

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

and

MAXINE WILSON,

Plaintiff-Intervenor,

v.

THE KRYSTAL COMPANY,

Defendant.

**CIVIL ACTION NO.
1:18-CV-4536-TCB-CCB**

ORDER

This matter is before the Court for consideration of the notice of Defendant's Chapter 11 Bankruptcy case and automatic stay of proceedings and motion to stay proceedings not subject to automatic stay filed by Defendant The Krystal Company. (Doc. 38). Defendant states that, on January 19, 2020, it filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division. *Id.* at 1. Defendant notes that except for those proceedings set forth in 11

U.S.C. § 362(b), the continuation of judicial proceedings are automatically stayed pending the bankruptcy. *Id.* at 2. The Equal Employment Opportunity Commission (EEOC) filed a response in opposition to the notice, arguing that its claims, which it brings under the agency's police and regulatory power, are not subject to the stay. (Doc. 39). Defendant replied, (Doc. 41), and the EEOC seeks leave to file a surreply, (Doc. 42). The motion for leave to file a surreply, (Doc. 42), is **GRANTED**, and for the reasons set forth below, the Court finds that the EEOC is not subject to the automatic stay. Plaintiff Maxine Wilson, however, is. The motion to stay, (Doc. 38), is therefore **GRANTED IN PART** and **DENIED IN PART**.

I. BACKGROUND

The EEOC filed a complaint against Defendant under Title I of the Americans with Disabilities Act of 1990 (ADA) to correct unlawful employment practices and to provide relief to Maxine Wilson, Defendant's former employee. (Doc. 1). Specifically, the EEOC seeks injunctive relief, back pay and front pay for Wilson, compensation for pecuniary and non-pecuniary losses suffered by Wilson, punitive damages, and costs. *Id.* at 7-9. Maxine Wilson filed her own complaint against Defendant in what was originally a separate action, the cases were then consolidated, and Wilson's complaint was filed as that of an intervenor in this

matter. (Docs. 5, 7, 9). On September 5, 2019, all of the parties jointly requested that the action be referred to a United States Magistrate Judge for mediation. (Doc. 31). That motion was granted. (Doc. 32). However, before the mediation began, Defendant filed its notice of bankruptcy and request for a stay. (Doc. 38). The EEOC opposes the notice of the stay, arguing that its claims are excepted because the agency is acting under its police or regulatory power. (Doc. 39). The intervenor, Maxine Wilson, has not filed any opposition to the notice of the stay.

II. DISCUSSION

Federal law provides that the filing of a bankruptcy petition operates as a stay of the commencement or continuation of a judicial action proceeding against the debtor. 11 U.S.C. § 362(a). The automatic stay provision, however, comes with exceptions. 11 U.S.C. § 362(b). And one of those exceptions is for a judicial proceeding by a governmental unit “to enforce such governmental unit’s...police and regulatory power.” 11 U.S.C. § 362(b)(4). The EEOC argues that it is a governmental unit bringing this suit under its police and regulatory power and, therefore, that the stay is not applicable to its claims. (Doc. 39). Defendant maintains that the police-power exception does not apply because: (1) any injunctive relief the EEOC seeks is likely to be moot, because Defendant intends to sell its assets to another company; and (2) Defendant is unaware of any cases

applying the police-power exception in cases involving claims brought by both the EEOC and a private litigant. (Doc. 41 at 2–3). Defendant further argues that even if the police-power exception applies, the Court should use its discretion to stay the case pending resolution of the bankruptcy proceeding because the EEOC’s claims are “intimately intertwined” with those of Wilson. *Id.* at 3. Moreover, Defendant argues, it will promote judicial efficiency and protect the limited resources of the parties for Wilson to simply assert a claim for monetary relief in the bankruptcy action—particularly since any injunctive relief that the EEOC might obtain is moot until it becomes clear that Defendant will remain in business. *Id.* at 4.

The Eleventh Circuit does not appear to have directly addressed whether the police-power exception applies to claims brought by the EEOC.¹ But other circuits have. In *EEOC v. Rath Packing Co.*, the Eighth Circuit held that Title VII claims brought by the EEOC were not subject to the automatic stay. 787 F.2d 318,

¹ The Eleventh Circuit has, however, applied the exception to other agencies bringing claims in the employment context. See *Brock v. Rusco Indus., Inc.*, 842 F.2d 270, 273 (11th Cir. 1988) (holding that the Secretary of Labor brought suit under the police power when it filed claims under the Fair Labor Standards Act “to protect legitimate businesses from unfair competition and to enforce the federal law regarding minimum wage”); *NLRB v. Evans Plumbing Co.*, 639 F.2d 291, 293 (5th Cir. Unit B Mar. 13, 1981) (holding that an enforcement proceeding by the NLRB falls within the police-power exception).

323–25 (8th Cir. 1986). The court noted that the “‘EEOC does not function simply as a vehicle for conducting litigation on behalf of private parties; it is a federal administrative agency charged with the responsibility of investigating claims of employment discrimination and settling disputes.’” *Id.* at 325 (quoting *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 368 (1977)). “Thus, ‘when the EEOC acts, albeit at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest in preventing employment discrimination.’” *Id.* (alteration omitted) (citing *Gen. Tel. Co. v. EEOC*, 446 U.S. 318, 326 (1980)). The court determined that the police-power exception applied to the EEOC claims, and it framed its holding in these terms:

When EEOC sues to enforce Title VII it seeks to stop a harm to the public—invidious employment discrimination which is as detrimental to the welfare of the country as violations of environmental protection and consumer safety laws, which are expressly exempt from the automatic stay. We therefore hold that the automatic stay provision did not apply to this Title VII action brought by EEOC.

Id.

The Fourth Circuit has similarly held that EEOC claims under Title VII and the Age Discrimination in Employment Act (ADEA) were exempted from the automatic stay:

We have no doubt that when EEOC sues to enjoin violations of Title VII or ADEA and seeks reinstatement of the victims of alleged discrimination and adoption of an affirmative action plan in a Title VII case, and couples these prayers for relief with a claim for back pay, EEOC is suing in exercise of its police or regulatory power and is not subject to the automatic stay until its monetary claims are reduced to judgment.

EEOC v. McLean Trucking Co., 834 F.2d 398, 402 (4th Cir. 1987)²; *see also EEOC v. Hall's Motor Transit Co.*, 789 F.2d 1011, 1014 (3d Cir. 1986) (“We agree with the Eighth Circuit that proceedings brought by the EEOC fall within the exception to the automatic stay defined by § 362(b)(4).”). And district courts around the country have followed *Rath* and *McLean Trucking*, holding that the police-power exception applies to claims by the EEOC. *See, e.g., EEOC v. Shepherd*, No. 3:17-CV-02569-L, 2018 WL 4932484, at *4 (N.D. Tex. Oct. 11, 2018); *EEOC v. Lehi Roller Mills Co.*, No. 2:08-CV-00591 DN, 2013 WL 5793687, at *1 (D. Utah Oct. 28, 2013); *EEOC v. CTI Global Solutions, Inc.*, 422 B.R. 49, 52–53 (D. Md. 2010); *EEOC v. Chemtura Corp.*, No. 07-CV-1025, 2009 WL 1940076, at *1 (W.D. Ark. July 6, 2009); *EEOC v. Noble Metal*

² In *McLean*, the court cited the former Fifth Circuit’s opinion in *Evans Plumbing*, noting the “direct analogy between a suit by EEOC to recover back pay for a victim of age or racial discrimination and a proceeding before the National Labor Relations Board to effect reinstatement or back pay for the victim of an unfair labor practice.” 834 F.2d at 403.

Processing, No. 08-CV-14713, 2009 WL 1868002, at *1 (E.D. Mich. June 29, 2009); *EEOC v. Consol. Freightways Corp.*, 312 B.R. 657, 659 (W.D. Mo. 2004).

The Court agrees with those courts that have considered the issue and finds that the police-power exception applies to the EEOC. Here the EEOC brings claims under the ADA for injunctive and monetary relief in the course of exercising its police or regulatory powers, and it is therefore not subject to the automatic stay. Defendant argues that police-powers exception is “less applicable” because the injunctive relief the EEOC seeks is likely to be moot, because Defendant intends to sell its assets. (Doc. 41 at 2). That argument is similar to the one relied upon by the bankruptcy court in *McLean*—where the lower court held that the EEOC’s claim was really just an attempt to adjudicate private rights because the defendant was in liquidation and had suspended its operations—and which the Fourth Circuit rejected. 834 F.2d at 400, 403. The proper focus is on the nature of the EEOC’s claims—which here are clearly brought under the agency’s police or regulatory power—and not the operating status of the defendant. *See Noble Metal Processing*, 2009 WL 1868002, at *1 (“NMP’s argument that declaratory and injunctive relief is no longer available at its Michigan plant is irrelevant to the issue of whether EEOC is exempt from an automatic bankruptcy stay.”).

Defendant also argues that it is “unaware of any cases applying the Police Power Exception in cases involving claims brought by both the EEOC and private litigants.” (Doc. 41 at 3). In fact, this scenario does not appear to be uncommon, and when it arises, courts have stayed the action as to the private litigant while allowing the EEOC’s claims to proceed. *See Lehi Roller Mills Co.*, 2013 WL 5793687, at *2 (staying the claims of the intervenor while declining to stay the case as to the EEOC); *Chemtura Corp.*, 2009 WL 1940076, at *1 (noting that the bankruptcy proceedings “automatically stayed the intervenors’ complaints” while “the EEOC’s claims are exempt from the automatic stay and are proceeding”). For all the reasons noted above, the Court finds that the police-power exception applies as to the EEOC.

Defendant also urges the Court to exercise its discretion to stay the matter “pending the resolution of related proceedings in another forum” because the claims of the EEOC and those of the intervenor are “intimately intertwined.” (Doc. 41 at 3 (citing *Sessions v. Barclays Bank Delaware*, 276 F. Supp. 3d 1349, 1350 (N.D. Ga. 2017))). Defendant argues that staying the matter pending resolution of the bankruptcy proceedings would promote judicial efficiency, conserve the resources of the parties, allow Wilson to assert claims for monetary relief in the bankruptcy

action, and avoid the prospect of litigating injunctive relief that may well become moot. *Id.* at 3–4.

It is true that a court has the discretion to stay a case pending the resolution of a related case in another court. *See Ortega Trujillo v. Conover & Co. Commc'ns, Inc.*, 221 F.3d 1262, 1264 (11th Cir. 2000). The Court declines to impose this more generally applicable discretionary stay, however, where there is a more specific staying mechanism provided for by a statute, 11 U.S.C. § 362(a), that expressly does not apply.³ Although Defendant argues that it should not have to spend limited financial resources on litigation while it is in bankruptcy proceedings, Congress obviously anticipated some litigation expenses when it elected to create exceptions to the automatic stay provision. Further, while it is true that there is some overlap between the EEOC's claims and those of the intervenor, it is not unusual for litigation to proceed as to the EEOC while the claims of an intervenor are stayed. *See Lehi Roller Mills Co.*, 2013 WL 5793687, at *2; *Chemtura Corp.*, 2009 WL 1940076, at *1. And finally, the fact that the claims for injunctive relief may end up being moot at the conclusion of the bankruptcy proceedings is not a sufficient

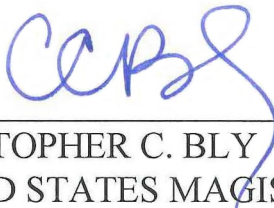
³ The EEOC cites in its surreply to a provision of the bankruptcy code, 11 U.S.C. 105(a), which allows a court to issue any order, process, or judgment (including a stay) necessary or appropriate to carry out the provisions of Title 11. Defendant does not mention § 105(a), and the Court declines to address it.

reason to stay the claims now – especially when that argument is insufficient to preclude application of the police-power exception to the automatic stay. *See Noble Metal Processing*, 2009 WL 1868002, at *1. For all these reasons, the Court declines to issue a discretionary stay.

III. CONCLUSION

For the reasons stated above, Defendant's notice of and motion for a stay, (Doc. 38), is **GRANTED IN PART and DENIED IN PART**. The case is **STAYED** as to intervenor Maxine Wilson but not as to the EEOC. The EEOC's motion for leave to file a surreply, (Doc. 42), to which Defendant did not file any opposition, is **GRANTED**.

IT IS SO ORDERED, this 21st day of May, 2020.



CHRISTOPHER C. BLY
UNITED STATES MAGISTRATE JUDGE