Docket #0053 Date Filed: 8/29/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re Nu Ride Inc., *et al.*,[1] Reorganized Debtors.	Chapter 11 Case No. 23-10831 (MFW) (Jointly Administered)
Nu Ride Inc. (f/k/a Lordstown Motors Corp.) and Lordstown EV Corporation, Plaintiffs, v. Hon Hai Precision Industry Co., Ltd. (a/k/a Hon Hai Technology Group), Foxconn EV Technology, Inc., Foxconn Ventures Pte. Ltd., Foxconn (Far East) Limited, and Foxconn EV System LLC, Defendants.	Adv. No. 23-50414 (MFW) **Re: A.D.I. 52**

DEFENDANTS' OPENING BRIEF IN SUPPORT OF THEIR
MOTION TO STAY PENDING APPEAL ON ARBITRABILITY

[1] The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Reorganized Debtors' service address is: c/o William Gallagher, CEO, M3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

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STATEMENT OF THE NATURE AND STAGE OF PROCEEDINGS

Plaintiffs Lordstown Motors Corp. (n/k/a Nu Ride Inc.) and Lordstown EV Corporation (collectively, "Lordstown" or "Plaintiffs") filed a Complaint on June 27, 2023, in the above-captioned proceeding ("Adversary Proceeding"). A.D.I. 1. Foxconn Defendants[2] moved to dismiss that Complaint in favor of arbitration and for failure to state a claim on September 29, 2023 ("Motion to Dismiss"). A.D.I. 8. On August 1, 2024, the Court entered an Order granting in part and denying in part Defendants' Motion to Dismiss ("Order"). A.D.I. 32.

On August 12, 2024, Defendants filed a timely Notice of Appeal of the Order insofar as the Court denied Defendants the right to arbitrate all claims in the Complaint. A.D.I 33. Defendants are entitled to pursue their appeal of the Court's order denying arbitration as of right under 9 U.S.C. § 16 and 28 U.S.C. § 158(a)(1). Following Defendants' filing of their Notice of Appeal, Plaintiffs filed a Motion for Partial Reconsideration of the Order. A.D.I. 36.

The Supreme Court's ruling in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), mandates that this Adversary Proceeding is automatically stayed pending Defendants' appeal on the issue of arbitrability. Plaintiffs have refused to acknowledge the stay. Therefore, through this motion pursuant to Rule 8007(a)(1) of the Federal Rules of Bankruptcy Procedure, Defendants request that the Court adhere to the Supreme Court's *Coinbase* ruling and issue an order staying all relevant proceedings pending resolution of Defendants' appeal on the issue of arbitrability.

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[2] Hon Hai Precision Industry Co., Ltd. (a/k/a Hon Hai Technology Group) ("Hon Hai"), Foxconn EV Technology, Inc. ("Foxconn Technology"), Foxconn Ventures Pte. Ltd. ("FVP"), Foxconn (Far East) Limited ("Foxconn (Far East)"), and Foxconn EV System LLC ("Foxconn System") are referred to collectively as "Defendants" or "Foxconn."

SUMMARY OF ARGUMENT

1. Defendants move to stay proceedings while Defendants' exercise their statutory right to an interlocutory appeal of the Court's denial of their right to arbitrate. A.D.I. 33; *see* 9 U.S.C. § 16(a). Defendants' statutory right to appeal the Court's decision on arbitrability is not in doubt, nor do the merits of Defendants' appeal matter for the purposes of this Motion. The sole question before the Court on this Motion is whether the Court must stay proceedings while Defendants' appeal is pending resolution. The Supreme Court's controlling decision in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023) and the defining principles on which it is based leave no doubt to the answer to this question: the Court is required to stay all proceedings pending resolution of Defendants' appeal of the Court's order denying arbitration. *Coinbase*, 599 U.S. at 743–44.

BACKGROUND

On June 27, 2023, Plaintiffs filed a petition for relief under Chapter 11 of the Bankruptcy Code, seeking to reorganize their failed electric vehicle startup business. That same day, Plaintiffs commenced this Adversary Proceeding, asserting eleven interconnected counts against Foxconn. Plaintiffs premise their claims on the theory that Foxconn duped them into selling their most valuable asset, a manufacturing facility in Ohio, based on the promise of a joint venture that would bring about a bright future for the company. *See* Compl. ¶¶ 28–29, 81–85.

Plaintiffs allege that Foxconn's alleged false promises culminated in a Joint Venture Agreement. *See id.* ¶¶ 29, 32–33. When Lordstown's business failed, however, it blamed and sued Foxconn. Foxconn moved to dismiss that suit, on the basis that substantially all of claims in it are arbitrable before the International Chamber of Commerce's International Court of Arbitration pursuant to the Joint Venture Agreement's arbitration clause, and for failure to state a

claim. *See* Motion to Dismiss [A.D.I. 8]; *Defendants' Reply Brief in Support of Their Motion to Dismiss All Counts of the Adversary Complaint* [A.D.I. 9].

The Court granted in part and denied in part Foxconn's motion to arbitrate. *See generally* Order (denying arbitration of all but one claim). *See* Mem. Op. at 29–30. As to the question of arbitrability, the Court agreed that the Joint Venture Agreement's arbitration clause is valid and enforceable. *Id.* at 13–17. But the Court concluded that Lordstown's claims did not fall within that valid and enforceable arbitration clause.[3] *Id.* at 11–30.

Defendants timely appealed the Court's arbitrability decision as of right pursuant to the Federal Arbitration Act ("FAA"). 9 U.S.C. § 16(a). Under *Coinbase*, that means this case is stayed, 599 U.S. at 743–44, but Plaintiffs will not acknowledge that fact. *See, e.g.*, *Plaintiff's Opening Brief in Support of Their Motion for Partial Reconsideration of Interlocutory Order* [A.D.I. 37] (the "Plaintiff's Memo in Support of Reconsideration Motion") at 3 n.3. Defendants have accordingly filed this Motion.

ARGUMENT

A failure to stay the proceedings pending appeal would profoundly and permanently affect Defendants' right to arbitration. As a matter of law and strong federal policy, the appeal as to arbitrability should be allowed to proceed without requiring Foxconn to engage in parallel bankruptcy court litigation when the very question of who should hear the merits in the first instance are subject to appeal. *See In re Mintze*, 434 F.3d 222, 229 (3d Cir. 2006) ("The FAA has established a strong policy in favor of arbitration . . . It requires rigorous enforcement of arbitration agreements.") (internal citations omitted).

[3] The Court did conclude that Plaintiffs' claim for breach of the Joint Venture Agreement is arbitrable, Mem. Op. at 17, but went on to dismiss that claim on the merits, *id.* at 31, 35.

A. Under the Supreme Court's Controlling Decision in *Coinbase*, This Case Must Be Stayed

Under Section 16(a) of the FAA, a party whose motion to compel arbitration is denied in the lower court may take an interlocutory appeal as of right. *See Coinbase*, 599 U.S. at 740. While that appeal on the question of arbitrability is pending, and until its final resolution, *Coinbase* requires an automatic stay of all lower court proceedings. *Id.* at 740–41, 744, 747 (citing and discussing *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)).

As the Supreme Court in *Coinbase* explained, "[b]ecause the question on appeal is whether the case belongs in arbitration or instead in the [lower] court, *the entire case is essentially 'involved in the appeal*,'" and longstanding precedent "*dictates that the [lower] court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing*." 599 U.S. at 741 (citing and quoting *Griggs*, 459 U.S. at 58) (emphasis added). Otherwise, "many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost." *Id.* at 743.

Put more colorfully, "[a] right to interlocutory appeal of the arbitrability issue without an automatic stay of the [lower] court proceedings is therefore like a lock without a key, a bat without a ball, a computer without a keyboard—in other words, not especially sensible." *Id. See also, e.g.*, *Sarah Car Care, Inc. v. LogistiCare Sols., LLC*, No. 21-3108, 2023 WL 5378845, at *1 & n.4 (3d Cir. Aug. 22, 2023) (applying *Coinbase* and staying trial court proceedings pending resolution of an interlocutory appeal on a motion to compel arbitration).

As the Supreme Court made clear repeatedly in *Coinbase*, the stay pending appeal of arbitrability issues is "automatic." *Coinbase*, 599 U.S. at 743–47. The Court is therefore required to order a stay of all proceedings pending resolution of Defendants' appeal on the arbitrability issue. The Court's analysis should begin and end there.

B. There Is No Legitimate Basis to Exempt Adversary Proceedings from the Rule Announced in *Coinbase*

Plaintiffs have suggested that *Coinbase* cannot apply because this case is an adversary proceeding in bankruptcy court. *See* Plaintiff's Memo in Support of Reconsideration Motion at 3 n.3. Not so. As the Third Circuit has recognized, an adversary proceeding is "essentially a self-contained trial" with "all the trappings of traditional civil litigation." *In re Mansaray-Ruffin*, 530 F.3d 230, 234 (3d Cir. 2008). Even before *Coinbase*, in the Third Circuit, the denial of arbitration rights in the context of an adversary proceeding has been treated the same for appellate purposes as it would be in any other civil case. *See In re Mintze*, 434 F.3d at 232–33.

Thus, the fact that Lordstown's "traditional civil litigation," *In re Mansaray-Ruffin*, 530 F.3d at 234, arises in the context of a bankruptcy, as opposed to some other context, is a distinction without a difference. *See, e.g.*, Ex. A., *Big Picture Loans, LLC v. Eventide Credit Acquisitions, LLC*, No. 24-00103, Dkt. No. 26, slip op. at 5 (N.D. Tex. May 14, 2024) (reversing bankruptcy court's refusal to stay case under *Coinbase* pending appeal of arbitrability issues). Underlying the Supreme Court's holding in *Coinbase* is the principle that allowing pre-trial proceedings and a trial to ensue while an appeal on arbitrability is ongoing deprives a party of its bargained-for agreement to take advantage of the efficiencies, cost-effectiveness, and benefits that arbitration inherently provides. *Coinbase*, 599 U.S. at 743. That underlying principle does not evaporate simply because a defendant happens to find itself litigating before the Bankruptcy Court—an Article I court. *See Big Picture Loans, LLC*, slip op. at 5.

Nor does the Court's discretion come into play here, as Plaintiffs have suggested. To the contrary, the Supreme Court explained in *Coinbase* that the automatic divesture of this Court's jurisdiction pending appeal "applies regardless of how often courts might otherwise grant stays under the ordinary discretionary stay factors." 599 U.S. at 747; *see In re Revel AC, Inc.*, 802 F.3d

558, 568 (3d Cir. 2015) (listing the ordinary discretionary stay factors). *Coinbase* expressly rejected the idea that application of the ordinary discretionary stay factors in the context of an FAA Section 16(a) appeal could ever adequately protect a party's right to an appellate determination on the question of arbitrability. *See* 599 U.S. at 746–47. As the Supreme Court observed, courts that had been applying the discretionary stay factors to deny a stay pending appeal on arbitrability were getting it all wrong. *See id.* ("District courts and courts of appeals applying the usual four-factor standard for a discretionary stay often deny stays in § 16(a) appeals because courts applying that test often do not consider litigation-related burdens (here, from the continued District Court proceedings) to constitute irreparable harm . . . In any event, the background *Griggs* rule applies regardless of how often courts might otherwise grant stays under the ordinary discretionary stay factors." (internal citations omitted)). The traditional discretionary factors in this context do not light the way; *Coinbase* dictates a stay.

Finally, nowhere does the Supreme Court suggest in *Coinbase* that the procedural appellate rights created by the FAA are wiped away when a defendant is sued in an adversary proceeding instead of an ordinary civil case. The Supreme Court in *Coinbase* did not hide an elephant in a mousehole by creating "exemptions" to its holding through a string cite in a footnote, as Plaintiffs suggest. *See* Plaintiff's Memo in Support of Reconsideration Motion at 3 n.3 (citing *Coinbase*, 599 U.S. at 744 n.6); *see, e.g.*, *Big Picture Loans, LLC*, slip op. at 5 ("[W]ithout clear guidance from the Fifth Circuit or the Supreme Court that *Coinbase* does not apply to Bankruptcy Courts, of which the Court finds none, BPL is entitled to an automatic stay of the proceedings in the Bankruptcy Court while this Court addresse[s] BPL's various appeals.").

CONCLUSION

For the foregoing reasons, the Court should enter an order staying all aspects of the Adversary Proceeding, including without limitation Defendants' obligation to answer the Complaint and participate in discovery, pending resolution of Defendants' appeal of the Court's Order.

Dated: August 29, 2024
Wilmington, Delaware

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Exhibit A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BIG PICTURE LOANS, LLC,

Appellant,

v. **No. 4:24-cv-00103-P**

EVENTIDE CREDIT ACQUISITIONS, LLC,

Appellee.

ORDER

Before the Court is Big Picture Loans, LLC's ("BPL") Motion to Stay Pending Appeal. ECF No. 17. For the reasons stated below, the Court determines that the Motion should be and is hereby **GRANTED**.

BACKGROUND

BPL appeals two orders of the bankruptcy court in the pending Chapter 11 bankruptcy of BPL. The Court recounts only the facts giving rise to those orders that are pertinent to resolving the pending motion.

On September 15, 2023, the Debtor filed a Complaint for Turnover pursuant to Sections 542(a), 542(b), and 542(e) of the Bankruptcy Code against Big Picture in Adversary Proceeding No. 23-09006-mxm. The turnover claims seek to recover estate property following Big Picture's undisputed failure to make a payment on September 1, 2023, due by Big Picture under the terms of a Secured Promissory Note, with an outstanding principal balance of $28.65 million, and Loan and Security Agreement ("LSA") dated September 18, 2020.

On October 17, 2023, Big Picture filed Big Picture Loans, LLC's (i) Motion to Dismiss the Adversary Proceeding under Rule 12(b)(6), and (ii) Motion to Dismiss Adversary Proceeding in Favor of Arbitration, Alternatively, the Compel Arbitration, or to Stay or Abstain in Favor of Arbitration.

On October 31, 2023, in Case No. 23-90007-mxm11 (the "Bankruptcy Case"), Big Picture filed Big Picture Loans, LLC's Emergency Motion for Relief from the Automatic Stay.

On January 23, 2024, following a hearing on November 15, 2023, the Bankruptcy Court entered an order denying Big Picture's Motion to Dismiss or Compel Arbitration, which (i) denied Big Picture's motion to dismiss the Complaint, and (ii) denied Big Picture's motion to compel arbitration, which it viewed as premature at the motion to dismiss stage, without prejudice.

On January 23, 2024, the Bankruptcy Court also entered an order denying Big Picture's 362 Stay Motion, which denied Big Picture's request for relief from the automatic stay to commence arbitration without prejudice. Although the Rule 12(b)(6) Order and 362 Stay Order were entered without prejudice to Big Picture's rights to file another motion to compel arbitration, Big Picture filed motions for leave to pursue interlocutory appeals of the Rule 12(b)(6) Order and 362 Stay Order on February 1, 2024. This Court has not yet ruled on Big Picture's motions for leave.

On February 1, 2024, Big Picture filed two motions for stay pending appeal relating to the Rule 12(b)(6) Order and the 362 Stay Order in the Bankruptcy Court pursuant to FED. R. BANKR. P. 8007, which were heard on February 29, 2024.

On April 9, 2024, the Bankruptcy Court entered its Order Regarding Big Picture Loans, LLC's Motions for Stay Pending Appeal (the "Stay Denial Order"). The Stay Denial Order denied Big Picture's requests for a stay pending appeal based on the Bankruptcy Court's determination that the FAA and the Supreme Court's opinion in *Coinbase, Inc. v. Bielski,* 599 U.S. 736 (2023) does not apply to the Debtor's turnover claims under section 542 because such core bankruptcy claims are not within the scope of the arbitration clause contained in the LSA and enforcing the FAA would conflict with the Bankruptcy Code.

On April 16, 2024, Big Picture filed the instant Motion requesting a broad stay of the Adversary Proceeding and "those issues in the main

bankruptcy case related to Eventide's allegations that it has rights to and control over [Big Picture's] assets and property, pending final resolution of its pending appeals." ECF No. 17 at 19. That Motion is fully briefed and is ripe for the Court's review.

LEGAL STANDARD

Federal Rule of Bankruptcy Procedure 8007 governs the procedure for stays of bankruptcy court orders pending appeal. This rule states that a party ordinarily must first move for a stay of a bankruptcy court judgment or order in the bankruptcy court. FED. R. BANKR. P. 8007(a)(1)(A). The rule also provides that a motion for a stay may be made in the district court where the appeal is pending. *Id.* 8007(b)(1). If the motion under 8007(a)(1)(A) was originally made in the bankruptcy court, the motion in the district court must "either state that the [bankruptcy] court has not yet ruled on the motion, or state that the court has ruled and set out any reasons given for the ruling." *Id.* 8007(b)(2)(B). The motion must also include "(A) the reasons for granting the relief requested and the facts relied upon; (B) affidavits or other sworn statements supporting facts subject to dispute; and (C) relevant parts of the record." *Id.* 8007(b)(3)(A)–(C).

"The decision of a bankruptcy court to deny a stay pending appeal will be reviewed for abuse of discretion." *18 Audubon Place, LLC v. SBN V FNBC LLC*, 2018 WL 5831231, at *1 (E.D. La. Nov. 7, 2018) (quoting *In re Permian Producers Drilling, Inc.*, 263 B.R. 510, 514 (W.D. Tex. 2000)). "A bankruptcy court abuses its discretion if it seriously errs in its determination of whether the moving party has established a case meriting injunctive relief." *Id.* "A district court reviews a bankruptcy court's conclusions of law *de novo* and findings of fact for clear error." *Id.* (citing *In re First S. Savings Ass'n*, 820 F.2d 700, 711 (5th Cir. 1987)). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.*

The movant seeking a stay of a bankruptcy court order pending appeal has the burden of satisfying four factors: "(1)

whether the stay applicant has made a strong showing that [s]he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Saldana v. Saldana*, 2015 WL 5021415, at *2 (N.D. Tex. Aug. 25, 2015) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Nken v. Holder*, 556 U.S. 418, 426 (2009)). "The first two of these factors are the most critical." *Id.* (citing *Nken*, 556 U.S. at 434). Regarding the first factor, the Fifth Circuit has explained that "the movant need not always show a 'probability' of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." *Id.* (quoting *In re First S. Savings Ass'n*, 820 F.2d at 709 n.10 (quoting *Ruiz v. Estelle ("Ruiz I")*, 650 F.2d 555, 565 (5th Cir. Unit A June 1981))). However, a likelihood of success is required in the usual case. *Id.* "Only if the balance of equities (*i.e.* consideration of the other three factors) is ... *heavily tilted* in the movant's favor will we issue a stay in its absence, and, even then, the issue must be one with patent substantial merit." *Id.* (emphasis and alterations in original) (quoting *Ruiz v. Estelle ("Ruiz II")*, 666 F.2d 854, 857 (5th Cir. 1982)).

ANALYSIS

Here, the Bankruptcy Court denied BPL's motion to stay pending appeal. *See* ECF No. 20 at 13. In stating its reasons, the Bankruptcy Court highlights that BPL did not "attempt to argue, let alone demonstrate, that each of the required factors for a Rule 8007e discretionary stay are satisfied." *Id.* at 12. In their motion to stay pending appeal, which serves as an appeal of the Bankruptcy Court's decision, BPL reiterates the same prior arguments: that the relief sought under *Coinbase* is procedural, and the Court need not look to the merits of their appeal. *See* ECF No. 17 at 16–17.

BPL is correct. In *Coinbase*, the Supreme Court was looking to answer whether "a [lower] court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing," ultimately, they said "[t]he answer is yes." *Coinbase* at 599 U.S. at 741. The Supreme Court's

focus is on "arbitrability," as in, whether or not claims *should* go to arbitration. In their briefing, BPL argues the Bankruptcy Court has erred in deciding that Eventide's pled claims *are not* subject to arbitration. *See* ECF No. 17 at 16–17. Therefore, the root of BPL's motion to stay pending appeal is the arbitrability of Eventide's claims. BPL is correct in that denying the claims in this case are subject to arbitration, the Bankruptcy Court ipso facto bases their denial on arbitrability. *Id.* Now, the Bankruptcy Court might be correct that the turnover claims themselves are not subject to arbitration, at least as they are pled in the Complaint; however, that is not the question being asked in the Motion to Stay Pending Appeal. In this Motion, BPL is arguing that the claims pled in the complaint (however they may be pled) *should be* subject to arbitration. *Id*. They might be wrong; they might be right. Regardless, an appeal of a denial to stay on the basis of arbitrability garners an automatic stay of the proceedings in the lower court under Supreme Court precedent. 599 U.S. at 741 (holding it makes no sense for trial to go forward while the appellate court cogitates on whether there should be one at all).

Currently, the Supreme Court has not directly addressed whether *Coinbase* applies in the Bankruptcy Court context. However, without clear guidance from the Fifth Circuit or the Supreme Court that *Coinbase* does *not* apply to Bankruptcy Courts, of which the Court finds none, BPL is entitled to an automatic stay of the proceedings in the Bankruptcy Court while this Court addressed BPL's various appeals. *Coinbase* is unambiguous, when a party appeals a denial of a motion to compel arbitration, the lower court is required to stay its proceedings. 599 U.S. at 741. The Bankruptcy Court denied BPL's motion to compel arbitration on January 23, 2024, and the subsequent motion to stay pending appeal of that denial on April 9, 2024. ECF No. 20 at 94–95, 13. The appeal of that denial to stay proceedings is currently before the Court, so the Court must stay the proceedings in the Bankruptcy Court, given the appeal is tied to the motion to compel arbitration. The Bankruptcy Court thus erred when it denied BPL's Motion to Stay the Proceeding (ECF No. 20 at 13).

CONCLUSION

Since BPL is entitled to an automatic stay of the lower court's proceedings under *Coinbase*, the Court **GRANTS** Big Picture Loans, LLC's Motion to Stay Pending Appeal (ECF No. 17) and **STAYS** the proceedings in the Bankruptcy Court until the Court has ruled on BPL's appeal.

SO ORDERED on this **14th day of May 2024.**

CERTIFICATE OF SERVICE

I, Echo Yi Qian, certify that I am not less than 18 years of age, and that service of the foregoing was caused to be made on August 29, 2024, via CM/ECF upon those parties registered to receive such electronic notifications and served additionally as indicated below.

Date: August 29, 2024

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