Stay Pending Appeal
FRCP 62(c)
FRBP 7062
FRBP 8005

Grassmueck v. Liberty Northwest Ins. Co. Dist. Court # 96-6176
In re U & R Express, Inc., Case No. 693-62125-fra7
Adv. # 95-6035-aer

8/16/96 Judge Hogan Unpublished
(reversing J. Radcliffe-no underlying written opinion)

History: The case was filed as a Chapter 11. The Bankruptcy Court entered an order extending DIP's worker's comp coverage for 60 days from the filing date. During the 60 days, 13 worker's comp claims were filed against DIP. The insurer, Liberty Northwest, moved for leave to appeal the Court's ruling extending coverage. DIP opposed the Motion on the ground that the appeal would be moot because the District Court would not have time to rule on the appeal before the 60 day extension expired. The Motion for leave to appeal was granted. However Liberty did not seek a stay pending appeal.

Approximately 9 months after the Bankruptcy Court's order was entered, the District Court reversed. The State of Oregon then took steps to hold the DIP's principals personally liable on the worker's comp claims. The case was subsequently converted to Chapter 7.

Current Case: The Chapter 7 Trustee filed the current adversary seeking a declaration that Liberty is obligated to provide coverage during the 60 day period in question because it had not sought a stay of the Bankruptcy Court's order pending the prior appeal. The Bankruptcy Court granted summary judgment in favor of Liberty. Debtor's principals appealed. The District Court reversed, holding that unless a stay pending appeal is requested and obtained, a lower court's order is effective until and unless it is overturned on appeal. Because Liberty did not request a stay, the Bankruptcy Court's order extending coverage governed during the pendency of the appeal of that order.

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

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CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
EUGENE DIVISION

BY _____

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

In re U & R EXPRESS, INC., Debtor	Bankruptcy Case No. 693-62125-fra7
MICHAEL GRASSMUECK, INC., Plaintiff, v. LIBERTY NORTHWEST INSURANCE CORPORATION, a Massachusetts insurance company, authorized to do business in Oregon, Defendant.	Adversary Proceeding No. 695-6035-fra District Court No. 96-6176 ORDER
MICHAEL CORBETT and FRANK CAROTHERS, Appellants, v. LIBERTY NORTHWEST INSURANCE CORPORATION, a Massachusetts insurance company, authorized to do business in Oregon, Respondent.	

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E96-11(8) 37

HOGAN, J.

Michael Corbett and Frank Carothers (appellants), president and vice president of the debtor corporation, U & R Express, Inc. (U & R), respectively, appeal a decision of the bankruptcy judge that U & R did not have workers' compensation insurance coverage during the period after United States Bankruptcy Judge Albert Radcliffe ordered such coverage extended but before this court ruled that such coverage may not be extended.

Facts

U & R filed for Chapter 11 bankruptcy on May 21, 1993. The company's existing workers' compensation insurance with respondent Liberty Northwest Insurance Corporation (Liberty) was due to expire two days later on May 23, 1993. U & R filed a motion requesting the bankruptcy court to enter an order preventing cancellation of workers' compensation insurance and extending coverage for 60 days beginning on the date the bankruptcy petition was filed. Judge Radcliffe granted the ex parte order but allowed Liberty to file a motion for reconsideration. Liberty subsequently filed such a motion but Judge Radcliffe denied it and ruled that the court's previous order would remain in effect.

On June 22, 1993, Liberty filed a motion for leave to appeal both the order preventing cancellation of insurance and the order denying Liberty's motion for reconsideration.

Liberty did not seek a stay of either of those orders pending appeal.

U & R opposed Liberty's motion for leave to appeal on the ground that it was moot since this court would not have time to rule on the appeal before the 60-day extension of coverage expired. The motion for leave to appeal was granted by minute order below and by minute order in this court.

During the 60-day period 13 workers' compensation claims were filed against U & R. Liberty denied coverage. U & R sought an order from Judge Radcliffe directing Liberty to show cause why it should not be held in contempt. At the hearing, however, the issue was not discussed; instead, the proceeding focused on Liberty's objection to U & R's counsel based on a perceived conflict of interest. As a consequence of the objection U & R's counsel withdrew and the debtor company retained new counsel. The motion to have Liberty held in contempt was never ruled on.

Liberty entered into an agreement with the Department of Insurance and Finance whereby Liberty agreed to process the pending claims if the Department would allow Liberty to cease processing those claims and obtain reimbursement from SAIF for all expended claims costs in the event that Liberty prevailed on appeal. U & R was not a party to the Liberty-Department agreement, but it appears U & R did have notice of this arrangement.

On April 20, 1994, roughly nine months after the expiration of the 60-day coverage extension, this court issued an order reversing the bankruptcy court's order extending coverage.

As a result of this court's ruling the state took steps to hold Corbett and Carothers personally liable, as "noncomplying employers" under ORS 656.735, for all penalties, claims costs, attorneys fees and related costs arising out of the claims filed during the 60 day period. Those costs are in excess of $60,000. The U & R bankruptcy was converted from Chapter 11 to Chapter 7, and the trustee of the Chapter 7 estate filed an adversary proceeding in bankruptcy court seeking a declaration that Liberty was obligated to provide coverage for the 60-day period following the date the petition was filed, on the ground that Liberty had neither requested nor obtained a stay of the order extending coverage pending appeal. (By this time all claims made during the 60-day period had apparently been processed to completion). The trustee and Liberty filed cross motions for summary judgment. Judge Radcliffe denied the trustee's motion and granted Liberty's motion, finding that to rule that Liberty was obligated to provide coverage during the 60-day period would be to "ignore Judge Hogan's order, reversing it, and in essence, reinstate the earlier order or, in essence, to put it another way, to say that Judge Hogan's order reversing this court is a nullity, it

doesn't make any difference because there was no stay pending appeal obtained." Tr. of Dec. 13, 1995, proceedings, p. 10. The trustee did not appeal. Corbett and Carothers, president and vice president of U & R, appeal; this court has already ruled that as aggrieved persons they have standing to appeal Judge Radcliffe's ruling denying the trustee's declaratory judgment action.

Discussion

The stay of an order pending appeal is governed by Fed. R. Civ. P. 62 which provides, in part:

> **(c) Injunction Pending Appeal.** When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Bankruptcy Rule 7062 makes Rule 62 applicable in adversary proceedings, and Bankruptcy Rule 9014 makes Rule 62 applicable in all contested matters raised by motions. Bankruptcy Rule 8005 also governs stays pending appeal in bankruptcy cases. That rule provides, in pertinent part, that

> notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel [to condition a stay], the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest.

The purpose of a stay pending appeal is of course to preserve the *status quo* until the appellate court makes a

decision. It is axiomatic that the onus is on the nonprevailing party to request a stay pending appeal; the prevailing party, having achieved a favorable ruling, has no interest in requesting a stay of that ruling.

Appellants' position is basically that since Liberty did not request a stay pending appeal of Judge Radcliffe's order extending coverage that order was in full effect and governed the rights of the parties up to the time this court reversed Judge Radcliffe.

This court agrees. Appellants had a right to rely on the bankruptcy court's order that U & R had workers' compensation insurance. The burden was on Liberty, as the nonprevailing party, not U & R, to request a stay. Liberty could have done so but did not, instead choosing to cut a deal with the Department of Insurance and Finance. Unless a stay pending appeal is requested and obtained, a lower court's order is effective until and unless it is overturned on appeal. Western Lighting Corp. v. Smoot-Holman, Inc., 352 F.2d 1019 (9th Cir. 1965).

Since Liberty did not request a stay, Judge Radcliffe's order extending coverage governs during the pendency of the appeal of that order.

Conclusion

The decision of the bankruptcy court denying the trustee's motion for summary judgment and granting Liberty's motion for summary judgment in the declaratory judgment

action is REVERSED and this case is REMANDED for entry of disposition consistent with this order.

IT IS SO ORDERED.

DATED this 16th day of August, 1996.

Michael R. Hogan
UNITED STATES DISTRICT JUDGE

FILED
& Entered
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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
EUGENE, OREGON
BY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL CORBETT,
FRANK CAROTHERS

Appellants,

v. **Civil No. 96-6176-HO**

LIBERTY NORTHWEST INS. CORP

Appellee.

JUDGMENT

The decision of the bankruptcy court denying the trustee's motion for summary judgment and granting Liberty's motion for summary judgment in the declaratory judgment action is reversed and this case is remanded for entry of disposition consistent with the order.

Dated: August 21, 1996.

Donald M. Cinnamond, Clerk

by Lea Force
Lea Force, Deputy