

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN SCIARA, AN INDIVIDUAL,
AND DERVATIVELY ON BEHALF OF
CAPFUND ENTERPRISES, INC., A
CORPORATION; AND CAPFUND
ENTERPRISES, INC., A
CORPORATION,

Appellants,

vs.

MICAMP SOLUTIONS, LLC, A
LIMITED LIABILITY COMPANY; AND
MICAMP HOLDINGS, LLC, A LIMITED
LIABILITY COMPANY,

Respondents.

MICAMP SOLUTIONS, LLC, A
LIMITED LIABILITY COMPANY; AND
MICAMP HOLDINGS, LLC, A LIMITED
LIABILITY COMPANY,

Appellants/Cross-Respondents,

vs.

BRIAN SCIARA, AN INDIVIDUAL,
AND DERVATIVELY ON BEHALF OF
CAPFUND ENTERPRISES, INC., A
CORPORATION; AND CAPFUND
ENTERPRISES, INC., A
CORPORATION,

Respondents/Cross-Appellants.

✓ No. 84458

FILED

APR 26 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 84968

ORDER

These are consolidated appeals, consisting of an appeal from a district court order granting summary judgment (No. 84458) and an appeal and cross-appeal from a district court order granting a motion for attorney fees (No. 84968). Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

MiCamp Solutions, LLC and MiCamp Holdings, LLC (MiCamp) have filed an unopposed motion to substitute MiCamp as the real parties in interest with regard to the appeals brought by Brian Sciara and Capfund Enterprises, Inc. currently before this Court and to voluntarily dismiss those appeals pursuant to NRAP 42(b) on the grounds MiCamp acquired the rights to Sciara and Capfund's remaining underlying claims and appeals at a sheriff's auction and sale conducted in execution of judgment.

Sciara and Capfund brought action against MiCamp for conversion, civil conspiracy, unjust enrichment, and violations of Nevada RICO statutes, as well as shareholder derivative claims and shareholder direct claims. The district court granted summary judgment for MiCamp and ordered Sciara and Capfund to pay MiCamp's attorney fees as sanctions pursuant to NRS 18.010(2)(b). Sciara and Capfund appealed the judgment and the fee award, but their motion and petition for writ of supersedeas to stay enforcement of the judgment was denied. Subsequently, while the appeal was pending, MiCamp obtained a writ of execution and executed against Sciara and Capfund's property, including:

All claims for relief, causes of action, things in action, and choses in action against anyone in any lawsuit pending in the State of Nevada, including, but not limited to, Eighth Judicial District Court Case No. A-20-824100-B and Nevada Supreme Court Case No. 84458, as well as any and all rights of Brian Sciara and Capfund Enterprises, Inc. in any action pending in the United States District Court, District of Nevada, including, but not limited to, Case No. 2:18-cv-01700-DJA

Nevada law permits a party to acquire the rights to claims. *Gallegos v. Malco Enters. of Nev., Inc.*, 127 Nev. 579, 582, 255 P.3d 1287, 1289 (2011) (“[R]ights of action held by a judgment debtor are personal property subject to execution in satisfaction of a judgment.”). While non-

assignable claims are exempt, claims seeking recovery for injury to property or pecuniary loss are generally assignable. *Reynolds v. Tufenkjian*, 136 Nev. 145, 151-53, 461 P.3d 147, 153-54 (2020). Moreover, Nevada’s general policy is that a statute specifying property that is liable to execution “must be liberally construed for the benefit of creditors.” *Sportsco Enters. v. Morris*, 112 Nev. 625, 630, 917 P.2d 934, 937 (1996) (citing 33 C.J.S. *Executions* § 18 (1942)). Accordingly, nothing in Nevada law precludes MiCamp’s acquisition of Sciara and Capfund’s appeal rights.

Having purchased Sciara and Capfund’s appeal rights, MiCamp now, for all intents and purposes, holds Sciara and Capfund’s position in regard to their appeals. Therefore, the unopposed motion to substitute is granted. NRAP 43(b). The clerk shall substitute MiCamp in place of Sciara and Capfund in their appeals. MiCamp’s unopposed motion to dismiss is granted. The appeal in No. 84458 and the cross-appeal in No. 84968 are dismissed. NRAP 42(b).

On August 4, 2023, Sciara filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code. The filing of a bankruptcy petition operates to stay, automatically, the “continuation” of any “judicial . . . action . . . against the debtor.” 11 U.S.C. § 362(a)(1). An appeal, for purposes of the automatic stay, is considered a continuation of the action in the trial court. Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. *See Ingersoll-Rand Fin. Corp. v. Miller Mining Co.*, 817 F.2d 1424, 1427 (9th Cir. 1987). However, in this case, Sciara was the plaintiff in the underlying trial court action. “A plaintiff’s bankruptcy petition generally does not implicate the bankruptcy automatic stay because the bankruptcy stay applies to actions ‘against the debtor,’ not actions *by* a debtor.” *Edwards v.*

Ghandour, 123 Nev. 105, 111, 159 P.3d 1086, 1090 (2007), *abrogated on other grounds by Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008).

However, a motion for attorney fees, which is the subject of the appeal in No. 84968, is treated as a separate action against the plaintiff bankruptcy debtor, and therefore the appeal of the order granting attorney fees in No. 84968 is subject to the automatic stay as to Sciara. *See Alpern v. Lieb*, 11 F.3d 689, 690 (7th Cir. 1993) (treating defendants' motion for NRCP 11 attorney fees as a separate action against the plaintiff bankruptcy debtor, but holding the stay inapplicable because actions brought pursuant to governmental police or regulatory powers are statutorily exempt from the stay); *Wolgast v. Richards*, 463 B.R. 445, 450 (E.D. Mich. 2012) (concluding that a motion seeking attorney fees from a debtor-plaintiff is automatically stayed under 11 U.S.C. § 362(a)(1)); *Roach v. First Nat'l Bank of Anchorage*, 636 P.2d 608, 614 (Alaska 1981) (construing defendant's application for fees and costs as a proceeding against the plaintiff bankruptcy debtor covered by the automatic stay), *modified on reh'g* by 643 P.2d 690 (1982). However, the automatic stay only applies to the debtor, and, therefore, the stay does not apply to Capfund. *Edwards*, 123 Nev. at 108, 159 P.3d at 1088 (explaining that the automatic stay applies only to actions against the debtor defendant, not nondebtor codefendants).

Given the applicability of the automatic stay to the appeal in No. 84968 as it relates to Sciara, the appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if the appeal in No. 84968 is dismissed without prejudice as to Sciara only. Because a dismissal without prejudice will not require this court to reach

the merits of the appeal and is not inconsistent with the primary purpose of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that such dismissal will not violate the bankruptcy stay. See *Indep. Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 966 F.2d 457, 459 (9th Cir. 1992) (holding that the automatic stay does not preclude dismissal of an appeal so long as dismissal is “consistent with the purpose of the statute [11 U.S.C. § 362(a)]”); *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 756 (9th Cir. 1995) (holding that a post-bankruptcy petition dismissal will violate the automatic stay “where the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case”). Therefore, we dismiss the appeal in No. 84968 as to Sciara only. This dismissal is without prejudice to the parties’ right to move for reinstatement of the appeal within 60 days of any order either lifting the bankruptcy stay or concluding the bankruptcy proceedings, if such a motion is deemed appropriate at that time.

MiCamp’s appeal of the district court order granting attorney fees (No. 84968) may proceed as to Capfund only. Briefing of that appeal has been completed.

It is so ORDERED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Susan Johnson, District Judge
Stephen E. Haberfeld, Settlement Judge
Brian Sciara
Capfund Enterprises, Inc.
Farhang & Medcoff
Prince Law Group
Holland & Hart LLP/Las Vegas
Whitmire Law, PLLC
Fabian VanCott
Eighth District Court Clerk