

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

NRA FOUNDATION INC, *et al.*,

Defendants.

Case No.: 2020 CA 003454 B

**Judge José M. López
Civil Calendar 14**

ORDER

Before the Court is the Notice and Suggestion of Bankruptcy of the National Rifle Association of America and Sea Girt LLC (the “Notice”), filed on January 18, 2021. On January 21, 2021, the District of Columbia (the “District”) filed a Response to the Notice (the “District Response”). Both Defendants National Rifle Association of America, Inc. (the “NRA”) and NRA Foundation, Inc. (the “Foundation”) filed replies to the District Response (the “NRA Reply” and the “Foundation Reply,” respectively). Upon consideration of the pleadings, the relevant law, and the entire record, the Court concludes that this matter is subject to the automatic stay imposed by Section 362(a) of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

The Notice states that Defendant NRA filed petitions commencing voluntary cases under Chapter 11 of the Bankruptcy Code. Section 362(a) prohibits “(1) the commencement or continuation . . . of a judicial, administrative, or other action or proceeding. . . to recover a claim against the debtor that arose before the commencement of the case under this title[.]” The Section further prohibits “(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; [and] (3) any act to obtain possession of the property of

estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(1)-(3).

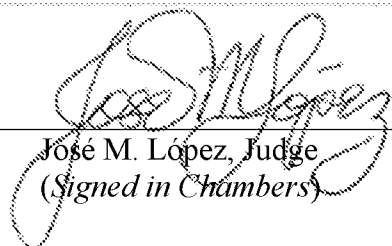
The District, in its Response to the Notice, argues that the automatic stay provided for in Section 362 does not apply to this case. Response at 1. Instead, the District claims that an exception to the automatic stay applies. Section 362(b)(4) excepts “the continuation of an action or proceeding by a governmental unit against the debtor to enforce such governmental unit’s . . . police and regulatory power.” 11 U.S.C. § 362(b)(4). This is known as the “police and regulatory power exception” to the automatic stay. NRA Reply at 1-2. A government action falls within the exception if it effectuates public policy rather than adjudicates private rights, and if it protects health and safety rather than government pecuniary interests. Response at 2 (citing *In re McMullen*, 386 F.3d 320, 324-25 (1st Cir. 2004); *In re Nortel Networks, Inc.*, 669 F.3d 128, 139-40 (3d Cir. 2011)). The District argues that this case fits into the exception “because the District brought this action to enforce its police and regulatory power over nonprofit corporations, and seeks only injunctive relief.” Response at 1.

However, the District seeks more than just injunctive relief. In order to assess whether the automatic stay is applicable, the Court “must look to what specific acts the government wishes to carry out and determine if such execution would result in an economic advantage to the government or its citizens over third parties in relation to the debtor’s estate.” *In re Charter First Mortg., Inc.*, 42 B.R. 380, 382 (Bankr. D. Or. 1984). Only “when a governmental proceeding will not conflict with the bankruptcy court’s control of the property of the debtor and will not otherwise create a pecuniary advantage for the government, the proceeding will be excepted from the automatic stay[.]” *In re Psychotherapy & Counseling Ctr., Inc.*, 195 B.R. 522, 527-28 (Bankr. D.D.C. 1996) (quoting *United States ex rel. Marcus v. NBI, Inc.*, 142 B.R. 1, 3 (D.D.C. 1992)). In both the District’s original Complaint and its proposed amended complaint, the District seeks the imposition of a constructive trust

over Foundation funds it alleges were improperly diverted to the NRA. *See generally* Complaint; January 11, 2021 Motion for Leave to Amend Complaint, Ex. A. If a constructive trust is imposed on funds held by the NRA, the same funds would not be available for distribution in bankruptcy. NRA Reply at 3. This is counter to the rule above because it would place the interests of the District above those of NRA creditors, who would be disadvantaged by the reduced value of the assets available for distribution. Therefore, the police and regulatory power exception to the automatic stay does not apply.

The District's alternative argument, that the case should continue against the Foundation since it did not file for bankruptcy, also fails. District Response at 5. "An action taken against a nondebtor which would inevitably have an adverse impact upon the property of the estate must be barred by the automatic stay provision." *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 392 (2d Cir. 1997) (citing *In re 48th Street Steakhouse*, 835 F.2d 427, 431 (2d Cir. 1987)). Because the District's allegations of financial improprieties are intertwined with all of its claims, the automatic stay bars those claims from proceeding unless the Bankruptcy Court grants relief from the automatic stay. *See* Foundation Reply at 2. As such, the automatic stay is applicable to the District's claims against the Foundation as well. Accordingly, it is this 1st day of February 2021, hereby

ORDERED that all motions and proceedings in this matter are **STAYED** until the Chapter 11 matter is resolved.



José M. López, Judge
(Signed in Chambers)

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