Business Bankruptcy Case Developments - 2021

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In re Senior Care Centers, LLC, 622 B.R. 680 (Bankr. N.D. Tex. 2020) (Jernigan, J.).

The post-confirmation lessor to the reorganized debtor brought an action in a Texas state district court seeking to enjoin the sale of the reorganized debtor's equity interests, alleging violations of the "change of control" provisions of the master lease agreement entered into under the terms of the confirmed chapter 11 plan. The reorganized debtor and parent removed the action to the Bankruptcy Court where they were joined by the liquidating trustee. Lessor sought to remand the case back to state court, arguing that the Bankruptcy Court did not have subject matter jurisdiction over the post-confirmation dispute.

The Bankruptcy Court found that it possessed subject matter jurisdiction over the dispute. In reaching this decision the Bankruptcy Court noted that the Supreme Court has provided that Bankruptcy Courts always maintain jurisdiction to enforce their orders even absent explicit language stating so, and that the addition of any explicit retention of jurisdiction is "icing on the cake." The icing was present here as the Bankruptcy Court had expressly retained jurisdiction over the assumption of unexpired leases and the adjudication of disputes related to distributions under the plan pursuant to the confirmation order. The Bankruptcy Court also found that it possessed subject matter jurisdiction over the dispute as the lessor's actions interfered with the implementation of the reorganized debtor's plan which was not yet fully consummated, and amounted to a collateral attack on the plan and confirmation order by seeking to enjoin the liquidating trustee's ability to sell the reorganized debtor's equity in accordance with the terms thereof when such objections could have been brought during the confirmation process.

In Non-Core "Related-To" Proceedings, the Shorter Deadlines under the Bankruptcy Rules Apply.
In re Lac-Mégantic Train Derailment Litigation, 999 F.3d 72 (1st Cir. 2021) (Selya, J.).

Under Rule 59(e) of the Federal Rules of Civil Procedures (the "Civil Rules"), a party has 28 days after entry of a final order to move for reconsideration. Rule 9023 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") makes Civil Rule 59 applicable in bankruptcy proceedings, but the deadline under the Bankruptcy Rules is reduced to 14 days. A timely motion filed either under rule tolls the deadline for filing a notice of appeal.

This case tested the limits of these competing rules and deadlines. The U.S. Court of Appeals for the First Circuit[1] held that the Bankruptcy Rules—not the Civil Rules—applied to the dispute, which was a non-core "related to" lawsuit between non-debtor parties. In so holding, the First Circuit agreed with the only two other Circuit Courts of Appeal to address the issue.[2] As a result, the shorter deadline applied, and the Court of Appeals dismissed the appeal for lack of appellate jurisdiction because the appellants failed to file a timely Rule 59 motion in the trial court below.

The dispute in *Lac-Mégantic* arose from a train derailment and explosion in Lac-Mégantic, Canada. Plaintiffs filed wrongful death actions in various state courts in Illinois and Texas. One of the co-defendants—Montreal, Maine, and Atlantic Railway (MMA)—commenced a bankruptcy case in the District of Maine. The lawsuits were removed to federal court and, because 28 U.S.C § 157(b)(5) provides for the

[1] Unless otherwise noted, this document refers to one or more of the thirteen federal appellate courts as "circuit courts" or "courts of appeals" collectively and "First Circuit," "Second Circuit," and so on individually, general trial courts as "district courts" collectively and "district court" individually, and "bankruptcy courts" collectively and "bankruptcy court" individually. If capitalized, the term "Circuit Court," "Bankruptcy Court," or "District Court" refer to the specific court that issued the relevant decision.

[2] *See In re Celotex Corp.,* 124 F.3d 619, 629 (4th Cir. 1997); *Phar-Mor,Inc. v. Coopers & Lybrand,* 22 F.3d 1228, 1238 (3d Cir. 1994); *cf. Double Eagle Energy Servs., L.L.C. v. MarkWest Utica EMG, L.L.C.,* 936 F.3d 260, 264 (5th Cir. 2019) (applying Bankruptcy Rule 7004 to a "related to" proceeding).

District Court with jurisdiction over a bankruptcy case to adjudicate personal injury and wrongful death claims related to the bankruptcy proceeding, the plaintiff-appellants joined the MMA bankruptcy trustee's requests to have all cases transferred to and consolidated in the District of Maine.

The plaintiff-appellants then settled with all defendants except appellee Canadian Pacific, a non-debtor co-defendant. Thus, the claims of non-debtor plaintiffs proceeded against a non-debtor defendant in the United States District Court for the District of Maine, as a non-core proceeding that was "related to" MMA's bankruptcy.

The District Court granted Canadian Pacific's motion to dismiss and denied the plaintiffs' motion for leave to amend the complaint. **Twenty-eight (28) days later**, the plaintiffs filed a motion under Civil Rule 59(e) to reconsider the District Court's orders. The District Court denied the motion in a margin order. This appeal followed.

Canadian Pacific moved for summary dismissal of the appeal for lack of appellate jurisdiction, arguing that the appeal was untimely because the plaintiffs' Rule 59 motion failed to toll the appellate deadline since it was not filed within the **fourteen (14) days** required by Bankruptcy Rule 9023. Thus, the issue presented to the First Circuit was: Which rules apply?

The Court of Appeals explained that support for the application of the Bankruptcy Rules could be found in the language of Bankruptcy Rule 1001. That rule applies to "cases under title 11 of the United States Code." While this language does not precisely mirror the definition of core cases in 28 U.S.C. § 157, the Court concluded that the term "under title 11" as used in Bankruptcy Rule 1001 could be read to apply to non-core cases that remain in federal district court under § 1334(b) as merely "related to" a bankruptcy case, such as this case. As support for this broader interpretation of the rule, the Court explained that the Bankruptcy Rules were adopted in 1987, three years after Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA) in response to *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

The First Circuit found further support for its conclusion in what it called "the practicalities attendant to the efficient operation of the modern bankruptcy system." The Court explained that it would be impractical for a federal district court, presiding over both core and non-core claims among the same parties, to apply different sets of rules within the same proceeding. "We, too, think it implausible that Congress could have intended to create such a Rube-Goldberg-like adjudicative contraption."

The First Circuit then considered and rejected the plaintiffs' "fallback position" that a district court has discretion to apply either set of rules to non-core "related to" cases, finding no statutory support for "such a pick-and-choose approach." Finally, it addressed the plaintiffs' plea for equitable relief based on their argument that they received insufficient notice of the possibility that the 14-day deadline under the Bankruptcy Rule 9023 might apply. To this argument, the Court of Appeals explained that there was no basis for equitable exceptions to jurisdictional requirements. Further, it noted that the plaintiffs had joined a request to transfer their cases to the District of Maine as cases "related to" MMA's bankruptcy case. "At the time, the existing case law, though sparse, put them on notice that the Bankruptcy Rules would apply." Thus, the Court declined to provide an exception and dismissed the appeal for lack of jurisdiction.

Jurisdiction Existed Over Collection Action Having a "Conceivable Effect" on Bankruptcy Estate.
Cross Keys Bank v. Ward (In re Karcredit, L.L.C.), 630 B.R. 14 (Bankr. E.D. La. 2021) (Hodge, J.).

"Related to" bankruptcy jurisdiction existed over third-party claims brought by the non-debtor lenders against the non-debtor issuer of stock in a scheme concocted by the debtor's insiders to "double-pledge" stock in a non-debtor entity as security for loans made to the debtor. The Court concluded that the "conceivable effect" test was "easily satisfied" because a lender's successful recovery of money or collateral from the non-debtor defendant "could result in a dollar-for-dollar reduction of the amount of its claim against the estate."

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