Docket #0058 Date Filed: 9/16/2024

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, 54**

DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTIONS TO STAY PENDING APPEAL ON ARBITRABILITY AND TO EXTEND ANSWER DEADLINE

[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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PRELIMINARY STATEMENT

Defendants have demonstrated that this Court must stay this adversary proceeding under the Supreme Court's recent decision in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), pending Defendants' appeal as to the arbitrability of all claims.[2] Opening Br. at 3–4. As *Coinbase* explains, longstanding divestiture principles require an automatic stay here. *See* 599 U.S. at 740–41, 744, 747 (citing and discussing *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). That is true "regardless of how often courts might otherwise grant stays under the ordinary discretionary stay factors." *Coinbase*, 599 U.S. at 747.

Plaintiffs never address the core issue raised in the motion to stay: without a stay pending appeal, the benefits to Defendants of arbitration would be "irretrievably lost," and Defendants' statutory "right to an interlocutory appeal" on arbitrability "would be largely nullified." *Id.* (citing 9 U.S.C. § 16(a)). The need for a stay here "reflects common sense." *Id.* at 743. The Court should not trample on Defendants' statutory rights under the FAA by denying a stay.

Plaintiffs' opposition instead offers only meandering misdirection to complicate an otherwise simple issue. Plaintiffs construct a bankruptcy exception to *Coinbase* out of nothing more than a passing reference to a bankruptcy-related statutory provision in a footnoted string cite. *Coinbase*, however, does not provide such an exception for adversary proceedings, as several courts have confirmed. *See* D.I. 53-1, *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); *see also Google, LLC v. Angell*, 2024 U.S. Dist. LEXIS 109349, at *1 (E.D.N.C. June 20, 2024) (staying adversary

[2] Undefined capitalized terms have the meanings assigned to them in Defendants' opening brief, A.D.I. 53 ("Opening Br."). Plaintiffs' opposition brief, A.D.I. 56, is cited herein as "Opp."

proceeding under *Coinbase*); Ex. A, Order, *Celsius Mining LLC v. Mawson Infrastructure Grp. Inc.*, No. 24 Civ. 2063, Dkt. No. 8 (S.D.N.Y. Mar. 27, 2024) (same).

Plaintiffs' argument is misleading for the further reason that the statutory provision Plaintiffs discuss at length does not, and will never, apply here. That provision applies only to certified, discretionary appeals to the Third Circuit. Here, the appeal is as of right and will never require any certification.

Plaintiffs also wrongly suggest that Defendants seek to expand *Coinbase* beyond its holding, but that is not so. This case involves an interlocutory appeal from an order denying a motion to compel arbitration, just like in *Coinbase*. That courts have declined to extend *Coinbase*'s holding beyond the arbitration context is apropos of nothing.

Plaintiffs' alternative argument that Defendants' appeal is frivolous is conclusory. They argue that Defendants losing (in part) their motion to dismiss renders their appeal frivolous. By that logic, every appeal is frivolous. Not only is that nonsensical, it is wrong here.

In fact, Plaintiffs themselves seek to correct the Court's arbitrability analysis. A.D.I. 37 at 2 (¶ 1) (Motion for Reconsideration). Defendants agree that the Court did not get it right and will contend on appeal that the Court's error extended beyond the issue Plaintiffs have identified. In any event, as the Court found, there are valid and binding arbitration clauses in play here. A.D.I. 31 ("MTD Opinion") at 16–17. That the Court disagreed with Defendants about the scope of those clauses does not mean that Defendants' good faith arguments in favor of arbitrating this entire case are wholly without merit. Notably, until their opposition here, Plaintiffs never before argued that Defendants' arbitrability arguments are frivolous.

Nor do Defendants seek to cause delay. It is widely understood that arbitration facilitates the speedy resolution of disputes. Plaintiffs would be nearing a final ruling on the merits had they simply honored their agreements to arbitrate from the start.

In short, there is nothing complicated about this motion, nor is there anything special about bankruptcy litigation that should result in a shredding of Defendants' rights under a separate statutory scheme, the FAA. *See In re Mintze*, 434 F.3d 222, 229, 232–33 (3d Cir. 2006). The FAA, as construed by *Coinbase*, mandates a stay.

ARGUMENT

Plaintiffs offer no reason why the Court should disregard the law and strong federal policy that requires a stay pending Defendants' appeal on arbitrability. Defendants should not be required to engage in parallel litigation before this Court when the very question of who should hear the merits in the first place is the subject of their appeal. Opening Br. at 3–6.

I. *COINBASE* MANDATES A STAY PENDING APPEAL

A. The Straightforward Application of *Coinbase* Requires a Stay Here

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. *Coinbase* requires a stay of lower court proceedings until the resolution of any appeal on arbitrability. *Id.* at 740–41, 744, 747 (citing *Griggs*, 459 U.S. at 58).

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). Otherwise, "many of the asserted benefits of arbitration

(efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost." *Id.* at 743. The Supreme Court repeatedly made clear that a stay is, thus, "automatic." *Id.* at 743–47.

The analysis here begins and ends with *Coinbase*, as held by the majority of courts that have considered the issue. *See supra* at 1–2. Those decisions dictate the outcome here: A stay of all proceedings pending resolution of Defendants' appeal on arbitrability is required to preserve Defendants' rights under the FAA.[3]

B. The Court Cannot Disapply *Coinbase* Simply Because this Case Is an Adversary Proceeding

Plaintiffs argue that *Coinbase* cannot apply here because this case is an adversary proceeding in bankruptcy court. Opp. at 5–17. That is incorrect. As Plaintiffs' own cited authority concedes, *Coinbase* is not so limited. *See* Laura N. Coordes, *A Clash of Automatic Stays: Analyzing* Coinbase v. Bielski*'s Impact on Bankruptcy Proceedings*, 43 No. 8 Bankr. L. Letter NL 1 (Aug. 2003) ("The majority's opinion does not cabin the results to non-bankruptcy federal cases, and only the dissent suggests the opinion should be read narrowly.") (cited in Opp. at 15).

Plaintiffs' argument fails for many independent reasons:

First, in the Third Circuit, the denial of arbitration rights in the context of an adversary proceeding has long 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. Plaintiffs brush this binding authority aside on the basis that it "merely observes" that the FAA's arbitration enforcement provisions apply unless a contrary Congressional intent is established. Opp. at 16. *In re Mintze* says more than that.

[3] Plaintiffs' claim that Defendants are seeking a "second bite at the stay apple," Opp. at 5, compares apples to oranges. Defendants previously sought a discretionary stay of any claims the Court found to be non-arbitrable while arbitrable claims are litigated. *See* MTD Opinion at 29–30, 59. Defendants here seek a non-discretionary stay under *Coinbase* pending their appeal on the threshold question of arbitrability, a completely separate issue.

In *In re Mintze*, the Third Circuit reversed a bankruptcy court's denial of arbitration rights, recognizing that the FAA has "established a strong policy in favor of arbitration [that] requires rigorous enforcement of arbitration agreements" in both core and non-core cases. 434 F.3d at 229 (citations omitted). The Third Circuit found nothing in the "statutory text, legislative history, or the underlying purposes of the Bankruptcy Code" indicating that Congress intended to preclude the arbitration of claims in an adversary proceeding. *Id.* at 233. Read together, *Coinbase* and *In re Mintze* compel one conclusion: When it comes to questions of arbitrability, courts in the Third Circuit do not treat adversary proceedings differently from any other civil case, *In re Mintze*, 434 F.3d at 229, 232–33, and when arbitration rights are denied in a civil case, the losing party has a right to an immediate appeal and automatic stay until that appeal is resolved, *Coinbase*, 599 U.S. at 740–41, 744, 747.

Second, relying on a snippet of dicta and a string cite in *Coinbase*, Plaintiffs claim that *Coinbase* "does not apply to bankruptcy appeals." Opp. at 6–7 (citing *Coinbase*, 599 U.S. at 744 n.6). *Coinbase* says no such thing. The language Plaintiffs cite simply says that Congress knows how to disapply the *Griggs* divestiture doctrine when it wants to do so by drafting non-stay provisions into statutes. 599 U.S. at 744. The Supreme Court then goes on to cite more than ten examples of Congress having done so, including a statutory provision that applies when a party seeks to certify an immediate appeal from a bankruptcy court to a court of appeals, 28 U.S.C. § 158(d)(2)(D). *Id.* at 744 n.6. That has nothing to do with Defendants' appeal to the district court ***under the FAA***, a separate, predominant statutory scheme that mandates a stay here. *See 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.").

Third, the statutory provision cited in *Coinbase*, 28 U.S.C. § 158(d)(2)(D), does not and will not apply in this case in any event, and Plaintiffs are wrong to suggest otherwise. Opp. at 8–9, 11–12. As 28 U.S.C. § 158(d)(2)(D)'s plain language makes clear, it applies only to direct appeals to a court of appeals *certified* under 28 U.S.C. § 158(d)(2). The provision states:

> An appeal under *this paragraph* does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

The emphasized reference to "this paragraph" is a reference to paragraph (2) of subsection (d) of section 158—the paragraph governing certification of a direct appeal to a court of appeals.[4] The provision has no application outside of a direct appeal to a court of appeals certified under paragraph (2) of subsection (d) of section 158.[5] Because Defendants' appeal is to the district court under 9 U.S.C. § 16(a) and 28 U.S.C. § 158(a)—and not a certified direct appeal to the Third Circuit under 28 U.S.C. § 158(d)(2)—subparagraph 158(d)(2)(D) simply is not applicable.[6]

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[4] Section 158, like other provisions of the Bankruptcy Code and title 28, differentiates between sections (*e.g.*, § 158), subsections (*e.g.*, 158(d)), paragraphs (*e.g.*, 158(d)(2)), and subparagraphs (*e.g.*, 158(d)(2)(D)), so that when section 158(d)(2)(D) refers to "this paragraph" it means paragraph (2) of subsection (d) of section 158. For Plaintiffs' argument to be correct, section 158(d)(2)(D) would need to say, "An appeal under this *section* [*i.e.*, section 158]" rather than "An appeal under this *paragraph* [*i.e.*, paragraph (d)(2)]."

[5] *See, e.g.*, *Mort Ranta v. Gorman*, 721 F.3d 241, 255 (4th Cir. 2013) (Faber, J., dissenting) ("Notably, an appeal under 28 U.S.C. § 158(d)(2), as opposed to an appeal under 28 U.S.C. § 158(d)(1), does not stay any proceeding in the lower court from which the appeal is taken."); *In re Crescent Res., LLC*, 2012 WL 691876, at *6 (Bankr. W.D. Tex. Mar. 2, 2012) ("Section 158(d)(2)(D) clarifies that the bankruptcy or district court's certification of an order for direct appeal to the court of appeals does not automatically stay the proceeding in the court from which the appeal is taken. It does not govern a stay pending interlocutory appeal to the district court.").

[6] Plaintiffs half-heartedly contend that Defendants' appeal required leave of court. Opp. at 13 n.3. *In re Mintze* forecloses that argument. 434 F.3d at 227 (noting that appeal under 9 U.S.C.

Plaintiffs would have the Court ignore subparagraph 158(d)(2)(D)'s plain language. They argue that the plain language ought to be disregarded in favor of their extratextual interpretation that subparagraph 158(d)(2)(D) must be applied "consistent[ly] across all bankruptcy appeals under Section 158." Opp. at 8. "Otherwise," they claim, "any mandatory stay during a first-stage appeal to the District Court would vanish during the second-stage appeal to the Court of Appeals," an "inconsistency" that Plaintiffs say would be "inefficient." *Id.* Fortunately, Plaintiffs' feared inconsistency does not exist. The second-stage appeal to the court of appeals here is governed by paragraph 158(d)(1), not paragraph 158(d)(2). And, as discussed above, the non-stay provision of subparagraph 158(d)(2)(D) applies only to direct discretionary appeals under paragraph 158(d)(2) and not to any other appeals (like this one) as of right under section 158.

Fourth, Plaintiffs fundamentally misconstrue the purpose of the Supreme Court's citation to 28 U.S.C. § 158(d)(2)(D) in *Coinbase* when they suggest that bankruptcy appeals are different than appeals from district courts. *See* Opp. at 6–7. Even if the *Griggs* divestiture principle is "more flexible" in the bankruptcy context, as Plaintiffs claim, Opp. at 10, that has no bearing here. This is an adversary proceeding brought by a publicly traded, reorganized debtor with a confirmed and effective chapter 11 plan. This case will not affect the main case nor the ability of the Plaintiffs/Debtors to reorganize or propose a plan—that has been done. In this respect, this case is no different than any other civil litigation brought by a publicly traded company in pursuit of recovery that will benefit its equity holders. It should therefore be treated no differently under *Coinbase*. It is well understood that in this context the *Griggs* divestiture principle applies in bankruptcy cases. *See, e.g.*, *In re Scarborough*, 457 F. App'x 193, 199 (3d Cir. 2012) (citing *Venen*

§ 16(a)(1)(B) from an adverse ruling on arbitrability is taken pursuant to 28 U.S.C. § 158(a)(1), *i.e.*, the provision allowing for bankruptcy appeals as of right).

v. Sweet, 758 F.2d 117 (3d Cir. 1985)); *In re Lynx Assocs., L.P.*, 2009 WL 116062, at *5 n.14 (D.N.J. Jan. 16, 2009) ("The [*Griggs*] theory of divestiture of jurisdiction from the trial court to the appellate court applies to bankruptcy cases as well.").

Accordingly, other courts have applied *Coinbase* to appeals to the district court from bankruptcy court orders denying a motion to compel arbitration. *See supra* at 1–2 (collecting cases). The fact that courts have declined to extend *Coinbase* outside of the arbitrability context has no bearing on the issue before this Court. *See* Opp. at 14 & n.4 (citing cases that declined to extend *Coinbase* to appeals from remand orders, a preliminary injunction denial, an order compelling appraisal, and an order confirming an arbitration award).[7] Plaintiffs' principal authority in this line of cases only serves to undermine their position: In declining to extend *Coinbase* to a remand order, the court there went out of its way to distinguish the issue of arbitrability, "a context unrelated to the procedural posture" of a remand. *See Att'y Gen. of N.J. v. Dow Chem. Co.*, 2024 WL 3362395, at *9 (D.N.J. July 9, 2024).

The single decision Plaintiffs reference to the contrary, *In re Orchid Child Productions, LLC*, 2024 WL 1740741, at *20 (Bankr. C.D. Cal. Apr. 22, 2024), offers Plaintiffs no help. While the *Orchid Child* decision relied on *Coinbase*'s passing reference to subparagraph 158(d)(2)(D) to conclude a stay was not automatic, it nevertheless granted a limited discretionary stay in part for the same reasons that the Supreme Court ruled the stay is mandatory in *Coinbase*: the benefits of arbitration would be irretrievably lost if the party seeking arbitration is forced to litigate while its arbitrability appeal is pending. *Compare Orchid Child*, 2024 WL 1740741 at *21 (loss of

[7] The decision in *Harrison v. Envision Management Holding, Inc.*, 2023 WL 4945841 (D. Colo. Aug. 3, 2023), declining to extend a *Coinbase* stay while a petition for writ of certiorari to the Supreme Court is pending, likewise has no bearing here, given that this motion deals with an appeal as of right, not a discretionary appeal after appeals as of right have been exhausted.

arbitration rights constitutes irreparable harm), *with Coinbase*, 599 at 743 (same). *Orchid Child*'s reasoning in declining an automatic stay (as opposed to the discretionary stay it granted) is clearly wrong: the court undertook no analysis of subparagraph 158(d)(2)(D)'s plain language and did not explain how the subparagraph applied to an appeal to the district court (because, as explained above, it does not).

In sum, *Coinbase*'s underlying arbitration-preserving principles do not evaporate simply because a defendant happens to find itself litigating before a bankruptcy court. *See Big Picture Loans, LLC*, slip op. at 5. One of Plaintiffs' cited cases, *In re MF Global Holdings Ltd.*, 246 F. Supp. 3d 662 (S.D.N.Y. 2017) (cited in Opp. at 13), underscores this point. As *MF Global* explains, this adversary proceeding and the main chapter 11 case belong to the district court, 28 U.S.C. § 1334(a), and are heard by this Court only on referral, *id.* § 157(a), which can be withdrawn, *id.* § 157(d). The referral of the main case and this case to this Court "are matters of efficiency." *In re MF Glob. Holdings Ltd.*, 246 F. Supp. 3d at 665. "Absent an express statement from Congress"—which is not present here—"these discretionary referrals should not rob the referred parties of substantive rights of review by Article III courts to which they would otherwise be entitled." *Id.* Such rights include the right under the FAA to a stay pending appeal of an order denying a motion to compel arbitration. *Coinbase*, 599 U.S. at 742–43 (citing 9 U.S.C. § 16(a)).

Finally, Plaintiffs fault Defendants for not analyzing the ordinary, discretionary stay factors. Opp. at 5–6. The response to this argument is simple: the Supreme Court in *Coinbase* explicitly rejected the argument that a party should ever have to make such a showing when its rights under the FAA are implicated. 599 U.S. at 746. A stay under *Coinbase* does not involve the application of "ordinary discretionary stay factors." *Id*. at 747.

C. Defendants' Appeal Is Meritorious

As a fallback, Plaintiffs argue that Defendants' appeal is frivolous, and an exception to *Coinbase*. Opp. at 17 (citing *Coinbase*, 599 U.S. at 745). This late argument, too, is wrong.

Plaintiffs' newfound argument is raised solely to avoid a stay. They never before suggested Defendants' arbitrability arguments were frivolous. Nor did the Court make any such findings.

In support of this new argument, Plaintiffs rely heavily on this Court's completely inapposite decision in *In re Magna Entertainment Corp.*, 2012 WL 272847 (Bankr. D. Del. Jan. 30, 2012). The facts of that case are not "nearly identical," as Plaintiffs claim, Opp. at 20. That case differed in material ways. There, the Court denied a stay pending appeal where a claimant in a main case sought to stay adjudication of a claim objection while the claimant arbitrated a *separate claim* against a *non-debtor party*. *Id.* at *2. Moreover, the movant in that case "never filed a document entitled motion to compel arbitration or to stay the proceedings pending arbitration" and "consistently insisted that [the debtor was] not a party to any arbitration clause and that [the movant] does not have to arbitrate its claim against [the debtor]." *Id.* at *2–3. Defendants, by contrast, properly and timely moved to compel arbitration of all claims, and have always maintained that the Plaintiffs/Debtors are bound to arbitrate their claims against Defendants. Further, the movant in *In re Magna* waived its right to arbitration through its own litigation conduct, *id.* at *4, which Defendants have not done.

Further still, in concluding that the *In re Magna* movant's appeal was frivolous, the Court found that the movant "cite[d] no case law to support its argument that litigation between parties who have not agreed to arbitration must be stayed under the FAA while arbitration proceeds between others." *Id.* at 3. In contrast, Defendants provided ample authorities in their motion to dismiss to support their arguments in favor of arbitration, including authorities establishing the

myriad circumstances in which non-signatories can be bound by an agreement to arbitrate. *See* Mot. to Dismiss Br., A.D.I. 9, at 12–17.

Next, Plaintiffs argue that "the underlying claims are clearly beyond the scope of the asserted arbitration clauses." Opp. at 19. Yet, unlike the cases that Plaintiffs rely on,[8] the Joint Venture Agreement ("JVA") and Contract Manufacturing Agreement ("CMA") at issue here each include broad arbitration clauses emphasizing that "any and all claims . . . arising under *or related to*" those agreements are covered. JVA, A.D.I. 3-4 § 13.8(d); CMA, A.D.I. 3-3 § 23(b)-(d).

The Court concluded that these broad arbitration clauses are valid and enforceable. MTD Opinion at 16–17. The Court also concluded that Plaintiffs' tort claims were not captured by these provisions, notwithstanding its finding that the tort claims "relate to all of the Defendants' actions, not just actions related to the CMA or JVA." MTD Opinion at 20. Because the Court found that Plaintiffs' tort claims "relate to" the JVA and CMA, they necessarily are within the scope of the arbitration clauses in those agreements covering "related" claims. The same is true with respect to Plaintiffs' other claims, which Defendants have shown are all interrelated and therefore captured by the broad arbitration clauses at issue here. Mot. to Dismiss Br., A.D.I. 9, at 12–17. The denial of arbitration as to these "related" counts is, therefore, error for appellate review. *See Celsius Mining LLC v. Mawson Infrastructure Grp. Inc.*, 2024 WL 1719633, at *6 (S.D.N.Y. Apr. 22, 2024) (reversing bankruptcy court order denying arbitration where, as here, bankruptcy court read

[8] *See, e.g.*, *Colum. Gas Transmission, LLC v. RDFS, LLC*, 2024 WL 973114, at *2 (N.D. W. Va. Feb. 27, 2024) (appeal frivolous because agreement was simple, exacting and narrow as to what was arbitrable); *Bucher v. Am. Health & Life Ins. Co.*, 2014 WL 5464857 (W.D. Pa. Oct. 28, 2014) (arbitration of claim under unsecured personal loans did not affect claims under separate mortgage and life insurance policy, which did not have arbitration clauses); *In re Nortel Networks, Inc.*, 2013 WL 1909855, at *2 (Bankr. D. Del. May 7, 2013) (appeal frivolous because court *was presented with and approved the contract* before it became effective, so court definitively knew it did not provide for arbitration); *Kirleis v. Dickie, McCamey & Chicolte, PC*, 2007 WL 3023950, at *2 (W.D. Pa. 2007) (no written agreement to arbitrate existed).

broad arbitration clause in an unduly narrow way); Ex. B, *Equities First Holdings, Inc. v. Celsius Network Ltd.*, No. 23-cv-10036, Dkt. No. 18, slip op. at 2, 4 (S.D.N.Y. Nov. 20, 2023) (reversing bankruptcy court order denying stay where bankruptcy court determined that "it wasn't clear whether all or only some of the claims are arbitrable").

Defendants' arbitrability arguments are not frivolous, and instead involve complex and disputed questions of law and fact that warrant appellate review. The Court should therefore grant a stay to preserve Defendants' right to arbitrate these claims.

II. DEFENDANTS DO NOT SEEK AN INDEFINITE EXTENSION OF THEIR ANSWER DEADLINE

Contrary to Plaintiffs' assertions, Defendants have not requested an indefinite extension of their time to respond to the Complaint. Rather, Defendants separately moved, out of an abundance of caution and pursuant to Fed. R. Bankr. P. 9006(b), for an extension of time to answer until thirty (30) days after the later of (i) a final ruling on the motion to stay in this Court or any subsequent similar motion in the district court, or (ii) the expiration of the stay. *See* Mot. to Extend, A.D.I. 54. When a request to extend is made prior to the expiration of an established deadline, a defendant need only establish "cause" to extend. *See In re Delloso*, 2022 WL 879230 at *4 (Bankr. D. Del. Mar. 24, 2022).[9] Defendants easily meet that standard here.

Courts routinely extend time in the interest of judicial economy and efficiency and to avoid the wasteful expenditure of resources. *See Tejada v. Delbalso*, 2019 WL 13334861, at *1 (M.D. Pa. July 12, 2019) (granting blanket extension of litigation deadlines); *Bradford v. Marchak*, 2018 WL 1535440, at *2 (E.D. Cal. Mar. 29, 2018) (finding good cause to extend time to answer while

[9] Plaintiffs rely on *In re Trout*, which dealt with a motion filed *after* the expiration of a deadline, giving rise to circumstances in which a heightened standard of excusable neglect applies. 1995 WL 193410, at *2 (Bankr. D.N.D. Apr. 25, 1995). Here, Defendants filed their motion prior to the expiration of the deadline, rendering *In re Trout* irrelevant.

another procedural motion was pending); *Block v. Equifax, Inc*., 2017 WL 10573832, at *2 (N.D. Cal. Nov. 13, 2017) (same). Requiring Defendants to file an answer and litigate this adversary proceeding in advance of a final ruling on the motion to stay would be inefficient, wasteful and contrary to the arbitration-preservation principles set forth in *Coinbase.* 599 U.S. at 743.

Plaintiffs cite no contrary authority. Importantly, none of the cases cited by Plaintiffs involved a request for an extension of time made in conjunction with a motion to stay pending an appeal on the issue of arbitrability.

Defendants have diligently complied with all applicable deadlines, and only filed the extension motion after Plaintiffs made clear that they would not agree to a further extension.[10] This case is therefore unlike *In re J.K. Chemicals, Inc.*, cited by Plaintiffs. 58 B.R. 225, 226 (Bankr. D.R.I. 1986) (denying extension to a defendant that had repeatedly missed deadlines and sought extensions) (cited in Opp. at 21). Defendants also promptly appealed the Court's arbitrability ruling and moved to stay pending appeal, unlike the defendant in *Tittl v. Hilton Worldwide*, *Inc.*, which asked for an extension before taking any of the other procedural steps that it claimed warranted that relief. 2012 WL 6863472, at *1 (E.D. Cal. Dec. 20, 2012) (cited in Opp. at 21).

Finally, Plaintiffs accuse Defendants of having improperly used Local Rule 9006-2 to obtain a *de facto* and potentially indefinite stay of their deadline to respond to the Complaint, citing *In re Maxus Energy Corp.*, 633 B.R. 215, 221–22 (Bankr. D. Del. 2021). That is not true and *Maxus* is therefore irrelevant. *Maxus* involved a consolidated motion to stay and extend an existing Court-ordered deadline. *Id.* at 217–18. Defendants do not seek to evade any Court-ordered

[10] Plaintiffs claim that Defendants filed their extension motion without first asking for a further extension from Plaintiffs is misleading because, when Plaintiffs granted the second one-week extension of the response deadline, Plaintiffs' counsel stated that Defendants should not assume there would be any further agreed extensions. Defendants took Plaintiffs' counsel at their word and filed the extension motion.

deadlines. Here, out of an abundance of caution, in addition to moving to stay, Defendants have separately moved for an extension of time to respond to the Complaint and are entitled to an automatic extension of time under Local Rule 9006-2, pending a ruling on the motions, the timing of which is within the Court's control.

CONCLUSION

For the foregoing reasons, the Court should enter an order staying all aspects of this 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 denying in part Defendants' motion to dismiss in favor of arbitration.

Dated: September 16, 2024
Wilmington, Delaware

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Counsel to Defendants

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

In re

CELSIUS NETWORK LLC, *et al.*,
Debtors.

24 Civ. 2063 (CM)

x

CELSIUS MINING LLC,
Plaintiff,

vs.

MAWSON INFRASTRUCTURE GROUP INC., LUNA SQUARES LLC, and COSMOS INFRASTRUCTURE LLC,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/27/24

x

ORDER

McMahon, J.:

IT IS HEREBY ORDERED:

1. All proceedings before the Bankruptcy Court with respect to the underlying adversary proceeding, *Celsius Mining LLC v. Mawson Infrastructure Group Inc., et al.*, Adv. Pro. No. 23-01202, are stayed pending appeal from Judge Glenn's February 27, 2024 Opinion and Order. *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2020)

2. Appellants Mawson Infrastructure Group, Luna Squares LLC, and Cosmos Infrastructure LLC (collectively "Appellants" or "the Mawson Entities") have until April 2, 2024 at 5:00 PM to submit the brief in support of their appeal.

3. Appellee Celsius Mining LLC has until April 8, 2024 at 5:00 PM to submit its responsive brief.

4. Appellants have until April 9, 2024 at 5:00 PM to submit their reply brief.

5. The Court strongly encourages the parties simply to file the briefs they submitted in their proceedings before Judge Glenn, with an addendum of no more than one page per nonarbitrable claim that addresses the issue of whether each such claim does or does not "relate in any way" to the Co-Location Agreement.

6. There will be no oral argument.

7. The Court will issue a written decision.

8. These dates will not be extended for any reason.

Dated: March 27, 2024

U.S.D.J.

BY ECF TO ALL COUNSEL

EXHIBIT B

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 11/20/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Celsius Network LLC, Debtor.	1:23-cv-10036-GHW
Equities First Holdings, LLC, *and* Alexander Christy, Appellants, v. Celsius Network Limited, Appellee.	ORDER

GREGORY H. WOODS, United States District Judge:

On November 14, 2023, Appellants filed a motion to stay the adversary proceeding pending appeal, under Rule 8007 of the Federal Rules of Bankruptcy Procedure. Dkt. No. 3. For the reasons that follow, this motion is GRANTED.

On September 6, 2023, Debtor-Plaintiff-Appellee commenced an adversary proceeding in the Bankruptcy Court for the Southern District of New York. Dkt. No. 4 at 7 (citing Adversary Proceeding Dkt. ("APD") No. 9-1).[1] Defendants-Appellants then filed a motion to compel arbitration, asking that the Bankruptcy Court stay or dismiss the proceedings pending arbitration under the Federal Arbitration Act ("FAA"). *Id.* (citing APD No. 9-1). They did so because Plaintiff-Appellee had previously agreed to arbitration with Defendants-Appellants on at least some of the claims at issue. *See id.* In Plaintiff-Appellee's response, Plaintiff-Appellee agreed that at least

[1] Pagination references throughout adhere to ECF pagination, not native pagination. References to the APD refer to the docket of *In re Celsius Network LLC*, No. 23-01167 (MG) in the Bankruptcy Court for the Southern District of New York.

some claims are arbitrable. *Id.* (citing APD No. 22).

On October 24, 2023, the Bankruptcy Court held a hearing on Defendants-Appellants' motion to compel arbitration. *Id.* (citing Dkt. No. 4-2). At this hearing, the Bankruptcy Court judge noted that while Defendants-Appellants "may be right" that the claims should be arbitrated, it wasn't clear whether all or only some of the claims are arbitrable. Dkt. No. 4-2 at 16. Nonetheless, the Bankruptcy Court judge stated that "[n]o one here disputes that EFH and Celsius agreed to arbitrate certain disputes that are enumerated in the relevant arbitration clauses . . . ." Dkt. No. 4-2 at 41.

Later that day, the Bankruptcy Court judge ordered Defendants-Appellants to "file any responsive pleadings to the Complaint on or before Thursday, November 23, 2023 at 5:00 p.m." Dkt. No. 1-1 at 6; APD No. 27. Defendants-Appellants then filed an "emergency motion for clarification" about this October 24, 2023 order, asking the judge to "clarify whether [his] Order . . . is refusing to stay the matter pending arbitration and instead ordering Defendants to respond to the Complaint." Dkt. No. 4 at 8 (citing APD No. 29). On November 7, 2023, the Bankruptcy Court judge stated that he "*did not rule* on the Arbitration Motion." Dkt. No. 1-1 at 8 (emphasis in original); APD No. 31. But his requirement that Defendants-Appellants file responsive pleadings remained in place. *See* Dkt. No. 1-1; APD No. 31. Following Defendants-Appellants' filing of a notice of appeal and statement of election under the FAA on November 7, 2023, *see* APD No. 33, Defendants-Appellants moved for a stay pending their interlocutory appeal, APD No. 35. This motion was denied. Dkt. No. 8-3 at 2–3; APD No. 38. On November 14, 2023, Defendants-Appellants filed a motion in this Court to stay the adversarial proceedings pending appeal, Dkt. No. 3, with an accompanying memorandum of law, Dkt. No. 4.

Although the Bankruptcy Court judge did not deny Defendants-Appellants' motion to compel arbitration, he did effectively "refus[e] a stay" of the action under section 3 of the FAA,

thereby conferring appellate jurisdiction on this Court. *See* 9 U.S.C. § 16(a)(1); *see also, e.g.*, *In re Winimo Realty Corp.*, 270 B.R. 99, 105 (S.D.N.Y. 2001) ("Pursuant to section 16(a) of the Federal Arbitration Act, [a party] has a right to appeal an order denying a petition to compel arbitration or refusing to stay an action pending arbitration. Pursuant to Rule 8005 of the Federal Rules of Bankruptcy Procedure, APDC may make a motion for a stay of the Bankruptcy Court's order pending appeal of that order to the District Court."). Plaintiff-Appellee argues that "a mandatory stay under § 3 of the FAA must be granted only as to arbitrable claims and issues." Dkt. No. 7 at 6 (citing 9 U.S.C. § 3). Here, it appears that Plaintiff-Appellee, Defendants-Appellants, and the Bankruptcy Court judge all agreed that at least some of the claims in the underlying action are arbitrable. *See* Dkt. No. 4 at 7 (Defendants-Appellants asserting as much); *id.* (citing APD No. 22) (same for Plaintiff-Appellee); *id.* (citing Dkt. No. 4-2 at 16, 41) (same for the Bankruptcy Court judge). In ordering that Defendants-Appellants provide responsive pleadings on all claims in the adversary proceeding—including the arbitrable ones—the Bankruptcy Court judge in effect denied Defendants-Appellants' request to stay the adversary proceeding pending arbitration of these claims. Thus, this Court has appellate jurisdiction. *See* 9 U.S.C. § 16(a)(1); 9 U.S.C. § 3; *In re Winimo Realty Corp.*, 270 B.R. at 105.

Moreover, a "showing of probable irreparable harm is the principal prerequisite for the issuance of a [Rule 8005] stay." *In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 347 (S.D.N.Y. 2007) (internal quotation marks and citation omitted) (brackets in original). "Irreparable harm must be 'neither remote nor speculative, but actual and imminent.'" *Id.* (quoting *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 975 (2d Cir. 1989)). "[I]rreparable harm exists when a party is forced to arbitrate a dispute that is not subject to arbitration, but no irreparable harm arises from arbitrating disputes that are subject to arbitration." *Pike Co., Inc. v. Tri-Krete Ltd.*, 349 F. Supp. 3d 265, 272 (W.D.N.Y. 2018); *see also Maryland Cas. Co. v. Realty Advisory Bd. on Lab. Rels.*, 107 F.3d 979, 985 (2d

Cir. 1997) (finding that a party "would be irreparably harmed by being forced to expend time and resources arbitrating an issue that is not arbitrable, and for which any award would not be enforceable"). Here, forcing Defendants-Appellants to litigate the arbitrable claims would constitute irreparable harm. *See Pike Co, Inc.*, 349 F. Supp. At 272; *Maryland Cas. Co.*, 107 F.3d at 985.

Because the Bankruptcy Court judge's October 24, 2023 order results in irreparable harm—by requiring Defendants-Appellants to answer claims that all parties, and the Bankruptcy Court judge, collectively acknowledge must be submitted to arbitration—Defendants-Appellants' motion to stay the adversary proceeding pending appeal, Dkt. No. 3, is GRANTED.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 3.

SO ORDERED.

Dated: November 20, 2023

GREGORY H. WOODS
United States District Judge

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 September 16, 2024, via CM/ECF upon those parties registered to receive such electronic notifications and served additionally as indicated below.

Date: September 16, 2024

/s/ Echo Yi Qian
Echo Yi Qian (Del. Bar No. 7330)

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