

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID MARTINEZ,
Appellant,
vs.
DESERT INCOME PALMYRA, LLC,
Respondent.

No. 76797-COA

FILED

MAR 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

David Martinez appeals from a district court order denying a motion for preliminary injunction in a real property matter.¹ Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Respondent Desert Income Palmyra, LLC filed suit against Martinez, among others (collectively defendants), alleging unlawful detainer, quiet title, breach of contract, and unjust enrichment related to an agreement between Desert Income and the defendants for defendants to purchase certain real property. Desert Income ultimately obtained summary judgment against Martinez, which determined that Martinez had no interest in the real property. Desert Income also obtained a temporary writ of restitution; however, this writ was executed by the constable one day after Martinez filed for bankruptcy. Martinez then filed a motion for a preliminary injunction seeking repossession of the real property and personal property that was allegedly at the real property. In so doing,

¹We note that the informal brief filed in this matter purported to be on behalf of David Martinez and Bridgetta Martinez; however, Bridgetta did not file a notice of appeal and is therefore not a proper appellant in this matter.

Martinez argued that the writ of restitution was executed in violation of the automatic bankruptcy stay. The district court denied the motion for injunctive relief, finding that it had already ruled that Martinez had no interest in the real property and that there was no evidence Martinez had any personal property there. This appeal followed.


Pursuant to 11 U.S.C. § 362, the filing of a bankruptcy petition like that filed by Martinez operates as an automatic stay as to certain proceedings involving the bankruptcy debtor, subject to various exceptions. And here, the district court's order failed to address the applicability of the automatic bankruptcy stay to the issues presented in Martinez's motion, the impact of the stay in regard to the execution of the writ of restitution, and whether it was proper for the district court to proceed with making decisions regarding the property under these circumstances. *Cf. Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 806, 963 P.2d 488, 496 (1998) (recognizing the breadth of the bankruptcy stay by noting that even a mere possessory interest in real property, without any legal interest, is subject to the automatic stay and further recognizing that the bankruptcy court can lift the stay so that the state court can determine certain issues).² Accordingly,

²Martinez requests that this court order specific performance related to the purchase of the real property and award statutory damages for the alleged violation of the bankruptcy stay, but because he failed to seek that relief in the relevant motion in the district court, we do not address those requests on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). However, the bankruptcy proceedings may provide a more appropriate forum for seeking damages for any alleged violation of the stay. Likewise, to the extent Desert Income believes it should not have been subjected to the stay, it could seek relief from the stay in bankruptcy court. *See* 11 U.S.C. § 362(d); *SFR Invs.*

we necessarily reverse and remand the matter for the district court to consider these issues in the context of Martinez's motion.³ See *Hillis Motors, Inc. v. Haw. Auto. Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993) (noting that an automatic stay immediately arises when a debtor files a bankruptcy petition, that the scope of the stay is broad, and that "[i]t is designed to effect an immediate freeze of the *status quo* by precluding and nullifying post-petition actions, judicial or nonjudicial, in nonbankruptcy fora against the debtor or affecting the property of the estate").

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

Pool 1, LLC v. U.S. Bank, N.A., 135 Nev., Adv. Op. 45, 449 P.3d 461, 464 (2019) (recognizing that relief from a bankruptcy stay can be retroactive).

³In light of the basis on which we reverse, we make no comment on the merits of the district court's determination that injunctive relief was not warranted.

⁴Because respondent failed to retain new counsel as directed by this court's January 23, 2020, order and respondent cannot proceed in pro se, see NRAP 46A(b)(2) ("[a] corporation or other entity may not appear without counsel."), we resolve this appeal based only on appellant's informal brief. Thus, the parties need not comply with our December 20, 2019, order directing full briefing.

cc: Hon. Kenneth C. Cory, District Judge
David Martinez
The Dean Legal Group, Ltd.
Eighth District Court Clerk