

2020 WL 5228979

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN  
RELEASED FOR PUBLICATION IN THE  
PERMANENT LAW REPORTS. UNTIL RELEASED,  
IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District Court of Appeal of Florida, Third District.

**NATIONAL MEDICAL  
IMAGING, LLC**, et al., Appellants,

v.

LYON FINANCIAL SERVICES, INC., etc., Appellee.

No. 3D20-730

|

Opinion filed September 2, 2020.

**Synopsis**


**Background:** Plaintiff in state court action against debtor moved to stay debtor's appeal from adverse judgment entered by the Circuit Court, 11th Judicial Circuit, Miami-Dade County, [Michael A. Hanzman, J.](#), out of concerns that it would violate automatic stay by filing a reply brief.

**[Holding:]** The District Court of Appeal, [Scales, J.](#), held that automatic stay did not apply to the filing of notice of appeal by debtor defendant from judgment entered in state court lawsuit against it or prevent appellee from filing a reply brief.


Motion denied.

**Procedural Posture(s):** Motion for Stay.

West Headnotes (3)


**[1] Courts**  Number of judges concurring in opinion, and opinion by divided court

Unless the Florida Supreme Court overrules a prior panel's decision, a subsequent panel of the District Court of Appeal is not free to disregard, and must follow, precedent of the prior panel.

**[2] Courts**  Number of judges concurring in opinion, and opinion by divided court

Only the District Court of Appeal, sitting en banc, may recede from a prior panel's decision.

**[3] Bankruptcy**  Judicial proceedings in general

Automatic stay did not apply to the filing of notice of appeal by debtor defendant from judgment entered in state court lawsuit against it or prevent appellee from filing a reply brief; notice of appeal filed by debtor-defendant was not the "continuation" of an "action or proceeding against the debtor."  11 U.S.C.A. § 362(a)(1).

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, [Michael A. Hanzman](#), Judge.


**Attorneys and Law Firms**

Genovese Joblove & Battista, P.A., and [W. Barry Blum](#) and [Jessica Serell Erenbaum](#), for appellants.

Shutts & Bowen, LLP, and [Jack C. McElroy](#), [John W. Bustard](#) and [Patrick G. Brugger](#), for appellee.

Before [FERNANDEZ](#), [SCALES](#) and [LINDSEY](#), JJ.

ON MOTION FOR STAY[SCALES, J.](#)

\*1 [1] [2] Appellee Lyon Financial Services, Inc. d/b/ a U.S. Bank Portfolio Services seeks to stay the appeal in appellate case number 3D20-730 because of bankruptcy petitions filed by appellants National Medical Imaging, LLC and National Medical Imaging Holding Company, LLC. Were we writing on a clean slate, we would grant the motion to stay pursuant to the automatic stay provision set forth in  11 U.S.C. § 362(a)(1).<sup>1</sup> Nonetheless, the motion to stay is denied as we are bound by this Court's prior decision in

 [Shop in the Grove, Ltd. v. Union Federal Savings & Loan](#)

[Ass'n of Miami](#), 425 So. 2d 1138 (Fla. 3d DCA 1982).<sup>2</sup> The instant matter, however, illustrates why this Court should revisit and recede from [Shop in the Grove](#).

[3] [Shop in the Grove](#) holds that the automatic stay provision in [11 U.S.C. § 362\(a\)\(1\)](#) is inapplicable in this Court where the debtor – who is the defendant below and who has filed for federal bankruptcy protection – is the appellant. [Shop in the Grove, Ltd.](#), 425 So. 2d at 1138. The rationale behind [Shop in the Grove](#) is simple enough: because the automatic stay acts as a *shield*, a debtor-defendant who seeks affirmative, appellate relief from this Court should be estopped from benefitting from the stay. Nevertheless, in our view, [Shop in the Grove](#)'s rationale disregards the plain language of [section 362\(a\)\(1\)](#) and causes unnecessary confusion and uncertainty.

First, the federal bankruptcy code's automatic stay provision is clear: the debtor's filing of a bankruptcy petition stays any action or proceeding, including the “continuation” of an “action or proceeding against the debtor.” [11 U.S.C. § 362\(a\)\(1\)](#) (2020). When the debtor is a defendant in an action, it seems to us that the debtor-defendant's appeal of an adverse judgment in that action is plainly a “continuation” of a “proceeding” against the debtor-defendant. See [Ass'n of St. Croix Condo. Owners v. St. Croix Hotel Corp.](#), 682 F.2d 446, 449 (3d Cir. 1982) (“[S]ection 362 should be read to stay all appeals in proceedings that were originally brought against the debtor, regardless of whether the debtor is the appellant or appellee.”).

\*2 Second, Florida's other district courts of appeal have held that [section 362\(a\)\(1\)](#) applies when the debtor-defendant is either the appellant or the appellee,<sup>3</sup> making [Shop in the Grove](#) an outlier. This Court did not have the benefit of the federal appellate courts' interpretations of the automatic stay provision when [Shop in the Grove](#) issued in 1982. See [Fla. E. Dev. Co., Inc. of Hollywood](#), 636 So. 2d at 757 (acknowledging “there was a dearth of law on the subject [of the automatic stay provision] at the time [Shop in the Grove](#) was decided in 1982”); [Shop in the Grove, Ltd.](#), 425 So. 2d at 1138 (referring to the “automatic stay provision of

the ‘new’ Bankruptcy Act”). Reasonable people can disagree on questions of statutory construction. This Court's isolated statutory interpretation of [section 362\(a\)\(1\)](#), however, can have significant consequences for multi-jurisdictional bankruptcy practitioners (and their clients), because tough sanctions accompany violations of the automatic stay.<sup>4</sup> Federal bankruptcy judges are certainly not bound by this Court's interpretation of [section 362](#) when determining whether a party or its counsel has violated the federal code's automatic stay provision.

The confusion and potential mischief caused by our [Shop in the Grove](#) case is illustrated here. The appellants, the debtor-defendants in the lower court action, filed their notice of appeal to this Court on May 7, 2020, and filed their initial brief on May 19, 2020. Then, on June 12, 2020, the appellants filed separate bankruptcy petitions in the United States Bankruptcy Court for the Eastern District of Pennsylvania. The instant motion to stay – filed by the *appellee* – states that the appellee “does not wish to violate the automatic stay.” The appellee understandably fears that filing its answer brief in this Court – a continuation of its proceeding against the debtors – may violate the automatic stay.

In light of this Court's denial of the appellee's stay motion, it is unlikely that the Pennsylvania bankruptcy court would sanction the appellee or its counsel for violating [section 362\(a\)\(1\)](#) for filing its answer brief in this Court. Nonetheless, the Pennsylvania bankruptcy court rests in the United States Court of Appeals for the Third Circuit, which has expressly and unequivocally determined that, contrary to [Shop in the Grove](#), “[section 362](#) should be read to stay all appeals in proceedings that were originally brought against the debtor, regardless of whether the debtor is the appellant or appellee.” [Ass'n of St. Croix Condo. Owners](#), 682 F.2d at 449.







While the panel is bound by this Court's prior precedent, we fear that our adherence to [Shop in the Grove](#) has needlessly placed the appellee on the horns of a dilemma.

Stay denied.

#### All Citations

--- So.3d ----, 2020 WL 5228979

## Footnotes

- 1 Where a debtor files a suggestion of bankruptcy under Chapter 11 of the federal bankruptcy code, all legal proceedings against the debtor are automatically stayed:
- (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of –
- (1) the commencement or continuation, 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, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]
-  [11 U.S.C. § 362\(a\)\(1\) \(2020\)](#).
- 2 Unless the Florida Supreme Court overrules a prior panel's decision, a subsequent panel of this Court is not free to disregard, and must follow, precedent of the prior panel. See [Bean v. Univ. of Miami](#), 252 So. 3d 810, 821 (Fla. 3d DCA 2018). Only the Court, sitting *en banc*, may recede from a prior panel's decision. See [State v. Washington](#), 114 So. 3d 182, 188-89 (Fla. 3d DCA 2012).
- 3 See  [Taylor v. Barnett Bank of N. Cent. Fla., N.A.](#), 737 So. 2d 1105, 1106 (Fla. 1st DCA 1998);  [Fla. E. Dev. Co., Inc. of Hollywood v. Len-Hal Realty, Inc.](#), 636 So. 2d 756, 758 (Fla. 4th DCA 1994);  [Crowe Group, Inc. v. Garner](#), 691 So. 2d 1089, 1089 (Fla. 2d DCA 1993).
- 4  [Section 362](#) provides for the award of damages, including attorneys' fees and costs, for a willful violation of the automatic stay:
- (k)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
- (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.
-  [11 U.S.C. § 362\(k\)\(1\)-\(2\) \(2020\)](#).