

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

Cotter & Sons, Inc. et al. v. BJ Corporation d/b/a National Building Service

No. 04-16-00186-CV · No. No. 04-16-00186-CV · Decided November 15, 2017

SUMMARY

The Fourth Court of Appeals of Texas issued an order addressing a suggestion of bankruptcy filed by appellant Alamo Towers-Cotter, LLC. The court held that the appeal and applicable appellate deadlines were stayed under the automatic stay and Texas Rule of Appellate Procedure 8, and abated the appeal while treating it as administratively closed pending reinstatement.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	November 15, 2017
DOCKET	No. 04-16-00186-CV
DISPOSITION	other
PROCEDURAL POSTURE	Interlocutory appellate order abating the appeal after an appellant filed for bankruptcy.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Cotter & Sons, Inc., James F. Cotter, Alamo Towers-Cotter, LLC, Cotter 11211 Katy Freeway Building, LP, Cotter 7447 Harwin Building, LP, Cotter Equities LLC, Cotter Harwin Equities LLC, Cotter Katy Equities LLC, Cotter Katy Freeway Building, LP, Et Al. v. BJ Corporation d/b/a National Building Service

TOPICS

automatic stay

appellate procedure

bankruptcy

commercial litigation

PRACTICE AREAS

Appellate procedure

Bankruptcy

Civil procedure

Commercial litigation

QUESTIONS PRESENTED

1. Whether the filing of a bankruptcy petition automatically stayed the appeal and appellate deadlines.
2. Whether the appeal should be abated pending reinstatement under Texas Rule of Appellate Procedure 8.3.

HOLDINGS

1. The bankruptcy petition triggered an automatic stay of the appeal and all time periods under the Texas Rules of Appellate Procedure from the date the petition was filed.
2. The appeal was abated and administratively treated as a closed case unless and until reinstated in accordance with Texas Rule of Appellate Procedure 8.3.

KEY QUOTATIONS

“Accordingly, this appeal and all time periods under the Texas Rules of Appellate Procedure are stayed from the date the bankruptcy petition was filed in the bankruptcy court.” (Order)

“This appeal is ABATED. For administrative purposes, the appeal will be treated as a closed case unless and until it is reinstated in accordance with Rule 8.3 of the Texas Rules of Appellate Procedure.” (Order)

FACTUAL BACKGROUND

Appellant Alamo Towers-Cotter, LLC filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the Western District of Texas on November 6, 2017. The bankruptcy filing prompted a suggestion of bankruptcy in the pending appeal.

PROCEDURAL HISTORY

The appeal arose from the 438th Judicial District Court of Bexar County, Texas, trial court cause number 2012-CI-09427. After Alamo Towers-Cotter, LLC filed a voluntary bankruptcy petition, it filed a suggestion of bankruptcy in the appeal, and the court abated the appeal and stayed appellate deadlines.

DISPOSITION

other

REMAND INSTRUCTIONS

The appeal remains abated and administratively closed unless and until it is reinstated in accordance with Texas Rule of Appellate Procedure 8.3.

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas November 15, 2017 No. 04-16-00186-CV COTTER & SONS, INC.; James F. Cotter; Alamo Towers-Cotter, LLC; Cotter 11211 Katy Freeway

Building, LP; Cotter 7447 Harwin Building, LP; Cotter Equities LLC; Cotter Harwin Equities LLC; Cotter Katy Equities LLC; Cotter Katy Freeway Building, LP; Et Al., Appellants v. BJ CORPORATION D/B/A NATIONAL BUILDING SERVICE, Appellees From the 438th Judicial District Court, Bexar County, Texas Trial Court No. 2012-CI-09427 Honorable Gloria Saldana, Judge Presiding ORDER In this appeal, Appellant Alamo Towers—Cotter, LLC filed a suggestion of bankruptcy.

The suggestion discloses that Appellant filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the Western District of Texas under Case No. 17-52599-cag on November 6, 2017. See 11 U.S.C. § 362 (2012); TEX. R. APP. P. 8.1.

Accordingly, this appeal and all time periods under the Texas Rules of Appellate Procedure are stayed from the date the bankruptcy petition was filed in the bankruptcy court. See 11 U.S.C. § 362 (“Automatic stay”); TEX. R. APP. P. 8.2. This appeal is ABATED.

For administrative purposes, the appeal will be treated as a closed case unless and until it is reinstated in accordance with Rule 8.3 of the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 8.3. _____ Patricia O. Alvarez, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 15th day of November, 2017. _____ KEITH E. HOTTLE, Clerk of Court