UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al. Debtors.	CV 19-10352 DSF Order DENYING Emergency Motion to Dismiss Appeal (Dkt. No. 2); Order GRANTING Motion to be Named as Appellee (Dkt. No. 11)

Appellant Strategic Global Management, Inc. has appealed an order of the Bankruptcy Court acknowledging that a certain sale of hospital assets is free and clear from certain requirements that the Attorney General of California wished to impose. Debtors have moved to dismiss the appeal due to waiver and lack of standing.[1]

It is questionable whether any exigency exists that could be meaningfully resolved by dismissal of this appeal. Appellant may or may not close the relevant transaction in a timely fashion. If it doesn't, Debtors may or may not run out of operating cash. The existence of a pending appeal at the time the deal falls through may be relevant to

[1] Because it is a party in interest that actively took part in the proceedings below, the Creditors' Committee's motion to be named as an appellee is GRANTED. But regardless of its right to intervene, the Court declines to consider any additional arguments raised by the Creditors' Committee in its joinder filed on December 17. December 17 was the deadline for Appellant to respond to the emergency motion to dismiss. The Court will not consider substantive arguments to which the Appellant had no opportunity to respond.

sorting out the legal responsibilities of the various parties somewhere in the future, but dismissal of the appeal would not force Appellant to close or cause cash to appear in the Debtors' accounts. Nonetheless, the Court will decide the motion now given that the matter has been briefed and the Court is ruling in favor of the party that opposes the emergency treatment of the motion.

Appellant did not waive its right to appeal the order entered by the Bankruptcy Court by virtue of its joinder in the original motion for relief. Waiver is the "intentional relinquishment or abandonment of a known right." Hamer v. Neighborhood Hous. Servs. of Chicago, 138 S.Ct. 13, 17 n.1 (2017). Appellant (presumably) agreed with the arguments made in Debtors' original motion and the Bankruptcy Court issued an extensive opinion agreeing with the arguments made in that motion. Appellants do not appeal that. Instead, they appeal the final order later entered by the Bankruptcy Court that was a product of an explicit compromise between Debtors and the Attorney General and that did not necessarily provide the entirety of relief requested in the motion. That compromise and order also resulted in the original opinion being vacated. There is no question that Appellants vigorously opposed the entry of the order and claimed that it did not provide them with the protection sought in the motion and to which they are entitled. While Appellants' arguments may ultimately turn out to be meritless, they did not waive the right to appeal an order that allegedly does not provide the result they had joined in seeking.

A party "aggrieved" by an order of a bankruptcy court generally has standing to appeal that order. "An appellant is aggrieved if directly and adversely affected pecuniarily by an order of the bankruptcy court; in other words, the order must diminish the appellant's property, increase its burdens, or detrimentally affect its rights." In re P.R.T.C., Inc., 177 F.3d 774, 777 (9th Cir. 1999) (internal quotation marks omitted). The premise of the appeal is that the order entered by the Bankruptcy Court does not provide the relief Appellant is entitled to as the prospective purchaser of assets from the Debtors. Appellants claim that the deficiencies in the order could expose them either to liability from an action by the Attorney General or to a reduced value of the

assets if the Attorney General asserts the existence of certain obligations on the holder of the assets in the future. Again, these arguments may ultimately be found to be substantively meritless, but Appellant has a pecuniary interest in that determination.

Debtors' assertion that generally a prevailing party has no standing to challenge the language of the lower court decree is incorrect. First, it is clear if a party that receives only some of what it sought, it is entitled to appeal. Forney v. Apfel, 524 U.S. 266, 271 (1998). In its view, Appellant only received part of what it sought or, alternatively, the ambiguity of the Bankruptcy Court's order rendered its purported victory illusory. Debtors' assertions to the contrary are its position on the substance of the appeal – that the order entered by the Bankruptcy Court was sufficient and everything Appellant wanted. In that sense, Debtors' standing argument begs the entire question posed by the appeal. In addition, language contained in an appealable decree – usually the judgment – has long been held to be subject to reformation on appeal by the prevailing party. See Envtl. Prot. Info. Ctr., Inc. v. Pac. Lumber Co., 257 F.3d 1071, 1075 (9th Cir. 2001) (citing Elec. Fittings Corp. v. Thomas & Betts Co., 307 U.S. 241, 242 (1939)). The relevant limitation is that "[a] party may not appeal from a judgment or decree in his favor, for the purpose of obtaining a review of findings he deems erroneous which are not necessary to support the decree." Elec. Fittings Corp., 307 U.S. at 242. This is an appeal of the direct applicable language of the appealable decree, not an appeal for a review of unnecessary findings.

The motion to dismiss is DENIED.

IT IS SO ORDERED.

Date: December 20, 2019

Dale S. Fischer
United States District Judge