

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Orders for Posting Orders

Will this Order be Published? Yes

Bankruptcy Caption: *In re* H & H Fast Properties, Inc.

Bankruptcy No. 23 BK 16874

Adversary Caption: H & H Fast Properties, Inc. v. Toorak Capital Partners, LLC

Adversary No. 24 AP 00020

Date of Issuance: March 18, 2024

Judge: Jacqueline P. Cox

Appearance of Counsel:

Attorney for Plaintiff-Debtor:

Mr. Paul M. Bach
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Attorney for Defendant-Creditor:

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Polsinelli PC

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

In re H & H Fast Properties, Inc.,)	
)	Bankr. No. 23-16874
Debtor.)	
)	Chapter 11
)	
<hr/>)	Judge Jacqueline P. Cox
)	
)	
H & H Fast Properties, Inc.,)	
)	
Plaintiff,)	
)	Adversary Proceeding No. 24-00020
v.)	
)	
Toorak Capital Partners, LLC,)	
)	
Defendant.)	
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Order Denying Motion for Preliminary Injunction (Adv. Docket 7)

Background

Before the court is the Debtor’s Motion for Preliminary Injunction to stay its creditor Toorak Capital Partners, LLC (“Toorak” or the “Creditor”) from enforcing a judgment it obtained against the Debtor’s principal Amanda L. Henderson on a debt she guaranteed. A stipulation filed herein at Adversary Docket 23 explains the factual background of this matter.

The Debtor is a real estate concern that acquires, rehabilitates and constructs homes and other buildings. Its 90% shareholder is Amanda L. Henderson who claims that she spends 40 to 60 hours per week managing its affairs. She testified herein on March 12, 2024. The court does not accept and believe her testimony that any collection activity on the \$317,578.92 judgment obtained by Toorak on January 30, 2024 would distract her from operating the Debtor’s business affairs and

working toward reorganizing its business.

The Debtor H & H Fast Properties, Inc. filed for bankruptcy protection under subchapter V of chapter 11 of the Bankruptcy Code on December 18, 2023. The automatic stay of 11 U.S.C. § 362(a) halted a foreclosure action against the Debtor. However, the automatic stay did not halt a claim in that case against the Debtor's principal, Amanda L. Henderson, on a guaranty of the debt in issue. On January 30, 2024, the judge in the foreclosure case granted the Creditor's Motion for Summary Judgment against Amanda Henderson and entered judgment against her in the amount of \$317,578.92. *See* Defendant's Response to Plaintiff's Motion for Preliminary Injunction ("Response"), Adv. Docket 12, Ex. 4 (citing *Toorak Cap. Partners, LLC v. H & H Fast Props. Inc.*, Case No. 22 CH 07009 (Ill. Cir. Ct. 2024)).

Discussion

Adversary Proceeding No. 24-00020 was filed by the Debtor on January 22, 2024. It seeks an injunction against Toorak to stay it from enforcing the January 30, 2024 judgment until confirmation of a plan, conversion or dismissal of the bankruptcy case, or until further order of the court. Amended Complaint, Adv. Docket 5, p. 3.

Jurisdiction

The court has jurisdiction to stay actions in other courts if those actions may affect the amount of property in the bankruptcy estate. "To protect this jurisdiction, the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title, 11 U.S.C. § 105(a), including a stay." *In re 1600 Hicks Road LLC*, 649 B.R. 172, 175-76 (Bankr. N.D. Ill. 2023) (citations omitted).

The court has authority to stay actions in other courts including "suits to which the debtor

need not be a party but which may affect the amount of property in the bankruptcy estate.” *Zerand-Bernal Grp., Inc. v. Cox*, 23 F.3d 159, 162 (7th Cir. 1994) (citations omitted). “Bankruptcy courts have often enjoined litigation against a non-debtor, usually but not always a guarantor of the debtor’s debts, who intends to contribute financially to the debtor’s reorganization.” *See In re 1600 Hicks Road LLC*, 649 B.R. at 180 (citations omitted).

The Seventh Circuit does not require the court to evaluate each of the four factors usually considered in the decisions issuing injunctions to stay claims against non-debtors. The moving party must establish a likelihood of success on the merits and the public interest must always be considered on an injunction motion. *In re 1600 Hicks Rd. LLC*, 649 B.R. at 181 (citing *Caesar’s Ent. Operating Co. v. BOKF, N.A. (In re Caesar’s Ent. Operating Co.)*, 561 B.R. 441, 450 (Bankr. N.D. Ill. 2016); *Maxwell v Megliola (In re marchFIRST, Inc.)*, 288 B.R. 526, 530 (Bankr. N.D. Ill. 2002), *aff’d*, 293 B.R. 443 (N.D. Ill. 2003)).

“As long as the third-party litigation would ‘defeat or impair’ the bankruptcy court’s ‘jurisdiction over the case before it,’ the debtor need show only that (1) there is a ‘likelihood of success on the merits,’ which in this context means the likelihood of a successful reorganization; and (2) the injunction would serve the public interest. The debtor need not show irreparable harm or an inadequate remedy at law.” *In re 1600 Hicks Road LLC*, 649 B.R. at 181 (internal citations omitted).

Judge Cleary noted in *1600 Hicks Road LLC* that “[t]he question ‘is whether the injunction sought by [the Debtor] is likely to enhance the prospects for a successful resolution of the disputes attending its bankruptcy.’” *Id.* at 175.

The Plaintiff-Debtor has the burden of showing by a preponderance of the evidence the elements required for entry of a preliminary injunction. *See 3M Occupational Safety LLC v. Those*

Parties Listed on Appendix a to the Complaint (In re Aearo Techs. LLC), 642 B.R. 891, 907 (Bankr. S.D. Ind. 2022).

Does the Litigation in Connection with the \$317,578.92 Judgment Impair this Court’s Jurisdiction?

This court finds that because the state court has refused to allow enforcement of the judgment against Amanda Henderson, that case does not impair this court’s jurisdiction. Illinois Supreme Court Rule 304(a) states, in part:

(a) Judgments As to Fewer Than All Parties or Claims-Necessity for Special Finding. If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial judge has made an express written finding that there is no just reason for delaying either enforcement or appeal or both

See Ill. Sup. Ct. R. 304(a).

The January 30, 2024 state court order entering the judgment against Amanda L. Henderson includes language denying Toorak’s request to enter a Rule 304(a) finding. *See* Response, Docket 12, Ex. 4, ¶ 6: “Plaintiff’s request for a finding pursuant to Illinois Supreme Court Rule 304(a) relative to the instant order is DENIED.”

Toorak can’t enforce the judgment. Amanda L. Henderson can’t show that this court’s jurisdiction is or could be impaired by that case.

Likelihood of Success on the Merits

The Debtor is likely to confirm a Plan herein, at least from what the court sees at this time. While it is early in the case, before the Debtor has filed a plan, the court sees no barriers to confirmation.

Would an Injunction Serve the Public Interest?

An injunction would serve the public interest in assisting reorganizations if the Debtor needs one. The judgment against its principal is not distracting Amanda L. Henderson because enforcement of it has been paused.

Ms. Henderson testified that she wants to stay the judgment to limit damage to her reputation. An injunction can't prevent damage to her reputation. In addition, an injunction will not discharge or vacate the judgment. In any event, if the foreclosure lawsuit was reported to credit reporting agencies her reputation was tarnished based on the allegation that she breached her duty to guarantee the Debtor's debt. An injunction would temporarily bar Toorak from taking actions to enforce the judgment, not alter the fact that the guaranty has not been honored.

Ms. Henderson testified that the real estate on which Toorak has a lien will be sold. When the court asked about the specifics of the prospective sale the court was told that information was not yet available to the court.

Judge Cleary noted that the question 'is whether the injunction sought by [the Debtor] is likely to enhance the prospect for a successful resolution of the disputes attending its bankruptcy.'" *In re 1600 Hicks Rd. LLC*, 649 B.R. at 175. This court finds that denial of an injunction does not impair the Debtor's efforts herein. The Debtor already has the pause in the litigation it needs.

Conclusion

The court denies the Motion for Preliminary Injunction. The Debtor has not shown that the state court case impairs its ability to reorganize. The court, at this point in time, finds that the Debtor is likely to get a plan confirmed. However, an injunction does not serve the public interest because the state court has paused the litigation in issue.

It is hereby ORDERED that:

1. The Motion for Preliminary Injunction (Adv. Dkt. 7) is denied.

Date: March 18, 2024

ENTER: _____
Chief Judge Jacqueline P. Cox
United States Bankruptcy Court
Northern District of Illinois