

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 CRAIG YATES,
5 Plaintiff,
6 v.

No. C 10-3073 CW

ORDER DENYING
MOTION TO STAY
(Docket No. 32)

7 DELANO RETAIL PARTNERS, LLC,
8 doing business as DELANO'S IGA
9 MARKET #1; and ARTHUR S. BECKER,
as Trustee of the ARTHUR S.
10 BECKER REVOCABLE LIVING TRUST,

11 Defendants.

12 _____/
13 Defendant Arthur S. Becker, Trustee of the Arthur S. Becker
14 Revocable Trust, moves to stay the entire case based on the
15 bankruptcy filing of his co-Defendant, Delano Retail Partners LLC.
16 Plaintiff Craig Yates opposes the motion. Having considered the
17 papers filed by the parties and their arguments at the hearing,
the Court DENIES Becker's motion.

18 BACKGROUND

19 Plaintiff alleges that he is a person with physical
20 disabilities and brings this action against Defendants for failure
21 to remove architectural barriers at the Delano's Market in San
22 Francisco, California, thereby denying him and others with
23 physical disabilities access to, and full and equal enjoyment of,
24 the grocery store on August 19, 2009, March 27, 2010, May 6, 2010,
25 May 16, 2010 and June 6, 2010. Plaintiff asserts claims for
26 injunctive relief and statutory damages under the Americans with
27 Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, et seq., the
28 Unruh Civil Rights Act, California Civil Code §§ 51, 51.5,

1 California Health and Safety Code §§ 19955, et seq., and the
2 California Disabled Persons Act, California Civil Code §§ 54, 54.1
3 and 54.3. The two Defendants are Delano Retail Partners, LLC, a
4 company which rents the property and operates the grocery store,
5 and Arthur S. Becker, Trustee of the Arthur S. Becker Revocable
6 Trust, the owner of the property and landlord to Delano Retail
7 Partners.

8 On February 10, 2012, Plaintiff filed a notice that Delano
9 Retail Partners had filed for bankruptcy and was entitled to an
10 automatic stay. See Docket No. 33.

11 In a case management statement filed on February 15, 2012,
12 Plaintiff stated that Delano Retail Partners "had entered into an
13 injunctive relief agreement" with Plaintiff "to remove barriers
14 and in fact removed barriers." Joint Case Management Statement,
15 Docket No. 34, 3. Because "[t]he remedial repairs have been
16 completed," Plaintiff no longer seeks injunctive relief and seeks
17 only "statutory damages, attorneys' fees, costs and litigation
18 expenses." Id. at 7.

19 DISCUSSION

20 Becker seeks to have the bankruptcy stay that automatically
21 applied to Delano Retail Partners extended to stay the entire
22 action. Becker argues that Delano Retail Partners is an
23 indispensable party to this action, because issues of Becker's
24 liability are "interwoven" with those of Delano Retail Partners'
25 liability, because Delano Retail Partners is contractually
26 obligated to indemnify Becker for these violations, and because
27 Becker is unable properly to defend itself without Delano Retail
28 Partners' participation.

1 "Ordinarily, . . . unless the assets of the bankrupt estate
2 are at stake, the automatic stay does not extend to actions
3 against parties other than the debtor, such as codebtors and
4 sureties." United States v. Dos Cabezas Corp., 995 F.2d 1486,
5 1491 (9th Cir. 1993). Though it has neither explicitly adopted
6 nor repudiated it, the Ninth Circuit recognizes that other "courts
7 have carved out" a "limited exception[] to this general rule" in
8 certain cases where "'there is such identity between the debtor
9 and the third-party defendant that the debtor may be said to be
10 the real party defendant and that a judgment against the third-
11 party defendant will in effect be a judgment or finding against
12 the debtor.'" Id. at 1491 n.3 (citing A.H. Robins Co. v.
13 Piccinin, 788 F.2d 994, 999 (4th Cir. 1986); In re Circle K Corp.,
14 121 Bankr. 257, 259 (Bankr. D. Ariz. 1990); In re Family Health
15 Service, 105 Bankr. 937, 943 (Bankr. C.D. Cal. 1989)). Some
16 courts have recognized "an exception where the debtor is an
17 indispensable party to the litigation." In re James Wilson
18 Assocs., 965 F.2d 160, 170 (7th Cir. 1992).

19 However, Becker's potential liability is independent from
20 that of Delano Retail Partners. The Ninth Circuit has recognized
21 that a landlord has an obligation to comply with the ADA that is
22 separate and independent from that of its tenant and that "a lease
23 allocating liability between a landlord and a tenant does not
24 affect either parties' liability with respect to third parties."
25 Botosan v. Paul McNally Realty, 216 F.3d 827, 834 (9th Cir. 2000).
26 In so holding, the court relied heavily on the Department of
27 Justice's formal interpretation of the ADA regulations in its
28 Technical Assistance Manual:

1 Both the landlord and the tenant are public
2 accommodations and have full responsibility for
3 complying with all ADA title III requirements applicable
4 to that place of public accommodation. The title III
5 regulation permits the landlord and the tenant to
6 allocate responsibility, in the lease, for complying
7 with particular provisions of the regulation. However,
8 any allocation made in a lease or other contract is only
9 effective as between the parties, and both landlord and
10 tenant remain fully liable for compliance with all
11 provisions of the ADA relating to that place of public
12 accommodation.

13 ILLUSTRATION: ABC Company leases space in a shopping
14 center it owns to XYZ Boutique. In their lease, the
15 parties have allocated to XYZ Boutique the
16 responsibility for complying with the barrier removal
17 requirements of title III within that store. In this
18 situation, if XYZ Boutique fails to remove barriers,
19 both ABC Company (the landlord) and XYZ Boutique (the
20 tenant), would be liable for violating the ADA and could
21 be sued by an XYZ customer. Of course, in the lease,
22 ABC could require XYZ to indemnify it against all losses
23 caused by XYZ's failure to comply with its obligations
24 under the lease, but again, such matters would be
25 between the parties and would not affect their liability
26 under the ADA.

27 Id. at 833-34 (quoting Department of Justice, Technical Assistance
28 Manual on the American With Disabilities Act § III-1.2000 (1994)).

See also Hoewischer v. Terry, 2011 U.S. Dist. LEXIS 130330, at *7
(M.D. Fla.) ("The ADA makes the landlord and tenant of a place of
public accommodation each individually responsible for any
violations found on the leased property. While a landlord and
tenant may use the terms of their lease to allocate costs
associated with the ADA between themselves, a lease cannot relieve
a landlord of its underlying obligations under the ADA.").

Thus, Becker's liability for ADA violations is distinct from
that of Delano Retail Partners, not derivative of it or
inextricably intertwined with it. Plaintiff was not required to
name Delano Retail Partners as a Defendant in order to hold Becker
responsible for the ADA violations. Each may be held separately

1 liable for the violations found on the leased property. While
2 Becker may attempt to rely on his lease agreements to seek
3 indemnification from Delano Retail Partners, these contracts does
4 not affect his obligations as to Plaintiff, a third party.

5 Further, the possible existence of an indemnification
6 agreement does not make Delano Retail Partners an indispensable
7 party. Courts have consistently held that "a defendant's possible
8 right of reimbursement, indemnity, or contribution against an
9 absent party is not sufficient to make the absent party
10 indispensable to the litigation." SASCO v. Byers, 2009 U.S. Dist.
11 LEXIS 36886, at *7-8 (N.D. Cal.) (citing Nottingham v. Gen. Am.
12 Commc'ns Corp., 811 F.2d 873, 880 (5th Cir. 1987); Field v.
13 Volkswagenwerk A.G., 626 F.2d 293, 298 (3rd Cir. 1980)). See also
14 Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 838 (1989)
15 (jointly and severally liable indemnitors are not indispensable
16 parties under Federal Rule of Civil Procedure 19(b)); Bank of Am.
17 Nat'l Trust & Sav. Ass'n v. Hotel Rittenhouse Assocs., 844 F.2d
18 1050, 1054 (3d Cir. 1988) ("A defendant's right to contribution or
19 indemnity from an absent . . . party does not render that absentee
20 indispensable pursuant to Rule 19.").

21 Becker's argument that he will be prejudiced if he must go
22 forward without Delano Retail Partners, because he "cannot obtain
23 any discovery from Delano who operated the store" to "rebut
24 Plaintiff's version of his alleged visits to the grocery store and
25 the barriers he allegedly encountered," Reply, at 2, is also
26 unavailing. Discovery can proceed against a bankrupt defendant to
27 same extent as it can against any other non-party. In re Miller,
28 262 B.R. 499, 504-05 (B.A.P. 9th Cir. 2001). See also Lewis v.

1 Russell, 2009 U.S. Dist. LEXIS 41539 (E.D. Cal.) (“In general,
2 parties may seek discovery from a debtor on matters related to
3 claims against non-debtor parties.”).

4 While Becker points to three cases for the proposition that
5 “courts routinely extend the automatic stay to non-bankrupt
6 landlords in ADA barrier cases when the tenant has filed for
7 bankruptcy,” Reply at 2, none of the stays in the cases he cited
8 were issued over an objection from the plaintiff. In Goldkorn v.
9 El Torito Restaurants, Inc., Case No. 11-1002 (C.D. Cal. 2012),
10 the parties stipulated to extend the bankruptcy stay to the
11 non-bankrupt defendant. See Stipulation for an Order to Stay the
12 Entire Action and Vacate All Pending Dates and Deadlines, Docket
13 No. 23. In Muegge v. Chevy Fresh Mex Santa Rosa, Case No. 10-4863
14 (N.D. Cal.), the plaintiff agreed that the entire action should be
15 stayed because the injunctive relief sought against all defendants
16 to that action would materially affect the bankruptcy estate of
17 the bankrupt defendant. See Pl.’s Brief on the Acknowledged
18 Effect of the Automatic Stay, Docket No. 48. See also Order re
19 Bankruptcy Stay, Docket No. 50 (granting stay where the “parties
20 are in agreement”). Here, injunctive relief is no longer an
21 issue. In Crespo v. El Torito Restaurants, Inc., Case No.
22 11-2364, the court sua sponte stayed the entire case after being
23 notified of the bankruptcy filing of one defendant, stating that
24 the parties may file a motion “should they desire this matter
25 placed back on active status.” Order Removing Mater from Court’s
26 Active Caseload, Docket No. 17. The docket for the case reveals
27 that the plaintiff did not file an objection or a motion to lift
28 the stay as to any defendants. Becker has not established the

1 existence of any general rule that courts should routinely extend
2 a bankruptcy stay applicable to a bankrupt tenant to non-bankrupt
3 landlords in ADA barrier cases.

4 CONCLUSION

5 For the reasons set forth above, Becker's motion to stay the
6 entire action is DENIED (Docket No. 32).

7 IT IS SO ORDERED.

8
9 Dated: 3/29/2012


CLAUDIA WILKEN
United States District Judge