

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC; AND CREIGHTON J.
NADY,

Appellants,

V.

MICHAEL MURRAY; AND
MICHAEL RENO, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Respondents.

) Supreme Court No. 77050

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Jun 07 2019 12:18 p.m.
Orlando A. Brown
Clerk of Supreme Court

RESPONSE TO ~~Elizabeth A. B~~
Elizabeth A. B

SHOW CAUSE WHY

APPELLANT CREIGHTON J.

NADY'S APPEALS SHOULD

NOT BE DISMISSED

This is an appeal filed by appellants A Cab, LLC, and Creighton J. Nady from an order of the district court granting summary judgment in favor of respondents against A Cab, but not against Nady, and from several post-judgment orders that, depending on whether the summary judgment qualifies as a final judgment, may qualify as appealable post-judgment orders. These are listed in appellant's second amended notice of appeal. Exhibit 1.

On May 7, 2019, this Court dismissed the appeals of A Cab based on A Cab's involuntary bankruptcy, without prejudice to the right of A Cab to reinstate these appeals when the automatic bankruptcy stay imposed by 11 U.S.C. § 362(a)(1) (2010) is lifted or the bankruptcy matter is concluded. *See* Order,

Exhibit 2.

On May 9, 2019, this Court issued an order to show cause why this appeal should not be dismissed as to Nady's based on lack of jurisdiction. Specifically, this Court's order noted that the district court's summary judgment severed respondents' claims against A Cab from respondents' claims against Nady, and stayed the claims against Nady. *See* Order, Exhibit 3. In response, Nady believes this Court may be correct in its assessment that its jurisdiction has not been properly invoked. However, Nady questions whether the district court's severance order was effective; therefore, Nady joined in A Cab's notices of appeal as an appellant out of an abundance of caution so as to protect all potential appellate rights.

I. Background.

The underlying class action claims generally that A Cab and its principal, Nady, failed to pay cab drivers a minimum wage.¹ Respondents pleaded claims against A Cab, and later amended the complaint to include claims against Nady, including personal and derivative claims. All claims are interrelated and arise from the alleged non-payment of a minimum wage, which appellants deny.

¹There are numerous pleading issues in this case, and this statement is a gross over-simplification of the action below. But the pleading arguments go to the merits of the appeal, and need not be sorted out in this response to an OSC.

This is not the first time this matter has been before this Court. Indeed, it has been the subject of a prior appeal (Docket No. 72691), a prior petition for a writ by appellants, (Docket No. 73326), and a prior petition for a writ by respondents (Docket No. 75877). As this Court may recall, the underlying class action suit then pending before Judge Cory (now before Judge Bare) was competing with a related class action suit before Judge Delaney involving the same defendants, the same claims, and an overlapping class. Despite having stated that he would not engage in a road race to judgment with Judge Delaney, Judge Cory, who believed he owned the class because his action was filed first, reconsidered and issued an injunction against Judge Delaney. That was the subject of the appeal in Docket No. 72691.

After this Court reversed the injunction, and faced with the almost certainty that his action would not reach finality before Judge Delaney's, Judge Cory, in a desperate attempt to reach final judgment first, granted summary judgment in favor of respondents against A Cab, although no motion for summary judgment was pending. Recognizing that the summary judgment was not a final judgment because it did not resolve the related claims against Nady, and having been informed by undersigned counsel that the non-final judgment could not be enforced or appealed from until there was finality, the district court, in a

transparent attempt to create finality where finality did not exist, severed rather than bifurcated the claims against Nady, and stayed those claims to allow the claims against A Cab to be final and to proceed to collection and appeal.

Respondents have been aggressively collecting on the supposed final judgment because A Cab is not in a position to post a bond and obtain a stay pending appeal.

Believing the finality of the summary judgment order to be questionable based on the argument that severance was improper, but recognizing that the summary judgment itself purports to be a final judgment, and an order exists purporting to sever related claims, A Cab had no option except to file a notice of appeal. Nady joined that appeal because his personal rights are affected by the judgment against A Cab, and in order to argue his position on appeal that the judgment is improper and not final because the claims against him remain pending. Again, this was done to protect all potential appellate rights in a situation where the district court has artificially created finality on the eve of trial by granting summary judgment and severing claims that cannot arguably be severed solely and transparently to create finality and beat Judge Delaney to judgment.

Thereafter, respondents filed motions to add parties after final judgment was entered, and for other relief. Appellants filed post-judgment motions, and

respondents began aggressively collecting on their non-final judgment against non-parties to the action. This resulted in the district court entering a number of post-judgment orders that are either independently appealable or qualify as special orders after final judgment, assuming the summary judgment is a final judgment. Appellants filed amended notices of appeal to list all potentially appealable post-judgment orders, again, to protect all potential appellate rights.

II. Discussion.

Respondents will undoubtedly vehemently disagree with appellants' characterization of the events that have created the present posture of this appeal, but they cannot dispute the fact that the district court severed the claims solely for the purpose of creating finality and beating Judge Delaney to final judgment. Appellants concede that if the district court's order severing the claims is effective, the summary judgment entered by the district court was not entered against Nady, and there is no judgment against Nady at this time. Also, the post-judgment orders are not appealable by Nady at this time, because Nady is no longer a party to the district court action on appeal, having been severed out.

But the action below continues, and the district court treats Nady as a party for some purposes and not for others. In other words, there has not been an actual severance of the cases into separate cases, and the distinction is not being

observed in district court. The severance seems to be to create finality only as to the A Cab summary judgment. There is only one action in district court with one district court case number, and although the “Nady severed action” remains stayed and inactive, actions against Nady personally are being pursued in the A Cab post-judgment matters as though he were a party.

Should this Court dismiss Nady’s appeal based on the severance of the claims into separate actions, it should do so explicitly recognizing the existence of the severance, and its effectiveness at least for purposes of determining finality for jurisdiction purposes, so that it is clear that Nady will have his appellate rights preserved in an appeal that will follow a final judgment as to the claims against Nady in the severed action.

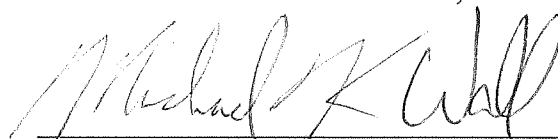
Many of the erroneous actions taken by Judge Cory in the lawsuit that led to the erroneous summary judgment in favor of respondents affected and prejudiced Nady personally, and will continue to affect the resolution of the improperly severed claims. Most if not all of the issues in this appeal are the same as the issues that will be raised when a final judgment is eventually entered regarding the Nady claims. Both this appeal and Nady’s eventual appeal, if Nady’s appeal is not allowed to proceed at this time, are from a single action improperly separated into two.

But Nady concedes that as the record now stands, the actions have been severed, not bifurcated (Judge Cory was careful there, having had the difference painstakingly explained to him), and there is presently no judgment against Nady as to the claims that have been brought against him personally and derivatively. If this deprives Nady of the right to argue on appeal from the manufactured final judgment that severance was improper, then he concedes that this appeal should be dismissed without prejudice to his right to raise these issues in the appeal that will inevitably follow the district court's eventual resolution of the claims that remain pending below.

Alternatively, this Court could simply dismiss this appeal in its entirety by recognizing the severance as the ineffective legal maneuver that it is, and declaring that the district court's decision is not final as to anyone.

Respectfully submitted this 7 day of June, 2019.

HUTCHISON & STEFFEN, PLLC

A handwritten signature in black ink, appearing to read "Michael K. Wall", is written over a horizontal line.

Michael K. Wall (2098)

10080 West Alta Drive, Suite 200

Las Vegas, NV 89145

Telephone: 702/385-2500

mwall@hutchlegal.com

Attorney for Appellants

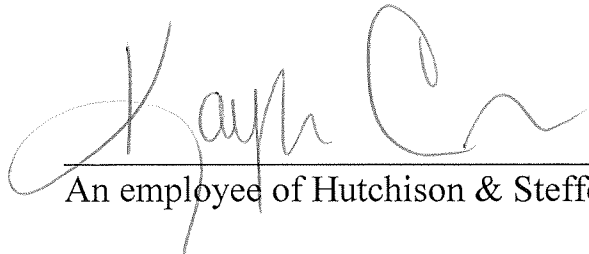
CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **RESPONSE TO ORDER TO SHOW CAUSE WHY APPELLANT CREIGHTON J. NADY'S APPEALS SHOULD NOT BE DISMISSED** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Leon Greenberg, Esq.
Dana Sniegocki, Esq.
Leon Greenberg Professional Corporation
2965 S. Jones Blvd., Ste. E3
Las Vegas, NV 89146
Telephone: (702) 383-6085
Facsimile: (702) 385-1827
leongreenberg@overtimelaw.com
Dana@overtimelaw.com

Attorneys for Respondents

DATED this 7th day of June, 2019.



An employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

Attorney for defendants
A Cab, LLC and Creighton J. Nady

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO,
Individually and on behalf of others similarly
situated,

Plaintiffs,

V.

A CAB TAXI SERVICE, LLC, A CAB, LLC,
and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C
Dept. No.: I

SECOND AMENDED NOTICE OF APPEAL

Notice is given that A Cab, LLC, Creighton J. Nady, and A Cab Series, LLC, defendants in the above-captioned matter,¹ appeal to the Supreme Court of Nevada from the district court's order granting summary judgment, severing claims, and directing entry of final judgment entered on August 21, 2018.

¹Under the fiction that A Cab, LLC, and A Cab Series, LLC, are one and the same entity, the district court, subsequent to its entry of its final judgment dated August 21, 2018, purported to add A Cab Series, LLC, as a party defendant. The district court's order is far from clear, but it purports both to substitute A Cab Series, LLC, in the place and stead of A Cab, LLC, and to retain both entities as separate defendants in the action below. Therefore, we have included A Cab Series, LLC, as an appellant from the district court's final judgment and various other post-judgment orders.

1 Notice is also given that A Cab, LLC, Creighton J. Nady, and A Cab Series, LLC,
2 appeal to the Supreme Court of Nevada from the following listed orders of the district court:

3 (1) The district court's order entered on October 22, 2018, amending its August 21,
4 2018 judgment to add A Cab Series, LLC, as a party defendant.

5 (2) The district court's order entered on December 18, 2018, granting plaintiffs'
6 counter-motion for judgment enforcement relief (receiver and injunction).

7 (3) The district court's order entered on December 18, 2018, granting in part and
8 denying in part plaintiffs' objections to defendants' claims of exemption from execution.

9 (4) The district court's order entered on December 18, 2018, denying defendants'
10 motion to quash writ of execution.

11 (5) The district court's order entered on December 20, 2018, denying defendants'
12 post-judgment motion to dismiss for lack of subject matter jurisdiction.

13 (6) The district court's order entered on February 4, 2019, entitled "Judgment and
14 Order Granting Resolution Economics' Application for Order of Payment of Special Master's
15 Fees and Order of Contempt."

16 (7) The district court's order entered on February 6, 2019, granting plaintiffs'
17 motion for an award of attorney's fees and costs.

18 (8) The district court's order entered on March 4, 2019, ruling on matters submitted
19 by Special Master George C. Swarts.²

20 (9) The district court's ordered entered on March 5, 2019, memorializing matters
21 that had been resolved long before the final judgment was entered.³

22 (10) The district court's order entered on March 5, 2019, entitled "order on motion
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24 ²Because of the unorthodox manner in which the case has proceeded since the entry of
25 judgment in August of 2018, this order appears to qualify as a special order entered after final
26 judgment.

27 ³Why the district court issued this order almost a year late is a mystery, but due to the timing
28 of the issuance of the order, appellants include this order in their list of specifically appealed from
orders in order to preserve all potential appellate rights.

1 for reconsideration.”⁴

2 (6) All other judgments and orders of the district court rendered appealable by any
3 of the foregoing orders and judgments.

4 DATED this 6 day of March, 2019.

5 HUTCHISON & STEFFEN, PLLC

6 

7 Michael K. Wall

8 10080 West Alta Drive, Suite 200

9 Las Vegas, NV 89145

10 Tel: (702) 385-2500

11 Attorney for defendants

12 A Cab, LLC, and Creighton J. Nady

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27 ⁴Among other things, this order denies appellants’ timely post-trial motion for a new trial.
28 Also, this order finally resolves all post-judgment tolling motions, rendering appellants first notice
of appeal from the final judgment effective. NRAP 4(a)(6).

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AMENDED NOTICE OF APPEAL to be served as follows:

- to the attorney(s) listed below at the address and/or facsimile number indicated below:

Attorneys for plaintiffs

- 4 -

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC; AND CREIGHTON J
NADY,

Appellants,

vs.

MICHAEL MURRAY; AND MICHAEL
RENO, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Respondents.

No. 77050

FILED

MAY 07 2019

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER

Respondents have filed a suggestion of bankruptcy notifying this court that an involuntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada has been filed against appellant A Cab, LLC. A copy of an Involuntary Petition Against a Non-Individual from the bankruptcy court is attached to the motion.

The filing of a Chapter 7 petition operates to stay, automatically, the “continuation” of any “judicial . . . action . . . against the [bankruptcy] debtor.” 11 U.S.C. § 362(a)(1) (2010). An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action in the trial court. *See, e.g., Ingersoll-Rand Fin. Corp. v. Miller Mining Co.*, 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtor was a defendant in the underlying trial court action. *Id.*

It appears that A Cab was a defendant below. Therefore, this appeal is stayed as to A Cab pursuant to the automatic stay provisions of federal bankruptcy law.

Given the applicability of the automatic stay, A Cab's appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if the appeal is dismissed as to A Cab without prejudice. Because a dismissal without prejudice will not require this court to reach the merits of A Cab's appeal and is not inconsistent with the primary purpose of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that such dismissal will not violate the bankruptcy stay.¹ See *Indep. Union of Flight Attendants v. Pan American World Airways, Inc.*, 966 F.2d 457, 459 (9th Cir. 1992) (holding that the automatic stay does not preclude dismissal of an appeal so long as dismissal is “consistent with the purpose of the statute [11 U.S.C. § 362(a)]”); *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 755 (9th Cir. 1995) (holding that a post-bankruptcy petition dismissal will violate the automatic stay “where the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case”). Accordingly, we dismiss this appeal as to A Cab only. The dismissal is without prejudice to A Cab's right to move for reinstatement of its appeal within 60 days of either the

¹The automatic stay provides a debtor “with protection against hungry creditors” and gives it a “breathing spell from its creditors” by stopping all collection efforts. *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 755 (9th Cir. 1995). Further, it assures creditors “that the debtor's other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor's assets.” *Id.* at 755-56.

lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if A Cab deems such a motion appropriate at that time.

It is so ORDERED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Cadish, J.
Cadish

cc: Hon. Kenneth C. Cory, District Judge
Rodriguez Law Offices, P.C.
Premier Legal Group
Hutchison & Steffen, LLC/Las Vegas
Leon Greenberg Professional Corporation
Eighth District Court Clerk

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EXHIBIT PAGE ONLY

EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC; AND CREIGHTON J
NADY,

Appellants,

vs.

MICHAEL MURRAY; AND MICHAEL
RENO, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Respondents.

No. 77050

FILED

MAY 09 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from a district court summary judgment and various post-judgment orders. Initial review of the docketing statements and documents before this court reveals a potential jurisdictional defect. Specifically, it appears that respondents' claims against appellant Creighton J. Nady remain pending below, and no final judgment has been entered against him. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment). The district court's summary judgment order severed respondents' claims against Nady and stayed those claims.¹ To date, it does not appear that the stay has been lifted and/or that the claims against Nady have been resolved. Additionally, if no final judgment has been entered against Nady, it does not appear that the post-


¹The district court's summary judgment appears to have resolved all claims against appellant A Cab, LLC. *See Valdez v. Cox Commc'ns Las Vegas, Inc.*, 130 Nev. 905, 336 P.3d 969 (2014) (explaining that severance creates two separate actions, and holding that an order finally resolving severed claims is appealable despite the existence of unresolved unsevered claims). However, A Cab's appeal has been dismissed, without prejudice, pursuant to the operation of the automatic bankruptcy stay. *See* 11 U.S.C. § 362(a).

judgment orders are appealable as special orders after final judgment under NRAP 3A(b)(8).

Nady shall have 30 days from the date of this order to show cause why his appeal should not be dismissed for lack of jurisdiction. Failure to demonstrate that this court has jurisdiction may result in the dismissal of Nady's appeal. Respondents shall have 14 days from service of Nady's response to file and serve any reply.

Briefing of this appeal is suspended pending further order of this court.

It is so ORDERED.

 C.J.

cc:

Rodriguez Law Offices, P.C.
Premier Legal Group
Hutchison & Steffen, LLC/Las Vegas
Leon Greenberg Professional Corporation