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***Edwards v. Ghandour*, 123 Nev. Adv. Op. No. 14 (June 7, 2007)¹**

CIVIL LAW - CIVIL PROCEDURE

Summary

On October 22, 1998, Edwards and two of his business partners filed their original complaint. In the complaint, Edwards and his partners alleged they were fraudulently induced into leasing restaurant space and brought claims against eleven defendants. While counsel initially represented Edwards and his partners, the lawyer was forced to withdraw, after being disbarred.

In his amended complaint, Edwards, who was not authorized to practice law, named, on their behalf, both business partners. In fact, Edwards named one partner who wished to be removed. The district court ruled that the amended complaint would relate solely to Edwards and removed the business partners from the caption. The court later determined that the earlier complaint remained effective as to the business partners.

In March 2000, one of the defendants filed for federal bankruptcy protection. Thus, the automatic bankruptcy stay was commenced. One year later, in April 2001, the federal bankruptcy court entered an order granting the parties in Edwards' action relief from the bankruptcy stay. In June 2001, even though the automatic stay had by that time been lifted, the district court acknowledged the stay and ordered the proceedings in Edwards' action stayed until the bankruptcy court lifted the automatic stay. Edwards did not notify the district court that the automatic stay had been lifted until the court entered its own stay order.

In April 2002, not aware of the true status of the bankruptcy stay, the district court entered an order refusing to consider any further pleadings until the bankruptcy stay was lifted. Later, realizing its error, the district court entered an order rescinding its previous stay orders. In an attempt to compel the district court to void all pleadings and orders filed after the bankruptcy, Edwards filed a notice of bankruptcy petition and a motion to stay the district court proceedings. The court denied Edwards' motion.

In March 2004, the district court dismissed the action against the remaining defendants pursuant to the NRCP 41(e)² five-year rule. The trial had not commenced before the period expired, on October 22, 2003.

In April 2004, Edwards filed his notice of appeal from the district court's NRCP 41(e) dismissal order. Additionally, he filed a second complaint in the district court. This new complaint was nearly identical to his 1998 complaint. Therefore, the district court entered an order dismissing the second complaint, basing the dismissal on claim preclusion.

¹ By Jennifer Arias

² NEV. R. NEV. R. CIV. P. 41(e) (2000) provides in pertinent part:

Want of Prosecution...Any action heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced or to which it may be transferred on motion of any party, or on the court's own motion, after due notice to the parties, unless such action is brought to trial within five years after the plaintiff has filed his action, except where the parties have stipulated in writing that the time may be extended.

Issue and Disposition

Issue

1. Does a bankruptcy stay impact the running of NRCP 41(e)'s five-year period?
2. Does an appeal from a district court's final judgment affect that judgment's finality for purposes of claim preclusion?

Disposition

1. Yes, where a defendant files for bankruptcy protection, the bankruptcy operates to toll NRCP 41(e)'s five-year period for bringing an action to trial.
2. No, an appeal has no effect on a judgment's finality for purposes of claim preclusion.

Commentary

State of the law before *Edwards v. Ghandour*

Prior to *Edwards v. Ghandour*, the Nevada Supreme Court held in *Rickard v. Montgomery Ward & Co.*,³ that while the bankruptcy automatic stay is in effect, the five-year period under NRCP 41(e) is tolled. Also, NRCP 41(e) allows for an extension of the five-year period, if the parties so stipulate in writing. The five-year period is tolled during any period in which the court-ordered stay prevents a plaintiff from prosecuting his or her case. In *Boren v. City of North Las Vegas*,⁴ the court first adopted the rule that any period during which parties are prevented from bringing an action to trial by reason of a court-ordered stay shall not be computed in determining the five-year period pursuant to Rule 41(e). In *Rickard*, the court extended the *Boren* reasoning to cases involving federal bankruptcy automatic stays.

Regarding claim preclusion, Nevada law has conformed to federal law in that an appeal does not affect a final judgment for purposes of claim preclusion. The court agreed with *Reed v. Allen*,⁵ in which the United State Supreme Court acknowledged that the purpose of claim preclusion would be compromised if a judgment, subject to an appeal, lost its preclusive effect.

Effect of *Edwards v. Ghandour*

The Nevada Supreme Court reaffirmed its holding in *Rickard v. Montgomery Ward & Co.*,⁶ that while the bankruptcy automatic stay is in effect, the five-year period under NRCP 41(e) is tolled. The automatic stay applies only to actions against the debtor defendants, and not to non-debtor co-defendants. Consequently, the court clarified that the automatic stay's tolling effect only applies to the particular defendant who is engaged

³ *Rickard v. Montgomery Ward & Co.*, 120 Nev. 493, 96 P.3d 743 (2004).

⁴ *Boren v. City of North Las Vegas*, 98 Nev. 5, 638 P.2d 404 (1982).

⁵ *Reed v. Allen*, 286 U.S 191 (1932).

⁶ *Rickard*, 120 Nev. 493.

in the bankruptcy proceedings. Therefore, unless the trial judge separately stays the plaintiff's action with respect to non-debtor defendants, the action may proceed against those defendants, and the five-year period continues to advance.

Conclusion

The Nevada Supreme Court reaffirmed its holding in *Rickard* in that one defendant's bankruptcy filing generally will not serve to stay an action with respect to other defendants. The NRC 41(e) period is tolled only as to the defendant who has sought bankruptcy protection, for the duration of the automatic bankruptcy stay, unless the federal bankruptcy court, in its discretion, extends the automatic stay to others or the trial court enters a separate stay that pertains to the entire action. In addition, the court concluded that Edwards's appeal from the NRC 41(e) dismissal order did not impact that order's preclusive effect.