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BANKRUPTCY - PENNSYLVANIA

Becker v. Bank of New York Mellon Trust Company, N.A.

United States District Court, E.D. Pennsylvania - October 5, 2016 - Slip Copy - 2016 WL 5816075

Plaintiff Leonard Becker moved to certify a class comprising holders of revenue bonds ("Bondholders") who were entitled to a distribution under the Plan for reorganization of the bond debtor, Lower Bucks Hospital ("LBH"), which Plan was confirmed under Chapter 11 of the Bankruptcy Code.

The Bondholders were awarded \$8,150,000 by the Bankruptcy Court in the reorganization. That amount was distributed to The Bank of New York Mellon Trust Company ("BNYM") as the successor Indenture Trustee. None of those funds were disbursed to the ninety-five Bondholders.

BNYM opposed certification. Its primary argument was that a finding of predominance was precluded because the proximate cause of the bondholders' alleged losses could not be proved with evidence that was common to all class members.

Plaintiff had previously sued BNYM under the multi-party agreements that created the bond financing transaction. The Complaints alleged that BNYM was negligent and breached its fiduciary and contractual duties to the Bondholders by failing to maintain perfected security interests in the property securing the bonds. Plaintiff alleged that the Bondholders were allowed less in LBH's bankruptcy than they would have been allowed if the security interests had been perfected.

Plaintiff had also sued for a declaratory judgment that the Bondholders were entitled to prompt disbursement of the funds allowed for them under the Plan, and that BNYM was not entitled to deduct from those funds any amounts that it incurred asserting its personal interests in the bankruptcy proceedings or in this litigation. Plaintiff also sued for equitable remedies — an injunction compelling BNYM to distribute the Bondholders' funds, an accounting of those funds, and damages for conversion and for money had and received.

Relevant to this litigation was the fact that the proposed pre-confirmation Plan included a stipulated third-party release of potential claims by the Bondholders against BNYM based on its alleged failure to maintain perfected security interests and liens against the property securing the bonds. Upon being made aware of the proposed release, the Bondholders objected. The Bankruptcy Court denied confirmation of the third-party release and struck it from the Plan because the release was inadequately disclosed before the Bondholders voted to accept the proposed plan.

The District Court took up the motion to certify the purported class of Bondholders.

The Court began its analysis by reviewing the facts of this case against Rule 23(a). The Court concluded that the proposed class met the requirements of numerosity, commonality, typicality and adequacy.

The Court then turned to Rule 23(b), finding that common questions predominated over any

questions affecting only individual class members, as required under Rule 23(b)(3).

The Court concluded by certifying the class, certifying Plaintiff Becker as the class representative, and appointing class counsel.

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