).

5. The Bankruptcy Code does not define "cause" and "there is no rigid test for determining whether sufficient cause exists to modify an automatic stay." In re W.R. Grace & Co., 2007 WL 1129170, \* 2 (Bkrtcy.D.Del. 2007) citing In re Continental Airlines, Inc., 152 B.R. 420, 424 (D.Del. 1993). "Rather, 'courts generally consider the policies underlying the automatic stay'

in addition to the competing interests of the Debtors and the Movants when determining whether there is sufficient cause to grant relief from the automatic stay.” Id.

6. In balancing the “competing interests” of the Debtors and the Movants of a lift stay application, courts in this district consider the following three (3) factors:

- (1) whether any great prejudice to either the bankrupt estate or the debtor will result from continuation of the [underlying] civil suit;
- (2) whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and
- (3) the probability of the creditor prevailing on the merits.

In re Rexene, 141 B.R. at 574; In re Continental Airlines, Inc., 152 B.R. 420, 424 (D.Del. 1993); In re Unidigital, Inc., 2000 WL 33712306 (Bankr.D.Del., Dec. 8, 2000). Here, the facts and circumstances demonstrate overwhelming cause requiring immediate relief from the automatic stay.

7. As to the first factor, granting Movants’ relief from the stay will not impose great prejudice on Debtors’ estate or impede administration of the estate. See In Re: Marvin Johnson's Auto Service, Inc., 192 B.R. 1008, 1014 (Bankr. N.D. Alaska 1996). Nothing before the Bankruptcy Court will be held in abeyance as a result of the state court action proceeding. It is not anticipated that members of Debtors’ senior management will be deposed in connection with this matter.

8. As to the second factor, the hardship to Movants considerably outweighs any hardship to Debtors if the stay is lifted. Movants are residents of the State of Pennsylvania and are willing and able to travel to and litigate in the State of Delaware, in the Federal Bankruptcy Court for the District of Delaware and there is, therefore, no hardship whatsoever to the Debtors but only to Movants.

9. As to the third factor, the required showing of probable success is “very slight.” In re Rexene, 141 B.R. at 578 (“Only strong defenses to state court proceedings can prevent a bankruptcy court from granting relief from the stay...”).

10. No prior request for the relief sought herein has been made to this or any other Court.

**Conclusion**

For the reasons set forth above, the Thatte plaintiffs, Movants herein, respectfully request this Court to enter an order substantially in the form attached hereto modifying the automatic stay so as to require payment by Debtors to Movants in the stated amount as well as granting such other and further relief as is just and proper.

THE BAILEY LAW FIRM

/s/ James F. Bailey, Jr. \_\_\_\_\_  
James F. Bailey, Jr., Bar ID #336  
Three Mill Road, Suite 306A  
Wilmington, DE 19806  
(302) 658-5686  
*Attorney for Movants Prabhakar Thatte and  
Asha Thatte*

Dated: January 19, 2010

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11  
: Case No. 09-13931 (KJC)  
ADVANTA CORP., et al. : Jointly Administered  
: Hearing Date: March 3, 2010 @ 10:00 a.m.  
Debtors. : Objections Due: February 24, 2010 @ 4:00 p.m.

**NOTICE OF MOTION**

TO:

**Chun I. Jang**  
**Mark D. Collins**  
**Zachary I Shapiro**  
Richards, Layton & Finger, P.A.  
920 North King Street  
Wilmington, DE 19801

*U.S. Trustee*  
**United States Trustee**  
844 King Street, Room 2207  
Lockbox #35  
Wilmington, DE 19899-0035

You are required to file a response to the Motion of Prabhakar Thatte and Asha Thatte for Relief from Stay and Reimbursement of Claim on or before February 24, 2010 at 4:00 p.m. (EST).

**HEARING ON THE MOTION WILL BE HELD on March 3, 2010 at 10:00 a.m.** in the United States Bankruptcy Court, 824 N. Market Street, 5th Floor, Courtroom 5, Wilmington, DE 19801.

**ANY RESPONSE MUST BE FILED AND SERVED AND A CERTIFICATE OF SERVICE FILED ON OR BEFORE FEBRUARY 24, 2010 AT 4:00 PM (EST). FAILURE TO TIMELY FILE AND SERVE A RESPONSE WILL RESULT IN AN ORDER GRANTING THE RELIEF REQUESTED IN THE MOTION.**

THE BAILEY LAW FIRM, P.A.

/s/ James F. Bailey, Jr.  
\_\_\_\_\_  
JAMES F. BAILEY, JR., I.D. #336  
Three Mill Road, Suite 306A  
Wilmington, DE 19806  
(302) 658-5686  
*Attorney for Movants Prabhakar Thatte and  
Asha Thatte*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
ADVANTA CORP., et al.	:	Case No. 09-13931 (KJC)
	:	
Debtors.	:	Jointly Administered

**ORDER**

The Court, having reviewed the Motion of Prabhakar Thatte and Asha Thatte for Relief from Stay and Reimbursement of Claim and consideration having been given to any response, hereby grants the Motion for Relief from Stay and Reimbursement of Claim.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

J., U. S. Bankruptcy Court

Advanta Corporation

CUSTOMER COPY

Pay To The Order Of	Check No.	Date	Memo
Prabhakar Thatte	33984	11-04-2009	
			Transaction Description
Account Number	Check Amount		
3500550169	Eight Thousand Fifteen and 25/100*****		

NON-NEGOTIABLE

\*031000040\*  
11/12/2009  
6519297347

This is a LEGAL COPY of  
your check. You can use it  
the same way you would  
use the original check.

RETURN REASON - S  
REFER TO MAKER

11/06/2009  
907836055372455

Advanta Corporation  
Republic First Bank  
Philadelphia, Pa 19103  
3214280

No. 33984  
Date 11-04-2009

Amount \$ \*\*\*\*\*8,015.25

Pay to the Order of Probbaker Thette

Michael Cor

8,015.25

031984 0360022470 117 159 30



1-800-788-2532 | - Advertise Utah

# RETURNED ITEM NOTICE



Doing more for you.

First Federal of Bucks County  
118 Mill Street  
PO Box 32  
Bristol, PA 19007-0032

205  
1-800  
205-7255  
Advertise

ACCOUNT NUMBER	DATE
DD1260001606	11/12/2009

WE CHARGE YOUR ACCOUNT FOR THE FOLLOWING ITEMS:

DATE	DRAWN BY	DRAWN ON	REASON NO.	AMOUNT
11/12/2009	ADVANTA CORPORATION ↓ 1-800-223-7074	REPUBLIC FIRST BANK	11	\$8,015.25

SUSEN (circled) (circled)

### REASON FOR NON-PAYMENT

1. Account Closed
2. Amounts Disagree
3. Cannot Locate Account
4. Drawn Against Uncollected Funds
5. Endorsement
6. Guarantee Amount
7. Not Sufficient Funds
8. Payee Missing
9. Payment Stopped
10. Post Dated
11. Refer to Maker
12. Signature Irregular
13. Signature Missing
14. Signature Not on File
15. Signature Unauthorized
99. Altered/Fictitious

HANDLING CHARGES	\$8.00
<b>TOTAL AMOUNT</b>	<b>\$8,023.25</b>

These items are being returned to you.

PRABHAKAR PAUL THATTE  
ASHA THATTE  
19 DIAMOND DR  
NEWTOWN PA 18940-2404

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
ADVANTA CORP., et al.	:	Case No. 09-13931 (KJC)
	:	
Debtors.	:	Jointly Administered
	:	

**CERTIFICATE OF SERVICE**

I, James F. Bailey, Jr., Esquire, do hereby certify that on this 21<sup>st</sup> day of January, 2010 one copy of the foregoing *NOTICE OF MOTION* and *MOTION OF PRABHAKAR THATTE AND ASHA THATTE FOR RELIEF FROM STAY AND REIMBURSEMENT OF CLAIM* was served on the following counsel of record via electronic filing:

**Chun I. Jang**  
**Mark D. Collins**  
**Zachary I Shapiro**  
Richards, Layton & Finger, P.A.  
920 North King Street  
Wilmington, DE 19801

*U.S. Trustee*  
**United States Trustee**  
844 King Street, Room 2207  
Lockbox #35  
Wilmington, DE 19899-0035

THE BAILEY LAW FIRM

/s/ James F. Bailey, Jr.  
JAMES F. BAILEY, JR., ESQUIRE  
Delaware Bar I.D. #336  
Three Mill Road, Suite 306A  
Wilmington, DE 19806  
(302) 658-5686  
*Attorney for Movants Prabhakar Thatte and  
Asha Thatte*