

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

MEDLINE INDUSTRIES INC.,	:	September Term, 2000
Plaintiff	:	
	:	No. 295
v.	:	
	:	Commerce Case Program
BECKETT HEALTHCARE INC., et al.,	:	
Defendants	:	Control No. 010635

MEMORANDUM OPINION

Petitioner Medline Industries Inc. (“Medline”) has filed a Motion to Remove Case from Deferred Status (“Motion”) for Defendant Legend Healthcare Inc. (“Legend”). Because the Motion raises disputed issues of material fact, the Court is issuing a contemporaneous order (“Order”) directing the Parties to take depositions in accordance with Pennsylvania Rule of Civil Procedure 4007.1.

BACKGROUND

The underlying matter in the instant case arises from a dispute over payments for goods the Defendants purchased from Medline. When the Defendants allegedly failed to pay the amounts due, Medline filed a complaint (“Complaint”) alleging claims for breach of contract, promissory estoppel, quantum meruit, unjust enrichment and an accounting.

Defendant Beckett Healthcare Inc. (“Beckett”) filed for bankruptcy on November 28, 2000, and subsequently requested that the Court stay the instant matter in accordance with 11 U.S.C.A. §

362 (“Section 362”). The Court responded by placing this case on deferred status on December 7, 2000.¹

Legend filed an answer to the Complaint on December 8, 2000.² Relying on the uncontested fact that Legend is solvent and has not filed a bankruptcy petition, Medline filed the Motion on January 9, 2001 and thereby seeks to remove this case from deferred status for Legend.

DISCUSSION

In general, a bankruptcy petition serves to stay:

[T]he 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. . . .

Section 362(a)(1). However, courts permit otherwise proper proceedings to continue against non-debtor defendants. See First Union Mortg. Corp. v. Frempong, 744 A.2d 327, 336 (Pa. Super. Ct. 1999) (“[o]nly the bankruptcy debtor . . . receives the benefit of an automatic stay of all proceedings in a Chapter 11 bankruptcy”); Bankers Trust Co. v. Tax Claim Bureau of Del. Cty., 723 A.2d 1092, 1093 (Pa. Commw. Ct. 1999) (citing McCartney v. Integra Nat’l Bank N., 106 F.3d 506 (3d Cir. 1997), for the principle that, “absent extraordinary circumstances, the automatic stay protections afforded a debtor under 11 U.S.C. § 362 do not apply to non-debtor third parties”). This has led to the rule that a stay “may not be invoked by entities such as sureties, guarantors, co-obligors,

¹ The stay issued by the Court in this matter is referred to as the “Stay.”

² Although this is not reflected on the docket, Medline asserts, and Legend admits, that this is correct. Motion at ¶ 3; Answer at ¶ 3.

or others with a similar legal or factual nexus to the debtor.” McCartney, 106 F.3d at 509-10 (citations and quotation marks omitted). See also In re Phar-Mor, Inc. Secs. Litig., 166 B.R. 57, 62 (W.D. Pa. 1994) (Bankruptcy Code was not intended to stay actions “where the debtor and another are joint tortfeasors or where the nondebtor’s liability rests upon his own breach of duty”); Owen Healthcare, Inc. v. Franklin Square Hosp., 159 B.R. 453, 457 (E.D. Pa. 1993) (bankruptcy stay did not extend to non-debtor even though bankrupt defendant allegedly had agreed to indemnify non-debtor). This rule ensures “that creditors obtain the protection they sought and received when they required a third party to guaranty the debt.” McCartney, 106 F.3d at 510 (citations and quotation marks omitted).

As an exception to this rule, however, courts extend a bankruptcy stay to non-debtor parties where “extraordinary circumstances” exist. In re Izz, 196 B.R. 727, 731 (Bankr. E.D. Pa. 1996). See also In re Aldan Indus., No. 00-10360DWS, 2000 WL 357719, at *4 (Bankr. E.D. Pa. Apr. 3, 2000) (calling this “a narrow exception to the prohibition against extending the protection of the automatic stay to nondebtor third parties”). Such circumstances have been found “where there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.” McCartney, 106 F.3d at 510 (citations and quotation marks omitted). But see Maritime Elec. Co. v. United Jersey Bank, 959 F.2d 1194, 1205 (3rd Cir. 1992) (“formal distinctions between debtor-affiliated entities are maintained when applying the stay. A proceeding against a non-bankrupt corporation is not automatically stayed by the bankruptcy of its principal”).³

³ Other jurisdictions have taken a more liberal approach in extending bankruptcy stays to non-debtor defendants. See, e.g., A.H. Robins Co. v. Piccinin, 788 F.2d 994 (4th Cir. 1986) (extending

The Court first notes that Legend is solvent and has not filed a bankruptcy petition. This precludes the Stay from extending to Legend in the absence of “extraordinary circumstances.”

Legend’s argument that the Complaint “does not state independent claims against Legend” does not justify broadening the scope of the Stay beyond Beckett. Legend’s Memorandum at 2. Legend cites A.H. Robins Co. v. Piccinin, 788 F.2d 994 (4th Cir. 1986), as standing for the principle that Section 362 “insures that the debtor’s affairs will be centralized, initially, in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all of the creditors’ interests with one another.” 788 F.2d at 998 (citation and quotation marks omitted). However, Legend proposes no link between this broad principle of bankruptcy law and the conclusion that “removal of this matter from deferred status will unfairly prejudice Legend and prevent it from properly being able to defend itself.” Legend’s Memorandum at 3. Consequently, the fact that the Complaint

stay to cover non-debtor party who was indemnified by debtor); Gray v. Hirsch, 230 B.R. 239, 243 (S.D.N.Y. 1999) (non-debtor party may be entitled to stay where it has a right to indemnification from debtor); In re Family Health Servs., Inc., 105 B.R. 937, 942 (Bankr. C.D. Cal. 1989) “[a] judgment against a non-debtor defendant will trigger a claim against the debtor for indemnification, thus, the debtor is the real party defendant”). However, no Pennsylvania state or federal court has adopted this liberal position, and numerous other jurisdictions have rejected it explicitly. *See, e.g.,* Holland v. High Power Energy, 248 B.R. 53, 58 (S.D.W. Va. 2000) (right of indemnification against debtor was not sufficient to warrant extension of stay to non-debtor defendant); In re First Cent. Fin. Corp., 238 B.R. 9, 19 (Bankr. E.D.N.Y. 1999) (right to indemnification against a debtor does not automatically warrant extension of stay to non-debtor defendant); In re Northeast Glass, Inc., 112 B.R. 475, 477 n.5 (Bankr. D. Mass. 1990) (an “automatic stay does not prohibit a creditor from proceeding against a surety or guarantor, even when that would give the surety or guarantor a claim for indemnification against the Debtor’s estate”).

does not state separate claims against Legend does not amount to “extraordinary circumstances” requiring that the Stay be continued for Legend.⁴

As a second argument, Legend contends that it will have “ultimate recourse against Beckett,” that “Beckett is the real party in interest,” and that Beckett could be affected by issues of collateral estoppel. Legend’s Memorandum at 4-5. To support these claims, Raymond Lemisch, counsel for Beckett, avers in his affidavit (“Affidavit”) that the continuation of the matter against Legend could have an adverse impact on Beckett and the bankruptcy estate. However, it is unclear what, if any, relationship exists between the two Defendants, especially given the lack of specificity in the Complaint and Legend’s assertion that it is separate and distinct from Beckett. Legend’s Answer to the Complaint at ¶ 3.

This conflict gives rise to disputed issues of material fact, which Philadelphia Civil Rule *206.1(E) and Pennsylvania Rule of Civil Procedure 206.7 mandate must be resolved through depositions and other discovery. Accordingly, the Court is ordering that the Parties take depositions as to the existence of extraordinary circumstances that would warrant extending the Stay to Legend. These depositions are to be completed within forty-five days of the issuance of this Opinion and in accordance with Pennsylvania Rule of Civil Procedure 4007.1. Once this has been accomplished and within sixty days of the issuance of this Opinion, the Parties are to file briefs addressing an extension of

⁴ Even if Legend were to encounter difficulties in preparing its defense, it has provided no support for the assertion that such difficulties would constitute extraordinary circumstances. Moreover, any confusion on Legend’s part as to Medline’s allegations and theories of liability against each of the Defendants should have been raised in preliminary objections and cannot be asserted now.

the Stay and referencing the depositions and any other relevant evidence. In the interim, the Motion will be held under advisement.

CONCLUSION

It is unclear if there are extraordinary circumstances that warrant extending the Stay to Legend. As such, the Court is ordering the Parties to take depositions and to file briefs addressing the existence of extraordinary circumstances.

BY THE COURT:

JOHN W. HERRON, J.

Date: February 22, 2001

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MEDLINE INDUSTRIES INC.,	:	September Term, 2000
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	:	No. 295
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	:	Commerce Case Program
BECKETT HEALTHCARE INC., et al.,	:	
Defendants	:	Control No. 010635

ORDER

AND NOW, this 22nd day of February, 2000, upon consideration of Petitioner Medline Industries Inc.'s Motion to Remove from Deferred Status and Respondent Legend Healthcare Inc.'s response thereto and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Motion will be held under advisement for sixty days so that within forty-five days, depositions pursuant to Pa. R. Civ. P. 4007.1 may be taken to resolve the issues of material fact surrounding the existence of extraordinary circumstances that would warrant extending the bankruptcy stay to cover the Respondent. After the forty-fifth day but on or before the sixtieth day, the Parties shall file with this Court briefs offering any further argument and referencing the depositions or other relevant evidence on the Motion.

BY THE COURT:

JOHN W. HERRON, J.