

**IN THE SUPREME COURT OF THE STATE OF MONTANA
CASE NO. DA 07-0281**

THE STATE OF MONTANA, ACTING BY AND THROUGH THE MONTANA
DEPARTMENT OF TRANSPORTATION,

Appellant,

vs.

SKYLINE BROADCASTERS, INC., a Montana Corporation; JOHN P. STOKES;
Z-600 INC., a Montana Corporation; QUESTA RESOURCES, INC. a Montana
Corporation; WILLIAM E. MYTTY; SANDRA F. MYTTY; QUALITY SUPPLY,
INC. PROFIT SHARING PLAN AND TRUST; DOUGLAS S. HADNOT; J.
CHRISS CRAWFORD; MYRNA K. CRAWFORD; STEPHEN S. ELLIS, M.D.,
P.C., EMPLOYEES AMENDED AND RESTATED PENSION PLAN; and
THOMAS H. BOONE, TRUSTEE OF THE BOONE KARLBERG EMPLOYEES
PROFIT SHARING TRUST,

Respondents and Cross-Appellants.

On Appeal from Montana's Eleventh Judicial District Court,
Flathead County, Cause No. DV-01-032(B)
Honorable Katherine R. Curtis, District Judge

CROSS-APPELLANTS' STATUS REPORT

APPEARANCES:

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FILED

MAR 30 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

BACKGROUND

On March 4, 2009, John Patrick Stokes, one of the defendants in this case, filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (Case No. 09-60265) with the United States Bankruptcy Court for the District of Montana.

By Order dated March 18, 2009, this Court ordered the parties to this appeal to prepare, file and serve written status reports advising whether the automatic stay provision of the Bankruptcy Code applies to this appeal.

Cross-Appellants William & Sandra Mytty, Quality Supply, Inc. Profit Sharing Plan & Trust, Douglas S. Hadnot, Chriss & Myrna Crawford, Stephen S. Ellis, M.D., P.C., Employees Amended & Restated Pension Plan, and Boone Karlberg Employees Profit Sharing Trust (hereinafter, "the Lenders") provide the following report:

ARGUMENT

The automatic stay applies to all issues on appeal in this case except for the issue of whether the District Court erred by imposing joint and several liability against the Lenders for the amounts withdrawn by the landowners in excess of the final condemnation award amount (the "excess withdrawal issue").

There are four issues on appeal in this case:

1. DID THE DISTRICT COURT ERR IN AWARDING ATTORNEY FEES AT THE RATE OF \$250/HOUR FOR WADE J. DAHOOD'S SERVICES?

2. DID THE DISTRICT COURT ERR IN CONCLUDING THAT THE PROPER TREATMENT OF THE MAY, 2004, STIPULATION IS TO SETOFF \$30,000 FROM THE TOTAL ATTORNEY FEE AWARD?

3. DID THE DISTRICT COURT ERR IN RULING JOINT AND SEVERAL LIABILITY TO INCLUDE THE SECURED CREDITORS FOR OVERAGE JUDGMENT?

4. DID THE DISTRICT COURT ERR IN ITS CALCULATION OF THE FINAL JUDGMENT AMOUNT?

(Cross-Appellants' Combined Brief, pg. 1.)

All of the above issues, except for Issue 3 relating to the excess withdrawn, are intertwined with litigating the final judgment amount to be entered against Debtor John Stokes and are therefore stayed by his bankruptcy filing under 11 U.S.C. §362(a). Any stay would remain in place until such time relief is obtained from the Bankruptcy Court.

Under 11 U.S.C. § 362(a), the commencement of a case under the Bankruptcy Code stays all judicial proceedings against a debtor or property of the estate which could have been brought before the commencement of the case, except in those cases specifically enumerated in § 362(b)¹. *In re Tucson Estates*,

¹ 11 U.S.C. §362(b) establishes several exceptions to the automatic stay, none of which appear to apply to these facts. The governmental powers exceptions contained in subsections (b)(4) and (b)(5) deal with "police or regulatory power", which are not at issue in our case. *See, Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 591 (9th Cir.1993).

Inc., 912 F.2d 1162, 1166 (9th Cir.1990) (“[a] bankruptcy filing imposes an automatic stay of all litigation against the debtor.”). The automatic stay provision “is designed to effect an immediate freeze of the *status quo* by precluding and nullifying post-petition actions, judicial or nonjudicial, in nonbankruptcy fora against the debtor or affecting the property of the estate.” *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir.1993). The importance of the automatic stay is discussed in the legislative history of § 362:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R.Rep. No. 95-595, 95th Cong. 1st Sess. 340-42 (1977); S.Rep. No. 95-989, 95th Cong., 2d Sess. 54-55 (1978); *reprinted in* 1978 U.S.Code Cong. & Admin.News 5787 at 5840-41 and 6296-97.

Here, the automatic stay of 11 U.S.C. §362(a) applies to all the issues on appeal in this case, except for the excess withdrawal issue, since those issues will determine the final judgment amount against Debtor John P. Stokes which is the basis for any claim by Montana Department of Transportation against Debtor John P. Stokes.


The only issue in this case that does not relate to Debtor John P. Stokes or the property of his bankruptcy estate is whether the District Court erred in ruling that these secured creditors were jointly and severally liable for the amounts withdrawn by the landowners in excess of the final condemnation award. The automatic stay only extends to the Debtor and the property belonging to the bankruptcy estate and not to matters involving non-debtors. *In re Kalispell Feed and Grain Supply, Inc.* 55 B.R. 627 (Bkrcty.D.Mont. 1985)(held automatic stay provisions of §362(a) were not available to non-debtor guarantors); *Schmidt v. Jomac, Inc.* (1982), 196 Mont. 323, 639 P.2d 517 (automatic stay does not apply to an individual not in bankruptcy or to a codebtor not in bankruptcy).

Here, the excess withdrawal issue does not affect the determination of any final judgment amount to be claimed against Debtor John P. Stokes and it has nothing to do with property belonging to his bankruptcy estate. These Lenders raised the excess withdrawal issue in their cross-appeal against Montana Department of Transportation and it only concerns whether joint and several liability for excess amounts withdrawn extends to these cross-appellants, the Lenders. Since the excess withdrawal issue has nothing to do with Debtor John Stokes or property belonging to his bankruptcy estate, the automatic stay does not apply to it.

CONCLUSION

The stay applies to the appellate issues related to amounts claimed against Debtor John Stokes (i.e., \$250/hour attorney fee award, treatment of the May, 2004 stipulation, calculation of the final judgment amount), but does not apply to the issue of whether the District Court erred by imposing joint and several liability against these secured creditors for the excess amounts withdrawn.

DATED this 26th day of March, 2009.



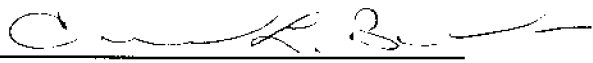
Christy L. Brandon
Attorney for Cross-Appellants Myttys et al.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2009, I caused a true and correct copy of the foregoing CROSS-APPELLANTS' STATUS REPORT to be served by first class mail with postage prepaid and addressed to the following:

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