FOURTH COURT OF APPEALS OF TEXAS AT SAN ANTONIO

Peacock Hospitality, Inc. d/b/a Holiday Inn Express-Burnet v. Bipin Patel, Mahadev, LLC, and Federal Deposit Insurance Corporation as receiver for First National Bank, N.A.

No. 04-13-00278-CV · No. No. 04-13-00278-CV · Decided December 23, 2014

SUMMARY

The Fourth Court of Appeals of Texas dismissed Peacock Hospitality's appeal against the FDIC for lack of jurisdiction after Peacock failed to take action within the statutory sixty-day period following disallowance of its claim. The court reinstated the remainder of the appeal against Bipin Patel and Mahadev, LLC and directed the clerk to set that portion for submission.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas at San Antonio
WRITING FOR THE COURT	Per curiam; Catherine Stone, Chief Justice; Patricia O. Alvarez, Justice; Luz Elena D. Chapa, Justice
JURISDICTION	Texas
DECIDED	December 23, 2014
DOCKET	No. 04-13-00278-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Peacock Hospitality appealed two summary judgments. After the FDIC was appointed receiver for First National Bank and Peacock failed to take action within the statutory sixty-day period after disallowance of its claim, the FDIC moved to dismiss the appeal as to itself.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is not otherwise specified in the opinion text.
PARTIES	Peacock Hospitality, Inc. d/b/a Holiday Inn Express-Burnet v. Bipin Patel, Mahadev, LLC, Federal Deposit Insurance Corporation as receiver for First National Bank, N.A.

TOPICS

appellate procedure · subject matter jurisdiction · civil procedure · commercial litigation

PRACTICE AREAS

Appellate procedure · Civil procedure · Banking and financial institutions · Commercial litigation

QUESTIONS PRESENTED

1. Whether the appeal against the FDIC had to be dismissed because Peacock failed to take action within sixty days after receiving notice that the FDIC had disallowed its claim.
2. Whether the court's indefinite stay required Peacock to take affirmative action to continue the appeal.

HOLDINGS

1. When a claimant fails to take action within the statutory sixty-day period to continue proceedings after the FDIC disallows its claim, the disallowance becomes final, the claimant has no further rights or remedies regarding the claim, and courts lack jurisdiction over that claim; accordingly, the appeal against the FDIC was dismissed.
2. When an appellate court stays proceedings pending further order of the court, thereby imposing an indefinite stay, the appellant must move to reinstate or otherwise take action to continue the appeal; the appeal does not automatically resume when a definite period expires.

KEY QUOTATIONS

> *"Because this court's stay order was of indefinite duration, Peacock was required to file a motion to reinstate or take some other action to continue the proceedings in the appeal."* (at 2)

> *"Because Peacock failed to take any action to continue this appeal within sixty days of its receipt of the FDIC's notice that its claim was disallowed, the appeal against the FDIC is dismissed."* (at 2)

FACTUAL BACKGROUND

Peacock Hospitality appealed summary judgments involving Bipin Patel, Mahadev, LLC, and First National Bank, N.A. During the appeal, the FDIC was appointed receiver for the bank, and Peacock's claim relating to the matter was subsequently disallowed. Peacock did not move to reinstate or otherwise continue the appeal within sixty days after receiving notice of the disallowance.

PROCEDURAL HISTORY

The Bexar County district court entered one summary judgment in favor of Bipin Patel and Mahadev, LLC and another in favor of First National Bank, N.A. Peacock timely appealed both judgments. During the appeal, the FDIC became receiver, obtained an automatic stay, and later moved to dismiss after Peacock failed to continue the appeal within sixty days of receiving notice that its claim had been disallowed. The court dismissed the appeal against the FDIC and reinstated the remainder of the appeal against Patel and Mahadev for submission.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

No remand was ordered. The appeal against the FDIC was dismissed, and the remainder of the appeal against Patel and Mahadev was reinstated on the appellate docket for submission.

CASES CITED

- Hanson v. F.D.I.C., 113 F.3d 866, 869-70 (8th Cir. 1997)
- Dougherty v. Deutsche Bank Nat. Co., No. 11-CV-0093, 2011 WL 3565079, at *6 (E.D. Penn. Aug. 12, 2011)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas MEMORANDUM OPINION No. 04-13-00278-CV PEACOCK HOSPITALITY, INC. d/b/a Holiday Inn Express-Burnet, Appellant v. Bipin PATEL, Mahadev, LLC, and Federal Deposit Insurance Corporation as receiver for First National Bank, N.A., Appellees From the 57th Judicial District Court, Bexar County, Texas Trial Court No. 2012-CI-04054 Honorable Janet P. Littlejohn, Judge Presiding PER CURIAM Sitting: Catherine Stone, Chief Justice Patricia O. Alvarez, Justice Luz Elena D. Chapa, Justice 1 Delivered and Filed: December 23, 2014 DISMISSED IN PART FOR LACK OF JURISDICTION This appeal arises from two summary judgments.

One summary judgment was granted in favor of Bipin Patel and Mahadev, LLC. The other summary judgment was granted in favor of First National Bank, N.A. Peacock Hospitality, Inc. d/b/a Holiday Inn Express-Burnet timely appealed both summary judgments in this appeal. 1 Not participating. 04-13-000278-CV On September 9, 2013, Peacock filed its brief, making the appellees' briefs due by October 9, 2013.

On September 18, 2013, appellee First National Bank, N.A. filed a motion for extension of time to file its brief which was granted, extending the deadline for filing the brief to November 8, 2013. Appellees Patel and Mahadev filed their brief on October 8, 2013.

On October 21, 2013, a motion was filed notifying this court that the Federal Deposit Insurance Corporation had been appointed as receiver for appellee First National Bank, N.A., and this court granted the request in the motion to substitute the FDIC in its capacity as receiver as appellee.

On October 31, 2013, the FDIC filed a motion for automatic stay pursuant to 12 U.S.C. § 1821(d)(12)(A), which imposes an automatic stay of judicial proceedings when the FDIC is appointed as a receiver. See 12 U.S.C. § 1821(d)(12)(A). By order dated November 1, 2013, this court granted the FDIC's motion and stayed all proceedings in the appeal "pending further order of this court." On April 22, 2014, the FDIC filed a motion to dismiss asserting that Peacock had failed to take any action to continue its appeal against the FDIC within sixty days of its receipt of notice that the FDIC had disallowed its claim relating to this matter.

See 12 U.S.C. § 1821(d)(6)(A)(ii). Where a claimant fails to take any action to continue its appeal within the sixty day deadline, the statute states the "disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim." Id. at § 1821(d)(6)(B)(ii).

Moreover, when the disallowance of a claim becomes final, no court has jurisdiction over the claim. Id. at § 1821(d)(13)(D); Hanson v. F.D.I.C., 113 F.3d 866, 869-70 (8th Cir. 1997). On May 1, 2014, Peacock filed a response to the motion, stating that it was not required to take any action because this court's stay only stayed the appeal for ninety days. Peacock contends that the appeal automatically continued on this court's docket at the conclusion of the ninety days without any action on its part.

See Dougherty v. Deutsche Bank Nat. Co., No. 11-CV-0093, 2011 -2- 04-13-000278-CV WL 3565079, at 6 (E.D. Penn. Aug. 12, 2011) (discussing cases distinguishing actions necessary to continue a case when the stay is of definite duration as opposed to indefinite duration).

We disagree because this court's prior order clearly stated that the appeal was stayed "pending further order of this court." Because this court's stay order was of indefinite duration, Peacock was required to file a motion to reinstate or take some other action to continue the proceedings in the appeal.

Because Peacock failed to take any action to continue this appeal within sixty days of its receipt of the FDIC's notice that its claim was disallowed, the appeal against the FDIC is dismissed. The remainder of the appeal is reinstated on the docket of this court, and the clerk of this court is directed to set Peacock's appeal against appellees Patel and Mahadev for submission.

PER CURIAM -3-