No. 2018-1614, -2044

In the United States Court of Appeals for the Federal Circuit

SYNGENTA CROP PROTECTION, LLC,

Plaintiff - Appellant,

v.

WILLOWOOD, LLC, WILLOWOOD USA, LLC, WILLOWOOD AZOXYSTROBIN, LLC, WILLOWOOD LIMITED,

Defendants - Cross-Appellants.

Appeal from the United States District Court
for the Middle District of North Carolina
in No. 1:15-cv-00274-CCE-JEP, Judge Catherine C. Eagles

APPELLANT SYNGENTA CROP PROTECTION, LLC'S SUPPLEMENTAL BRIEF REGARDING APPLICABILITY OF BANKRUPTCY STAY

March 29, 2019	Russell E. Levine, P.C. Hari Santhanam Meredith Zinanni KIRKLAND & ELLIS LLP 300 North LaSalle Street Chicago, Illinois 60654 Phone: (312) 862-2000 Fax: (312) 862-2200 *Counsel for Appellant Syngenta Crop Protection, LLC*

In response to the Court's March 19, 2019 Order that the parties file supplemental briefs addressing how the Notice of Bankruptcy Stay should affect the above-captioned appeal with respect to non-debtors Willowood Azoxystrobin, LLC[1] and Willowood Limited, Appellant Syngenta Crop Protection, LLC respectfully submits this supplemental brief. As discussed below, there is no case law support, nor is there any basis in the text or underlying policies of the Bankruptcy Code, to stay the appeal with regard to the non-debtor entity Willowood Limited. Rather, it is black letter law that the automatic stay does not apply to non-debtor entities. Therefore, Appellant Syngenta requests that the appeal proceed without further delay with respect to Willowood Limited.[2]

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[1] On March 28, 2019, the eve of the deadline for this Supplemental Brief, Willowood Azoxystrobin, LLC commenced bankruptcy proceedings in the Bankruptcy Court for the District of Colorado (the "Bankruptcy Court"). As a result, this Supplemental Brief only addresses how the Notice of Bankruptcy Stay should affect Willowood Limited.

[2] On March 21, 2019, Syngenta filed a motion with the Bankruptcy Court, requesting relief from the automatic stay to allow this Court to enter its opinion with respect to Willowood, LLC and Willowood USA LLC. The hearing for this motion is scheduled for April 16, 2019, and in accordance with this Court's March 19, 2019 Order, Syngenta will file a notice to inform this Court of the Bankruptcy Court's ruling within 10 days of its issuance. Syngenta will supplement its motion with the Bankruptcy Court in light of Willowood Azoxystrobin, LLC's recent bankruptcy filing.

Background

Willowood, LLC and Willowood USA, LLC (collectively, the "Debtors") each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court for the District of Colorado on February 27, 2019. Cross-Appellant Willowood Azoxystrobin, LLC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on March 28, 2019. Cross-Appellant Willowood Limited is not part of any bankruptcy filing.

Argument

Section 362 of the Bankruptcy Code "operates as a stay, applicable to all entities, of—the . . . continuation . . . of a judicial . . . proceeding ***against the debtor*** that was or could have been commenced before the commencement of the case under [the Bankruptcy Code] . . . ." 11 U.S.C. § 362(a) (2018) (emphasis added). "[T]he rule followed by [the Tenth Circuit] and the general rule in other circuits is that the stay provision does not extend to solvent codefendants of the debtor." *Okla. Federated Gold & Numismatics, Inc. v. Blodgett*, 24 F.3d 136, 141 (10th Cir. 1994); *see also Seiko Epson Corp. v. Nu-Kote Int'l, Inc.*, 190 F.3d 1360, 1364 (Fed. Cir. 1999) ("In cases involving multiple parties or

multiple claims, the courts have 'disaggregated' the proceedings so that claims against co-defendants who are not under the protection of the bankruptcy court may go forward . . . . It is clearly established that the automatic stay does not apply to non-bankrupt co-defendants of a debtor 'even if they are in a similar legal or factual nexus with the debtor.'") (citation omitted) (quoting *Maritime Elect. Co. v. United Jersey Bank*, 959 F.2d 1194, 1205 (3d Cir. 1991)).

Well-established precedent in multiple circuits, including the Tenth Circuit, firmly holds that the automatic stay "affords ***no protection***" to non-debtor codefendants. *Fortier v. Dona Anna Plaza Partners*, 747 F.2d 1324, 1330 (10th Cir. 1984) (emphasis added) (collecting cases from various United States Circuit Courts of Appeals). This widespread approach is supported by both the text of the Bankruptcy Code and the policies it advances. *See id.* at 1329 ("[T]he Courts of Appeals have uniformly rejected . . . an interpretation [that actions against co-defendants of the debtor are stayed by the] automatic stay provisions of the Bankruptcy Act.").

First, the text of the Bankruptcy Code only references actions "against the debtor." 11 U.S.C. § 362(a); *see also Fortier*, 747 F.2d at 1330

("The language of the statute extends stay proceedings only to actions 'against the debtor.' There is nothing in the statute which purports to extend the stay to causes of action against solvent co-defendants of the debtor.") (collecting cases from various United States Circuit Courts of Appeals).

Second, granting stay relief to a non-debtor codefendant would ignore the purpose of the automatic stay:

> It would make no sense to extend the automatic stay protections to solvent co-defendants. They don't need it, and at the same time it would work a hardship on plaintiffs, by giving an unwarranted immunity from suit to solvent co-defendants. Extending the stay to protect solvent co-defendants would not advance either of the purposes underlying the automatic stay [allowing the debtor a breathing spell and preventing a "run on the bank" for a debtor's assets].

Fortier, 747 F.2d at 1330.

Here, Willowood Limited, a party to the appeal, has not filed for bankruptcy. During the proceedings before the District Court for the Middle District of North Carolina, the Cross-Appellants emphasized the corporate separation between Willowood Limited and one of the Debtors: "Willowood USA and Willowood Limited are separate and distinct entities, and there is no principal/agent relationship between the two companies. Neither entity is involved in or controls the day-to-day

operations of the other. The two companies have separate bank accounts, assets, and offices." *See Syngenta Crop Protection, LLC v. Willowood, LLC et al.*, Case No. 1:15-cv-274 (M.D.N.C.), Docket No. 14 at 5 (June 16, 2016). Accordingly, there is no basis to stay the appeal with regard to Willowood Limited, and with respect to this entity, the appeal should proceed without limitation or further delay.

Dated: March 29, 2019

Respectfully submitted,

/s/ Russell E. Levine, P.C.

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CERTIFICATE OF COMPLIANCE

This motion complies with the typeface requirements of Fed. R. App. P. 27(d)(2) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook. This motion further complies with the type-volume limitations of Fed. R. App. P. 27(d)(2) because according to the word processing system used to prepare it, the brief contains 937 words, excluding the parts of the brief exempted by Fed. Cir. Rule 27(d).

Dated: March 29, 2019

/s/ *Russell E. Levine, P.C.*
Russell E. Levine, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2019, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: March 29, 2019

/s/ *Russell E. Levine, P.C.*
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