

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Law Offices of Michael R. Nevarez, A Professional Corporation v. Joe Jesse Monge; Rosana Elena Monge

700 F. App'x 354 (5th Cir. 2017) · No. 17-50319 · Decided November 2, 2017

SUMMARY

The Fifth Circuit considered an appeal from a district court order dismissing an appeal involving bankruptcy-court orders concerning arbitration and the automatic bankruptcy stay. The court granted the appellees' motion to dismiss because the district court had not yet considered the merits of the issues after consolidating related bankruptcy appeals, and it denied the appellant's motions for sanctions and to supplement the record.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per Curiam; Davis; Clement; Costa
JURISDICTION	Federal
DECIDED	November 2, 2017
DOCKET	17-50319
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the district court's dismissal of an appeal involving three interlocutory bankruptcy-court orders concerning arbitration and the automatic bankruptcy stay.
PRECEDENTIAL VALUE	Unpublished; nonprecedential except as permitted by 5th Cir. R. 47.5.4
PARTIES	Law Offices of Michael R. Nevarez, A Professional Corporation, doing business as The Nevarez Law Firm, P.C. v. Joe Jesse Monge, Rosana Elena Monge

TOPICS

appellate procedure interlocutory appeal arbitration automatic stay bankruptcy

PRACTICE AREAS

bankruptcy arbitration appellate procedure

QUESTIONS PRESENTED

1. Whether the Fifth Circuit should dismiss an appeal from the district court's dismissal of an action containing interlocutory bankruptcy orders when the district court consolidated that action with a separate action containing the bankruptcy court's final judgment but had not yet considered the merits of the interlocutory orders.
2. Whether the bankruptcy court's denial of a motion to stay pending arbitration was appealable under section 16 of the Federal Arbitration Act.

HOLDINGS

1. Dismissal of the appeal was appropriate because the district court had not yet had an opportunity to consider the merits of the issues in the consolidated proceedings, and none of the narrow statutory exceptions to the ordinary district-court appellate review scheme applied.
2. A bankruptcy court's decision denying a motion to stay pending arbitration is appealable under section 16 of the Federal Arbitration Act.

KEY QUOTATIONS

“Although Nevarez is correct that a bankruptcy court’s decision to deny a motion to stay is appealable and the district court here rendered final judgment, the district court has not had an opportunity to consider these issues because it consolidated the cases.” (at 356)

FACTUAL BACKGROUND

Joe and Rosana Monge retained the Law Offices of Michael R. Nevarez to pursue qui tam actions. After the Monges declared bankruptcy and Nevarez sued for unpaid legal fees, the Monges counterclaimed, asserting among other things that Nevarez's continued pursuit of the qui tam actions violated the automatic bankruptcy stay. Nevarez relied on an arbitration provision in the retainer agreement, but the bankruptcy court treated the automatic-stay claim as nonarbitrable.

PROCEDURAL HISTORY

The bankruptcy court entered three orders, including an order declining to compel arbitration of the Monges' automatic-stay claim and denying Nevarez's motion to stay pending arbitration. Nevarez appealed those orders to the district court. After the bankruptcy court entered a final judgment in a separate action, the district court consolidated the matters, dismissed the action containing the interlocutory orders, and stated that it would consider those orders in the separate action, which remained pending. Nevarez appealed the dismissal to the Fifth Circuit, and the appellees moved to dismiss.

DISPOSITION

dismissed

CASES CITED

- In re Nat'l Gypsum Co., 118 F.3d 1056, 1061 (5th Cir. 1997)

OPINION

PER CURIAM.

Case: 17-50319 Document: 00514221808 Page: 1 Date Filed: 11/02/2017 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals Fifth Circuit FILED No. 17-50319 November 2, 2017 Summary Calendar Lyle W. Cayce Clerk In The Matter of: JOE JESSE MONGE; ROSANA ELENA MONGE Debtor LAW OFFICES OF MICHAEL R. NEVAREZ, A Professional Corporation, doing business as The Nevarez Law Firm, P.C., Appellant v. JOE JESSE MONGE; ROSANA ELENA MONGE, Appellees Appeal from the United States District Court for the Western District of Texas USDC No. 3:16-CV-525 Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM: * Joe and Rosana Monge engaged the Law Offices of Michael R. Nevarez (“Nevarez”) to pursue various qui tam actions. Eventually, the Monges ran out * Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4. Case: 17-50319 Document: 00514221808 Page: 2 Date Filed: 11/02/2017 No. 17-50319 of money and declared bankruptcy.

Nevarez sued the Monges for unpaid legal bills. Upon discovering that Nevarez continued pursuing the qui tam actions without the Monges’ knowledge or consent, the Monges countersued in bankruptcy court and argued, inter alia, that Nevarez’s actions violated the automatic bankruptcy stay. Nevarez argued that their retainer agreement required arbitration of all of the Monges’ claims.

The bankruptcy court largely agreed, except as to the Monges’ claim that Nevarez’s continued pursuit of the qui tam actions violated the automatic bankruptcy stay. The bankruptcy court issued three orders to that effect.

In one of those orders, the bankruptcy court decided that the Monges’ claim that Nevarez’s continued pursuit of the qui tam actions was not arbitrable. Accordingly, the bankruptcy court denied Nevarez’s motion to stay pending arbitration. Nevarez appealed these three orders to the district court.

Before the district court ruled on that appeal, however, the bankruptcy court issued a final judgment on all issues between the Monges and Nevarez. Nevarez appealed the final judgment to the district court in a separate action.

Thus, there were two actions with nearly identical claims before the district court. The district court exercised its discretion under Federal Rule of Bankruptcy Procedure 8003(b)(2) to

consolidate the two lawsuits, and then it dismissed the appeal containing the three interlocutory orders and rendered final judgment in that action.

The district court stated it intended to consider those interlocutory orders in the separate action with the final judgment, which remains pending. Nevarez appealed the dismissed action to this court. The Monges moved to dismiss the appeal before this court because the district court has not yet had an opportunity to rule on the merits of the issues. Nevarez contends that the bankruptcy court's decision to decline staying the case until arbitration occurred, though interlocutory in nature, was appealable 2 Case: 17-50319 Document: 00514221808 Page: 3 Date Filed: 11/02/2017 No. 17-50319 in light of section 16 of the Federal Arbitration Act.

9 U.S.C. § 16(a)(1)(A); see *In re Nat'l Gypsum Co.*, 118 F.3d 1056, 1061 (5th Cir. 1997). Because the district court rendered final judgment in the action with the three interlocutory orders after consolidating the appeals, Nevarez contends dismissal is inappropriate here.

Although Nevarez is correct that a bankruptcy court's decision to deny a motion to stay is appealable and the district court here rendered final judgment, the district court has not had an opportunity to consider these issues because it consolidated the cases. Dismissal is consistent with the statutory scheme of district court appellate review of bankruptcy decisions that occurs except in narrow and statutorily specified circumstances—none of which applies here.

See 28 U.S.C. § 158(d)(2)(A). Because dismissal is appropriate, Nevarez's motion for sanctions fails. IT IS ORDERED that appellees' opposed motion to dismiss appeal is GRANTED. IT IS FURTHER ORDERED that appellant's motion for sanctions is DENIED. IT IS FURTHER ORDERED that appellant's motion to supplement the record is DENIED. 3