

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Yigal Bosch v. Frost National Bank

494 F. App'x 463 (5th Cir. 2012) · No. 12-20135 · Decided October 10, 2012

SUMMARY

The Fifth Circuit affirmed the district court’s dismissal of Yigal Bosch’s appeal from several bankruptcy court orders and affirmed denial of reconsideration. The court held that some appeals were untimely and that dismissal of the remaining fee-order appeals was within the district court’s discretion because Bosch failed to comply with bankruptcy appellate-record requirements.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per curiam; Jolly; Benavides; Dennis
JURISDICTION	Federal
DECIDED	October 10, 2012
DOCKET	12-20135
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bosch appealed the district court's dismissal of his appeal from multiple bankruptcy court orders and the district court's denial of his motion for reconsideration.
STANDARD OF REVIEW	The court reviewed the district court's actions in its appellate role for abuse of discretion and reviewed questions of law, including jurisdictional questions, de novo.
PRECEDENTIAL VALUE	Unpublished and nonprecedential under 5th Cir. R. 47.5, subject to the limited exceptions in Rule 47.5.4.
PARTIES	Yigal Bosch v. Frost National Bank, YB & SJ Enterprises, Incorporated, Midland Western Building, L.L.C., Sheiness, Scott, Grossman & Cohn, L.L.P., Beirne, Maynard & Parsons, L.L.P., H. Miles Cohn, Esq., Trent L. Rosenthal, as the Former Chapter 11 Trustee of 2646 South Loop West Limited Partnership, Trent L. Rosenthal, P.L.L.C., as the Former Chief Restructuring Manager of 201-209 East Mulberry, L.L.C.

TOPICS

appellate jurisdiction

appellate procedure

bankruptcy

standard of review

reorganization

PRACTICE AREAS

Bankruptcy

Appellate Procedure

Commercial Litigation

QUESTIONS PRESENTED

1. Whether the district court had appellate jurisdiction over Bosch's challenges to the bankruptcy court's stay-modification order, confirmation order, and additional orders when Bosch filed his notice of appeal more than fourteen days after entry of those orders.
2. Whether the district court abused its discretion by dismissing Bosch's appeal from the fee orders for failure to comply with Federal Rule of Bankruptcy Procedure 8006 and failure to provide an adequate appellate record.
3. Whether the district court properly denied Bosch's motion for reconsideration.

HOLDINGS

1. A district court lacks appellate jurisdiction over a bankruptcy court order when the notice of appeal is not filed within the fourteen-day period required by Federal Rule of Bankruptcy Procedure 8002(a). Bosch's notice was untimely as to the challenged orders, so dismissal was proper.
2. A district court may dismiss a bankruptcy appeal when the appellant fails to comply with Federal Rule of Bankruptcy Procedure 8006, including the requirement to timely designate the record and provide necessary transcripts. The district court therefore acted within its discretion in dismissing Bosch's appeal from the fee orders.
3. The district court did not abuse its discretion in denying Bosch's motion for reconsideration.

KEY QUOTATIONS

"A district court lacks appellate jurisdiction when a notice of appeal is not timely filed." (at 3)

"The responsibility for providing an adequate record and insuring its timely transmittal rests squarely with appellant." (at 5)

FACTUAL BACKGROUND

2646 South Loop West Limited Partnership and three wholly owned subsidiaries filed separate bankruptcy cases, which the bankruptcy court consolidated on October 14, 2009. The bankruptcy court subsequently confirmed reorganization plans for 2646 and two subsidiaries and dismissed the bankruptcy case of the third subsidiary. Bosch, the principal partner of 2646, challenged orders modifying the automatic stay, confirming a reorganization plan, approving professional fees, appointing a trustee, and approving an unsecured claim.

PROCEDURAL HISTORY

The bankruptcy court consolidated the bankruptcy cases of 2646 South Loop West Limited Partnership and three subsidiaries, confirmed reorganization plans for three entities, and dismissed the case of the fourth. Bosch filed a

notice of appeal in the district court challenging a stay-modification order, a confirmation order, and three fee orders. The district court dismissed the appeal and denied reconsideration; the Fifth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Spencer Ad Hoc Equity v. Idearc, Inc. (In re Idearc, Inc.), 662 F.3d 315, 318 (5th Cir. 2011)
- Zer-Ilan v. Frankford (In re CPDC Inc.), 221 F.3d 693, 698-99 (5th Cir. 2000)
- Estate of Smith v. Comm'r, 429 F.3d 533, 537 (5th Cir. 2005)
- Arbuckle v. First Nat'l Bank of Oxford (In re Arbuckle), 988 F.2d 29, 32 (5th Cir. 1993)
- Robinson v. Robinson (In re Robinson), 640 F.2d 737, 738 (5th Cir. 1981)
- IRS v. Orr (In re Orr), 180 F.3d 656, 659 (5th Cir. 1999)
- M.A. Baheth & Co. v. Schott (In re M.A. Baheth Constr. Co.), 118 F.3d 1082, 1083-84 (5th Cir. 1997)
- Pyramid Mobile Homes, Inc. v. Speake, 531 F.2d 743, 745-46 (5th Cir. 1976)

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