

FOURTEENTH COURT OF APPEALS OF TEXAS

Citibank N.A. as Trustee for NRZ Pass-Through Trust VI and Newrez LLC F/K/A New Penn Financial LLP D/B/A Shellpoint Mortgage Servicing v. Pechua, Inc.

Citibank v. Pechua · No. No. 14-19-00337-CV · Decided April 27, 2021

SUMMARY

In this concurring opinion, the Fourteenth Court of Appeals joins the court's holding that common-law tolling applies in the trial-court proceeding during the pendency of a bankruptcy automatic stay. The concurrence suggests that the Supreme Court of Texas promulgate a procedural rule addressing trial-court proceedings similar to Texas Rule of Appellate Procedure 8, because debtors may not ensure timely action after the stay terminates.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Charles A. Spain; Ken Wise; Jerry Bourliot
JURISDICTION	Texas
DECIDED	April 27, 2021
DOCKET	No. 14-19-00337-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the 215th District Court of Harris County, Texas, in which the Fourteenth Court of Appeals affirmed as modified.
PRECEDENTIAL VALUE	Published opinion; the extracted text is a concurring opinion.
PARTIES	Citibank N.A. as Trustee for NRZ Pass-Through Trust VI, Newrez LLC f/k/a New Penn Financial LLP d/b/a Shellpoint Mortgage Servicing v. Pechua, Inc.

TOPICS

[automatic stay](#) [appellate procedure](#) [bankruptcy](#) [civil procedure](#)

PRACTICE AREAS

[Bankruptcy](#) [Civil procedure](#) [Appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the bankruptcy automatic stay creates common-law tolling in a state trial-court proceeding.
2. Whether Texas should adopt a trial-court procedural rule comparable to Texas Rule of Appellate Procedure 8 to address proceedings affected by the bankruptcy automatic stay.

HOLDINGS

1. The court held that common-law tolling applies in this trial-court proceeding while the bankruptcy automatic stay is in effect.

KEY QUOTATIONS

“I join the court’s opinion and concur only to suggest the Supreme Court of Texas promulgate a Texas Rule of Civil Procedure like Texas Rule of Appellate Procedure 8.” (at 2)

“While I join the court in holding there is common-law tolling in this trial-court proceeding, there is an underlying problem that a debtor in bankruptcy is not likely to pay state trial-court counsel to monitor the bankruptcy proceeding and take timely action once the automatic stay in bankruptcy no longer applies.” (at 2)

FACTUAL BACKGROUND

The opinion concerns state-court proceedings affected by a debtor’s bankruptcy and the automatic stay under 11 U.S.C. § 362. The concurrence focuses on the problem of determining when the automatic stay no longer applies and how a debtor or counsel should take timely action in the trial court after the stay ends.

PROCEDURAL HISTORY

The case was appealed from the 215th District Court of Harris County in trial court cause number 2016-83417. The appellate court affirmed the judgment as modified. The concurrence addressed the effect of a bankruptcy automatic stay on state trial-court proceedings and appellate deadlines.

DISPOSITION

affirmed

CASES CITED

- Continental Casing Corp. v. Samedan Oil Corp., 751 S.W.2d 499, 501 (Tex. 1988)
- Chunn v. Chunn, 929 S.W.2d 490, 493 (Tex. App.—Houston [1st Dist.] 1996, order)
- Raley v. Lile, 861 S.W.2d 102, 104–05 (Tex. App.—Waco 1993, writ denied)
- Nautical Landings Marina, Inc. v. First Nat’l Bank, 791 S.W.2d 293, 296 (Tex. App.—Corpus Christi 1990, writ denied)

OPINION

PER CURIAM.

Affirmed as Modified and Opinion and Concurring Opinion filed April 27, 2021. In the Fourteenth Court of Appeals NO. 14-19-00337-CV CITIBANK N.A. AS TRUSTEE FOR NRZ PASS-THROUGH TRUST VI AND NEWREZ LLC F/K/A NEW PENN FINANCIAL LLP D/B/A SHELLPOINT MORTGAGE SERVICING, Appellants v. PECHUA, INC., Appellee On Appeal from the 215th District Court Harris County, Texas Trial Court Cause No. 2016-83417 CONCURRING OPINION I join the court's opinion and concur only to suggest the Supreme Court of Texas promulgate a Texas Rule of Civil Procedure like Texas Rule of Appellate Procedure 8.

Rule 8 was promulgated to resolve the issues with notices of appeals that were filed during the pendency of the title 18, United States Code, section 362 automatic stay in bankruptcy and the supreme court's caselaw that an action taken in violation of the automatic stay is void, not merely avoidable. 18 U.S.C. § 362; see *Continental Casing Corp. v. Samedan Oil Corp.*, 751 S.W.2d 499, 501 (Tex.

1988) (action taken in violation of automatic stay is void, not merely avoidable); *Chunn v. Chunn*, 929 S.W.2d 490, 493 (Tex. App.—Houston [1st Dist.] 1996, order), disp. on merits, No. 01-95-00202-CV, 1999 WL 626733 (Tex. App.—Houston [1st Dist.] Aug. 19, 1999, pet. denied) (judicial actions taken against debtor in violation of automatic stay are void, not avoidable); *Raley v. Lile*, 861 S.W.2d 102, 104–05 (Tex.

App.—Waco 1993, writ denied) (automatic bankruptcy stay does not toll appellate timetable); *Nautical Landings Marina, Inc. v. First Nat'l Bank*, 791 S.W.2d 293, 296 (Tex. App.—Corpus Christi 1990, writ denied) (appeal bond filed during pendency of stay was void).

Because caselaw had concluded there was no state law that tolled the filing of the notice of appeal and that title 18, United States Code, section 108(c)(2) provided the only extension of time, the supreme court promulgated Texas Rule of Appellate Procedure 8 to provide an explicit suspension of state-court appellate proceedings over and above the automatic stay in bankruptcy until “the appellate court reinstates or severs the appeal in accordance with federal law.” Tex. R. App.

P. 8.2; see 18 U.S.C. § 108(c)(2). While I join the court in holding there is common-law tolling in this trial-court proceeding, there is an underlying problem that a debtor in bankruptcy is not likely to pay state trial-court counsel to monitor the bankruptcy proceeding and take timely action once the automatic stay in bankruptcy no longer applies. This is a trap, and one that could be addressed in trial-court proceedings as it was in appellate proceedings with Rule 8. /s/ Charles A. Spain Justice Panel consists of Justices Wise, Bourliot, and Spain.

(Bourliot, J., majority.) 2

