COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: March 26, 2007
Decided: April 26, 2007

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RE: Enodis Corp., et al. v. Amana Co., L.P.
C.A. No. 18836
Enodis Corp., et al. v. KB Home, et al.
C.A. No. 19688

Dear Counsel:

I have reviewed the parties' submissions regarding the plaintiffs' motions to lift the stays currently in effect in these two declaratory judgment actions. The motions will be denied, due in large part to the pendency of an appeal in a related case now before the United States Court of Appeals for the Seventh Circuit. Upon resolution of that case, however, I do anticipate entertaining renewed motions to lift the stays in these matters.

The first action, *Enodis Corporation, et al. v. Amana Company, L.P.*, C.A. No. 18836, was filed on April 8, 2001. The second suit, *Enodis Corporation, et al.*

v. KB Home et al., C.A. No. 19688, was filed on June 6, 2002. Essentially, both cases seek a declaratory judgment finding that Consolidated Industries, Inc. is not the alter ego of Enodis and Welbilt Holding Company and that no grounds exist to render Enodis or Welbilt liable for any of Consolidated's pre-bankruptcy obligations.

On March 28, 1998, well before the initiation of either of these suits in Delaware, Consolidated filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Indiana. Thereafter, a trustee was appointed and the case was converted to a Chapter 7 liquidation. The trustee then brought an adversary proceeding against Enodis and Welbilt in the bankruptcy case, alleging that the two companies were the alter egos of Consolidated and were therefore responsible for all of Consolidated's debts. Those claims were litigated in a five-week trial in the bankruptcy court in February and March 2003.

Due to the prior pendency of the bankruptcy case and the similarity of the issues being litigated there, this court entered orders in August 2003 staying both of the declaratory judgment actions. On July 28, 2004, the bankruptcy court issued its decision and found that the trustee did not have standing to pursue alter ego claims against Enodis or Welbilt under 11 U.S.C. § 541.[1] The trustee appealed to

[1] *See In re Consolidated Indus. Corp.*, No. 4:04-CV-65, slip op. at 6 (N.D. Ind. Oct. 31, 2006) (discussing the bankruptcy court's decision).

the United States District Court for the Northern District of Indiana. In its October 31, 2006 opinion, the district court disagreed with the bankruptcy court's finding that the trustee did not have standing. Nevertheless, it affirmed the bankruptcy court's ultimate legal conclusion that the trustee's alter ego claims lacked substantive merit. The trustee filed a notice of appeal in the Seventh Circuit on November 30, 2006. The following day, the plaintiffs moved to lift the stays in both of the cases in Delaware.

The plaintiffs offer several arguments in support of their motions. First, the plaintiffs contend that the bankruptcy case is no longer a relevant "pending" action to which this court should give procedural deference. Since the district court definitively ruled on the merits of the trustee's alter ego claims, the plaintiffs say that the cases here should now proceed unabated to judgment. As a corollary to this argument, the plaintiffs also take the position that the trustee is not appealing the issue of his standing to assert the alter ego claims that the district court found he failed to prove. On that basis, they argue that any ruling by the Seventh Circuit cannot have a substantive impact on their potential exposure to alter ego liability. Finally, the plaintiffs contend that they will be unduly prejudiced by further delay if the stay is not lifted, as the relevant witnesses with personal knowledge of the underlying events at issue are dying or losing their mental faculties.

The defendants counter that the same considerations which initially led this court to stay both of these actions still remain extant. Lifting the stay and proceeding to judgment, the defendants maintain, would result in a waste of judicial resources and would increase the potential for inconsistent rulings because the Seventh Circuit may reverse a portion of the district court's decision as to the trustee's alter ego claims. Therefore, the defendants contend that the stays should continue in place here at least until the Seventh Circuit decides the trustee's appeal.

Under *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Engineering Co.*,[2] Delaware courts should liberally exercise their discretion in favor of a stay when (1) a first-filed prior pending action exists in another jurisdiction, (2) that action involves similar parties and issues, and (3) the court in the other jurisdiction is capable of rendering prompt and complete justice.[3] Well-founded concerns of judicial economy and the avoidance of conflicting judgments are central to this comity doctrine.[4]

This court, in similar situations, has left a stay undisturbed to await the outcome of a potentially dispositive appeal in a prior pending action in another

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[2] 263 A.2d 281 (Del. 1970).
[3] *Id.* at 283.
[4] *Id.*

jurisdiction.[5] Contrary to the plaintiffs' position, a decision by a lower court elsewhere does not necessarily mean that the other litigation is no longer "pending" for purposes of a *McWane* analysis when that decision is subsequently appealed.[6]

Furthermore, I find the plaintiffs' argument that a reversal by the Seventh Circuit would have no effect on the bankruptcy case somewhat disingenuous. The plaintiffs correctly note that the trustee has not appealed the district court's ruling on his standing. In truth, there is no reason that he would: the trustee won that specific issue when the district court reversed the bankruptcy court's decision. What the trustee seems to be asking the Seventh Circuit to consider is whether the district court misapplied the law in determining that his alter ego claims failed not for lack of standing, but for lack of substantive merit. Obviously, a reversal by the Seventh Circuit on this point would have a great effect on the trustee's claims against Enodis and Welbilt in the final resolution of the bankruptcy proceeding.

This court is not unsympathetic to the plaintiffs' concerns regarding the drawn-out nature of the bankruptcy litigation that has embroiled them for the better

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[5] *See, e.g., Davis Int'l, LLC v. New Start Group Corp.*, 2006 WL 2519534, at *1-2 (Del. Ch. Aug. 22, 2006) (refusing to vacate a stay in order to await the appellate decision of the United States Court of Appeals for the Third Circuit); *Fort James Corp. v. Beck*, 2005 WL 2000761, at *5 (Del. Ch. Aug. 16, 2005) (refusing to lift a stay following an appeal to the United States Court of Appeals for the Ninth Circuit taken from a district court's affirmance of a bankruptcy court's ruling).

[6] *See Davis*, 2006 WL 2519534, at *2 (applying the *McWane* standard to a prior-filed case when an appeal was pending).

part of a decade. However, I hesitate to allow the cases before me to move forward on the cusp of an appellate decision by the Seventh Circuit which should, at long last, dispose of a heavily litigated bankruptcy action which directly implicates the ability of the defendants here to succeed on claims against these plaintiffs. In the absence of any special urgency, then, this court declines the plaintiffs' invitation to "interrupt the routine deliberations of a United States circuit court in the process of deciding an appeal,"[7] especially when doing so could undermine the United States Bankruptcy Code's overarching policy of facilitating an orderly and unitary disposition of all matters affecting a debtor.[8]

For the foregoing reasons, the plaintiffs' motions to lift the stay in the above-referenced matters are DENIED. IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor

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[7] *Id.*

[8] *See, e.g.*, 11 U.S.C. § 362(a)(3) (imposing a broad automatic stay during the pendency of a bankruptcy case of all judicial actions affecting a debtor); *Fort James*, 2005 WL 2000761, at *5 (noting that bankruptcy courts control the litigation process and that litigants should not be permitted to adjudicate claims relevant to the bankruptcy estate on a piecemeal basis throughout the country).