

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRUCE ROBERTS, ET AL.	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 04-CV-5631
	:	
WE LOVE COUNTRY INC., ET AL.	:	

**SURRICK, J.**

**AUGUST 29, 2005**

**MEMORANDUM & ORDER**

Presently before the Court is the Motion of Defendants We Love Country, Inc. d/b/a Mill Street Design, Brian Yaffe & Wendy E. Lofgren To Stay Civil Proceedings (Doc. No. 21). For the following reasons, Defendants’ Motion will be granted and the proceedings will be stayed.

Plaintiffs Bruce Roberts, Mark Riddick, and William Kaufhold filed the Complaint in this matter on December 3, 2004, alleging that Defendants infringed certain copyrights, in violation of 17 U.S.C. § 501, and violated the integrity of copyright management information, in violation of 17 U.S.C. § 1202. (Doc. No. 1.) On June 21, 2005, Defendant Brian Yaffe (“Yaffe”) filed a Chapter 7 bankruptcy petition in United States Bankruptcy Court. (Doc. Nos. 19, 20.) Based on this bankruptcy filing, Defendants We Love Country, Inc. d/b/a Mill Street Design (“Mill Street”), Yaffe, and Wendy E. Lofgren (“Lofgren”) seek to stay the proceedings pursuant to 11 U.S.C. § 362(a). Under § 362 of the bankruptcy code, the filing of a Chapter 7 bankruptcy petition automatically stays all proceedings against the debtor. *See* 11 U.S.C. § 362(a); *Nationwide Mut. Ins. Co. v. Selfinger*, Civ. A. No. 98-1969, 1999 U.S. Dist. LEXIS 11705, at \*3

(E.D. Pa. July 20, 1999). Therefore, the proceedings as to Defendant Yaffe must be stayed.<sup>1</sup>

Plaintiffs oppose the Motion to the extent that it seeks a stay as to Defendants Mill Street and Lofgren. (Doc. No. 23.) Generally, the automatic stay provisions of 11 U.S.C. § 362(a) only apply to the bankrupt debtor defendant. *McCartney v. Integra Nat'l Bank N.*, 106 F.3d 506, 509 (3d Cir. 1997). However, a court may also stay the proceedings as to non-bankrupt co-defendants in “unusual circumstances.” *Id.* at 510. Such circumstances exist when ““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,”” *id.* (quoting *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986)), or “where stay protection is essential to the debtor’s efforts of reorganization.” *Id.* In determining whether “unusual circumstances” exist, a court should consider four factors:

(1) the plaintiff’s interest in having a forum and whether or not plaintiff has a satisfactory alternative forum; (2) whether the defendant may wish to avoid multiple litigation or inconsistent relief or sole responsibility for liability he shares with another; (3) the interest of the outsider whom it would have been desirable to join and the extent to which the judgment may, as a practical matter, impair or impede the absent party’s ability to protect his interest; and (4) the interest of the courts and the public in the complete, consistent and efficient settlement of controversies.

*Smith v. Dominion Bridge Corp.*, Civ. A. No. 96-7580, 1999 U.S. Dist. LEXIS 2131, at \*12 (E.D. Pa. Mar. 2, 1999) (internal quotation omitted) (granting motion to stay proceedings as to non-bankrupt co-defendants).

In the instant case, Plaintiffs’ Complaint alleges the following:

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<sup>1</sup>Plaintiffs concede that the automatic stay provision applies to their claims against Defendant Yaffe. (Doc. No. 23 at 2.)

4. Defendant We Love Country Inc. dba Mill Street Design (“Mill Street”) is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business located at 306 Mill Street, Bridgeport, Pennsylvania 19045.

5. Defendant Brian Yaffe (“Yaffe”) is, and at all times mentioned herein was, an individual residing at 8310 Childs Road, Glenside, Pennsylvania 19038. On information and belief, Defendant Yaffe is, and at all times mentioned herein was, an officer, director and majority shareholder of Mill Street, and personally participated in, directed, authorized and/or ratified the acts, omissions, and wrongful conduct of Mill Street and Does 1-10, inclusive, as alleged herein.

6. Defendant Wendy E. Lofgren (“Lofgren”) is and at all times mentioned herein was, an individual residing at 109 Crimson Place, Chester Springs, Pennsylvania 19425. On information and belief, Defendant Lofgren is, and at all times mentioned herein was, an officer, director and shareholder of Mill Street, and personally participated in, directed, authorized and/or ratified the acts, omissions, and wrongful conduct of Mill Street and Does 1-10, inclusive, as alleged herein.

....

8. On information and belief, each Defendant named herein is, and at all relevant times herein was, the agent, servant, employee, partner and/or joint venturer of each of the other Defendants; the acts of each Defendant were within the scope of such agency, service, employment, partnership or joint venture; in doing the acts and omissions alleged herein, each Defendant acted with knowledge, permission and/or consent of every other Defendant; and each Defendant aided, abetted, and/or conspired with the other Defendants in the acts and omissions alleged herein.

(Compl. ¶¶ 4-6, 8.)

Moreover, in their submissions in support of the Motion to Stay, Defendants assert that “Defendant Brian Yaffe was the sole owner of Mill Street Design which is now bankrupt and no longer doing business.” (Doc. No. 24 at unnumbered 3.) They also assert that “Mill Street has no assets.” (*Id.* at unnumbered 3 n.1.)

We are satisfied after weighing all of the factors that unusual circumstances exist here which justify staying the proceedings as to Defendants Mill Street and Lofgren. Initially, Defendants Mill Street and Lofgren seek only to stay these proceedings. Plaintiffs will be able to pursue their claims in this Court after the conclusion of the bankruptcy proceedings. Granting a

stay as to the claims against Defendants Mill Street and Lofgren will not shield them from liability since Plaintiffs' ability to pursue claims against them is merely delayed until the conclusion of the bankruptcy proceedings.

In addition, it is apparent that if a stay was not granted as to Defendants Mill Street and Lofgren, Yaffe would not be able to adequately protect his interests. The allegations against Mill Street and Lofgren and the allegations against Yaffe are essentially the same. *See In re Loewen Group, Inc. Sec. Litig.*, Civ. A. No. 98-6740, 2001 U.S. Dist. LEXIS 6482, at \*10 (E.D. Pa. May 16, 2001). Plaintiffs allege that the Defendants were all acting as agents for each other, with the consent of each other and as aiders, abettors, and conspirators with regard to the conduct alleged by Plaintiffs. (Compl. ¶ 8.) Given the allegations and the extent to which Plaintiffs' claims against these Defendants overlap, Yaffe would certainly be compelled to participate in the defense of this litigation in order to protect his interests. In fact, it is difficult to see how the claims against Mill Street and Lofgren could go forward without Yaffe's active participation. "[M]any of the critical factual determinations to be made" in this action "would entail detailed and burdensome discovery" which would clearly involve Yaffe. *In re Loewen Group, Inc. Sec. Litig.*, 2001 U.S. Dist. LEXIS 6482, at \*10. However, such a result is the very ill that the automatic stay provision was designed to prevent. As the Third Circuit observed in *In the Matter of M. Frenville Co., Inc.*, 744 F.2d 332 (3d Cir. 1984), "Congress' intent in enacting § 362(a) is clear - it wanted to stop collection efforts for all antecedent debts. Congress intended that the debtor obtain a fresh start, free from the immediate financial pressures that caused the debtor to go into bankruptcy." *Id.* at 334; *see also Ass'n of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir. 1982).

Finally, the interests in avoiding potentially inconsistent relief and in efficiently resolving Plaintiffs' claims militate in favor of staying the proceedings as to Defendants Mill Street and Lofgren. Depending on the outcome of the instant proceedings as to these non-bankrupt Defendants, it is probable that substantially similar issues would have to be relitigated as to Yaffe after the conclusion of his bankruptcy proceedings. *In re Loewen Group, Inc. Sec. Litig.*, 2001 U.S. Dist. LEXIS 6482, at \*10. Given the apparent relationship between Yaffe and Mill Street, such litigation would necessarily require the parties to address, and the Court to resolve, the extent to which the earlier proceedings bind Defendant Yaffe. Granting a stay as to Defendants Mill Street and Lofgren will allow the parties and the Court to address the merits of Plaintiffs' claims with greater efficiency by eliminating the need to revisit previously adjudicated legal issues.

An appropriate Order follows.

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WE LOVE COUNTRY INC., ET AL.	:	

**ORDER**

AND NOW, this 29th day of August, 2005, upon consideration of the Motion of Defendants We Love Country, Inc. d/b/a Mill Street Design, Brian Yaffe & Wendy E. Lofgren To Stay Civil Proceedings (Doc. No. 21, No. 04-CV-5631), and all papers filed in support thereof and in opposition thereto, it is ORDERED that the Motion is GRANTED. This action is stayed and the Clerk of Court is directed to place this case in civil suspense pending the conclusion of the bankruptcy proceedings filed by Defendant Brian Yaffe in United States Bankruptcy Court. Defendants shall notify the Court within thirty (30) days of completion of the bankruptcy proceedings.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge