

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
NANOMECH, INC.,)	Case No. 19-10851 (JTD)
)	
Debtor.)	
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NANOMECH, INC.,)	
)	
Plaintiff,)	
v.)	Adv. Proc. No. 19-50361 (JTD)
)	
DANIEL CARROLL,)	
)	
Defendant.)	Re: D.I. 4

MEMORANDUM ORDER

Before the Court is Debtor’s Motion for Injunctive Relief (the “Motion”) to impose the automatic stay on Defendant in his action against a third-party non-debtor in the State of Arkansas. (D.I. 4). For the reasons set forth below, the Court will enforce the automatic stay and enjoin Defendant from proceeding with the action in Arkansas.

The automatic stay is one of the most fundamental protections provided by the Bankruptcy Code, giving the debtor a breathing spell from its creditors. *Cuffee v. Atlantic Bus. & Cmty. Dev. Corp.*, 901 F.2d 325, 327 (3rd Cir. 1990). The scope of the automatic stay is very broad. Section 362 states that any proceeding against the debtor that could have commenced before the order for relief and any act to obtain possession or to exercise control over property of the estate is subject to the automatic stay. 11 U.S.C. § 362(a). The purpose of this section is to “protect the debtor from an uncontrollable scramble for its

assets” and to “preclude one creditor from pursuing a remedy to the disadvantage of other creditors.” *A.H. Robbins Co., Inc. v. Piccinin*, 788 F.2d 994, 998 (4th Cir. 1986).

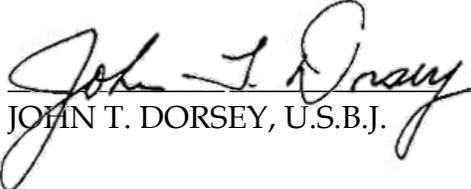
Section 362(a)(1) generally applies only to the debtor. See 11 U.S.C. 362(a)(1). However, under unusual circumstances, where there is “such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor,” the stay properly extends to non-debtor third-parties. *A.H. Robbins*, 788 F.2d at 999; *Gillman v. Continental Airlines, Inc.*, 177 B.R. 475, 479 (D. Del. 1993) (Extending the automatic stay where there was an identity of interest such that the litigation would affect the debtor and its assets). As stated in *A.H. Robbins*, the leading case on the issue, a textbook example of such an unusual circumstance arises where there is a suit against a third party who is entitled to indemnity by the debtor. *A.H. Robbins*, 788 F.2d at 999.

The automatic stay may also be extended under section 362(a)(3). Unlike section 362(a)(1), the text of this subsection does not have an apparent limitation to proceedings against the debtor. Section 362(a)(3) refers to *any* act. See 11 U.S.C. 362(a)(3). The term “any” should be given broad construction under the “settled rule that a statute must, if possible, be construed in such fashion that every word has some operative effect.” *United States v. Nordic Village*, 503 U.S. 30, 35-36 (1992). Where there is a liability insurance policy, that is an important asset of the estate, any action which may diminish the value of that asset is subject to a stay under section 362(a)(3). *A.H. Robbins*, 788 F.2d at 1001.

In light of the fact that Debtor's insurance policy is likely its sole remaining substantial asset and that Debtor is duty bound to indemnify the named plaintiff in the Arkansas action, the Court finds that the automatic stay properly extends to the Arkansas actions and that Debtor and the named plaintiff's interests are so "intimately intertwined" that the Debtor may be said to be the real party in interest and allowing the action to proceed would risk substantially diminishing an important asset of the estate. Therefore, the Court grants the Motion and hereby enjoins Defendant from pursuing the Arkansas action.

SO ORDERED.

Dated: October 9, 2019


JOHN T. DORSEY, U.S.B.J.