

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

REP. LARRY METZ, *et al.*,

Appellants,

CASE NO. 1D18-0687

v.

L.T. Case Nos. 2017-CA-2284,
2017-CA-2368

MAT MEDIA, LLC, and
CHARLES “PAT” ROBERTS,

Appellees.

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**APPELLANTS’ RESPONSE TO MAT MEDIA, LLC’S
SUGGESTION OF BANKRUPTCY**

MAT Media suggests to this Court “that this action has been stayed by the operation of Title 11 U.S.C. § 362.” But MAT Media simply is incorrect, and these appellate proceedings should continue as to both appellees.

First, this appeal should move forward as to Appellee Roberts, who is *not* a debtor in the underlying bankruptcy proceedings. Section 362 does not operate to stay proceedings against non-debtors. *See W.W. Gay Mech. Contractor, Inc. v. Wharfside Two, Ltd.*, 545 So. 2d 1348, 1350 (Fla. 1989) (“Generally, the protections of the automatic stay do not apply to a codefendant not in bankruptcy.”); *Puig v. PADC Mktg., LLC*, 26 So. 3d 45, 46–47 (Fla. 3d DCA 2009) (citing *Mar. Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991)) (granting certiorari and quashing trial court’s stay of action against non-debtor parties); *see Mar. Elec.*

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Co., 959 F.2d at 1205 (explaining that “the automatic stay is not available to non-bankrupt co-defendants of a debtor even if they are in a similar legal or factual nexus with the debtor”) (collecting cases). At a minimum, then, these appellate proceedings may continue as they pertain to Appellee Roberts, who has not sought bankruptcy protection.

Second, these proceedings should continue as to both appellees at least insofar as the final order on review granted them the relief that *they* sought in *their* suit against the House. Even though the House filed the appeal in this case, section 362 does not operate to stay proceedings that were brought *by* the debtor at the case’s inception in the trial court. *Cf. W.W. Gay Mech.*, 545 So. 2d at 1350 (concluding that appellate review may continue as to debtor’s counterclaim and cross-claim); *see generally Mar. Elec. Co.*, 959 F.2d at 1204 (explaining that “the dispositive question is whether a proceeding was *originally brought* against the debtor”) (emphasis in original) (internal quotation and citations omitted); *Taylor v. Barnett Bank of N. Cent. Fla., N.A.*, 737 So. 2d 1105, 1105–06 (Fla. 1st DCA 1998) (concluding that stay applies on appeal where *original* proceeding was against the debtor).

The first-filed suit in the underlying consolidated action was brought *by* Appellees MAT Media and Roberts to quash portions of legislative subpoenas directed to them. R 16–36; R 90–253. The order on appeal granted the appellees that relief. R 1952, 1996. The Speaker brought a separate action against the

appellees to enforce those subpoenas, SR 2347–2437, and that action then was consolidated with the appellees’ suit, R 254–255; SR 2533–2534. But “section 362 does not necessarily stay all other claims in the case. Within a single case, some actions may be stayed, others not.” *Mar. Elec. Co.*, 959 F.2d at 1204. “Multiple claim and multiple party litigation must be disaggregated so that particular claims, counterclaims, crossclaims and third-party claims are treated independently when determining which of their respective proceedings are subject to the bankruptcy stay.” *Id.* at 1204–05; *see also id.* at 1205 (collecting cases). These appellate proceedings are not stayed to the extent the appeal seeks review of the order granting relief sought by Appellees MAT Media and Roberts in the trial court.

Third, section 362’s “governmental unit” exception from the automatic stay applies here. *See* 11 U.S.C. § 362(b)(4). That exception provides that a bankruptcy petition does not stay an action by a governmental unit to enforce its “police and regulatory powers.” *Id.* “Congress enacted the police and regulatory power exception to the automatic stay” because “the stay provision was particularly vulnerable to abuse by debtors improperly seeking refuge under the stay in an effort to frustrate necessary governmental functions.” *United States v. Nicolet, Inc.*, 857 F.2d 202, 207 (3d Cir. 1988); *see also Commodity Futures Trading Comm’n v. Co Petro Mktg. Grp., Inc.*, 700 F.2d 1279, 1283 (9th Cir. 1983) (“The policy behind this ‘police or regulatory exception’ to the automatic stay is to prevent the bankruptcy

court from becoming a haven for wrongdoers.”) (citing 2 *Collier on Bankruptcy* § 362.05, at 362-40 (15th ed. 1982)).

The exception applies because the House undoubtedly is a governmental unit and because the House’s suit seeks to enforce its “police or regulatory powers.” *Cf. NLRB v. Evans Plumbing Co.*, 639 F.2d 291, 293 (5th Cir. 1981) (“The crucial issue is whether the NLRB is a governmental unit and whether this action is one to enforce police or regulatory powers.”). There are two different tests to be “applied to determine whether a particular governmental action was excepted from the automatic stay: the pecuniary purpose test or the public policy test.” *NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 942 (6th Cir. 1986). “If the action primarily seeks to protect the government’s pecuniary interest, the automatic stay applies. If the suit primarily seeks to protect the public safety and welfare, the automatic stay does not apply.” *City & County of San Francisco v. PG & E Corp.*, 433 F.3d 1115, 1124 (9th Cir. 2006). The public policy test in particular “distinguishes between proceedings that effectuate public policy and those that adjudicate private rights: only the former are excepted from the automatic stay.” *Edward Cooper Painting*, 804 F.2d at 942 (internal quotation and citation omitted).

The House, of course, does not seek to protect a pecuniary interest against MAT Media. This appeal concerns the enforcement of legislative subpoenas. At its core, then, this case is a governmental investigative matter. As the House explains

in its appellate briefs, the House’s committee exercised its constitutional and statutory authority to investigate various VISIT FLORIDA contracts with MAT Media, and that authority is similar to that exercised by executive branch agencies and prosecutors. *See* Initial Br. 12–15, 29–40; Reply Br. 4–8. The House’s subpoenas—and the enforcement action that followed—were tied directly to the effectuation of public policy. The “governmental unit” exception to section 362’s automatic stay applies.

For the foregoing reasons, these appellate proceedings are *not* stayed in any respect by MAT Media’s filing of a bankruptcy petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of March, 2019, a true copy of the foregoing response was furnished to the Clerk of the Court through the Florida Courts eFiling Portal, which shall serve a copy via e-mail to the counsel listed below, constituting compliance with the service requirements of Florida Rule of Judicial Administration 2.516(b), Florida Rule of Appellate Procedure 9.420(c), and this Court's Administrative Order 19-1:

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