

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PRECEDENTIAL VALUE	Unpublished; nonprecedential except as permitted by 5th Cir. R. 47.5.4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)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/fifth-circuit/2017/law-offices-of-michael-r-nevarez-a-professional-corporation-1en17280>