

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

John Tenneson, et al. v. Mark A. Russell, et al.

Tenneson v. Russell · No. CV-23-02131-PHX-DJH · Decided March 24, 2026

OPINION

Reyes

PER CURIAM.

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 John Tenneson, et al., No. CV-23-02131-PHX-DJH 10 Plaintiffs, ORDER 11 v. 12 Mark A
Russell, et al., 13 Defendants. 14 15 Before the Court is remaining Defendants Mark A. Russell
("Russell") and Michael 16 Lohscheller's ("Lohscheller") (collectively "Individual Defendants")
Motion to Stay 17 Proceedings. (Doc. 49). Plaintiffs have filed a Response (Doc. 51) and
Individual 18 Defendants have filed a Reply. (Doc. 52). For the reasons set forth below, the Court
will 19 deny Individual Defendants' Motion. 20 I. Background 21 Plaintiffs' class action lawsuit
arises out of the complex history of Nikola 22 Corporation ("Nikola"). Plaintiffs restate this
history in their Second Amended Complaint 23 ("SAC"). (Doc. 24). The SAC details the rise and
fall of Nikola, as well as a revitalization 24 effort by new leadership. The rise came when Nikola
became a publicly traded company 25 on the Nasdaq Global Select Market. (Doc. 24 at ¶ 14). The
fall came when Nikola's 26 founder was convicted. (Id. at ¶ 1). Revitalization efforts by new
leadership were then 27 stalled when Nikola's electric vehicles started combusting into flames.
(Id. at ¶ 3). 28 Plaintiffs are public stockholders. They assert that Nikola and Chief Executive
Officers 1 ("CEOs") Russell and Lohscheller—who ascended to their positions after Nikola's
founder 2 was convicted—are responsible for violations of Section 10(b) and 20(a) of the
Securities 3 Exchange Act of 1934 and SEC Rule 10b-5(b). (Id. at ¶ 7). Nikola has since filed for
4 bankruptcy and filed a notice of such with the Court. (Docs. 44 & 45). Russell and 5 Lohscheller
now ask that the Court extend the bankruptcy stay in this case to them as well. 1 6 (Doc. 49). For
reasons explained below, the Court will not do so. 7 II. Legal Standard 8 Generally, the automatic
stay provisions of Section 362(a) of the bankruptcy code 9 cover only debtors, property of the
debtor, or property of the bankruptcy estate. In re 10 Chugach Forest Prods., Inc., 23 F.3d 241,
246 (9th Cir. 1994). It does not expand its 11 protections to other parties liable on the debts of the
debtor. Id. There is one exception to 12 this general rule. A non-debtor seeking to be covered by
the automatic stay provision of

13 Section 362(a) can invoke the "unusual circumstances" exception. A.H. Robins Co. v.

14 Piccinin (In re A.H. Robins Co.), 788 F.2d 994 (4th Cir. 1986), cert. denied, 479 U.S. 876, 15

107 (1986)). This exception is available if the interests of the debtor and the non-debtor are 16 “inextricably woven.” In re Excel Innovations, Inc., 502 F.3d 1086, 1096 (9th Cir. 2007). 17 Put differently, an automatic stay can be extended under Section 362(a) when “there is 18 such identity between the debtor and the third-party defendant that the debtor may be said 19 to be the real party in interest and that a judgment against the third-party defendant will in 20 effect be a judgment or finding against the debtor.” A.H. Robins Co., 788 F.2d at 999. 21 Though the Ninth Circuit has not made clear the vitality of the unusual circumstances 22 doctrine, it has not outright rejected the exception either. Chugash Forest Prods., 23 F. 3d 23 at 247. 24 Alternatively, the Court can stay proceedings incidental to its inherent authority to 25 do so. Ernest Bock, LLC v. Steelman, 76 F.4th 827, 842 (9th Cir. 2023). When a district 26 court finds that entering a stay is efficient for its own docket and the fairest course for the 27 1 Individual Defendants filed a Reply to Plaintiffs’ Response to Suggestion of Bankruptcy 28 (Doc. 49), which the Court construed as a Motion to Stay and converted it to a Motion to Stay. (Doc. 50). 1 parties, the district court can issue a stay of proceedings pending the resolution of 2 proceedings elsewhere. Mediterranean Enters., Inc. v. Ssangyong Corp., 708 F.2d 1458, 3 1465 (9th Cir. 1983). Three non-exclusive factors determine whether the district court is 4 properly exercising its authority: (1) the possible damage which may result from granting 5 the stay; (2) the hardship or inequity which a party may suffer in being required to go 6 forward; and (3) judicial efficiency. In re PG&E Corp. Sec. Litig., 100 F.4th 1076, 1085 7 (9th Cir. 2024). These factors originate in the Supreme Court’s ruling in Landis v. N. Am. 8 Co., 299 U.S. 248 (1936), and are otherwise known as the Landis factors. 9 III. Discussion 10 Russell and Lohscheller first assert that the automatic stay should be extended to 11 them because Plaintiffs cannot pinpoint misrepresentations made specifically by Russell or 12 Lohscheller separate from Nikola such that either would be independently liable. (Doc. 49 13 at 3). They also state that they may seek indemnification from Nikola under Nikola’s 14 Director & Officer policies, which have been deemed by courts to be property of the 15 bankruptcy estate. (Id. at 4). Russell and Lohscheller further argue that issuing a stay 16 under the Court’s inherent authority to do so is appropriate here. Id. at 2. 17 Plaintiffs say staying the case against Russell and Lohscheller is unwarranted. They 18 initially argue that Section 362(a) of the Bankruptcy Code does not extend to individual 19 defendants. (Doc. 51 at 3). They also argue that Russell and Lohscheller should be seeking 20 a stay from the Delaware Bankruptcy Court and that the Ninth Circuit has not officially 21 adopted the unusual circumstances test advocated for by Russell and Lohscheller. (Id. at 22 4). Plaintiffs finally argue that even under the Court’s inherent authority, the Court should 23 not stay the proceedings. (Doc. 51 at 5–11). 24 A. Extension of Stay of Proceedings under Section 362(a) 25 The Court agrees with Plaintiffs that a stay under Section 362(a) of the proceedings 26 is unwarranted. The unusual circumstances that would typically allow for a stay under

27 Section 362(a) are absent from this case.

28 Defendants argue that a stay is warranted because the unusual circumstances 1 exception under

Section 362(a) applies. They analogize the claims against them to those 2 against the defendants in *Tuller v. Tintri, Inc.*, 2018 WL 4385652, at *1 (N.D. Cal. Sept. 3 14, 2018). In *Tuller*, the district court extended the bankruptcy stay under Section 362(a) 4 after finding that the unusual circumstances exception applied. *Tuller*Id. at *1. The court 5 found so because even though plaintiffs had alleged materially misleading statements by 6 both the corporate defendant and the individual defendants, they made no attempt to 7 distinguish between the two. Id. at *2. The lack of particularization led the court to rule 8 that there was no distinction between the corporate defendant and the individual 9 defendants. Id. at *3. Defendants argue that the same is true here because Plaintiffs have 10 not adequately separated statements made by Lohscheller and Russell from statements 11 made by Nikola. (Doc. 49 at 3). 12 Plaintiffs disagree and say this case is more like *Duval v. Gleason*, 1990 WL 13 261364, at *4 (N.D. Cal. Oct. 19, 1990). There, the court declined to extend a stay under

14 Section 362(a) after finding that plaintiffs properly demarcated between actions committed 15 by the corporation and actions committed personally by the individual defendants. The 16 court also held the securities laws allowed individual defendants to be held liable and that 17 a contrary result would cause a loophole in the Bankruptcy Act whereby corporate officers 18 and directors “could escape all civil prosecutions of their individual fraudulent acts by 19 having the corporation file a bankruptcy petition.” Id. at *4. 20 The Court agrees with Plaintiffs that the facts here are more like those in *Duval*. 21 The unusual circumstances that would typically allow for a stay under Section 362(a) are 22 absent from this case. Despite what Russell and Lohscheller assert, there is a meaningful 23 distinction between statements made by Nikola and statements made by both men. In 24 Plaintiffs’ FAC, Plaintiffs parse out statements that can be directly attributed to either 25 Russell or Lohscheller. For example, Plaintiffs point to Russell’s allegedly false and 26 materially misleading statements during a May 5, 2022, conference call and to 27 Lohscheller’s statements during a November 3, 2022, and an August 4, 2023, conference 28 call. (Doc. 24 at ¶¶ 69, 88, & 128). Plaintiffs say these statements stand on their own and 1 that statements made only by Nikola do not amount to the entirety of the materially 2 misleading statements they have alleged. (Doc. 51 at 10). Plaintiffs’ ability to separately 3 identify Russell and Lohscheller’s statements makes this case distinguishable from *Tuller* 4 and more akin to *Duval*. Moreover, securities laws allow for personal liability against 5 individual officers and directors. See Securities Act of 1933, as amended (Securities Act), 6 and Securities Exchange Act of 1934, as amended (Exchange Act). For the Court to hold 7 otherwise would contravene the entire purpose of both the securities laws and Section 8 362(a) of the Bankruptcy Code. *Duval*, 1990 WL 261364, at *4. 9 The Court also rejects Russell and Lohscheller’s argument that a stay is warranted 10 because Nikola may indemnify them for their potentially misleading statements.2 While it 11 is true that absolute indemnity by a corporate defendant favors sending the case to the 12 bankruptcy court because the property of the corporate defendant, i.e., an insurance policy 13 that indemnifies Defendants, is implicated,3 such is not true for a hypothetical indemnity. 14

Duval, WL 261364 at *3.4 15 2 Individual Defendants also seem to assert in their Motion that Nikola, the debtor corporation, would be unduly burdened by discovery if this matter were allowed to proceed. (Doc. 49 at 4). Even if the court were to assume that is true, that cannot be a basis to grant a stay under Section 362(a). See *Dish Network, LLC. v. Jadoo TV, Inc.*, 2019 WL 17 4544423, at *5 (C.D. Cal. Aug. 14, 2019). 18 3 But see *Quarrato v. Madison Glob. LLC*, 2023 WL 7212173, at *2 (S.D.N.Y. Nov. 2, 2023) (even in the case of an absolute indemnification provision referral may be 19 inappropriate under Section 362(a), especially when the provision is the only basis for extending the automatic stay); *In re Boginsky*, 658 B.R. 209, 212 (Bankr. S.D. Fla. 2024); 20 *Al-Shara v. Wal-Mart Stores, Inc.*, 2012 WL 1119339, at *4 (E.D. Mich. Apr. 3, 2012). 21 4 The Court will not counsel Russell and Lohscheller on how to best pursue their case or their desired relief. However, the Court would like to note, that much in line with 22 Plaintiff's objection that Russell and Lohscheller should have brought this to the attention of the bankruptcy court in Delaware, case law suggests that the type of relief requested by 23 both Defendants is better requested under 11 U.S.C. § 105 in front of the bankruptcy court. See *In re Boginsky*, 658 B.R. 209, 212 (Bankr. S.D. Fla. 2024) (citing to as string of cases 24 explaining the difference between what a district court can do under section 362(a) and what a bankruptcy court can do under section 105). Courts in the Ninth Circuit, on the other 25 hand have held that even under the contours of Section 362(a), only the bankruptcy court can issue an extension of stay and not the district court. See *J & J Sports Prods., Inc. v. 26 Brar*, 2012 WL 4755037, at *1 (E.D. Cal. Oct. 3, 2012) (listing cases from the Ninth Circuit where courts have refused to extend the automatic stay because they believed that authority 27 rested exclusively with the bankruptcy court). Another recent case from this circuit even states that only a bankruptcy court can stay a case under Section 362(a) using its equity 28 jurisdiction. *Dish Network, LLC. v. Jadoo TV, Inc.*, 2019 WL 4544423, at *6 (C.D. Cal. Aug. 14, 2019). 1 Here, Russell and Lohscheller have not shown the Court that they are insured under 2 Nikola's insurance policies, they merely speculate that they may be. A mere assertion, 3 without more, does not warrant a stay.5 Even if Russell and Lohscheller are indemnified 4 by Nikola's insurance policy, the issue is far too premature for the Court to decide now. 5 Duval, WL 261364 at *6 ("Only if such liability attaches will there arise the separate issue 6 of whether any insurance policy proceeds are available to satisfy claims on the basis of 7 indemnity."). Due to above, the Court will not extend the bankruptcy stay using Section 8 362(a) of the bankruptcy code to Russell and Lohscheller. 9 B. Stay of Proceedings under Court's Inherent Authority 10 A court should consider three non-exclusive factors when deciding whether to stay 11 a case under its inherent authority to do so: (1) "the possible damage which may result 12 from the granting of a stay"; (2) "the hardship or inequity which a party may suffer in being 13 required to go forward"; and (3) "the orderly course of justice measured in terms of the 14 simplifying or complicating of issues, proof, and questions of law." *Ernest Bock, LLC v. 15 Steelman*, 76 F.4th 827, 842 (9th Cir. 2023), cert. denied, 144 S. Ct. 554 (2024) (quoting 16 *Lockyer*, 398 F.3d at 1110). The last factor, also referred to as "judicial efficiency," is not 17 alone

sufficient to stay proceedings. In re PG&E Corp. Securities Litig., 100 F.4th 1076, 18 1085 (9th Cir. 2024). Rather, a court must weigh the relative hardships that a stay might 19 cause. Id. at 1087. Dempsey v. Smith’s Food & Drug Centers, Inc., 2025 WL 326644, at 20 *3 (D. Nev. Jan. 28, 2025). “The party requesting a stay bears the burden of showing that 21 the circumstances justify an exercise of that discretion.” Nken v. Holder, 556 U.S. 418, 22 433-434 (2009). “If there is even a fair possibility that the stay will work damage to 23 someone else, the party seeking the stay must make out a clear case of hardship or 24 inequity.” Percy v. United States, 2016 WL 7187129, *2 (D. Ariz. 2016) 25 Here, Russell and Lohscheller argue that even if a stay is not warranted under 26 27 5 Russell and Lohscheller state in their Reply that they are prepared to turn over the policy that indemnifies them for in camera inspection. (Doc. 52 at 3). Even then, for reasons stated 28 in the Order, the Court will not extend the automatic stay under Section 362(a).

1 Section 362(a), the Court should extend the stay to them under its inherent authority to do 2 so. (Doc. 49 at 2). Plaintiffs disagree and state that they would be unduly prejudiced if the 3 Court issues a stay. (Doc. 51 at 5–11).⁶ The Court will not exercise its inherent authority 4 to issue a stay of the proceedings. 5 i. Possible damage that may result from granting the stay 6 The first factor to consider is the possible damage to a party in granting a stay. 7 Defendants argue that they will be severely burdened if Plaintiffs’ claims against them 8 proceed. They point out they are likely to seek indemnification from Nikola and that 9 Nikola, not Defendants, has the vast majority of discoverable documents relevant to the 10 claims. (Doc. 52 at 3). Plaintiffs, in response, are vehement that they will be irreparably 11 damaged should a stay be granted. (Doc. 51 at 6). They tell the Court that if their class 12 action is stayed, members of the class will not be able to remember important details as 13 more time progresses, physical evidence will be lost, and statutory deadlines might prevent 14 them from moving forward with their claims on an individual basis. (Id. at 6–7). 15 As an initial matter, Defendants’ focus on how the absence of a stay would prejudice 16 them is misplaced. The proper focus under factor is consideration of possible damage if 17 the stay is granted, not if it is not granted. Lockyer v. Mirant Corp., 398 F.3d 1098, 1110 18 (9th Cir. 2005). With regard to Plaintiff’s claims of prejudice, however, Defendants say 19 that any risk of lost evidence is ameliorated by Defendants’ preservations obligations, and 20 that Plaintiffs do not face a risk of claims being extinguished by the statute of limitations 21 because that occasion would only arise for putative class members who may opt of out of 22 the class. (Doc. 52 at 3). Defendants do not address the risk of witnesses’ lapsed memories, 23 however. Plaintiffs claim that as more time passes, they “will be less likely to recall 24 important details” about the events that give rise to their claims. (Doc. 51 at 6). 25 Significantly, the roll-out of the defective truck batteries and the subsequent quality 26 readiness meetings occurred over three years ago already. (Id.) The concerns Plaintiffs state 27 about fading memories are legitimate and although not dispositive to the entire analysis, 28 6 The Court summarily rejects Plaintiffs argument that Defendants should not be able to invoke Section 362(a) and the Court’s inherent authority to argue for a stay. 1 do invoke “a fair possibility that the stay will work damage to

someone else.” Landis, 299 U.S. at 255. This second Landis factor favors Plaintiffs. 3 ii. The hardship or inequity which a party may suffer in being required to go forward 5 Russell and Lohscheller first argue that they will be highly burdened by discovery 6 because Nikola holds all the pertinent documents. Burdensome discovery is not a reason 7 for the Court to find hardship on the part of Russell and Lohscheller. Lockyer, 398 F.3d at 81112 (9th Cir. 2005)(“[B]eing required to defend a suit, without more, does not constitute 9 a “clear case of hardship or inequity” within the meaning of Landis.”). Further, it is unclear 10 to the Court if the underlying bankruptcy proceeding is sufficiently related, legally and 11 factually, to the current class action. Id. at 1113 (stating that it is improper to issue a Landis 12 stay “[W]here the proceeding in the bankruptcy court is unlikely to decide, or to contribute 13 to the decision of, the factual and legal issues before the district court.”). 14 In the current class action, Plaintiffs seek to have Russell and Lohscheller found 15 individually liable for statements constituting material misrepresentation. The bankruptcy 16 court is dealing only with a Chapter 11 bankruptcy restructuring initiated by Nikola. In 17 other words, when Nikola initiated the bankruptcy, it was not for the bankruptcy court to 18 examine Russell and Lohscheller’s statements that might constitute a material 19 misrepresentation. (Doc. 44). At this point, for the Court to find that there is a hardship or 20 inequity for Russell and Lohscheller to proceed with the case, requires a strained and 21 perhaps even hopeful perception of what may happen in the bankruptcy court. Therefore, 22 this factor weighs against Russell and Lohscheller and in favor of Plaintiffs. 23 iii. Judicial efficiency 24 While Russell and Lohscheller encourage the Court to find that judicial efficiency 25 counsels granting a stay, this factor standing alone, is never sufficient to grant a stay under 26 the Court’s inherent authority. Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 2007). Although this factor favors Russell and Lohscheller, it 28 does not favor issuing a Landis stay. While this factor is ultimately neutral, the Court finds 1 || that the first and second factors clearly favor Plaintiffs. Defendants will not suffer a || hardship or inequity in going forward. Therefore, a Landis stay is unwarranted. IV. Conclusion 4 The Court declines to stay this matter against Individual Defendants under either || Section 362(a) of the bankruptcy code and or the Court’s inherent authority to stay 6 || proceedings. 7 Accordingly, 8 IT IS ORDERED that Individual Defendants’ Motion to Stay proceedings 9|| (Doc. 49) is denied. 10 IT IS FURTHER ORDERED resetting a Rule 16 Scheduling Conference for May 11}} 21,2026 at 10:30 a.m. in Courtroom 605, 401 West Washington Street, Phoenix, AZ 85003 || before Judge Diane J Humetewa. The remainder of the Court’s Order (Doc. 25) is 13} otherwise affirmed. 14 Dated this 23rd day of March, 2026. 15 16 oC. . fo □□ 7 norable’ Diangd. Hunfetewa 18 United States District Judge 19 20 21 22 23 24 25 26 27 28 -9-