

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

Civil Division
Case No. 1130-12-19 Cncv

THOMAS SPENCER

v.

LAX, LLC; EDITION LOGISTICS
MANAGEMENT, LLC; and CORBEL
CAPITAL PARTNERS SBIC, L.P.

v.

OLD LAND AIR OF NEW ENGLAND, LTD.

RULING ON DEFENDANT CORBEL'S MOTION TO STAY
OR DISMISS WITHOUT PREJUDICE

When a party files for bankruptcy, section 362 of the Bankruptcy Code provides that all actions pending against the party are “automatically stayed.” 11 U.S.C. § 362(a). On September 8, 2022, the court entered an order dismissing this case against defendants LAX, LLC and Edition Logistics Management, LLC without prejudice based on each entity’s filing for bankruptcy in federal court. Defendant Corbel Capital Partners SBIC, L.P. (“Corbel”) now asks the court to stay or dismiss the case against it as well, arguing that the automatic stay should also apply to it even though it has not filed a bankruptcy petition.

Spencer’s Claim against Corbel

Spencer asserts the following in his complaint. Edition Logistics is the parent company of LAX and exerts direct control over LAX. Complaint, ¶ 3. Corbel is the lead investor in and majority owner of Edition Logistics. Id. ¶ 4. Spencer and LAX entered into a two-year employment agreement in April 2019. Id. ¶ 9. Corbel assumed control of

the managing board of Edition Logistics around the end of July 2019. Id. ¶ 15. A Corbel employee contacted Spencer in August 2019 and proposed that he accept a reduced compensation package. Id. ¶ 18. Spencer expressed concern to Corbel in September 2019 that members of the Edition Logistics management team had isolated him from LAX and prevented him from doing his job. Id. ¶ 21. Edition Logistics terminated Spencer on October 15, 2019, stating that his termination was “for cause.” Id. ¶ 22. Spencer does not believe he was terminated for cause and claims that he is entitled to severance pay through April 2021. Id. ¶ 34. Spencer asserts causes of action against LAX and Edition Logistics for breach of contract and against Corbel for tortious interference with contract. Id. ¶¶ 35–38, 44–48.

Analysis

The automatic stay does not apply to non-debtor¹ co-defendants in all cases pending in state courts, but it can apply “when a claim against the non-debtor will have an immediate adverse economic consequence on the debtor’s estate.” In re Ladieu, 2011 WL 748566, at *19 (Bankr. D.Vt. Feb. 24, 2011) (quoting Queenie, Ltd. v. Nygard Int’l, 321 F.3d 282, 287 (2d Cir. 2003)). A claim against a non-debtor co-defendant has such an effect when the claim is based on “an obligation for which the debtor was a guarantor.” Id. (citing Mokuba New York LLC v. Pitts (In re Pitts), 2009 WL 4807615, at *6 (Bankr. E.D.N.Y. Dec. 8, 2009)).

Corbel asserts that the claims against Edition Logistics and LAX are similarly intertwined with those against Corbel. Relying on the agreement it entered into with Edition Logistics, Corbel contends that Edition Logistics is obligated to defend Spencer’s

¹ A party that has not sought protection from the bankruptcy court is referred to herein as a “non-debtor.”

claim and indemnify it for any judgment in Spencer’s favor. Edition Logistics agreed to “indemnify, hold harmless, defend, pay and reimburse any Covered Person against any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims” due to the Covered Person’s act or omission undertaken on behalf of Edition Logistics. Motion at 7–8. The agreement defines “Covered Person” as members, officers, directors, shareholders, and partners of Edition Logistics. *Id.* at 7. Editions Logistics also agreed to indemnify “Covered Persons” for conduct by subsidiaries, which covers conduct by LAX. *Id.* at 8. In Corbel’s agreement with LAX, LAX agreed to indemnify and reimburse any “Covered Person” for and against any “loss, damage, claim, or expense” incurred that relates to or arises out of any “alleged acts or omissions (whether or not constituting negligence) performed or omitted by any Covered Person on behalf of the Company.” The LAX agreement defines “Covered Person” as the Member (which is Edition Logistics) as well as each officer, director, shareholder, manager, member, agent, or representative of the Member. *Id.* at 8–9.²

In Ladieu, an individual (the “debtor”) filed for bankruptcy protection in December 2007 in Vermont. Ladieu, 2011 WL 748566, at *18. The debtor was the sole member of a business and had personally guaranteed the business’s obligations. *Id.* at *2. The plaintiff sued the debtor’s business in Oregon in September 2008 and obtained a judgment that it sought to enforce against the individual in the bankruptcy court in

² Corbel did not file copies of its agreements with LAX and with Edition Logistics, but Spencer does not contest Corbel’s representations of the documents’ provisions. Thus, for purposes of this ruling, the court adopts Corbel’s representations regarding its agreements with LAX and Edition Logistics.

Vermont. Id. at *1, *18. The plaintiff argued that the debtor's obligation to pay the Oregon judgment was non-dischargeable under the Bankruptcy Code and that the debtor was liable for satisfying the judgment it obtained against the debtor's business. Id. at *1.

The bankruptcy court denied the plaintiff's claim and held that the Oregon judgment was "void *ab initio* since it was obtained in violation of the automatic stay." Id. at *18. The court explained its rationale as follows:

Ladieu was the guarantor of the non-debtor Galadieu's obligation. Further, Ladieu is the sole member of Galadieu, and under the facts presented, this creates such an identity between Ladieu and Galadieu that a judgment for Rentrak against Galadieu for default under the Agreement would be a judgment in favor of Rentrak against Ladieu.

Id. at *19 (citing Queenie, Ltd. v. Nygard Int'l, 321 F.3d 282, 288 (2d Cir. 2003)). In Queenie, upon which Ladieu relied for its holding, the Second Circuit Court of Appeals acknowledged that, although § 362(a) automatic stays do not normally apply to non-bankrupt co-defendants, the automatic stay can apply to non-debtors "when a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate," such as "a claim to establish an obligation of which the debtor is a guarantor." Queenie, 321 F.3d at 287. In Queenie, the non-debtor corporation at issue was wholly owned by the individual debtor, and the court found that a judgment against the non-debtor corporation would have an "immediate adverse economic impact" on the debtor. Id. Thus, the Court of Appeals applied the automatic stay to the non-debtor corporation. Id.

Spencer contends that the court lacks subject matter jurisdiction to determine whether § 362 of the Bankruptcy Code applies to Corbel. Opposition at 3–5. In dismissing the case against Corbel without prejudice, the court is not attempting to exercise federal statutory authority by extending the automatic stay to Corbel, as Spencer

suggests. Rather, it is exercising its inherent jurisdiction to control its docket to preserve judicial resources and ensure efficient disposition of cases. See In re Snowstone, LLC, 2021 VT 72A, ¶ 24 (2022); In re Woodstock Cmty. Tr. & Hous. Vt. PRD, 2012 VT 87, ¶ 36, 192 Vt. 474. Moreover, the court has the power to determine that the automatic stay applies to litigation pending in its court. See In re Singleton, 230 B.R. 533, 538–39 (6th Cir. BAP 1999) (“That the bankruptcy court may be the exclusive forum to consider a motion for relief from the automatic stay does not preclude a nonbankruptcy court from determining whether a matter pending before it is stayed by a party’s bankruptcy filing.”) (citation omitted); In re Baldwin-United Corp. Litig., 765 F.2d 343, 347 (2d Cir. 1985) (“Whether the stay applies to litigation otherwise within the jurisdiction of a district court or court of appeals is an issue of law within the competence of both the court within which the litigation is pending and the bankruptcy court supervising the reorganization.”) (citations omitted).

Spencer attempts to distinguish the cases Corbel relies on by pointing out that the debtors in some of those cases filed Chapter 11 petitions, involving reorganization, rather than Chapter 7 petitions, which result in liquidation of the debtor’s assets. However, the debtor in Ladieu filed under Chapter 7, and the Vermont bankruptcy court found, nevertheless, that the automatic stay applied to the debtor’s wholly owned business. Ladieu, 2011 WL 748566, at *18–19. The court finds the rationale set forth in Ladieu to be persuasive.³

³ The court recognizes that Edition Logistics is not wholly owned by Corbel, which distinguishes this case from Ladieu, but the court finds that Edition Logistics’ and LAX’s potential obligations to indemnify could have an adverse economic impact on the debtors’ bankruptcy estates if Spencer were to receive a judgment against Corbel in this case.

Lastly, the court notes that Spencer has the option of initiating an adversary proceeding in the bankruptcy court against LAX, Edition Logistics, and Corbel, thereby litigating all claims he has against all three entities in a single proceeding. For a bankruptcy court to have jurisdiction over a proceeding involving a non-debtor, the proceeding must be “related to” a bankruptcy case. In re Wilson, 271 B.R. 511, 513 (2001) (citing 28 U.S.C. § 157(c)(1)). “A matter is ‘related to’ a bankruptcy case if ‘the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.’” Id. (quoting Sanders Confectionery Prods., Inc. v. Heller Fin., Inc., 973 F.2d 474, 482 (6th Cir. 1992) (further citation omitted)); *see* Worldview Ent. Holdings, Inc. v. Woodrow, 611 B.R. 10, 16 (Bankr. S.D.N.Y. 2019) (“‘Related to’ jurisdiction exists when the outcome of the cause of action ‘might have any conceivable effect on the bankrupt estate.’”) (quoting SPV Osus Ltd. v. UBS AG, 882 F.3d 333, 339–40 (2d Cir. 2018) (further citation omitted)).

Order

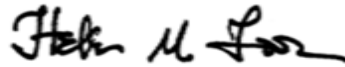
For the reasons stated above, the court dismisses the proceeding against Corbel Capital Partners SBIC, L.P. The dismissal is without prejudice to Spencer’s right to have this order vacated, and the case reopened, if he demonstrates any of the following events have occurred:

1. The bankruptcy court has dismissed the bankruptcy cases of Edition Logistics and/or LAX;
2. LAX or Edition Logistics has been denied a discharge;
3. Any debt to Spencer for which LAX or Edition Logistics is responsible has been determined to be non-dischargeable;
4. The bankruptcy court has granted relief from the automatic stay to pursue this claim;
or

5. For any other reason LAX's or Edition Logistics' bankruptcies have not precluded the possibility of Spencer prevailing in this action.

To vacate this dismissal and reopen the case without charge, Spencer must, within thirty (30) days of the date of a bankruptcy court action cited in Items 1 through 5, above, file with the Clerk a "Request to Vacate Dismissal and Reopen the Case." Spencer should attach to that request copies of the appropriate bankruptcy court documents.

Electronically signed on December 12, 2022 pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Helen M. Toor", written over a horizontal line.

Helen M. Toor
Superior Court Judge