

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SAFETY NATIONAL CASUALTY	:	
CORPORATION,	:	
	:	
Appellant,	:	
	:	
v.	:	Civil Action No. 02-1580 JJF
	:	
KAISER ALUMINUM & CHEMICAL	:	
CORPORATION,	:	
	:	
Appellee.	:	

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Attorneys for Appellant Safety National Casualty Corporation.

MEMORANDUM OPINION

November 25, 2003

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion Of Appellee Kaiser Aluminum & Chemical Corporation ("Kaiser") For Damages And Costs For Frivolous Appeal Pursuant To Federal Rule Of Bankruptcy Procedure 8020. (D.I. 14.) For the following reasons, the Court will deny Kaiser's Motion.

BACKGROUND

The instant appeal arises from a bankruptcy proceeding before Bankruptcy Judge Judith K. Fitzgerald (the "bankruptcy judge"). In a September 23, 2002 hearing, the bankruptcy judge granted Kaiser's motion to enforce the automatic stay against Safety National Casualty Corporation ("Safety"). In order to fully understand the instant appeal, a brief description of the underlying facts is necessary.

In 1984, Safety issued Kaiser an insurance policy containing an arbitration clause applying to all disputes arising from the policy. In 2000, Kaiser filed a lawsuit against Lloyd's of London ("Lloyds") seeking coverage for its asbestos liability in California (the "California Action"). Kaiser did not include Safety as a defendant in the California Action. Subsequently, Kaiser filed for bankruptcy in Delaware.

In the California Action, Lloyds filed a cross-complaint against Safety and various other insurers for indemnification and contribution in covering Kaiser's asbestos liability. During the

California Action, Kaiser circulated a draft of an amended complaint that named Safety as a defendant. In response, Safety communicated to Kaiser that Kaiser was obligated to arbitrate this dispute as it arose from the insurance policy between them. Kaiser never filed the amended complaint which named Safety as a defendant. Nevertheless, Safety filed a motion to compel arbitration between it and Kaiser in the California Action.

The bankruptcy judge held that Safety's filing of a motion to compel arbitration during the automatic stay was a willful violation of Section 362 of the Bankruptcy Code. However, despite this finding, the bankruptcy judge did not award Kaiser damages as she concluded that Kaiser's circulation of its amended complaint was a motivating factor in Safety's decision to file the motion to compel arbitration.

DISCUSSION

Kaiser contends, as the bankruptcy judge found, that Safety willfully and indisputably violated the automatic stay. Therefore, Kaiser contends that Safety has no grounds to appeal the bankruptcy judge's order, thereby making this appeal frivolous and sanctionable under Federal Rule of Bankruptcy Procedure 8020 ("Bankruptcy Rule 8020"). In response, Safety contends that its appeal of the bankruptcy judge's order is not frivolous. Safety contends that the bankruptcy judge erred in finding that it willfully violated the automatic stay.

Bankruptcy Rule 8020 provides, "If a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may . . . award just damages and single or double costs to the appellee." The language of Bankruptcy Rule 8020, in relevant part, is identical to that of Federal Rule of Appellate Procedure 38 ("Appellate Rule 38"), and therefore, a court considering a Bankruptcy Rule 8020 motion should be guided by cases applying Appellate Rule 38. 10 Collier On Bankruptcy ¶ 8020.02 (15th ed. rev. 2003) (citation omitted).

The purpose for sanctions under Appellate Rule 38 is to "compensate appellees who are forced to defend judgments awarded them in the trial court from appeals that are wholly without merit." Nagle v. Alspach, 8 F.3d 141, 145 (3d Cir. 1993). The analysis is purely objective, limited to a focus on the merits of the appeal and "regardless of [the appellant's] good or bad faith." Id. (interior quotation omitted). However, a court must exercise caution in awarding damages under Appellate Rule 38 because imprudent awards may "chill" parties' desire to appeal difficult and novel questions. Hillman Co. (V.I.) Inc. v. Hyatt Intern., 899 F.2d 250, 253 (3d Cir. 1990). Therefore, a court should not award damages unless the appeal "lacks colorable support." Nagle, 8 F.3d at 145.

I. Safety's Grounds For This Appeal: Whether Safety Willfully Violated The Automatic Stay

The automatic stay provided by the Bankruptcy Code, 28 U.S.C. § 362(a)(1), applies to "the commencement or continuance, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title. . . ." "The scope of [the automatic stay] is broad. [Under Section 362(a)(1) all proceedings are stayed, including arbitration . . . proceedings" H.R. Rep. No. 95-595, 340 (1977); see also Neufeld, Fred, Enforcement of Contractual Arbitration Agreements Under the Bankruptcy Code, 65 Am. Bankr. L.J. 525, 540 (1991) ("In addition, the legislative history of the 1978 Act and the 1984 amendments is silent on the question of arbitration, with the exception that the automatic stay is applicable to arbitration agreements."). Based upon the scope of protection provided by Section 362, the Court agrees with the bankruptcy judge's finding that Safety willfully violated the automatic stay by filing the motion to compel arbitration in the California Action.

II. Whether Kaiser Is Entitled To Damages For This Appeal

Despite the Court's conclusion that Safety violated the automatic stay, the Court concludes that Safety has presented various arguments demonstrating that its appeal is not entirely

without "colorable support." The facts presented in this case evidence the novel and difficult questions faced by Safety, and therefore, the Court finds that Safety's contentions are sufficient to deny granting Kaiser damages and costs for this appeal.

An appropriate Order will be entered.

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CORPORATION,	:	
	:	
Appellee.	:	

ORDER

WHEREAS Kaiser Aluminum & Chemical Corporation ("Kaiser")
filed a Motion For Damages And Costs For Frivolous Appeal
Pursuant To Federal Rule Of Bankruptcy Procedure 8020 (D.I. 14);

NOW THEREFORE, IT IS HEREBY ORDERED this 25th day of
November, 2003, that Kaiser's Motion For Damages And Costs For
Frivolous Appeal Pursuant To Federal Rule Of Bankruptcy Procedure
8020 (D.I. 14) is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE