

STATE OF MICHIGAN  
BERRIEN COUNTY TRIAL COURT - CIVIL DIVISION  
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**EBF HOLDINGS, LLC d/b/a  
EVEREST BUSINESS FUNDING,**

Plaintiff,

CASE NO. 2024-0073-CB

v.

HON. DONNA B. HOWARD

**BRIDGVILLE PLASTICS, INC.,  
a Michigan corporation, and  
THOMAS ARNOLD MONETA,**

Defendants.

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Bridgville Plastics, Inc.  
c/o Thomas A. Moneta, President  
7380 Jericho Road  
Stevensville, MI 49127

Thomas A. Moneta  
5080 Deerwood Trail  
Stevensville, MI 49127

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**ORDER REGARDING PLAINTIFF'S MOTION TO REOPEN CASE  
AS TO DEFENDANT BRIDGVILLE PLASTICS, ONLY**

At a session of the Berrien County Trial Court, held  
On the 24<sup>th</sup> day of January 2025, in the  
City of St. Joseph, Berrien County, Michigan

**I. BACKGROUND**

This matter comes before the Court on Plaintiff's Motion to Reopen Case as to Defendant Bridgville Plastics, Inc. ('Bridgville') filed on September 26, 2024. This action was originally filed by Plaintiff against Bridgeville and Thomas Moneta ('Moneta') on March 25, 2024. Plaintiff purportedly served Defendants on or about April 3, 2024.

Plaintiff's Complaint asserts two separate breach of contract claims, one against each Defendant. The breach of contract claims arise from a Revenue Based Financing Agreement ('the Agreement') that Plaintiff entered into with Bridgville, and an associated personal guarantee

signed by Moneta [*see* Compl, 3/25/24; Agreement attached as Exh A]. More specifically, Plaintiff essentially alleges that Bridgville defaulted on its obligations under the Agreement by blocking the approved bank account, thus preventing Plaintiff from collecting payments it was owed [Compl, 3/25/24, ¶31, p 6]. Additionally, Plaintiff asserts that Moneta breached the performance guarantee by “failing or refusing to remove the stop payment that Bridgville Plastics placed on the approved bank account and failing to ensure that Bridgville Plastics complied with the Agreement.” [Compl, 3/25/24, ¶35, p 7].

On July 1, 2024, the Court entered an Order for Administrative Closing Due to Bankruptcy Stay (form MC300) after being made aware that Moneta had filed a Petition for Chapter 13 Bankruptcy in the United States District Court for the Western District of Michigan [*see*, Order, 7/1/24; Notice, 7/1/24].<sup>1</sup> The Order closed the case, without prejudice, and provided the parties with the opportunity to file a motion to reopen the case once the bankruptcy stay is removed [Order, 7/1/24]. Though the stay remains in effect, by its Motion, Plaintiff asks that the Court reopen the case as to Bridgville, alone, because it is not a co-debtor in Moneta’s bankruptcy action [Motion, p 3; Brief, p 6]. The Court held a hearing on Plaintiff’s Motion on December 9, 2024.<sup>2</sup> At the time of the hearing, questions remained concerning the proper legal authority to grant Plaintiff’s Motion. Specifically, the Court requested that Plaintiff show under what legal authority it may lift a bankruptcy stay as to a co-defendant who is not a co-debtor in bankruptcy [Hrg, 12/9/24]. As such, the Court took the matter under advisement and afforded Plaintiff 14 days to file supplemental briefing. Plaintiff timely filed its supplemental brief on December 23, 2024. The Court, now being fully advised on the matter, grants Plaintiff’s motion for the following reasons.

## II. ANALYSIS

Section 362(a) of the Bankruptcy Code provides in part:

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of –

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<sup>1</sup> *See*, USDC WD Mich Bankruptcy Petition No. 24-01640 (SWD).

<sup>2</sup> Neither Defendant appeared at the December 9, 2024 hearing. However, upon further review of the record, the Court notes that the Proof of Service for the Hearing Notice, filed by Plaintiff only indicates that it was mailed to “the attorneys of record of all parties,” and not necessarily to the Defendants, as parties without counsel of record.

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

11 USC 362(a)(1).

In other words, the automatic stay provision of the Bankruptcy Code applies to enforcement of judgments, liens, or any other attempts to recover a claim against the debtor. *Lopez v Lopez*, 191 Mich App 427, 428; 478 NW2d 706 (1991). The Michigan Court of Appeals explained that “[t]he purpose of the automatic stay provision is to protect both debtors and creditors. Debtors are insulated from further collection efforts, harassment, and foreclosure actions while formulating a repayment plan. Creditors are ensured orderly liquidation proceedings and equality of treatment.” *Id.* Similarly, the Sixth Circuit Court of Appeals opined that “[t]he stay helps preserve what remains of the debtor’s insolvent estate and provide a systematic equitable liquidation procedure for all creditors, secured as well as unsecured, thereby preventing a chaotic and uncontrolled scramble for the debtor’s assets in a variety of uncoordinated proceedings in different courts.” *Chao v Hosp Staffing Servs., Inc*, 270 F3d 374, 382–83 (CA 6, 2001)(internal quotation marks and citations omitted). There is no question that as it applies to the petitioning debtor, the Bankruptcy Code protections, including but not limited to the automatic stay provision, sweep broadly and apply to all creditors of the debtor to facilitate the Bankruptcy Code’s orderly and centralized debt-resolution process. *Lac du Flambeau Band of Lake Superior Chippewa Indians v Coughlin*, 599 US 382, 391; 143 S Ct 1689; 216 L Ed 2d 342 (2023)(citations and internal quotations omitted). As such, it is well-established that, as to the debtor and the debtor’s assets, once a bankruptcy petition is filed, other non-bankruptcy courts, such as this Court, are stripped of their jurisdiction, and the bankruptcy court has exclusive jurisdiction to handle and/or otherwise grant relief from its stay, for or against the debtor and/or creditors. *Chao*, 270 F3d at 382-384.

In this case, there is no question that Moneta’s bankruptcy case stays all proceedings against him, and thus, Plaintiff’s Count II for breach of contract (*i.e.* personal guaranty) remains stayed until the bankruptcy court lifts the stay, confirms Moneta’s debt plan, or otherwise discharges Moneta’s bankruptcy petition.

However, the question, as presented in Plaintiff’s motion, is whether that stay remains as to non-debtor, co-defendant Bridgville. In that regard, federal courts have long held that

bankruptcy stays can apply to co-defendants who are not co-debtors when “unusual circumstances” are present. *In re Eagle-Picher Indus, Inc*, 963 F2d 855, 860-861 (CA 6, 1992). In *Eagle-Picher*, the Sixth Circuit upheld a preliminary injunction granted in the lower bankruptcy court (USDC in the SD of Ohio) that prevented a shareholder of the debtor-company from pursuing a state court action in Texas against two of the debtor-company’s officers, who were non-debtor’s and purported co-defendants in the Texas action. Adopting the definition of “usual circumstance” from the seminal case of *AH Robins Co, Inc v Piccinin*, 788 F2d 994, 999 (CA 4, 1986), the Sixth Circuit described in pertinent part that a sufficiently “unusual circumstance” arises where:

[T]here 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. An illustration of such a situation would be a suit against a third-party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against them in the case. To refuse application of the statutory stay in that case would defeat the very purpose and intent of the statute.

*Eagle-Picher*, 963 F2d at 861, quoting *AH Robins*, 788 F2d at 999.

Unlike the above cases, in this instance as to Bridgville, the Court finds, on the present record, that there is not such an identity between Defendants, and that a judgment against Bridgville will not, in effect, be one against Moneta. More specifically, Plaintiff’s breach of contract claim against Bridgville (Count I) is plainly a direct claim, *i.e.* there are no allegations of an *alter ego* with Moneta or piercing the corporate veil or other derivative claim that would arguably seek to reach into the assets or bankruptcy estate of Moneta, presently under the exclusive jurisdiction of the bankruptcy proceedings, namely the stay. Additionally, the presented record is silent of any assets or obligations Bridgville may owe to Moneta, which could be considered part of the Moneta estate stayed in bankruptcy. Consequently, from the record presented, the Court finds that the bankruptcy stay for Moneta, as the sole petitioned debtor, has no effect on the separate breach of contract claim (Count I) pled against Bridgville. The Court has not been made aware of any automatic bankruptcy stay that presently binds this Court or Plaintiff from proceeding with the Count I breach of contract claim contained in the Complaint. *See e.g.*, *Coast-to-Coast Produce, LLC v Lakeside Produce USA, Inc*, 709 F Supp 3d 413, 432-33 (ED Mich, 2023)(holding, in part, that some of the plaintiffs’ claims against a defendant were direct, and therefore, not impacted by bankruptcy stay for a separate but associated foreign corporation).

### III. CONCLUSION

In light of the foregoing, the Court finds that the automatic stay under 11 USC 362(a)(1) applies to Moneta only, and from the record presented, the bankruptcy court has not extended the automatic stay or otherwise enjoined proceedings against Bridgville as to Count I of the Complaint.

**WHEREFORE IT IS ORDERED** that Plaintiff's motion to reopen this case against Bridgville, only, is GRANTED, and the stay, as it relates to Bridgville (Count I of the Complaint) only, is hereby LIFTED.

**IT IS FURTHER ORDERED** that pursuant to MCR 2.612(A), the Court Clerk shall reset the case code for this matter from "CK" to "CB" to reflect its appropriate designation in the specialized business docket of this Court, where Plaintiff properly designated the matter as a business case in the summonses, but mis-identified the case code on its submitted Complaint.

**IT IS SO ORDERED.**

1/24/2025

Date

/s/ *Donna B. Howard*

DONNA B. HOWARD (P57635)  
Trial Court Judge – Civil Division

**Certificate of Service:** The undersigned certifies that a copy of the foregoing Opinion & Order was served upon the attorneys and/or parties of record to the above cause by mailing the same to them at their respective addresses as disclosed by the file with postage fully prepaid or interoffice office delivery, if available, on: \_\_\_\_\_.

Deputy Clerk/Bailiff