

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re:	)	
	)	Case No. 26-15148-TBM
SOARING EAGLES TOWNHOMES	)	
ASSOCIATION, INC.	)	Chapter 11
	)	
Debtor.	)	
_____	)	
	)	
ROWCAL CONSTRUCTION &	)	
MAINTENANCE CO LLC,	)	
	)	
Movant,	)	
	)	
v.	)	
	)	
SOARING EAGLES TOWNHOMES	)	
ASSOCIATION, INC.,	)	
	)	
Respondent.	)	
	)	

**ROWCAL CONSTRUCTION & MAINTENANCE CO LLC’S MOTION FOR RELIEF
FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1)**

RowCal Construction & Maintenance CO LLC (“RowCal Construction”), the holder of a Mechanics’ Lien against the real property described below, recorded pursuant to the Colorado General Mechanics’ Lien Act, C.R.S. §§ 38-22-101 to -133 (“Mechanics’ Lien Act”), by and through undersigned counsel, respectfully moves this Court, pursuant to 11 U.S.C. § 362(d)(1) and Fed. R. Bankr. P. 4001(a), for entry of an order granting limited relief from the automatic stay to permit RowCal Construction to name and join Soaring Eagles Townhomes Association, Inc. (“Debtor”) as a defendant in a judicial foreclosure action in the District Court for El Paso County, Colorado, Case No. 2026CV31849 (the “Mechanics’ Lien Action”) and record a Notice of Lis Pendens, for the following reasons: (1) Debtor is required to be named as a party in the Mechanics’

Lien Action under the Colorado Mechanics' Lien Act and, and (2) for the purpose of adjudicating the relative priority of the Debtor homeowner association's statutory assessment lien under the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-316 ("CCIOA"), as against RowCal Construction's Mechanics' Lien. RowCal Construction seeks no money judgment, deficiency, or other affirmative recovery against the Debtor or property of the bankruptcy estate through the Mechanics' Lien Action. In support of this Motion, RowCal Construction states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested are 11 U.S.C. § 362(d)(1) and Fed. R. Bankr. P. 4001(a).

II. BACKGROUND

4. On July 16, 2026, Debtor filed a voluntary petition for relief under subchapter V of chapter 11 of title 11 of the United States Code, commencing the above-captioned bankruptcy case (the "Bankruptcy Case"). Docket No. 1. The U.S. Trustee appointed Jonathan M. Dickey as Subchapter V Trustee on July 20, 2026. Docket No. 11.
5. Debtor is a homeowner's association located in El Paso County, Colorado, consisting of common area owned by the Debtor and 150 individually owned townhome lots. In 2024 a hailstorm caused significant damage to townhomes within the homeowner's association. Debtor had insurance in effect, but it had a high deductible. A third-party insurance claims adjuster was assigned and determined the cost to repair the damage was \$3,604,548, subject to a deductible

of \$3,112,817, which deductible amount the Debtor would have to pay to make the necessary repairs.

6. To pay the \$3,112,817 in necessary repairs, the Debtor's board levied a special assessment on all the 150 units in the association in equal shares of \$20,752. See Exhibit A, the "Amended Complaint" at ¶¶ 28-33.

7. Most of the 150 unit owners paid the special assessment. Eighteen of them did not, placing the Debtor association and the homeowners who paid the special assessment in financial jeopardy. On October 16, 2025, the Debtor filed suit in the District Court for El Paso County, Case No. 2025CV32121 (the "Assessment Action"), against the delinquent homeowners for a declaratory judgment that the delinquent homeowners are obligated to pay the special assessment to the Debtor. See Exhibit A.

8. Instead of paying the special assessment, the delinquent homeowners counterclaimed against the Debtor, RowCal Construction, and RowCal Management Co, LLC in the Assessment Action. See Exhibit B.

9. One of the delinquent homeowners was elected to the Debtor association's board, and Debtor filed this Chapter 11.

10. The Debtor has a statutory lien on the delinquent homeowner's units. The Debtor also has statutory liens on any other homeowner's units that may have unpaid regular or special assessments. C.R.S. § 38-33.3-316(1)(a). Recording of the claim of assessment is not required. C.R.S. § 38-33.3-316(2)(d)(4).

11. The amounts owed the Debtor by the delinquent homeowners should be listed as collectible assets of the Debtor but are not. See Docket No. 1, Schedule A/B, pgs.7-10.

12. The Debtor contracted with RowCal Construction to repair the hailstorm damage. RowCal Construction repaired the damage, and upon completion passed inspection. RowCal Construction furnished labor, materials, and/or services for the construction, alteration, or improvement of real property located within the boundaries of the Debtor association and more fully described in the Notice of Lis Pendens filed in the Mechanics' Lien Action and attached as Exhibit C (the "Property").¹

13. The Property is located within the common interest community governed by the Debtor pursuant to a Declaration of Covenants, Conditions and Restrictions (the "Declaration"), which subjects the Property to periodic assessments in favor of the Debtor.

14. RowCal Construction was not paid in full for the labor, materials, and/or services it furnished on units located within the Property. RowCal Construction timely recorded a blanket mechanics' lien against the Property pursuant to C.R.S. §§ 38-22-103(4) and 38-22-109, in the principal amount of \$722,600.37 plus all other amounts authorized by law (the "Mechanics' Lien").

15. As a result, RowCal Construction has commenced the Mechanics' Lien Action to judicially foreclose the Mechanics' Lien pursuant to C.R.S. §§ 38-22-110 and 38-22-111. A copy of the Complaint commencing the Mechanics' Lien Action is attached as Exhibit D.

16. Upon information and belief, the Debtor holds a statutory assessment lien against the Property under C.R.S. § 38-33.3-316. CCIOA expressly provides that its limited priority lien (aka super-priority lien) provisions under C.R.S. § 38-33.3-316(2)(b) do "not affect the priority of mechanics' or materialmen's liens." C.R.S. § 38-33.3-316(2)(c). The relative priority of RowCal

¹ RowCal has not recorded the Notice of Lis Pendens out of an abundance of caution in observance of the automatic stay. However, once this motion is granted and Debtor is added as a party, RowCal will file the Notice of Lis Pendens or an amended version reflecting Debtor as a party.

Construction's Mechanics' Lien and the Debtor's statutory assessment lien is therefore determined under the Mechanics' Lien Act's ordinary relation-back principles, C.R.S. § 38-22-106 (a properly perfected Mechanics' Lien has priority as of the date work commenced or materials were first furnished on the project), and remains to be judicially adjudicated as between RowCal Construction and the Debtor.

17. The Colorado Mechanics' Lien Act contemplates that lien claimants and other parties holding an interest in the property be joined in a single foreclosure action so that all such interests are adjudicated and bound by one judgment. C.R.S. § 38-22-111; *Union Pac. Ry. Co. v. Davidson*, 39 P. 1095 (1895). Where a party holding a recorded interest in the property is not joined in a mechanics' lien foreclosure action, that party's interest is not bound by the resulting judgment and may later be asserted to cloud title or otherwise impair the foreclosure sale. *Johnston v. Bennett*, 40 P. 847 (1895). Because the Debtor, as holder of the homeowner association's statutory assessment lien, holds a recorded interest in the Property that must be adjudicated for RowCal Construction's foreclosure judgment to convey clear and marketable title, joinder of the Debtor as a party defendant in the State Court Action is required.

18. RowCal Construction also has a contractual claim for unpaid debt against the Debtor in the amount of at least \$722,600 (the "Claim"). See Docket No. 1, Schedule E/F, pg. 15. The amounts owed in the Claim are the subject of the RowCal Construction's lien claims in the Mechanics' Lien Action against real property owned by unit owners that are part of and subject to the Debtor's homeowner's association. The Colorado Mechanics' Lien Act, C.R.S. § 38-22-115, requires that any person that is personally liable for the debt for which the lien is claimed shall be made a party in the Mechanics' Lien foreclosure lawsuit.

19. RowCal Construction does not seek, and will not seek, any money judgment, deficiency judgment, or other award of damages against the Debtor in the Mechanics' Lien Action. RowCal Construction does not seek possession or control of any property of the Debtor or of the bankruptcy estate through the Mechanics' Lien Action other than a judicial determination of the relative priority, as of the applicable dates, between RowCal Construction's Mechanics' Lien and the Debtor's statutory assessment lien. RowCal Construction does not seek through the Mechanics' Lien Action to reduce, avoid, or otherwise impair the amount or existence of any priority to which the Debtor's statutory lien is otherwise entitled; any such priority will be recognized and paid or preserved in accordance with C.R.S. § 38-33.3-316 and applicable law.

III. RELIEF REQUESTED

20. RowCal Construction requests entry of an order, substantially in the form of the proposed order granting RowCal Construction limited relief from the automatic stay of 11 U.S.C. § 362(a) solely to: (a) name and join the Debtor as a necessary party defendant in the Mechanics' Lien Action as required by the Colorado Mechanics' Lien Act, C.R.S. §§ 38-22-111 and 38-22-115, effective as of July 31, 2026; (b) obtain a judicial determination of the priority of the Debtor's statutory lien under C.R.S. § 38-33.3-316 relative to RowCal Construction's Mechanics' Lien; and (c) take any further action reasonably necessary including recording the Notice of Lis Pendens to conclude the foreclosure as to lien priority—without seeking or obtaining any money judgment, deficiency, or other affirmative relief against the Debtor personally or against property of the bankruptcy estate other than the determination of lien priority described above.

IV. ARGUMENT

21. Section 362(d)(1) authorizes a bankruptcy court to grant relief from the automatic stay “for cause.” 11 U.S.C. § 362(d)(1). “Cause” is not defined in the Bankruptcy Code, and

whether cause exists is committed to the bankruptcy court's discretion, determined on a case-by-case basis. *Pursifull v. Eakin*, 814 F.2d 1501, 1504 and 1506 (10th Cir. 1987).

22. The ordinarily used framework to determine cause, known as the *Cutris* factors, unequivocally establishes cause. Bankruptcy courts, including courts in this district, commonly weigh the twelve factors set forth in *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984). Those factors are listed below including an analysis for each factor. As a whole, the factors weigh strongly in favor of granting the limited relief from the automatic stay that RowCal Construction seeks.

(1) Whether the relief will result in a partial or complete resolution of the issues.

Relief from stay is necessary because the Debtor is a necessary party to the Mechanics' Lien Action pursuant to C.R.S. §§ 38-22-111 and 38-22-115. Granting relief from stay will necessarily result in a complete resolution of the Mechanics' Lien Action.

(2) The lack of any connection with or interference with the bankruptcy case.

Granting relief from stay is necessary to assist the Debtor in administering the estate. Determining lien priority of the assessments will be required for plan formulation and confirmation. Accordingly, while there may be some, albeit minimal, interference with the bankruptcy case because the Debtor will need to engage special counsel, the litigation is necessary to plan formulation and confirmation and therefore must be completed.

(3) Whether the foreign proceeding involves the debtor as a fiduciary.

This factor is not applicable.

(4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases.

The District Court for El Paso County is not a specialized tribunal but it is in the best position and is the only court with jurisdiction to cost effectively resolve the Mechanics' Lien

Action. See C.R.C.P. 98(a) (“all actions affecting real property ... shall be tried in the county in which the subject of the action ... is situated”).

(5) Whether the debtor’s insurance carrier has assumed full financial responsibility for defending the litigation.

RowCal Construction does not believe an insurance carrier would assume full financial responsibility for the Mechanics’ Lien Action.

(6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question.

While the Debtor is not a bailee or conduit, the Mechanics’ Lien Action primarily involves non-debtors, does not involve any estate property, and Debtor will be added to the action to determine lien priority and because it is a necessary party.

(7) Whether litigation in another forum would prejudice the interests of other creditors, the creditors committee and other interested parties.

The Mechanics’ Lien Action will benefit creditors, the creditors committee (which has not been appointed), and other interested parties because it will allow RowCal Construction to reduce the amounts it is owed by the Debtor thereby reducing claims in the estate and benefitting other creditors, and fix the priority and amount of the Debtor’s assessments.

(8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c).

This factor is not applicable.

(9) Whether movant’s success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f).

This factor is not applicable.

(10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties.

RowCal Construction is not attempting to prosecute a claim against the Debtor or to reach property of the estate. RowCal Construction seeks only to comply with the joinder and necessary party requirements imposed by the Colorado Mechanics' Lien Act, C.R.S. §§ 38-22-111 and 38-22-115, and Colorado case law construing them, so that the Mechanics' Lien Action can produce a foreclosure judgment that correctly adjudicates and preserves the Debtor's own statutory lien priority rather than leaving it unresolved and unbound by the judgment. See *Union Pac. Ry. Co. v. Davidson*, 21 Colo. 93, 39 P. 1095 (1895); *Johnston v. Bennett*, 6 Colo. App. 362, 40 P. 847 (1895). The Debtor's presence in the Mechanics' Lien Action is not adversarial in the ordinary sense: no money judgment, deficiency, or personal liability will be sought against the Debtor, and whatever priority the Debtor's statutory lien is entitled to under C.R.S. § 38-33.3-316 will be recognized, not extinguished, by the relief RowCal Construction seeks.

(11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.

The Mechanics' Lien Action is in its infancy. Nevertheless, conclusion of the action is necessary to the Debtor's administration of the estate and will benefit other creditors by reducing amounts owed to RowCal Construction by the Debtor and fixing the amount and priority of the Debtor's assessments.

(12) The impact of the stay on the parties and the "balance of hurt."

Absent relief from the stay, RowCal Construction faces an intractable procedural conflict: the Colorado Mechanics' Lien Act requires joinder of the Debtor as a holder of a recorded interest in the Property for the foreclosure judgment to bind that interest, yet the automatic stay may be read to prohibit naming the Debtor as a defendant even for that limited, non-adversarial purpose. Declining to name the Debtor risks a foreclosure judgment that does not bind the Association's lien and remains subject to later challenge, clouding title and delaying an orderly resolution of

RowCal Construction's lien claim. By contrast, granting the narrow relief requested causes no cognizable harm to the Debtor, the estate, or other creditors, because no monetary or possessory relief will be sought by RowCal Construction against the Debtor and the Debtor's statutory lien priority is preserved, not impaired.

Courts in this circuit have granted relief from the stay to permit continuation of pending or contemplated non-bankruptcy litigation where, as here, the debtor's role is limited and the equities favor allowing the matter to proceed to a prompt and orderly resolution outside the bankruptcy forum. *See Pursifull*, 814 F.2d at 1506 (relief from stay for cause determined case by case; no debtor prejudice shown from continuation of pending state court proceeding).

23. Each of these considerations is either neutral or favors granting the limited relief requested here.

V. CONCLUSION

24. For the foregoing reasons, RowCal Construction respectfully requests that the Court enter an order, substantially in the form submitted herewith, granting RowCal Construction limited relief from the automatic stay to name and join the Debtor in the Mechanic's Lien Action solely for purposes of adjudicating lien priority as described above, record the Notice of Lis Pendens, and granting such other and further relief as the Court deems just and proper.

Respectfully submitted this 19th day of August 2026.

/s/ Martin E. Long

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/s/ Aaron J. Conrardy

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Maintenance CO LLC*

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

In re:	)	
	)	Case No. 26-15148-TBM
SOARING EAGLES TOWNHOMES	)	
ASSOCIATION, INC.	)	Chapter 11
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Debtor.	)	
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ROWCAL CONSTRUCTION &	)	
MAINTENANCE CO, LLC,	)	
	)	
Movant,	)	
	)	
v.	)	
	)	
SOARING EAGLES TOWNHOMES	)	
ASSOCIATION, INC.	)	
	)	
Respondent.	)	
	)	

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11
U.S.C. § 362(d)(1)**

OBJECTION DEADLINE: SEPTEMBER 10, 2026

YOU ARE HEREBY NOTIFIED that RowCal Construction & Maintenance CO, LLC (“RowCal Construction”) has filed a Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362(d)(1) (the “Motion”), a copy of which is attached hereto.

An in-person hearing on the Motion has been set for Thursday, September 17, 2026, at 9:00 a.m. in Courtroom E, U.S. Custom House, 721 19th Street, 5th Floor, Denver, Colorado 80202. The hearing will be conducted in accordance with the provisions of L.B.R. 4001-1(d).

If you desire to oppose the Motion, you must file with this Court a written objection to the Motion on or before the objection deadline stated above and serve a copy upon Movant’s attorney, whose address is listed below. If you file an objection, you are required to comply with L.B.R. 4001-1 regarding hearing procedures, including (i) the timely submission and exchange of witness lists and exhibits and (ii) attendance at the above-scheduled hearing in person or through counsel, if represented.

IF YOU FAIL TO FILE AN OBJECTION, THE SCHEDULED HEARING WILL BE VACATED, AND AN ORDER GRANTING THE RELIEF REQUESTED MAY BE ENTERED WITHOUT FURTHER NOTICE TO YOU.

DATED this 19th day of August 2026.

Respectfully submitted,

WADSWORTH GARBER WARNER CONRARDY, P.C.

/s/ Aaron J. Conrardy

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