

DIS. CT# 91-00001

FILED

JUL 19 1991

Case No. 91-5493

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

RONARD GREEN, Clerk

IN RE: PHOENIX COAL COMPANY, )  
 )  
 Debtor, )  
 )  
 \_\_\_\_\_ )  
 )  
 PHOENIX COAL COMPANY, )  
 )  
 Plaintiff-Appellee, )  
 )  
 v. )  
 )  
 RICH CREEK PROCESSING, INC.; )  
 BELVA COAL COMPANY, INC., formerly )  
 known as Belva Acquisition, Inc., )  
 )  
 Defendants-Appellants. )

O R D E R

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION  
Sixth Circuit Rule 33.1(b) applies to specific situations. Please see  
the Sixth Circuit's website for more information. If a copy of this  
order is to be placed on the court's website, it should be  
placed in a copy that is reviewed on order pages and the Court.  
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BEFORE: GUY and NORRIS, Circuit Judges; and BROWN, Senior Circuit  
Judge.

The defendants appeal a district court order vacating the bankruptcy court's dismissal of the plaintiff's complaint and remanding the case to the bankruptcy court for plaintiff to amend its complaint and conduct further discovery. The plaintiff now moves to dismiss the appeal. The defendants have responded in opposition.

Pursuant to 28 U.S.C. § 158(d), this court has jurisdiction in bankruptcy matters in appeals from all final decisions, judgments, orders, and decrees of district courts sitting in review of bankruptcy courts. In re: Vause, 886 F.2d 794 (6th Cir. 1989). The order from which this appeal is taken requires that further steps be taken by the

bankruptcy court before an adjudication on the merits of the plaintiff's claims can be made. Accordingly, this matter is not yet final for review by this court. See In re: Frederick Petroleum Corp., 912 F.2d 850 (6th Cir. 1990).

It is therefore ordered that the plaintiff's motion to dismiss is granted without prejudice to the defendants' right to perfect a timely appeal upon entry of final judgment.

ENTERED BY ORDER OF THE COURT

*Edward Green, Jr.*  
Clerk