

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

AMERICAN CONTRACTORS)	
INDEMNITY COMPANY,)	
)	
Plaintiff,)	
)	
v.)	No. 4:11CV2128 TIA
)	
ONE SOURCE BUILDERS, INC., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on the Notice of Filing of Bankruptcy filed by Defendant Toni Elmore (Doc. No. 39) and the Motions for Summary Judgment and for Reconsideration of Order Referring Case to ADR filed by the Plaintiff American Contractors Indemnity Company (Doc. Nos. 40, 41). The parties consented to the jurisdiction of this Court pursuant to 28 U.S.C. § 636(c).

On December 8, 2011, Plaintiff American Contractors Indemnity Company (“ACIC”) filed a Complaint for Indemnity against Defendants One Source Builders, Inc. (“One Source”), Jeffrey Nations, and Toni Elmore. (Compl., ECF No. 1) The named individuals were officers of One Source. (Id. at ¶ 9) The Complaint alleges that ACIC has paid claims to several companies pursuant to performance and payment bonds and that Defendants were required to indemnify ACIC under the terms of a General Indemnity Agreement. (Id. at ¶¶ 7-22) However, ACIC contends that Defendants have failed to indemnify ACIC and have therefore breached their duties under the General Indemnity Agreement, resulting in monetary damages. (Id. at ¶¶ 23-25)

On April 2, 2013, Defendant Toni Elmore filed a Suggestion of Bankruptcy, indicating that proceedings against her were stayed by the automatic stay of 11 U.S.C. § 362. On April 30, 2013,

Plaintiff filed a Motion for Summary Judgment against Defendants One Source and Jeffrey Nations. As of this date, those Defendants have not responded to said motion. However, under Eighth Circuit law, a stay under § 362 extends only to claims against the debtor and not to nonbankrupt codefendants, even where they have a legal or factual nexus with the debtor. American Prairie Constr Co. v. Hoich, 560 F.3d 780, 789 (8th Cir. 2009) (citing Croyden Assocs. v. Alleco, Inc., 969 F.2d 675, 677 (8th Cir. 1992)); see also Cornerstone Wrecker Sales, Inc. v. Bower Servs., Inc., No. 3:08-cv-178-DPM, 2010 WL 3862546, at *1-2 (E.D. Ark. Sept. 27, 2010) (noting that the case was stayed as to defendant who filed Chapter 7 bankruptcy and not to the codefendant). As such, the Court will order Defendants One Source and Jeffrey Nations to show cause for failure to respond to the summary judgment motion.

Accordingly,

IT IS HEREBY ORDERED that Defendants One Source Builders, Inc. and Jeffrey Nations shall show cause, in writing and not later than **July 12, 2013**, why they failed to file timely responses to Plaintiff's Motion for Summary Judgment.

IT IS FURTHER ORDERED that the bench trial set for August 19, 2013 shall be continued and that the Court will reset the trial pending disposition of the Motion for Summary Judgment.

IT IS FINALLY ORDERED that the Motion for Reconsideration of Order Referring Case to Alternate Dispute Resolution (Doc. No. 42) is **GRANTED**, and the Order Referring Case to ADR is set aside.

/s/ Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE

Dated this 2nd day of July, 2013.