

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**NGHIA “NATHAN” NGUYEN,
individually, and on behalf of all
others similarly situated,**

Plaintiff,

v.

**PREHIRED RECRUITING, LLC, a
Delaware limited liability company;
PREHIRED RECRUITING, LLC, a
Florida limited liability company;
PREHIRED, LLC, a Delaware
limited liability company;
PREHIRED, LLC, a Florida limited
liability company; and JOSHUA
JORDAN, individually;
MERATAS INC.,**

Defendants.

CIVIL ACTION FILE

NO. 1:22-CV-2894-MHC

ORDER

This case comes before the Court on Defendants Prehired Recruiting LLC, a Delaware limited liability company, Prehired Recruiting, LLC, a Florida limited liability company, Prehired, LLC, a Delaware limited liability company, and Prehired, LLC, a Florida limited liability company (collectively the “Prehired

Entities”), and Defendant Joshua Jordan (“Jordan”)’s Motion to Dismiss Pursuant to FRCP 12(b)(1) [Doc. 21].

While the Motion is styled as a motion to dismiss, the Prehired Entities and Jordan (collectively the “Moving Defendants”) specifically ask this Court to compel arbitration in this case and style their brief as the Memorandum of Law in Support of Their Motion to Compel Arbitration. Defs.’ Mem. of Law in Supp. of Mot. to Compel Arbitration (“Defs.’ Br.”) [Doc. 21 at 3-15]. However, preceding the filing of the Motion to Dismiss, the Moving Defendants also filed a Notice of Automatic Stay [Doc. 18] based on Prehired, LLC’s filing for Chapter 11 bankruptcy on September 27, 2022. The filing of a bankruptcy petition automatically operates as a stay of “the commencement or continuation . . . of a judicial . . . action or proceeding against the debtor.” 11 U.S.C. § 362 (a) (1). “Any orders or judgments entered in violation of an automatic bankruptcy stay are void; they are deemed without effect and are rendered an absolute nullity.” In re Credolawson, 546 B.R. 888, 892 (Bankr. N.D. Ga. 2016) (citation omitted and alteration accepted).

While the filing of the Chapter 11 bankruptcy petition operates as a stay as to all of the Prehired Entities, Joshua Jordan is not a debtor for the purposes of the

bankruptcy petition.¹ As a general proposition, the automatic stay provisions of 11 U.S.C. § 362(a) do not operate to stay claims against non-debtor defendants, unless unusual circumstances apply.

It is well-established that stays pursuant to § 362(a) are limited to debtors and do not encompass [non-debtor defendants]. Nonetheless, the protections of the automatic stay have been extended to [non-debtor defendants] in unusual circumstances, such as when there is such identity between the debtor and the third-party defendant . . . that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.

Bostik, Inc. v. Softee Supreme LLC, No. 1:10-CV-00722-JOF, 2011 WL

13214353, at *1 (N.D. Ga. May 20, 2011) (citations and quotations omitted)

(emphasis added); see also In re Excel Innovations, Inc., 502 F.3d 1086, 1096 (9th

Cir. 2007) (recognizing that “the automatic stay may be extended [to non-debtor

defendants] if unusual circumstances make the interests of the debtor and the non-

debtor defendant inextricably interwoven”); Matter of Zale Corp., 62 F.3d 746, 761

(5th Cir. 1995) (actions against nondebtor may be subject to stay “when the

nondebtor and the debtor enjoy such an identity of interests that the suit against the

nondebtor is essentially a suit against the debtor”).

¹ “Defendant Joshua Jordan is the president, CEO, owner, director and/or partner of Defendant Prehired Recruiting, LLC, and Defendant Prehired, LLC, and regularly directs the business practices of Prehired Recruiting, LLC, and Prehired, LLC.” Am. Compl. [Doc. 17] ¶ 103.

A potential judgment against Jordan, who is the officer in charge of the debtor, could result in an identity of interests “between the debtor and the [non-debtor] defendant that the debtor may be said to be the real party defendant and that a judgment against the [non-debtor] defendant will in effect be a judgment or finding against the debtor.” Cajun Global LLC v. Volunteer Chicken, LLC, No. 1:18-CV-4124-AT, 2019 WL 12763080, at *2 (N.D. Ga. Apr. 29, 2019) (citation omitted).² Accordingly, this Court finds that Jordan’s relationship with the Prehired Entities falls within the unusual circumstances that allow for the protections of the automatic stay to extend to Jordan despite his status as a non-debtor.

Even if the unusual circumstances doctrine did not apply, the Court can also issue a stay pursuant to its inherent power to control its docket.³ “The District Court has broad discretion to stay proceedings as an incident to its power to control

² There are similar judicial economy concerns here as present in Cajun Global, because any analysis of Jordan’s activities will inextricably be intertwined with the debtors’ actions and, once the stay is lifted, would have to be undertaken again. Cajun Global LLC, 2019 WL 12763080, at *2 (discussing judicial economy concerns).

³ There are no pending filings by Plaintiff against the debtor Defendants since the entry of the automatic stay. The Moving Defendants’ Motion to Dismiss was filed after the entry of the automatic stay.

its own docket.” Cajun Global LLC, 2019 WL 12763080, at *3 (citing Clinton v. Jones, 520 U.S. 681, 706 (1997)).

Based on the foregoing, it is hereby **ORDERED** that this case is **STAYED** until the automatic stay in the parallel bankruptcy proceeding is lifted. Moreover, given that all Defendants other than the Prehired Entities and Jordan have settled any pending claims or have been voluntarily dismissed, the Clerk of Court is **DIRECTED** to **ADMINISTRATIVELY CLOSE** this case. The case shall be restored to the trial docket upon motion of a party following the termination or expiration of the Bankruptcy Court’s automatic stay to allow this action to proceed to disposition. This Order shall not prejudice the rights of the parties to this litigation in any manner.

IT IS SO ORDERED this 5th day of June 2023.



MARK H. COHEN
United States District Judge