

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

STATE OF OHIO, EX REL. MICHAEL DEWINE,

CASE NO.: 2011 CV 05802

Plaintiff(s),

JUDGE TIMOTHY N. O'CONNELL

-vs-

MASTER VISION PLATING, LLC., et al.,

**DECISION AND ENTRY GRANTING
PLAINTIFF'S MOTION FOR RELIEF
FROM JUDGMENT AND FOR
VACATION**

Defendant(s).

On February 01, 2011 Plaintiff filed a *Motion for Relief from Judgment and for Vacation*. On February 10, 2011 Defendants, Ernie Powers and Terry Skelley, filed a response to the *Motion to Vacate Judgment*. On January 23, 2012 the court had entered a dismissal pursuant to the automatic stay provision of the bankruptcy law.

On or about April 30, 2012 Plaintiff renewed its *Motion for Relief from Judgment*. On or about May 01, 2012 the State filed a *Motion and Memo to Lift the Stay*. On or about May 09, 2012 Defendants, Bohn Jur Company, John Jurich and Bonnie Jurich, filed a response to Plaintiff's *Motion to Lift Stay*. On May 11, 2012 Defendants, Terry Skelley and Ernie Powers, filed a *Motion in Response to the Plaintiff's Motion to Lift Stay*.

On June 29, 2012 this matter came on for a hearing. The parties appeared by and through counsel. The attorneys made oral arguments.

PROCEDURAL HISTORY

Plaintiff filed his complaint on August 12, 2011. Defendant Skelley noticed the court of his personal bankruptcy on January 19, 2012. The court dismissed the action and then stayed the action on January 23, 2012. Plaintiff moved to oppose Stay on January 27, 2012.

LAW AND ANALYSIS

A grant of relief from judgment under Civil Rule 60 (B) requires that the movant “demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted, (2) (the party is entitled to relief under one of the grounds stated in Civil Rule 60 (B)(1) through (5), and (3) the motion is made within a reasonable time.”¹ The Ohio Supreme Court has made clear that in order to be eligible for relief from judgment, the movant must “demonstrate that he is entitled to relief under one of the grounds stated in Civil Rule 60 (B)(1) through (5).”² The court noted that “doubt should be resolved in favor of the motion...so that cases may be decided on their merits.”³

The Plaintiff has a meritorious claim to present. R.C. 3734.10 et seq. grants Plaintiff various powers. This case is brought pursuant to that chapter. There is no evidence in the record, at this point, that the State lacks a colorable claim.

The Plaintiff is entitled to relief under one of the grounds stated in Civil Rule 60 (B)(1) through (5). Civil Rule 60 (B)(4) provides for relief where “it is no longer equitable that the judgment should have perspective application.”⁴

The judgment dismissing this case references the bankruptcy filing as the reason for the dismissal. Plaintiff has shown that this type of action should not be stayed, let alone dismissed, based on a bankruptcy filing. The State is seeking to enforce compliance with Ohio’s environmental laws and has requested injunctive relief and assessment of civil penalties pursuant to Ohio law. Because this action constitutes a use of the State’s police and regulatory powers, the continuation of this action does not violate the provisions of the automatic stay. Under 11 USC section 362 (b)(4) this matter may proceed despite the filing of a bankruptcy by one of many Defendants. Going forward, the January 23, 2012 ruling, which provides for a dismissal of the action in response to a filing of bankruptcy by one of many Defendants, will not effectuate equitable or just application.

¹ *GTE Automatic Electric, Inc. v. Arc Industries, Inc.*, 47 Ohio St.2d 146, 150, 351 N.E.2d 113 (1976).

² *Id.* at 151.

³ *Id.*

⁴ *Civil Rule 60 (B)(4).*

Civil Rule 60 (B)(5) provides a basis upon which relief can be granted to plaintiff. This section “is intended as a catch-all provision reflecting the inherent power of a court to relieve a person from the unjust operation of a judgment.”⁵

In this case, the court interpreted the filing of a bankruptcy by one Defendant as a basis for dismissal of the entire action. This response to a bankruptcy filing is inconsistent with prevailing law. The January 23, 2012 ruling can be unjustly applied every time a bankruptcy occurs to allow any Defendant to evade their environmental responsibilities since bankruptcy would be equated incorrectly with dismissal.

Based on the pecuniary purpose test and the public policy test as set forth in case law, the State’s counts for injunctive relief and civil penalties in this case are unaffected by the bankruptcy of Defendant Skelley.

The Defendants primarily argue that a *Motion for Relief from Judgment* should not be granted because the issue of dischargeability is appropriately resolved by a bankruptcy court. The law indicates that a State action may be maintained even though the bankruptcy court has powers to determine dischargeability under the circumstances in this case.

The *Motion for Relief* was timely filed. The order dismissing the case and Staying it came on about January 23, 2012. The Plaintiff filed its motion on February 01, 2012, about one week after the judgment.

Plaintiff has timely established that it is eligible for relief based on the criteria set forth in GTE. Accordingly, the *Motion for Relief from Judgment and for Vacation* is well taken and is hereby GRANTED. This matter is set for a telephone scheduling conference to be held on August 02, 2012 at 9:30 am.

SO ORDERED:

JUDGE TIMOTHY N. O’CONNELL

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⁵ *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 66, 448 N.E.2d 1365 (1983), in paragraph 1 of the syllabus.

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General Division
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Case Number: 2011 CV 05802
Type: Decision Sustaining Motion

So Ordered

Timothy N. O'Connell

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