LONE STAR STEEL CO. (ON RECONSIDERATION)

IBLA 87-346 Decided September 30, 1992

Motion to vacate prior decision of the Board cited as Lone Star Steel Co., 117 IBLA 96 (1990).

Motion denied.

1. Coal Leases and Permits: Bonds--Bankruptcy Code: Automatic Stay--Mineral Leasing Act: Bonds

The automatic stay of the Bankruptcy Code invoked upon the filing of a petition in bankruptcy applies to the commencement or continuation of administrative or judicial proceedings against the debtor or the debtor's assets. As a general rule, the stay does not bar proceedings against a guarantor or surety on a coal lease bond securing the debtor's obligations under the lease. Hence, a motion on reconsideration to vacate the decision of the Board adjudicating the royalty due on a coal lease on the ground that the lessee came within the jurisdiction of the bankruptcy court prior to issuance of the Board's decision is properly denied where the decision is being relied upon to support a claim against the third party surety and not against the debtor/lessee.

APPEARANCES: Virgil D. Medlin, Esq., Oklahoma City, Oklahoma, for the Lone Star Steel Company; Howard W. Chalker, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The decision in this case was issued by this Board on December 3, 1990, and is cited as Lone Star Steel Co., 117 IBLA 96 (1990). The Board decision affirmed the ruling of the Director, Minerals Management Service (MMS), in MMS 85-0111-MIN holding that an additional $348,495.81 in royalty was due on coal mined from Federal coal leases NM-059992 OK and BLM-C-018820 OK. The appeal to the Board from the MMS decision was pursued by Lone Star Steel Company (Lone Star), the lessee.

On January 29, 1991, counsel for Lone Star filed with the Board a motion to vacate the decision on the basis of proceedings in the United

States Bankruptcy Court. 1/ The motion indicates that pursuant to an involuntary petition filed against the debtor, Lone Star, under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 1101-1146 (1988), an order of relief was entered on June 30, 1989. Lone Star asserts that the Board decision was within the scope of the automatic stay of proceedings against the debtor provided by statute upon the filing of the petition in bankruptcy, which preceded the date of the decision. 11 U.S.C. § 362 (1988).

Counsel for MMS has opposed the motion. MMS asserts that regardless of the protection afforded Lone Star by the automatic stay of the Bankruptcy Code, MMS is not now seeking to collect from appellant on the lease obligations. MMS contends the decision is relevant for the purpose of determining the liability of the guarantor on two surety bonds issued to insure compliance with the lease requirements, and that it is seeking to obtain payment from the guarantor. In response, Lone Star asserts that the surety bonds are assets of the bankrupt estate which are also protected from actions to collect.

We find two fundamental issues presented by the motion of Lone Star and the objection of MMS. The first question is whether an appeal by the debtor of an otherwise final Departmental decision which is adverse to the debtor may be considered a "proceeding against the debtor" barred by the automatic stay of the Bankruptcy Code, 11 U.S.C. § 362 (1988), upon the filing of a petition in bankruptcy. If the first issue is answered in the affirmative, we are faced with the question of whether the decision is barred as a determination of the liability of the surety under a lease bond in favor of the Government.

The automatic stay provision of the Bankruptcy Code reads in part:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title * * * operates as a stay, applicable to all entities, of--
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> > (1) the commencement or continuation, including the issuance or employment of process, 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;

1/ The appeal regulations provide that a decision of the Board constitutes final agency action, but reconsideration is authorized "in extraordinary circumstances for sufficient reason." 43 CFR 4.403. The motion was filed within the required 60 days of the decision.

> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; * * *.

11 U.S.C. § 362(a) (1988). An appeal is a continuation of a judicial (or quasi-judicial) proceeding and, hence, has been held to be stayed automatically if it is an action or proceeding against the debtor. Commerzanstalt v. Telewide Systems, Inc., 790 F.2d 206, 207 (2nd Cir. 1986); Cathey v. Johns-Manville Sales Corp., 711 F.2d 60, 61 (6th Cir. 1983). Further, the stay has been held to be automatic and mandatory with the filing of the petition and, thus, a motion for stay need not be filed in the proceeding. 2/ Commerzanstalt, 790 F.2d at 207. Whether a proceeding is against the debtor is determined by examining the debtor's status at the time the proceedings were initiated, rather than by reference to which party has appealed. Commerzanstalt, 790 F.2d at 207; Cathey, 711 F.2d at 62; Assoc. of St. Croix Condo. Owners v. St. Croix Hotel Corp., 682 F.2d 446, 449 (3d Cir. 1982); 9A Am. Jur. 2d, Bankruptcy, § 1388 (1991). Applying this standard, it appears that the automatic stay would bar further action against the debtor/lessee to collect the royalties owed. 3/

However, counsel for MMS asserts that this does not make it appropriate to vacate the Board's decision in this matter since MMS is no longer attempting to recover a claim against Lone Star. Rather, recovery is being sought against the surety which has obligated itself to be bound by the terms and conditions of the leases. 4/ Counsel contends that the decision of the Board in this case enables the Department to seek recovery from the surety on the bonds. Lone Star replies that any effort to collect from the surety as a co-debtor in this case adversely impacts the assets of the bankrupt estate and, consequently, falls within the bar of the automatic stay.

The copy of the surety bond (Form 3504-3 (September 1977)) provided for lease OK NM 059992 (Bond No. 5233551) 5/ states in part that:

> Lone Star Steel Company * * *, as principal, and Safeco Insurance Company of America * * *, as surety, are held and firmly bound unto the United States in the sum of Ten Thousand and No/100 dollars

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2/ The Board was not advised by counsel of the bankruptcy proceedings involving Lone Star until after issuance of the decision of the Board in this case.

3/ Counsel for MMS concedes in his brief in response to the motion that the effect of the automatic stay is to stay the continuation of a proceeding against the debtor.

4/ Counsel for MMS has provided with the response to the motion copies of letters dated after the Board's decision in this case demanding payment from the sureties on the lease bonds because MMS has been unable to obtain payment from Lone Star.

5/ The bond was provided as an attachment to the MMS response to the motion to vacate.

> ($10,000.00), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, and each of us * * * jointly and severally, firmly by these presents.
>
> The conditions of this obligation are such, that whereas the said principal entered into a lease of the lands described therein and upon conditions therein expressed, which lease bears the above serial number. Surety agrees to be bound by all the terms and conditions of the lease as readjusted effective June 1, 1989. Now, therefore, if the said principal, his heirs, executors, administrators, or successors, shall faithfully carry out the obligations and observe the requirements of said lease, and shall duly keep, perform, and abide by each and every term and provision of said lease as therein stipulated and agreed, then this obligation shall be null and void; otherwise to remain in full force and effect. [Emphasis in original.]

Thus, the surety is clearly bound to the United States up to the amount of the bond if the lease obligations are unfulfilled by the principal/lessee.

[1] We note that as a general rule, the automatic stay applies to actions against the debtor and not to actions against nondebtors such as guarantors and sureties. 9A Am. Jur. 2d, Bankruptcy, § 1384 (1991). Thus, in Credit Alliance Corp. v. Williams, 851 F.2d 119 (4th Cir. 1988), the court rejected an appeal by the guarantor of an obligation of the bankrupt debtor from a holding that a judgment obtained against him was not barred by the automatic stay of the Bankruptcy Code: "Nothing in § 362 suggests that Congress intended that provision to strip from the creditors of a bankrupt debtor the protection they sought and received when they required a third party to guaranty the debt." 851 F.2d at 119; accord Browning Seed, Inc. v. Bayless, 812 F.2d 999, 1004 (5th Cir. 1987); Otoe County Nat. Bank v. W & P Trucking, Inc., 754 F.2d 881, 883 (10th Cir. 1985). Similarly, the "prevailing authority" appears to hold that a debtor/contractor has no property interest in a surety bond issued by a third party to guarantee the contractor's performance on its commercial or personal service contracts and, hence, the automatic stay does not bar an action against the surety on the bond. In re Lockard, 884 F.2d 1171, 1177-78 (9th Cir. 1989); see In Re Mansfield Tire & Rubber Co., 660 F.2d 1108, 1115 (6th Cir. 1981); Globe Construction Co. v. Oklahoma Housing Authority, 571 F.2d 1140, 1143 (10th Cir.), cert. denied, 439 U.S. 835 (1978); 6/ cf. D.J. Baker and Candace S. Schiffman, Effect of Bankruptcy Law on Specific Oil and Gas Insolvency Problems, 35 Sw. Legal Found. Oil & Gas Inst. 187, 208-09 (1984)

6/ The Globe case was decided under the provisions of the Bankruptcy Act of 1898, which was subsequently superseded by the Bankruptcy Reform Act, 11 U.S.C. § 101 (1988), also called the Bankruptcy Code. However, this distinction appears immaterial to the issue of whether a bankruptcy stay is properly applied to an action against a surety on a bond securing an obligation of the debtor. See In re Lockard, 884 F.2d at 1177 (citing cases under both the Bankruptcy Act and the Bankruptcy Code).

(payment of letters of credit by a bank after bankruptcy of the debtor). We find these precedents persuasive in view of the action taken by MMS to
collect from the sureties. Accordingly, while the automatic stay of the Bankruptcy Code may serve to bar the effect of the Board's prior decision in this case in terms of the liability of the debtor which has become subject to the jurisdiction of the bankruptcy court, that stay does not bar the resolution by this Board on administrative review of amounts due under the leases for which a surety or third-party guarantor may be liable in whole or in part.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the motion to vacate our prior decision in this matter is denied.

C. Randall Grant, Jr.
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

ADMINISTRATIVE JUDGE MULLEN DISSENTING:

To the extent that this decision stands for the proposition that the Minerals Management Service can go against the surety, I can agree. However, there should be no question that I believe that the decision should be vacated. See the discussion in Lone Star Steel Co., 117 IBLA 96, 110-19 (1990), for my reasons.

R. W. Mullen
Administrative Judge