

Motions Granted, Appeal Reinstated, Appeal Dismissed, and Memorandum Opinion filed May 23, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00155-CV

**ALEJANDRO KISS, INDIVIDUALLY AND AS TRUSTEE OF THE
ALEJANDRO KISS AND MARY KATHRYN KISS REVOCABLE LIVING
TRUST, Appellant**

V.

**DONALD ATENCIO, WELLHEAD SERVICES, INC., FRACMASTER,
LLC AND JK RED DIRT RENTALS, INC., Appellees**

**On Appeal from the 113th District Court
Harris County, Texas
Trial Court Cause No. 2014-64371**

M E M O R A N D U M O P I N I O N

This is an appeal from a judgment signed February 23, 2016.

On March 4, 2016, Petroleum Products & Services, Inc. d/b/a Wellhead Distributors Int'l, a cross-defendant in the underlying proceeding that is not a party to this appeal, filed a petition for bankruptcy under Chapter 11 of the Bankruptcy

Code. *See* No. 16-31201, *In re Petroleum Products & Services, Inc. d/b/a Wellhead Distributors Int'l, d/b/a WDI*, in the U.S. Bankruptcy Court for the Southern District of Texas. On March 9, 2016, the trial court case underlying this appeal was removed to bankruptcy court as an adversary proceeding to the main bankruptcy case. *See* No. 16-03053, *Kiss v. Atencio*, in the U.S. Bankruptcy Court for the Southern District of Texas.

On May 3, 2016, this court abated the appeal due to the removal of the underlying proceeding to bankruptcy court. *See* 28 U.S.C. § 1446(d) (Once a state case is removed, the state court “shall proceed no further unless and until the case is remanded.”).

The adversary proceeding (No. 16-03053) was remanded to the trial court on August 8, 2016. The remand order states that the automatic bankruptcy stay shall remain in effect. *See* 11 U.S.C. § 362(a)(1) (providing, as relevant here, that a bankruptcy petition operates as a stay to the continuation of most judicial actions against the debtor that were filed or could have been filed before the bankruptcy proceeding began or to recover a claim against the debtor that arose before the bankruptcy proceeding began).

The bankruptcy court confirmed the debtor’s Chapter 11 Plan of Reorganization in the main bankruptcy proceeding (No. 16-31201) and discharged the debtor on January 31, 2017. The discharge operated to lift the automatic bankruptcy stay. *See id.* § 362(c)(2) (providing that, subject to exceptions not applicable in this case, the automatic bankruptcy stay continues until the earliest of the time the bankruptcy case is closed, the time the bankruptcy case is dismissed, or the time a debtor in a Chapter 11 bankruptcy case is discharged).

On May 15, 2017, appellant filed an unopposed motion to reinstate and dismiss the appeal. The motion states appellant does not desire to pursue this

appeal and no impediment remains to dismissal of this appeal. *See* Tex. R. App. P. 42.a(1).

The motion is granted. The appeal is reinstated and dismissed.

PER CURIAM

Panel consists of Justices Boyce, Donovan, and Jewell.