STATE OF FLORIDA
FIRST DISTRICT COURT OF APPEAL

REP. LARRY METZ, *et al*.,

Appellants,

Case No.: 1D18-0687
L.T. Case Nos.: 2017-CA-2284, 2017-CA-2368

v.

MAT MEDIA, LLC, and CHARLES "PAT" ROBERTS,

Appellee.
_____/

APPELLEES' RESPONSE TO ORDER TO SHOW CAUSE

Appellees, MAT MEDIA, LLC ("MAT Media"), and CHARLES "PAT" ROBERTS ("Roberts"), pursuant to that certain Order to Show Cause entered on March 26, 2019, hereby reply to Appellants' Response to MAT Media, LLC's Suggestion of Bankruptcy and show cause as to why this case should not proceed, as follows:

On March 6, 2019, MAT Media filed a Notice of Suggestion of Bankruptcy, which provided notice that MAT Media had filed a petition for relief under Chapter 7 of Title 11, United States Code, and that the automatic stay provisions of Title 11 U.S.C. § 362(a) had been invoked. On March 11, 2019, Appellants filed a Response to MAT Media's Notice of Suggestion of Bankruptcy ("Response"), wherein Appellants set forth three arguments with regard to the Notice of

Suggestion of Bankruptcy: (i) that the appeal should not be stayed with regard to Appellee Roberts; (ii) that the appeal should proceed since the final order being reviewed granted relief that Appellees sought in the trial court; and (iii) that the "governmental unit" exception to the automatic stay applies. Subsequently, on March 26, 2019, this Court ordered Appellees to address Appellants arguments and show cause as to why this case should not proceed. Appellees address each of Appellants' arguments below.

I. THE AUTOMATIC STAY APPLIES TO APPELLEE ROBERTS.

Appellants first argument is that these proceedings should move forward with regard to Roberts, despite the automatic stay invoked by MAT Media's bankruptcy filing. The basis for this argument is that Roberts is a non-debtor to whom the automatic stay does not apply. Throughout this litigation, however, Appellants have repeatedly asserted that they seek only the records of MAT Media and that they do not have any desire or interest in seeking the records of Roberts, individually. (Initial Br. 24 ("The House clarified that it was not seeking Mr. Roberts's personal tax returns."); Initial Br. 41 ("The House does not seek Mr. Roberts's personal records, so the subpoenas could not affect any right to privacy he may have in those records."); R. at 2072-75 (Hearing transcript wherein Appellants' counsel confirms that "the subpoenas themselves never asked for Mr.

Roberts' tax returns."); S.R. at 2466 ("And the subpoenas do not specifically seek Mr. Roberts's tax returns – only MAT Media's.").)

Because Appellants have repeatedly asserted in both the trial court and this Court that they are not seeking any personal records from Roberts, there is nothing to "move forward" on without the involvement of MAT Media. Accordingly, despite Roberts' status as a non-debtor, Appellants argument fails and the automatic stay applies to all proceedings and parties.

II. THE AUTOMATIC STAY APPLIES TO ALL CLAIMS.

Next, Appellants argue that these proceedings should continue as to both Appellees because the final order on review granted relief initially sought by (as opposed to against) Appellees in the trial court. The cases cited by Appellants in support of this argument have no applicability to the proceeding at hand. In particular, the first two cases cited by Appellants stand for the proposition that the automatic stay does not apply to "actions brought by the debtor which would inure to the benefit of the bankruptcy estate." *W.W. Gay Mechanical Contractor, Inc., v. Wharfside Two, Ltd.*, 545 So. 2d 1348, 1350 (Fla. 1989); *Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F. 2d 1194 (3rd Cir. 1991). This proposition is understandable for cases such as the cited cases in which monetary claims were brought by a debtor, since those monetary claims could have produced income for the benefit of the bankruptcy estates. Neither case, however, addresses a situation

such as the one at hand where only declaratory and injunctive relief are at issue. Here, because there are no monetary claims pending, allowing the case to proceed would provide no possible benefit to the bankruptcy estate since no revenue will possibly be produced by the claims at issue in the case. As a result, the cases cited by Appellants are easily distinguished. In addition, *Taylor v. Barnett Bank of North Cent. Florida, N.A.,* 737 So. 2d 1105 (Fla. 1st DCA 1998) stands for the proposition that "the automatic stay provision of the federal Bankruptcy Code applies on appeal regardless of whether the debtor is an appellant or an appellee[,]" which is not an issue or argument raised by either party in this proceeding.

Moreover, the effect of Appellants' requested relief would be that these proceedings would be bifurcated, allowing the claims against MAT Media to be stayed while allowing the claims brought by MAT Media to proceed. As is clear from the record and briefs - despite the initial filing of two complaints in the circuit court, the underlying questions of law and fact in this case are identical and the claims brought by and against MAT Media are only the opposite sides of the same core dispute. Accordingly, the ultimate outcome of granting Appellants' relief would be that the exact same legal and factual issues would be resolved twice: once now with regard to the claims brought by MAT Media and again after the stay is lifted with regard to the claims brought against MAT Media. This would cause a clear duplication of judicial effort to the detriment of judicial economy.

Accordingly, Appellants' argument must fail and the automatic stay must apply to all claims in this proceeding.

III. THE GOVERNMENTAL UNIT EXCEPTION DOES NOT APPLY TO THE PROCEEDINGS AT ISSUE.

Last, Appellants argue that the "governmental unit" exception to the automatic stay provisions of 11 U.S.C. § 362(a) apply. This "governmental unit" exception states that:

> The filing of a petition under section 301, 302, or 303 of this title… does not operate as a stay… of the commencement or continuation of an action or proceeding by a governmental unit… **to enforce such governmental unit's or organization's police and regulatory power**, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power[.]

11 U.S.C. § 362(b)(4) (emphasis added). Importantly, this exception is to be narrowly construed. *See In re Jefferson County, Alabama*, 484 B.R. 427, 452 (Bankr. N.D. Ala. 2012)*; In re Allied Mechanical Services, Inc.*, 38 B.R. 959, 962 (Bankr. N.D. Ga. 1984); *Donovan v. TCM Industries, LTD*, 20 B.R. 997, 1001 (N.D. Ga. 1982);

As used in this provision, "[t]he term 'police or regulatory power' refers to the enforcement of state laws affecting health, welfare, morals, and safety." *In re Seminole Entertainment, Inc. d/b/a Rachel's*, 2001 WL 1825794 at *2 (Bankr.

M.D. Fla. Jan. 30, 2001). The legislative history to 11 U.S.C. § 362(b) highlights this purpose and function of (b)(4), as follows:

> Paragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers. **Thus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such law, the action or proceeding is not stayed under the automatic stay**.

See Allied Mechanical Services, Inc., 38 B.R. at 961 (emphasis added); *Donovan*, 20 B.R. at 1001. Representative Don Edward further emphasized this intent in his remarks when the bill was introduced:

> Section 362(b)(4) indicates that the stay under section 362(a)(1) does not apply to affect the commencement or continuation of an action or proceeding by a governmental unit to enforce the governmental unit's police or regulatory power. **This section is intended to be given a narrow construction in order to permit governmental units to pursue to protect the health and safety** and not to apply to actions by a governmental unit to protect the pecuniary interest in property of the debtor or property of the estate.

Id. (emphasis added).

Appellants do not have police or regulatory powers. To the contrary, they have limited investigatory powers established by Article III, Section 5 of the Florida Constitution and Appellants do not cite any authority to suggest that these

limited investigatory powers qualify as "police or regulatory powers." As a result, the governmental unit exception found in 11 U.S.C. § 362(b)(4) does not apply.

Even if Appellants' limited investigatory powers were "police or regulatory powers," they have absolutely no relation to the health, welfare, morals, and safety of the public and, as a result, the governmental unit exception would still not apply. Here, Appellants themselves have repeatedly asserted that they are seeking the documents at issue only to see if they received a good return on their investment. Appellants' desire to analyze their return on their own investment in a marketing campaign has no relation to the public's health, safety, morals, or welfare.

The lack of a correlation between the subpoenas and the public's health, safety, morals, and welfare is highlighted by Appellants' inability to remedy any deficiency they could possibly ascertain from the requested documents, to wit: even if Appellants were to obtain the documents at issue and determine that they received a poor return on investment, they have no recourse and no ability to recoup any of their investment for the benefit of Florida's citizens as the contracts at issue were arms-length contracts which have been fully performed and for which no breach is alleged.

Moreover, the purpose of the issuance of the subpoenas at issue was not to serve any of the purposes intended by the governmental unit exception, such as to

prevent or remedy violations of laws relating to fraud, environmental or consumer protection and safety, or laws.

Because the underlying subpoenas do not involve the enforcement of any police or regulatory power and further because the underlying action has no relation to the health, safety, morals, and welfare of the public, the governmental unit exception found in 11 U.S.C. § 362(b)(4) does not apply and the automatic stay established by 11 U.S.C. § 362(a) is in effect.

IV. THIS COURT SHOULD ABSTAIN FROM RULING ON THIS MATTER AND SHOULD DEFER TO THE APPROPRIATE BANKRUPTCY COURT.

This matter raises a complex question of law which arises under the bankruptcy code, about which bankruptcy courts have special knowledge and expertise. Accordingly, while Appellees acknowledge that this Court has concurrent jurisdiction with the bankruptcy courts to consider the applicability of the automatic stay, Appellees respectfully request that this Court abstain from ruling on this issue and defer resolution to the appropriate bankruptcy court for the reasons stated herein.

Respectfully submitted this 10th day of April, 2019.

/s/ Mark Herron

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished electronically this 10th day of April, 2019, to the following:

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