NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

ANDREW HOLDER, Plaintiff, vs. MICHEL MROUE, SOHO HOSPITALITY GROUP, LLC, VICOLINA RESTAURANT VENTURE, LLC, KAFI, INC., HIRAMASSA RESTAURANT VENTURE, LLC, ABC COMPANY t/a ATELIER, COSTA (or the entity presently operating as Costa at 1300 Madison Avenue, New York), SOHO RETAIL VENTURE NEW JERSEY, LLC, and JOE DOE ENTITY 1-5, Defendants, MICHEL MROUE, Third-Party Plaintiff, vs. THE HOLDER GROUP, INC., Third-Party Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION : MORRIS COUNTY DOCKET NO. MRS-L-1627-23 CIVIL ACTION - CBLP **OPINION**

Argued: April 1, 2025

Decided: April 1, 2025

Gregory M. Gennaro, Esq., attorney for the Plaintiff and Third-Party Defendant.

Alexander Schachtel, Esq. of Law Office of Alexander Schachtel, LLC, attorney for the Defendants and Third-Party Plaintiff.

Frank J. DeAngelis, P.J. Ch.,

I. BACKGROUND INFORMATION

This matter comes before the Court on a motion to stay. By way of background, Plaintiff Andrew Holder ("Plaintiff") entered into a business agreement in 2020 with Defendant Michel Mroue ("Defendant") wherein Holder would have 20% membership interest and Mroue would have 80% membership interest in Mercato Rustico, LLC ("Mercato"), located at 1300 Madison Avenue, New York. Compl. ¶ 6-8. Pursuant to the parties' Operating Agreement ("OA"), Holder contributed $40,000 and loaned $20,000 towards opening Mercato. Id., ¶ 18-19. The parties also agreed that Defendant would guarantee the repayment of the principal amount and any accrued interest. Id. at ¶ 33. Defendant executed a promissory Note ("Note") in his capacity as manager of Mercato and a personal Guaranty ("Guaranty") for the amount of $20,000. Id. at ¶ 22-36. The Note provides:

> Provided there is no Event of Default, the unpaid principal amount under this Note will bear interest from the date hereof through February 14, 2021 (the "Maturity Date") at a rate of 10.00% per month.
>
> Maker will repay this Note by paying Holder all accrued interest in arrears on the 12th day of each month (each interest payment being $2,000) starting on September 15, 2020 and continuing on the 15th day of each month until the Maturity Date.

Certification of Andrew Holder ("Holder Cert.") dated Dec. 12, 2023, ¶ 7, Ex. C.

On August 18, 2023, Plaintiff filed a Second Amended Complaint adding Soho Hospitality Group, LLC ("Soho Hospitality"), Vicolina Restaurant Venture, LLC ("Vicolina"), Kafi, Inc. ("Kafi"), Hiramassa Restaurant Venture, LLC ("Hiramassa"), and e) ABC Company t/a Atelier ("Atelier") as parties with additional allegations that Defendant fraudulently conveyed Mercato's assets to Soho Hospitality, Vicolina, Kafi, or Hiramassa by signing promissory notes on Mercato Rustico's behalf that were payable to Soho Hospitality, Vicolina, Kafi, or Hiramassa. Id. Count 12, ¶ 4. On February 17, 2025, Plaintiff filed a Third Amended Complaint adding Soho Retail Venture New Jersey LLC ("SRVNJ") as a party and alleging that

Defendant had closed Atelier and is operating a similar business under the name "Costa" in the space that Atelier and Mercato were previously. Id. Count 13, ¶ 12-14.

On February 21, 2025, Defendant filed a petition for Chapter 11 Bankruptcy in the United States Bankruptcy Court for the District of New Jersey ("Bankruptcy Proceeding"). On March 4, 2025, this Court stayed the action against Defendant. In the instant application, Defendant seeks to stay the case as to all defendants pending the Bankruptcy Proceeding.

II. STANDARD OF REVIEW

The filing of a petition initiates a bankruptcy action and operates as an order for relief granting the debtor the protections of the bankruptcy code. 11 U.S.C. § 301(a) and (b). The most fundamental protection triggered by a bankruptcy filing is the immediate imposition of an automatic stay, which prevents all efforts against the debtor to collect pre-petition obligations. 11 U.S.C. § 362(a)(1); Celotex Corp. v. Edwards, 514 U.S. 300, 314, 115 S. Ct. 1493, 131 L. Ed. 2d 403 (1995) (Stevens, J., dissenting).

The automatic stay becomes effective immediately upon the filing of the petition and the broad language of the bankruptcy code section is designed to prevent a creditor's coercion of a debtor. See Borman v. Raymark Indus., Inc., 946 F.2d 1031, 1032-33 (3d Cir. 1991). A creditor seeking to proceed against the debtor may apply to the bankruptcy court for relief from the stay. 11 U.S.C. § 362(d). Absent such relief, the stay remains in full effect until the bankruptcy case is concluded. 11 U.S.C. § 362(c).

Courts have "recognized that the automatic stay provisions of the bankruptcy code ordinarily apply only to the debtor and its property and do not protect a corporation owned by or in which the debtor has an interest." In re Mut. Benefit Life Ins. Co., 258 N.J. Super. 356, 377 (App. Div. 1992). Moreover, "the automatic stay does not protect a corporation owned by the debtor." Citizens First Nat'l Bank v. Marcus, 253 N.J. Super. 1, 5 (App. Div.1991). "A corporation is regarded in law as an entity distinct from its individual officers, directors, and agents." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 761 (1989).

Nonetheless, "courts have extended the automatic stay to nonbankrupt codefendants in 'unusual circumstances,'" under 11 U.S.C. § 362(a)(1). McCartney v. Integra Nat'l Bank N., 106 F.3d 506, 510 (3d Cir. 1997) (quoting A.H. Robins Co. v. Piccinin, 788 F.2d 994, 999 (4th Cir. 1986)). Courts have extended the stay in two particular situations, where: (1) "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"; and (2) the "stay protection is essential to the debtor's efforts of reorganization."

III. ANALYSIS

Defendant submits that a bankruptcy proceeding "operates as a stay" against "the 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" debtor filed for bankruptcy. 11 U.S.C. § 362(a)(1). Defendant acknowledges that ordinarily, the automatic stay only shields the debtor named in the bankruptcy petition. McCartney v. Integra Nat'l Bank N., 106 F.3d 506, 509 (3d Cir. 1997). However, Defendant asserts that courts may extend the automatic stay to cover third parties where "necessary to foster the reorganization process." Millard v. Developmental Disabilities Inst., 266 B.R. 42, 44 (E.D.N.Y. 2001). Defendant provides that in deciding whether to extend the stay, courts consider: (1) "whether continuation of outside litigation would so distract individuals important to the reorganization process as to impede the reorganization effort"; (2) whether extending the stay to cover third parties "would work a hardship on plaintiffs by giving 'unwarranted immunity' to solvent defendants"; (3) "whether a recovery would so reduce the debtor's limited insurance fund as to affect the property of the estate"; and (4) whether a "non-bankrupt party seeking the stay is independently liable to the plaintiff." Millard, 266 B.R. at 4.

Defendant argues that the Court should extend the automatic stay to all defendants because Plaintiff alleges that the remaining defendants are Defendant's alter egos. Defendant maintains that courts should extend the scope of the automatic stay when "there is such identity between the debtor and the non-debtor

co-defendant that the debtor may be said to be the real party defendant." Maintainco, Inc. v. Mitsubishi Caterpillar Forklift Am., Inc. (In re Mid-Atlantic Handling Sys., LLC), 304 B.R. 111, 128 (Bankr. D.N.J. 2003). Defendant contends that although the stay cannot be extended simply because "a debtor owns all of the stock" in a third party, courts will extend the stay if the allegations in litigation are that "the subsidiary [or business entity] is 'a mere sham or alter ego' of the debtor." Citizens First Nat. Bank of N.J. v. Marcus, 253 N.J. Super. 1, 5 (App. Div. 1991). Defendant further submits that courts extend the stay when a third party is "inextricably intertwined with the [d]ebtor," such that shielding the third party from collection efforts will protect the rights of all the debtor's creditors. Lazarus Burman Assocs. v. Nat'l Westminster Bank USA (In re Lazarus Burman Assocs.), 161 B.R. 891, 898 (Bankr. E.D.N.Y. 1993). Defendant elaborates that a third party's identity overlaps with the debtor's if "there [is] no way for" a creditor "to pursue" a claim against the third party "without involving" the debtor "in the process." McCartney, 106 F.3d at 511.

Here, Defendant claims that Plaintiff cannot pursue his claims against Soho Hospitality, Vicolina, Kafi, Hiramassa, Atelier, Costa, or SRVNJ "without involving [Mroue] in the process." See id. Defendant asserts that Plaintiff's claims against these entities all arise from their alleged use by Mroue in an overarching conspiracy to divert profits from Plaintiff. Further, Defendant purports that alleges that Mroue uses Soho Hospitality, Vicolina, Kafi, and Hiramassa as shells to operate his web of "food and beverage businesses," which Plaintiff alleges are all interconnected with each other. Second Am. Compl. Count 10, ¶ 2-7. Defendant also relies on Plaintiff's allegations that Defendant possesses full operational control of Soho Hospitality, Vicolina, Kafi, and Hiramassa as their sole or a principal member and that Defendant created Atelier and Costa as alter egos for the Mercato Rustico restaurant. With respect to SRVNJ, Defendant alleges that this claim amounts to a claim against Defendant personally as contends that Mroue did not account for funds he contributed to SRVNJ and therefore must repay him for his contributions to this business. Defendant maintains that none of Plaintiff's pleadings allege that these entities engaged in

business activities without Defendant's personal involvement, nor do they assert any basis for liability independent of Defendant.

Moreover, Defendant argues that that Court should extend the automatic stay to all Defendants because Plaintiff's claims against the remaining defendants will complicate the progress of the Bankruptcy Proceeding. Defendant submits that courts will also extend the automatic stay to third parties if "stay protection is essential to the debtor's efforts of reorganization." Maintainco, 304 B.R. at 129. Defendant explains that this rationale can apply when a corporate debtor's individual owners or principals devote "a substantial amount of their time" to defending litigation instead of focusing on the debtor's reorganization. E.g., Lazarus, 161 B.R. at 899-900 (extending the stay to cover a debtor's general partners because they were "the only persons who [could] effectively formulate, negotiate[,] and carry out" a reorganization plan for the debtor).

Defendant alleges that in the instant case, allowing Plaintiff to pursue the entities without pursuing Mroue himself creates "piecemeal litigation" and risks producing "inconsistent judgments" with any adversary proceedings that might later occur in Mroue's bankruptcy case. See Roman Cath. Diocese of Rockville Ctr. v. Ark320 Doe (In re Roman Cath. Diocese of Rockville Ctr.), 651 B.R. 622, 659 (Bankr. S.D.N.Y. 2023).

Additionally, Defendant asserts that he will have to spend time and money defending the entities from Plaintiff's claims. Defendant purports that although Plaintiff cannot pursue Defendant directly, he has continued to pursue Defendant by demanding he appear for depositions as the entities' corporate representative and provide broad supplemental written discovery responses. Defendant contends that these burdens will distract from Defendant's reorganization efforts. Further, Defendant submits that the continued expense of defending this action could reduce the assets available to repay Defendant's creditors. See Lazarus, 161 B.R. at 900 (holding that courts may extend the stay when shielding a third party will protect the interests of all creditors). Defendant maintains that to ensure he receives the "breathing room" necessary

to create a reorganization plan, the Court should relieve him from Plaintiff's continued pursuit while the bankruptcy proceeding is still pending. See Clark v. Pomponio, 397 N.J. Super. 630, 639 (App. Div. 2008).

In opposition, Plaintiff takes issue with Defendant's claims that Plaintiff's pleadings do not allege any bases for liability against these entities independent of Defendant and that Defendant is the real party in interest in this lawsuit, as all of the claims against Defendant's companies seek to impose personal liability against him for various alleged bad acts carried out under the businesses. Plaintiff asserts that he has asserted direct claims against the remaining defendant, independent of Defendant. Plaintiff submits that as Mercato and Atelier, Plaintiff is seeking a declaration as to his 20% interest in the company—interest which allegedly belongs to Plaintiff and thus would not be included in Defendant's bankruptcy estate under 11 U.S.C. § 541. Similarly, Plaintiff alleges that his claim against Mercato and Atelier for non-payment of his promissory note for $20,000 is being brought against Mercato and Atelier, as the borrowers. Plaintiff also claims that he has an absolute right to be provided with full and complete copies of the tax returns filed by or on behalf of Mercato and Atelier, and to claim his share of any profits or losses on his personal tax returns. Plaintiff contends that Defendant's filing of an individual Chapter 11 bankruptcy petition does not stay the company's obligation to provide copies of these tax returns or Holder's right to claim his share of the profits or losses on his tax returns. Plaintiff makes the same argument for SRVNJ.

Next, Plaintiff distinguishes the caselaw relied on by Defendant. Plaintiff provides that Clark involved divorcing parties and not the continuation of state court claims against non-debtor parties. Clark v. Pomponio, 397 N.J. Super. 630 (App. Div. 2008). Plaintiff asserts that Defendant's reliance on McCartney is also misplaced. Plaintiff explains that the creditor in McCartney was placed in the position of having to choose between violating the bankruptcy stay or losing its right to pursue a deficiency judgment, which the court resolved by extending the stay as an "unusual circumstance." McCartney v. Integra Nat'l Bank, 106 F.3d 506 (3d Cir. 1997). Plaintiff provides that with respect to Maintainco and Citizens First, the courts failed to find exceptional circumstances to extend the stays. See McCartney v.

Integra Nat'l Bank, 106 F.3d 506 (3d Cir. 1997); Citizens First Nat. Bank of N.J. v. Marcus, 253 N.J. Super. 1, 5 (App. Div. 1991)(noting that "the automatic stay does not protect a corporation owned by the debtor.").

Plaintiff submits that in the instant matter, no exceptional circumstances exist to extend the automatic stay to the remaining defendants. Plaintiff asserts that he seeks: (1) a declaration that he owns a 20% equity interest in Mercato and Atelier, and (2) to collect his $20,000 loan from Atelier as the successor to Mercato and from the other defendant-entities. Plaintiff argues that his 20% equity interest is not the property of Defendant's bankruptcy estate and that the stay on his claim against Defendant as the guarantor of the Note does not prevent Plaintiff from pursuing his claim against the remaining defendants.

Plaintiff further takes issue with Defendant's reliance on Millard and Lazarus. Plaintiff provides that in Millard, the court denied the applicant's request for an extension of the stay finding that "[w]hile it is true that defending this case will necessarily take some of defendant['s]…time away from his reorganization duties, this case is not so complex as to require an inordinate amount of that time." Millard v. Developmental Disabilities Inst., 266 B.R. 42 (E.D.N.Y. 2001). As to Lazarus, Plaintiff elaborates that the debtors commenced an adverse bankruptcy proceeding commenced to enjoin the plaintiff-lender's state court action against the debtors and the court had made numerous findings of fact prior to extending the stay. Here, Plaintiff asserts that Defendant has not filed an adversary proceeding in the bankruptcy court to enjoin this court from proceeding with plaintiff's claims against the defendant-entities, nor have the remaining defendants sought the protection of bankruptcy.

The Court finds that Defendant has neither demonstrated exceptional circumstance warranting an extension of the stay to the remaining defendants nor that stay protection is essential to the Defendant's reorganization. Defendant first contends that the Court should extend the stay because he and other entities are so intertwined that the remaining defendants are Defendant's alter egos. However, "the fact that a debtor owns all of the stock of a subsidiary does not provide a sufficient basis for a bankruptcy court to enjoin the prosecution of a suit against the subsidiary." Citizens First, 253 N.J. Super. 5-6 (App. Div. 1991). Further, a key factor in deciding whether to extend a bankruptcy stay is whether a "non-bankrupt party seeking the

stay is independently liable to the plaintiff." Millard, 266 B.R. at 4. Here, Plaintiff has alleged claims that, if true, would render the remaining defendants individually liable to Plaintiff including civil conspiracy, aiding and abetting, and fraudulent conveyance against the remaining defendants. See Second Amend. Compl., Count Ten, ¶ 17-18, Count Eleven, ¶ 2, Count Twelve, ¶ 3. Because the entities are independently liable to Plaintiff, and liability is not based on an alter ego theory, the Court cannot extend the stay on these grounds.

Moreover, Plaintiff has not provided evidence that "stay protection is essential to the debtor's efforts of reorganization." Maintainco, 304 B.R. at 129. Defending this case will take some of Defendant's time, however, as the Court in Millard noted, it is only in cases where the action is exceedingly complex such that litigation will require an inordinate amount of time, that a stay should be granted. See Millard v. Developmental Disabilities Inst., 266 B.R. 42 (E.D.N.Y. 2001). Aside from standard discovery demands and that Defendant will be required to appear for a deposition, Defendant has not demonstrated that this action will take an inordinate amount of time, so as to be a distraction from his reorganization efforts.

IV. CONCLUSION

Accordingly, Defendant's motion to stay is denied.