DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2012

JOHN P. FOUNTAS,
Appellant,

v.

MICROCOMPUTER RESOURCES, INC. and **PAUL P. FOUNTAS,**
Appellees.

No. 4D10-3085

[May 23, 2012]

PER CURIAM.

John P. Fountas (plaintiff) appeals the trial court's award of attorney's fees and costs in favor of Marika Tolz. The trial court concluded that Tolz was entitled to recover her reasonable attorney's fees and costs under section 607.07401(5), Florida Statutes, because plaintiff's derivative action against Tolz was commenced without reasonable cause. During the course of this appeal, Ms. Tolz filed for bankruptcy. The trustee of Ms. Tolz's bankruptcy estate represents that he does not intend to file a brief or otherwise defend this appeal, and consents to a reversal of the order appealed from, so long as no fees or costs are assessed against the bankruptcy estate.[1] Upon concession of error, this Court, therefore, reverses the trial court's award of attorney's fees and costs.

Reversed and remanded.

---

[1] We note that there was no need to obtain relief from the automatic stay provisions of 11 U.S.C. § 362. The underlying final order on appeal was not an action against debtor Tolz, but the result of a motion for attorney's fees and costs brought by Tolz. *See W.W. Gay Mech. Contractor, Inc. v. Wharfside Two, Ltd.*, 545 So. 2d 1348, 1350 (Fla. 1989) ("The Bankruptcy Code stays proceedings against the debtor alone and does not address actions brought by the debtor which would inure to the benefit of the bankruptcy estate."). Accordingly, this appeal may proceed.

WARNER, CIKLIN and CONNER, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Robert A. Rosenberg, Judge; L.T. Case Nos. 05-17543 07 and 06-13452 07.

Steven N. Lippman of Rice Pugatch Robinson & Schiller, P.A., Fort Lauderdale, for appellant.

Patrick S. Scott of GrayRobinson, P.A., Fort Lauderdale, for appellee Marika Tolz.

Not final until disposition of timely filed motion for rehearing.