

Naylor v. Cusson, No. S0142-05 CnCv (Katz, J., May 20, 2008)

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STATE OF VERMONT
Chittenden County, ss.:

SUPERIOR COURT
Docket No. S0142-05 CnCv

NAYLOR

v.

CUSSON

ENTRY

Plaintiff Naylor brought this action against Defendants Cusson and Ducharme to recover payment for construction work done on their house. After judgment was entered for Plaintiff, Defendants appealed to the Vermont Supreme Court and shortly thereafter, filed for bankruptcy. The Supreme Court affirmed this court's decision regarding the merits, as well as the award of attorney fees to Plaintiff. Defendants were discharged in bankruptcy in August of 2006, but filed a motion to reopen their cases to determine the secured status of Naylor's contractor's lien, which was granted by the bankruptcy court in January. Naylor now seeks to recover all of his attorney fees incurred in pursuing payment on the lien, including fees awarded in the superior court judgment, as well as those incurred in the bankruptcy action, the appeal, and subsequent proceedings in this court. Defendants have requested that this court "abstain" from determining the fees issue pending the resolution of their re-opened bankruptcy cases.

Under federal bankruptcy law, the filing of an original bankruptcy petition has the effect of staying

- (1) the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title. . .

11 U.S.C. § 362(a). Once a debtor has been discharged in bankruptcy, the stay expires. Id. § 362(c)(2). The re-opening of a bankruptcy case does not automatically reinstate the stay, In re Crocker, 362 B.R. 49, 57 (1st Cir. BAP 2007), however, the bankruptcy court has broad equitable powers pursuant to 11 U.S.C. § 105 to stay proceedings in other courts after re-opening a case. Crocker, 362 B.R. at 57.

Here, we have been shown no evidence that a stay pursuant to 11 U.S.C. §362 or §105 is in place in the re-opened bankruptcy action. Defendants are therefore ORDERED to show cause why this court cannot proceed in resolving the issues related to Plaintiff's motion for his attorney fees.

Dated at Burlington, Vermont, this ____ day of May, 2008.

M. I. Katz, Judge