

IN THE SUPREME COURT OF THE STATE OF NEVADA

EXECUTIVE MANAGEMENT, LTD., A
CALIFORNIA CORPORATION,
Appellant,
vs.
TICOR TITLE INSURANCE COMPANY,
A FOREIGN CORPORATION,
Respondent.

No. 47592

FILED

JAN 12 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER GRANTING MOTION TO SUBSTITUTE PARTY
AND DISMISSING APPEAL

This is an appeal from a district court order granting respondent judgment as a matter of law and a post-judgment order awarding attorney fees and costs in an action to quiet title. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

After this appeal was filed, the district court issued a writ of execution directing appellant Executive Management, Ltd., to satisfy, out of certain personal property, the court's order awarding respondent Tigor Title Insurance Company approximately \$1.7 million in attorney fees and costs. According to the writ of execution, Executive Management's personal property included its rights in "all claims for relief, causes of action, things in action, and choses in action . . . specifically, the rights of

Executive Management [in the underlying action] and any appeals thereof.”¹

Pursuant to the writ of execution, the Clark County Sheriff seized Executive Management’s personal property and, thereafter, conducted a sale of that property. At the sheriff’s sale, Ticor Title purchased all of Executive Management’s personal property, including its rights in the underlying action. Based on its purchase of Executive Management’s rights in the underlying action, Ticor Title has filed a motion requesting, under NRAP 43(b), to substitute itself for Executive Management and then, under NRAP 42(b), to voluntarily dismiss this appeal. Executive Management has opposed the motion and Ticor Title has filed its permitted reply.

Having considered the motion, opposition, and reply, we grant Ticor Title’s request to substitute itself for Executive Management and to dismiss this appeal. Specifically, Ticor Title validly purchased Executive Management’s rights in the underlying action, and by extension, this appeal.² Because Ticor Title purchased Executive Management’s claims,

¹See Fishman v. Las Vegas Sun, 75 Nev. 13, 14-15, 333 P.2d 988, 989 (1959) (recognizing that an appeal to this court generally does not “deprive the respondent judgment creditor of the right to execute upon its judgment” and that the district court retains jurisdiction for such purposes).

²See NRS 21.080(1) (listing property liable to execution, including personal property); NRS 10.045 (defining “personal property” to include “things in action”); see also Sportsco Enter. v. Morris, 112 Nev. 625, 630, 917 P.2d 934, 937 (1996) (providing that statutes specifying kinds of property liable to execution “must be liberally construed” for the judgment creditor’s benefit); see generally Denham v. Farmers Ins. Co., 262 Cal. Rptr. 146, 152 (Ct. App. 1989) (applying Nevada law and interpreting NRS

continued on next page . . .

it now, for all intents and purposes, holds Executive Management's position vis-à-vis this appeal,³ and thus it may voluntarily dismiss the appeal.⁴

... *continued*

21.080 and NRS 10.045 to allow a judgment creditor to execute on a judgment debtor's cause of action).


³See NRAP 43(b) (noting that this court, on a motion, may substitute a party for any necessary reason); cf. NRCP 25(c) (providing that the district court, on a motion, may substitute in the action a party to whom an interest in the action has been transferred).

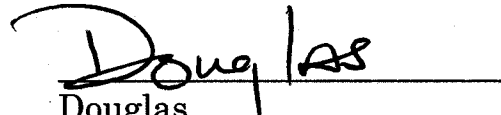
⁴See Applied Medical Technologies, Inc. v. Eames, 44 P.3d 699 (Utah 2002) (providing that, in general, a judgment creditor may dismiss claims against him that he had purchased to satisfy a judgment).

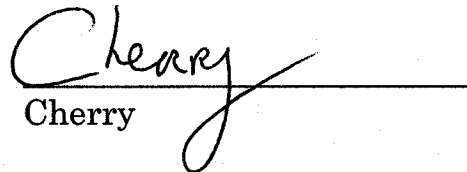
Although Executive Management contends that granting Ticor Title's motion will unjustifiably circumvent the appeal process, we note that this result is the natural conclusion of the course of events to which Executive Management acquiesced. Cf. Mill-Spex, Inc. v. Pyramid Precast Corp., 101 Nev. 820, 822, 710 P.2d 1387, 1388 (1985) ("A waiver may be implied from conduct which evidences an intention to waive a right, or by conduct which is inconsistent with any other intention than to waive the right."). Executive Management could have sought a stay of the district court's order awarding attorney fees and costs and/or writ of execution pending its appeal, but declined to do so, apparently in light of its financial inability to post a supersedeas bond. But Executive Management could have requested relief from the requirement to post a supersedeas bond as part of any request for a stay, as it did in its October 10, 2006 motion requesting, after the fact, that this court stay the sheriff's sale. See Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252 (2005).

Accordingly, we grant the motion, and we

ORDER this appeal DISMISSED.⁵


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Eighth Judicial District Court Dept. 18 , District Judge
Leonard I. Gang, Settlement Judge
Alverson Taylor Mortensen & Sanders
Michael A. Olsen
Gerrard Cox & Larsen
Clark County Clerk

⁵See NRAP 42(b).

In light of this order, we deny as moot Executive Management's December 13, 2006 motion for reconsideration of this court's order suspending briefing.