

Dykes v. TD Development, LLC, Not Reported in Atl. Rptr. (2021)

2021 WL 6608928

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Hartford at Hartford.

Katherine DYKES, Commissioner of the
Department of Energy and Environmental

v.


TD DEVELOPMENT, LLC et al.

HHD-CV206126173S

|
December 27, 2021

Rosen, J.

INTRODUCTION

*1 By motion dated September 30, 2021, the defendants, TD Development, LLC and Todd Clifford, moved for a stay of the present environmental enforcement action pursuant to  11 U.S.C. § 362, on the ground that the court is required to issue an automatic stay upon receipt of notice that Clifford filed a petition for Chapter 13 bankruptcy protection. For the reasons set forth below, the motion is denied.

FACTS


The plaintiff, Katherine S. Dykes, Commissioner of the Connecticut Department of Energy and Environmental Protection, filed a complaint on March 24, 2020, seeking judicial enforcement of a final administrative order issued by the plaintiff against the defendants and alleging the following facts.

The plaintiff is charged with the supervision and enforcement of the statutes and regulations of the state of Connecticut regarding the environment. Pursuant to [General Statutes § 22a-6\(a\)\(3\)](#), the plaintiff is empowered to institute all legal proceedings necessary to enforce statutes, regulations, orders,

or permits administered, adopted, or issued by her. On or about August 6, 2018, the plaintiff issued an administrative order to the defendants (order) requiring them to, *inter alia*: (1) secure a tract of land previously purchased by the defendants located at 100 South Main Street in Plainfield (Moosup), Connecticut (site);¹ (2) retain an environmental consultant(s); (3) address outstanding notices of violation; (4) submit a plan for identifying, managing, removing, and properly disposing of solid wastes and hazardous wastes; and (5) remediate the site in accordance with an approved plan and schedule.

The defendants did not request a hearing on the order within thirty days as required by [General Statutes §§ 22a-6\(e\) and 22a-225](#), as well as the Uniform Administrative Procedure Act, title 4 of chapter 54 of the General Statutes. As a result, the order became a final order.²

The plaintiff seeks permanent injunctions requiring the defendants to comply with the order and prohibiting the defendants from violating chapters 445,³ 446d,⁴ and 446k⁵ of the General Statutes, governing hazardous waste, solid waste management, and water pollution control, respectively. The plaintiff also seeks civil penalties against the defendants.

On September 29, 2021, the defendants filed a voluntary petition for bankruptcy under title 11, chapter 13 of the United States Code.⁶ On September 30, 2021, the defendants filed a Motion for Automatic Stay, asserting that the court is required to issue an automatic stay pursuant to  11 U.S.C. § 362 based on the filing of the petition.⁷ (Dkt. #130.) On the same day, the plaintiff filed an objection to the motion, arguing that the automatic stay is inapplicable where, as here, a governmental entity brought an action under its police and regulatory powers. (Dkt. #131.) On October 1, 2021, the court ordered the parties to submit briefs regarding the bankruptcy stay within ten days, and a remote hearing was scheduled for October 25, 2021, to address all pending motions. The plaintiff filed a memorandum in support of her objection on October 8, 2021. (Dkt. #133.) The defendants did not file a brief in connection with their stay motion, nor did they appear at the October 25 remote hearing. The court took the papers on the stay motion and the plaintiff's Motion to Strike (dkt. #119).

DISCUSSION

*2 [11 U.S.C. § 362](#) provides, in relevant part, that there is a general automatic stay against “the commencement or continuation ... of a judicial, administrative, or other action or proceeding against the debtor ...” [11 U.S.C. § 362\(a\) \(1\)](#). Under subsection (b), however, there is an exception to the application of an automatic stay that states, in relevant part: “[T]he commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit’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\(b\)\(4\)](#). The purpose of this exception is to prevent a debtor from “frustrating necessary governmental functions by seeking refuge in bankruptcy court.” (Internal quotation marks and citations omitted.) [S.E.C. v. Brennan](#), 230 F.3d 65, 71 (2d Cir. 2000).

“Given the general rule that pre-emption is not favored, and the fact that, in restoring power to the States, Congress intentionally used such a broad term as ‘police and regulatory powers,’ we find that the exception to the automatic stay provision contained in subsections 362(b)(4)-(5) should itself be construed broadly, and no unnatural efforts be made to limit its scope.” [Penn Terra, Ltd. v. Dept. of Environmental Resources](#), 733 F.2d 267, 273 (3d Cir. 1984) (finding considerations favor liberal construction of exception to automatic stay contained in [11 U.S.C. § 362\[b\]\(4\)](#)).⁸


Where an action is commenced by a governmental unit to enforce its regulatory or police powers, “the automatic stay does not apply even if the relief requested would place a significant strain on the bankrupt debtor’s finances. The reason for this exception to the automatic stay is said to be the recognition that enforcement of such laws merits a higher priority than the debtor’s rights to a ‘cease fire’ or his creditors’ rights to an orderly administration of the estate.” (Internal quotation marks omitted.) *Holbrook, Commissioner of Environmental Protection v. Huntington & Kildare, Inc.*, Superior Court, judicial district of Hartford,

Docket No. CV-95-0548320 (September 9, 1996, Sheldon, J.) [17 Conn. L. Rptr. 572] [Conn. L. Rptr. 572](#)]. Further, “[t]his exception discourages debtors from submitting bankruptcy petitions either primarily or solely for the purpose of evading impending governmental efforts to invoke the governmental police powers to enjoin or deter ongoing debtor conduct which would seriously threaten the public safety and welfare (e.g., environmental and/or consumer protection regulations).” [McMullen v. Sevigny](#), 386 F.3d 320, 324-25 (1st Cir. 2004); see also *S.E.C. v. Brennan*, *supra*, 230 F.3d 71 (noting exception exists to prevent debtor from frustrating necessary governmental function by seeking refuge in bankruptcy court).

To determine whether the so-called “police power” exception applies, courts often “evaluate whether the government’s action is to effectuate a ‘public policy’ or to further its own ‘pecuniary interest.’” [Kupperstein v. Schall](#), 994 F.3d 673, 677 (1st Cir. 2021), cert. denied, S.Ct., 211 L.Ed. 2d 37 (2021). “If the governmental action is designed primarily to protect the public safety and welfare, then it passes the ‘public policy’ test and is excepted from the automatic stay. In contrast, if the government is attempting to proceed against the debtor for a ‘pecuniary purpose,’ that is, to recover property from the estate, the police power exception offers no shelter and the proceeding is stayed.” (Citation omitted; internal quotation marks omitted.) *Id.*, 677-78. The key determination is whether the subject regulatory proceeding is designed primarily to protect the public or represents the government’s attempt to simply recover property of the debtor. See *McMullen v. Sevigny*, *supra*, 386 F.3d 325; see also *Penn Terra, Ltd. v. Dept. of Environmental Resources*, *supra*, 733 F.2d 274 (“[I]t first is clear to us that the actions taken by [the defendant] in obtaining and attempting to enforce the ... injunction falls squarely within [the state’s] police and regulatory powers. [The defendant] seeks to force [the plaintiff] to rectify harmful environmental hazards. No more obvious exercise of the State’s power to protect the health, safety, and welfare of the public can be imagined”).

*3 In this action the plaintiff, acting in her official capacity as commissioner of a governmental unit, is exercising her duty to protect the environment and Connecticut’s natural resources pursuant to [General Statutes § 22a-2d](#) and, by extension, the public safety and welfare by, *inter alia*, seeking injunctive relief to prevent additional environmental

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harm caused by the contamination at the defendants' site. Accordingly, the plaintiff's action falls within the police power exception to the automatic stay under  11 U.S.C. § 362(b)(4).


For all of the foregoing reasons, the defendants' motion for stay is denied.

All Citations

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CONCLUSION

Footnotes

- 1 At the time the defendants purchased the site, it contained "significant preexisting contamination," requiring a remediation agreement. The plaintiff alleges that, to date, the site's soil and water contamination has not been investigated and remediated, and the defendants "left massive surface piles of asbestos-laden demolition debris" at the site.
- 2 A notice of final order was sent to the defendants on September 13, 2018, and noncompliance notices were sent to the defendants on September 21, 2018, and October 26, 2018.
- 3 See [General Statutes §§ 22a-123 and 22a-134a\(j\)](#).
- 4 See [General Statutes § 22a-226\(b\)](#).
- 5 See [General Statutes § 22a-432](#).
- 6 The petition was filed by defendant Clifford and listed several "fdba" (formerly doing business as) entities, including defendant TD Development, LLC.
- 7 The stay motion was filed the day before a scheduled hearing on a number of motions filed by both parties. See *dk.* ##110, 119 and 121.
- 8 This interpretation is consistent with the legislative history of  [11 U.S.C. § 362\(b\)\(4\)](#), which "excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers. *Thus, where a government 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.*" (Emphasis added.) S.Rep. No. 95989 at 52, 1978 U.S. Code Cong. & Ad. News at 5787, 5838; [H. Rep. No. 95-595 at 343](#), 1978 U.S. Code Cong. & Ad. News at 6299.