SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. O. PETER SHERWOOD PART IAS MOTION 49EFM

Justice

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GBIG HOLDINGS, INC.,

Plaintiff,

-against-

ASPIDA HOLDCO, LLC,

Defendant.

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INDEX No.:652863/2020

MOT. DATE: 10/6/2020

MOT. SEQ. No.: 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69
were read on this motion to/for DISMISS

Defendant Aspida Holdco, LLC moves, pursuant to CPLR 3211(a)(2) and 3211(a)(4), to dismiss plaintiff GBIG Holdings, Inc.'s first amended complaint or stay this action in favor of prior pending litigation in Michigan. For the following reasons, defendant's motion is granted and this matter is stayed.

I. BACKGROUND

As this is a motion to dismiss, the following background is taken from the first amended complaint (Doc. No. 9). Plaintiff GBIG Holdings, Inc. ("GBIG") is a Delaware corporation which owns all the issued and outstanding stock of Pavonia Life Insurance Company of Michigan ("PLICMI") (Compl. ¶¶ 12-13). Defendant Aspida Holdco, LLC ("Aspida") is a Delaware company that made a secured loan to GBIG and now seeks to force a sale of GBIG assets, including the PLICMI stock (*id.* ¶¶ 1, 14). On July 9, 2019, as a means for the orderly sale and transfer of PLICMI's ownership, PLICMI stipulated to an order placing itself into rehabilitation and appointing the Director of the Michigan Department of Insurance and Financial Services ("DIFS Director") as PLICMI's rehabilitator (*id.* ¶ 18). The DIFS Director submitted a Plan of Rehabilitation ("Rehabilitation Plan") to the 30th Judicial Circuit Court of Ingham County, Michigan ("Rehabilitation Court") which "proposes [PLICMI's] sale by its current owner GBIG Holdings, Inc., to a non-affiliated thirty party, Aspida Holdco, LLC" for an approximate purchase

price of $75 million (*id.* ¶ 19). The Rehabilitation Plan proposes to "consummate [PLICMI's] sale from [GBIG] to [Aspida] pursuant to the terms of the Stock Purchase Agreement" entered into between GBIG and Aspida prior to the rehabilitation proceeding (*id.* ¶ 20). The Stock Purchase Agreement (the "Purchase Agreement") is dated July 9, 2019 and was entered into by GBIG, as Seller, and Aspida, as Buyer (*id.* ¶ 21). The Purchase Agreement indicates GBIG's desire to sell to Aspida all of GBIG's issued and outstanding shares in PLICMI (*id.* ¶ 22). Closing on the Purchase Agreement may only occur on the last day of the month after all closing conditions are satisfied (*id.* ¶ 23). Contrary to that provision, Aspida moved the Rehabilitation Court to force closing on an emergency basis, claiming GBIG has unreasonably delayed (*id.* ¶ 24).

On July 9, 2019, the same day as a rehabilitation's commencement and the Purchase Agreement's execution, GBIG, as Borrower, and Aspida, as Lender, entered into a Loan Agreement (the "Loan") whereby Aspida agreed to advance a term loan to GBIG of $25 million, secured by a Pledge Agreement of even date wherein GBIG granted a security interest to Aspida in GBIG's stock in PLICMI (the "Pledged Shares") (Compl. ¶¶ 31-32). The Pledged Shares include the same stock in PLICMI that Aspida would purchase from GBIG pursuant to the Purchase Agreement (*id.* ¶¶ 32-33). The Pledge Agreement allows Aspida to exercise rights and remedies with respect to the Pledged Shares "if any Event of Default shall have occurred and is continuing," incorporating the definition of Default as used in the Loan Agreement (*id.* ¶¶ 35-36; Pledge Agreement, § 12(d)).

On June 15 and June 24, 2020, Aspida delivered Notices of Default to GBIG claiming that GBIG breached the Purchase Agreement by failing to use best efforts to close the deal, but without identifying the alleged default (*id.* ¶¶ 43, 45-46). In light of Aspida's posture, GBIG intends to exercise its right under the Loan Agreement to prepay the Loan at any time, seeking a refinancing of the Loan with another lender to effectuate payoff (*id.* ¶¶ 50-51). In response, Aspida filed a motion in the Rehabilitation Court seeking emergency relief in the form of specific performance of the Purchase Agreement, alleging that the refinancing would violate the agreement's terms (*id.* ¶¶ 53). On June 14, 2020, under "duress" of the Rehabilitation Court's order requiring closing to occur that day, GBIG exercised its right to terminate the Purchase Agreement (*id.* ¶¶ 57-58). Plaintiff alleges, in contradiction of its original complaint, that the Purchase Agreement becomes void and of no further effect upon termination (*id.* ¶ 60; Original Compl. ¶ 15 [Doc. No. 2]). The Loan Agreement defines an "Event of Default" to include the Purchase Agreement's termination

(Compl. ¶ 61). Plaintiff alleges that when the Rehabilitation Court ordered closing to occur on July 14, 2020, GBIG "was left with no choice but" to challenge the court's order and terminate the Purchase Agreement as forcing a closing would have been in violation of GBIG's "contractual" and "constitutional rights" (*id.* ¶¶ 62-63). Plaintiff alleges that Aspida will "imminently breach the parties' agreements" by proceeding to foreclose upon PLICMI's stock (*id.* ¶ 71). GBIG asserts four causes of action against Aspida including: (i) declaratory judgment, (ii) breach of the implied duty of good faith and fair dealing, (iii) injunction pursuant to NYUCC § 9-625, and (iv) permanent injunction.

II. ARGUMENTS

A. Defendant's Memorandum in Support

Defendant Aspida seeks either dismissal of the complaint or a stay of this matter for lack of subject matter jurisdiction, deference to the Michigan proceedings, and pursuant to the first-filed action rule (Def. Br. at 2-4 [Doc. No. 48]). First, defendant argues that New York's enactment of the Uniform Insurers Liquidation Act bar plaintiff's request to overturn the orders of the Michigan Rehabilitation Court, requiring this court to defer to the Michigan courts' jurisdiction (*id.* at 11; CPLR § 3211(a)(2); *see e.g. Ballard v HSBC Bank USA*, 6 NY3d 658, 663 [2006]). Defendant argues that UILA applies to any "delinquency proceeding," defined to include "any proceeding commenced against an insurer for the purpose of . . . rehabilitation . . . such insurer" (NY Ins. Law § 7408(b)(2); *G.C. Murphy Co. v Reserve Ins. Co.*, 54 NY2d 69, 77 [1981]; *Hala v Orange Reg'l Med. Ctr.*, 178 AD3d 151, 158 [2d Dept 2019]). As New York and Michigan have adopted statutory provisions substantively the same as the UILA, Michigan law meets the standard of reciprocity (Def. Br. at 11-12; *see* MCL §§ 500.8152-8157; NY Ins. Law §§ 7408-7414; *see e.g. MDOT v Am. Motorists Ins. Co.*, 305 Mich. App. 250, 254-256 [Ct App 2014]). Defendant argues the injunctive relief GBIG seeks here, if entered, would conflict with the Rehabilitation Court's orders and interfere with the Rehabilitation Court's administration of the PLICMI Rehabilitation Plan, as well as the Michigan Appellate Court's jurisdiction in GBIG's pending appeal (Def. Br. at 12). Defendant argues a principal purpose for the PLICMI rehabilitation proceedings is to separate ownership of PLICMI from GBIG and its owner Greg Lindberg (*id.* at 13; *see* Clarke Aff., Ex. 2). Defendant argues that the statutory deference espoused by the UILA cannot be overcome by a contractual forum selection clause (Def. Br. at 13; *see e.g. US Merch., Inc. v L & R Distribs., Inc.*, 122 AD3d 613, 614 [2d Dept 2014]). Defendant further argues that

principles of comity also require this action to be dismissed or stayed (Def. Br. at 14; *White Light Prods., Inc. v On the Scene Prods., Inc.*, 231 AD2d 90 [1st Dept 1997]; *Bank of Tokyo-Mitsubishi, Ltd., NY Branch v Kvaerner a.s.*, 243 AD2d 1, 9 [1st Dept 1998]; *Kelly v Overseas Invs., Inc.*, 24 AD2d 157, 161 [1st Dept 1965]).

Defendant next argues that the first-filed action rule also supports dismissal or stay of this matter in favor of the Michigan proceedings (CPLR 3211(a)(4); *Matter of Perception, Inc. (Vogelsong)*, 34 AD3d 1215, 1215 [4th Dept 2006]). To be subject to dismissal under the first-filed action rule, there need only be "substantial identity" between the parties in the two actions, the presence of additional parties in one action will not necessarily defeat a CPLR 3211(a)(4) action (Def. Br. at 15; *White Lights Prods, Inc.*, 231 AD2d at 93-94; *see JPMorgan Chase Bank, Nat'l Ass'n v Luxama*, 172 AD3d 1341, 1342 [2d Dept 2019]). The relief sought in each matter need not be identical but only "substantially the same" (*White Light Prods, Inc.*, 231 AD2d at 94). Courts also consider whether a dispute "has a significant nexus" with the non-New York jurisdiction (*AIG Fin. Prods. Corp. v Penncara Energy, LLC*, 83 AD3d 495, 496 [1st Dept 2011]). Here, defendant argues that: (i) the parties in these two matters have the same identity, (ii) the issues presented overlap to a significant degree with the issues raised in the Michigan Court of Appeals, (iii) the matters in dispute has a "significant nexus with" Michigan, and (iv) the Rehabilitation Proceedings were instituted almost a full year before this action was filed (Def. Br. at 15-17).

B. Plaintiff's Memorandum in Opposition

In opposition, plaintiff argues that this court has subject matter jurisdiction as defendant agreed to this jurisdiction in the Purchase Agreement which should be binding here (Pl. Br. at 5-7 [Doc. No. 66]; *Sterling Nat. Bank as Assignee of NorVergence, Inc. v Eastern Shipping Worldwide, Inc.*, 35 AD3d 222 [1st Dept 2006]; *LSPA Enterprise, Inc. v Jani-King of New York, Inc.*, 817 NYS2d 657, 658 [2d Dept 2006]; *ITEC, LLC v Hyperion V.O.F.*, 2008 NY Slip Op 32171(U), ¶ 7 [Sup Ct]). The Purchase Agreement contains a mandatory forum selection clause that defendant "irrevocably and unconditionally" submitted to (Purchase Agreement § 14.11(a)). Defendant knew PLICMI's rehabilitation would be overseen by Michigan courts when agreeing to this provision, and to rule otherwise would deprive this and other courts to determine matters related to the agreements at issue (Pl. Br. at 7). Plaintiff further argues that subject matter jurisdiction exists under New York law, stating that an action against a foreign corporation may be maintained if it

"arises out of or relates to any contract" for which "a choice of New York law has been made," and which the foreign corporation "agrees to submit to the jurisdiction of the courts of this state" (Pl Br. at 7-8; NY Gen. Oblig. 5-1402). Plaintiff argues that this court must permit parties to maintain an action pursuant to the Purchase Agreement for the choice of forum clause because the damages in controversy are in excess of $1,000,000 (Pl. Br. at 7-8; *Credit Francais Int'l, S.A. v Sociedad Financiera de Comercio, C.A.*, 128 Misc2d 564, 569 [Sup Ct 1985]; *see also DDR Real Estate Servs. v Burnham Pac. Props.*, 1 Misc3d 802, 804 [Sup Ct 2003]). Plaintiff argues there is no dispute that this suit arises out of a contract and that each Agreement relates to a transaction covering an amount exceeding $1,000,000 (Pl. Br. at 8; Def. Br. at 4; Compl. ¶¶ 31-32, 65). Because defendant consented to New York jurisdiction in the Agreements, GBIG can maintain an action here pursuant to 5-1402 (Pl. Br. at 8). Plaintiff further argues that this court also has subject matter jurisdiction under CPLR 1314(b) because defendant is a foreign corporation doing business or authorized to do business in this state (Pl. Br. at 9; CPLR § 1314(b); *see D&R Glob. Selections, S.L. v Bodega Olegario Falcon Pineiro*, 2017 NY Slip Op 04494, ¶¶ 2, 29 [2017]).

Plaintiff next argues that no other law or policy defeats subject matter jurisdiction here, beginning by arguing that the UILA does not apply (Pl. Br. at 10). PLICMI is not a "defunct insurer" or subject to claims of policy holders or creditors and, consequently, the UILA was not intended for PLICMI's Rehabilitation (*id.*). Plaintiff argues that UILA does not apply in situations like this where non-parties to the insurance proceeding have contractual disputes (*id.*; *see In Transit Cas. Co.*, 79 NY2d 13, 20 [1992]; *Crawford v Emp'rs Reinsurance Corp.*, 896 F Supp 1101, 1103 [WD Okla 1995]). Plaintiff argues the UILA does not grant exclusive jurisdiction over contractual disputes, even if those disputes are related to an insurer in rehabilitation (Pl. Br. at 11; *see e.g. State ex rel. Comm'r of Ins. v Eighth Judicial Dist. Court of Nev.*, 454 P3d 1260 [Nev 2019] [UILA did not prevent arbitration of a breach of contract and tort claims against third parties on behalf of the insurer because they were not the creditor's claim]). Plaintiff argues that, here, the contractual disputes between the parties, neither of whom are in rehabilitation are beyond the scope of the UILA (Pl. Br. at 11; Compl. ¶¶ 17-19). Plaintiff argues that, even if the UILA required recognition of the Michigan court's jurisdiction over the disposition of PLICMI's assets, the Rehabilitation Court lacks jurisdiction to interpret the contracts between GBIG and Aspida as PLICMI's stock is not an asset of PLICMI but of GBIG (Pl. Br. at 11-12). Plaintiff further argues that, even if the UILA applied, dismissal or a stay of this matter is not required as there is no law

mandating such (*id.* at 12). Plaintiff argues that Aspida has the burden to establish that New York has no subject matter jurisdiction over this case because of the UILA and that they have failed to do so (*id.* at 12-13; CPLR 3211(a)(4); *Hartnagel v FTW Contr.*, 147 AD3d 819, 820 [2017]).

Plaintiff next argues that the first-filed rule has no application here because the Rehabilitation is not a "first filed suit" under CPLR 3211(a)(4) (Pl. Br. at 13-15). The Rehabilitation of PLICMI does not meet the requirements of a "first-filed action" relative to this case as there is no "substantial identity of parties" between the two matters, the two matters are not "sufficient similar," nor do they seek the same relief (Pl. Br. at 13-15; CPLR § 3211(a)(4); *Nakazawa v Horowitz*, 50 AD3d 985, 986 [2d Dept 2008]). Neither GBIG nor Aspida is in rehabilitation and neither party is a plaintiff or defendant in the Rehabilitation (Pl. Br. at 13-14). Further, GBIG's suit against Aspida is not substantially similar because the matter here "alleges a breach of contract" (despite the fact that the amended complaint does not allege such as a cause of action) whereas the Rehabilitation is not adversarial and seeks relief in the form of regulatory approval for PLICMI's sale (Pl. Br. at 14-15; *see Kent Development Co. Inc. v Liccione*, 37 NY2d 899 [1975]). Plaintiff further argues that New York courts have enforced mandatory forum selection provisions even where a party has alleged that another first-filed case exists (Pl. Br. at 15-16; *see Posadas De P.R. Assocs., LLC v Condado Plaza Acquisition, LLC*, 2020 NY Slip Op 32176(U), ¶ 16 [Sup Ct]; *Somo Audience Corp. v Perloff*, No. 652354/2019, 2019 NYMisc LEXIS 7191, at *1 [Sup Ct 2019]).

Plaintiff also argues that principles of comity are inapposite here as the parties have agreed to jurisdiction in New York (Pl. Br. at 16-17; *Ehrlich-Bober & Co. v University of Houston*, 49 NY2d 574. 580 [1980]; *see also Crair v Brookdale Hosp. Med. Ctr., Cornell Univ.*, 94 NY2d 524, 528-529 [2000]). Even if principles of comity were applicable, the mandatory selection clauses in the Purchase Agreement, Loan Agreement, and Pledge Agreement require this court to exercise jurisdiction (Pl. Br. at 17). Plaintiff further argues that dismissal or stay based on comity would be improper as the current suit includes different parties, circumstances, and requested relief than the Rehabilitation (*id.*; *see Gen. Aniline & Film Corp. v Bayer Co.* 188 Misc 929, 935 [Sup Ct 1946]).

Finally, plaintiff argues that a potential for conflicting orders does not warrant stay or dismissal because Aspida agreed to jurisdiction in New York by executing the Agreements the same day that PLICMI was placed into Rehabilitation (Pl. Br. at 18; *see W.R. Grace & Co. v Local Union 759, Int'l Union of United Rubber*, 461 US 757, 770 [1983]). The fact that different

jurisdictions might enter conflicting orders is not a reason to warrant stay or dismissal because the parties are "not bound by the decision of the first court" as they are not parties to the Rehabilitation (Pl. Br. at 18-19; *see Hansberry v Lee*, 311 US 32, 40 [1940]; *Taylor v Sturgell*, 553 US 880, 893; *see also Phillips v Kidder, Peabody & Co.*, 750 F Supp 603, 606 [SD NY 1990]; *Alex Charts and Charts Ins. Assoc., Inc. v Nationwide Mutual Ins. Co.*, 16 F App'x 44, 46 [2d Cir 2001]).

C. Defendant's Reply

In reply, defendant argues that plaintiff's argument, that the forum selection clause vests exclusive jurisdiction to New York courts, is inapposite arguing that it is "axiomatic that a court cannot be divested of its subject matter jurisdiction by a contract" (Def. Reply at 3 [Doc. No. 67]; *Lischinskaya v Carnival Corp.* 56 AD3d 116, 122 [2d Dept 2008]). Contractual forum selection clauses do not implicate subject matter jurisdiction and that the court here can decide where it should enforce the provision "as a term of the contract between the parties" (Def. Reply at 3; *see CDR Creances S.A.S. v Cohen*, 77 AD3d 489, 491 [1st Dept 2010]). There are well establish reasons for New York courts to decline to enforce a contractual forum selection clause and one such reason, when enforcing such a provision would be in contravention of public policy, is triggered by New York's enactment of the UILA (Def. Reply at 4; *see e.g. Somerset Fine Home Bldg., Inc. v Simplex Indus., Inc.*, 185 AD3d 752 [2d Dept 2020]; *U.S. Merch. Inc. v L & R Distribs., Inc.*, 122 AD3d 613, 614 [2d Dept 2014]). Defendant reiterates that the UILA was enacted to provide a system for equitable administration of assets and liabilities of insurance companies in delinquency proceedings and, to achieve that end, the UILA mandates recognition of order issued by courts in reciprocal states in any insurer "delinquency proceeding" which is explicitly defined to include rehabilitation proceedings (Def. Reply at 4; *Matter of Levin v Nat'l Colonial Ins. Co.*, 1 NY3d 350, 356 [2004]; *Hala v Orange Reg'l Med. Ctr.*, 178 AD3d 151, 158 [2d Dept 2019]).

Defendant argues that the Appellate Division has applied this principal to recognize orders staying New York litigation against insurers in delinquency proceedings and delinquent insurer's policyholders (Def. Reply at 4; *Dambrot v REJ Long Beach, LLC*, 39 AD3d 797, 799 [2d Dept 2007]). GBIG is mistaken in contending that Michigan and New York are not reciprocal states because case law has contended that New York and Illinois, and Illinois and Michigan, are UILA reciprocal states so, consequently, New York and Michigan must be reciprocal states (Def. Reply at 5; *G.C. Murphy Co. v Reserve Ins. Co.*, 54 NY2d 69, 77; *MDOT v Am. Motorists Ins. Co.*, 305

Mich. App. 250, 254-256 [Ct App 2014]). Defendant argues that none of plaintiff's arguments against the UILA suggests a different result should apply here (Def. Reply at 5). That there is no statutory support for GBIG's assertion, that the UILA does not apply because PLICMI is not "defunct," as a "delinquency proceeding" under New York law includes any proceeding commenced against an insurer for the purpose of rehabilitation (Def. Reply at 5-6; Pl. Br. at 10; NY Ins. Law § 7508(b)(2)). Defendant further argues that plaintiff's arguments about the scope of UILA and its jurisdiction are inapposite as, ultimately, the UILA requires this court to recognize the Michigan Rehabilitation Court's orders including the June 25, 2020 order confirming PLICMI's Rehabilitation Plan and providing for the Michigan court's exclusive jurisdiction over the "taking of any action necessary to ensure the continued vitality and legality of the Stock Purchase Agreement, the transaction, the Plan, and this Order" (Def. Reply at 6; Clarke Aff., Ex. 6 ¶ N [Doc. No. 6]). Defendant argues that the contractual forum selection clauses on which plaintiff relies must yield to public policy under the circumstances here (Def. Reply at 6; *Matter of Levin*, 1 NY3d at 356).

Plaintiff cannot rely on the forum selection clauses to avoid application of comity as recognition of other states' delinquency proceedings was enacted in the UILA for the express purpose of "enlarging . . . the areas for the operation of interstate comity" (Def. Reply at 7-8; *Kelly v Overseas Invs., Inc.*, 24 AD2d 157, 161 [1st Dept 1965]). Plaintiff has failed to show why this court should ignore comity by wading into already pending issues in the Michigan courts at the risk of creating jurisdictional conflict (Def. Reply at 8; *see White Light Prods., Inc. v On the Scene Prods., Inc.*, 231 AD2d 90, 93 [1st Dept 1997]; *Bank of Tokyo Mitsubishi, Ltd., NY Branch v Kvaerner a.s.*, 243 AD2d 1, 9 [1st Dept 1998]).

III. DISCUSSION

CPLR 3211(a)(2) states that "a party may move for judgment dismissing one or more causes of action asserted against him on the ground that the court has not jurisdiction of the subject matter of the cause of action" (CPLR § 3211(a)(2)). Defendant's arguments regarding the Uniform Insurers Liquidation Act do not meet the burden required by CPLR 3211(a)(2). As defendant argues, the UILA "mandates recognition of orders issued by [] courts in reciprocal states" in any "delinquency proceeding," which is explicitly defined by statute to include rehabilitation proceedings (*Hala v Orange Reg'l Med. Ctr.*, 178 AD3d 151, 158 [2d Dept 2019]; *see also* NY Ins. Law § 7408(b)(2)). The Michigan Rehabilitation Court's June 25, 2020 Order states that "[t]he

Court will retain exclusive jurisdiction over this matter for all purposes necessary to effectuate and enforce its order, including this Order" (Clarke Aff., Ex. 6 ¶ N [Doc. No. 6]). The order included "the right to hear and determine all claims, controversies, disputes, and demands arising out of or relating to this Order and the Pavonia Entities' rehabilitation proceedings; and the taking of any action necessary to ensure the continued vitality and legality of the [Stock Purchase Agreement], the transaction, the Plan, and this Order" (*id.*). Although defendant's UILA argument at first appears to resolve this matter, plaintiff correctly notes that defendant has failed to establish that New York and Michigan are reciprocal states (Pl. Br. at 10 n 6). Defendant's logic, that because New York and Illinois are reciprocal and Illinois and Michigan are reciprocal New York and Michigan must be reciprocal, is unavailing. First, Michigan, New York, and Illinois each have different definitions as to what constitutes a "reciprocal state" under their respective insurance laws (*compare* NY Ins. Law § 7408(b)(6) *with* MCL 500.8103(l) *and* 215 ILCS 5/221.1(a)). Second, one of defendant's cases cited in support, *MDOT v American Motorists Insurance Company*, states that while Michigan had at one time explicitly enacted the UILA, it was repealed and simultaneously replaced by its current law (*see MDOT v Am. Motorists Ins. Co.*, 305 Mich App 250, 254 n 3 [2014]). Consequently, defendant's motion does not succeed pursuant to CPLR 3211(a)(2).

CPLR 3211(a)(4) states that "a party may move for judgment dismissing one or more causes of action asserted against him on the ground that there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires" (CPLR § 3211(a)(4)).

Here, defendant has carried its burden to show that, under the first-filed action rule espoused by CPLR 3211(a)(4), as: (i) plaintiff and defendant here are also "Interested Parties" to the rehabilitation proceedings who have meaningfully participated in those proceedings on appeal (Clarke Aff., Ex. 2 [Doc. No. 51]; Pace Declaration, Ex. A [Doc. No. 65]), and (ii) the issues raised in both matters overlap as both proceedings arise out of the same subject matter and concern the effectiveness of the Purchase Agreement as well as the contractual forum selection clauses in the agreements at issue (Pace Declaration, Ex. A at 13-19; Pl. Br. at 5-7, 11-12). Plaintiff's arguments against a stay pursuant to CPLR 3211(a)(4) are unavailing. First, plaintiff's argument that the two matters do not share a substantial identity of the parties because neither GBIG nor Aspida are "in

rehabilitation" is unavailing as both GBIG and Aspida stipulated to the designation as "Interested Parties" in the Michigan Rehabilitation and are currently opposed to each other on appeal (Clarke Aff., Ex. 2 [Doc. No. 51]; Pace Declaration, Ex. A [Doc. No. 65]). Plaintiff's argument that the issues raised in both matters are not "sufficiently similar" also fails as both matters concern the Purchase, Loan, and Pledge Agreements as well as the forum selection clause contained with the Agreements (Pace Declaration, Ex. A; Compl.).

Accordingly, it is hereby

ORDERED that the motion to dismiss is granted to the extent of staying further proceedings in this action, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon final determination of the action/proceeding known as *GBIG Holdings, Inc. v Fox, et al.*, pending before the State of Michigan Court of Appeals; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119) within ten days from entry and the Clerk shall mark this matter stayed as herein provided; and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

1/14/2021
DATE

O. PETER SHERWOOD, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED	[X]	NON-FINAL DISPOSITION	
APPLICATION:	[X]	GRANTED	[ ]	DENIED	[ ] GRANTED IN PART	[ ] OTHER
	[ ]	SETTLE ORDER	[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN	[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE