In the United States Bankruptcy Court

for the Northern District of Iowa

NATIONAL CATTLE CONGRESS, INC.	Bankruptcy No. 93-61986KW
Debtor.	Chapter 11

ORDER RE EIGHTH CIRCUIT ORDER OF REMAND

On October 4, 1996, the above-captioned matter came on for hearing pursuant to assignment on the Court's Order setting a scheduling conference concerning the Eighth Circuit Order of Remand of an appeal in this case. Debtor appeared by Attorney John Titler. The Iowa Racing and Gaming Commission appeared by Iowa Assistant Attorney General Jeffrey Farrell. Pursuant to the record made, both parties to the appeal are in substantial agreement that the issues raised in the appeal are now moot.

ORDER

Debtor National Cattle Congress, Inc. ("NCC"), operated a racing facility known as Waterloo Greyhound Park pursuant to a pari-mutuel dog racing license issued and supervised by the Iowa Racing and Gaming Commission. On December 16, 1993, NCC filed its Chapter 11 petition. The Commission renewed the license of NCC for the racing season from November 1, 1994, to April 23, 1995, in July, 1994.

The Commission held a hearing November 4, 1994, and decided to revoke the license of NCC effective November 11, 1994, unless the license was voluntarily turned over to the Commission prior to that date. NCC did not surrender its license, but instead filed a Motion for Determination Regarding Application of Automatic Stay to Revocation Resolution of Iowa Racing and Gaming Commission. NCC also filed for a temporary restraining order, which was granted.

The Commission claimed that the decision to revoke NCC's license was based upon the failure of NCC to demonstrate financial responsibility and long term viability, demonstrated through statistics concerning mutuel handle and the failure of two referendums in Black Hawk County to install slot machines. The Commission argued that its revocation resolution and actions were exempt from the 362(a)(1) automatic stay under 362(b)(4) as a valid exercise of a state agency's regulatory powers.

NCC alleged that this action violated the automatic stay of 362(a)(1) as "control over property of the estate" under 362(a)(3). The Unsecured Creditors Committee, in support of NCC, additionally alleged that the revocation of the license violated 525, which prohibits discriminatory treatment based solely on an entity's status as a debtor under the Code.

This Court held that the license issued was property of the estate subject to the 362 automatic stay. In re National Cattle Congress, Inc., 179 B.R. 588 (Bankr. N.D. Iowa 1995). Additionally, this Court found that the attempt of the Commission to revoke the license of NCC was a violation of the automatic stay, from which the Commission must seek relief. Finally, this Court's Order concluded that no violation of 525 had occurred.

The Court was affirmed by the District Court on October 23, 1995. The District Court's affirmance was appealed to the Eighth Circuit Court of Appeals. While the case was pending on appeal, the Supreme Court decided Seminole Tribe of Florida v. Florida, __ U.S. __, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996). The Eighth Circuit remanded this case on August 2, 1996, for a determination of the effect of Seminole on the order enforcing the stay against the Commission, which the Commission claims is in violation of the State's Eleventh Amendment immunity as construed in Seminole.

Upon the motion of NCC, a Final Decree closing this matter was entered on June 26, 1996.

For a federal court to have jurisdiction, Article III of the Constitution requires that an actual case or controversy exist. United States v. Nelson, 969 F.2d 626, 629 (8th Cir. 1981). This Article III case or controversy requirement limits federal courts to questions presented in an adversarial context. Flast v. Cohen, 392 U.S. 83, 96 (1948). "A federal court has no authority to give opinions on moot questions . . . . which cannot affect the matter in issue in the case before it." Tungseth v. Mutual of Omaha, 43 F.3d 406, 408 (8th Cir. 1994) (quoting Church of Scientology v. United States, __ U.S.__, 113 S. Ct. 447, 449, 121 L. Ed. 2d 313 (1992)).

A controversy becomes moot when events have occurred resulting in the elimination of adverse parties with sufficient interests in maintaining litigation. In re Manges, 29 F.3d 1034, 1038 (5th Cir. 1994). In the appellate process, when an event has occurred which eliminates the possibility for the court to be able to grant the appellant relief, should the court decide in favor of the appellant, then the court should refrain from formal judgement. Mills v. Green, 159 U.S. 651, 653 (1895); In re Roberts Farms Inc., 652 F.2d 793, 797 (9th Cir. 1981).

Bankruptcy proceedings are subject to the same requirement that a case or controversy exist. In re Chateaugay Corp., 10 F.3d 944, 949 (2d Cir. 1993). Bankruptcy courts must also take into account equitable considerations in their determination of whether an issue is moot. Id.; Manges, 29 F.3d at 1038. These equitable considerations require a recognition by the court that in some circumstances it is impossible to fundamentally change a Chapter 11 reorganization plan which would grant the appellant the relief requested. Id. at 1039. When it is impossible to grant the relief requested, the issue should not be decided. Roberts Farms, 652 F.2d at 797; In re Commodore Corp., 86 B.R. 564 (N.D. Ind. 1988).

When a judicial remedy is no longer practicably available to provide relief requested by an appellant, the court should dismiss the case as moot. In In re Corporacion de Servcios Medicos Hospitalarios de Fajardo, 805 F.2d 440 (1st Cir. 1986), the court addressed the issue of mootness of an appeal in a Chapter 11 proceeding. The Bankruptcy Court enjoined the action of an administrative agency to revoke or suspend a license. The Court held that since the administrative agency was enjoined, the

license has expired and been renewed, and, therefore, the issue was moot. Id. at 449.

An exception to the mootness doctrine arises when the issue is "capable of repetition, yet evading review." Neighborhood Transp. Network, Inc. v. Pena, 42 F.3d 1169, 1172 (8th Cir. 1994) (quoting Southern Pac. Terminal Co. v. ICC, 219 U.S. 498, 515 (1911). However, this exception is applicable only when it is likely that the same issue will arise between the same parties and the duration of the action is too short to be fully litigated again. Neighborhood Transp. Network, 42 F.3d at 1172. This exception does not apply in this case.

The Commission was denied relief from the automatic stay by the Bankruptcy Court in January, 1995. The license which the Commission sought to revoke from the National Cattle Congress expired April 23, 1995. No ruling by the Court at this point will alter the fact that the National Cattle Congress had the license in its possession under the automatic stay for the time period of November 1, 1994, to April 23, 1995.

The automatic stay enforced against the Commission has now expired. The reorganization plan has been confirmed and the Chapter 11 case filed by NCC has been closed. Since no automatic stay continues to exist, the Commission's appeal against the enforcement of the automatic stay raises no issue for resolution.

WHEREFORE, for the reasons set forth herein, the Court concludes, without objection by the appellate parties, that the issues raised in the appeal are now moot and any opinion concerning the issues raised would be in the nature of an advisory opinion.

FURTHER, as no issues remain for resolution, it is the opinion of this Court that the appeal by the Iowa Racing and Gaming Commission should be dismissed on the grounds of mootness.

SO ORDERED this 4th day of October, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge