

Bond Case Briefs

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BANKRUPTCY - CALIFORNIA

In re City of Stockton, California

United States Bankruptcy Appellate Panel of the Ninth Circuit - December 11, 2015 - B.R. - 2015 WL 8793569

Capital market creditor objected to city's failure to provide for modification of its pensions in its proposed Chapter 9 plan, and the California Public Employees' Retirement System (CalPERS), the administrator of pensions, responded by asserting that pension benefits were not subject to being modified. Creditor also objected to plan's good faith and to classification of its unsecured claim.

The United States Bankruptcy Court for the Eastern District of California confirmed the plan. Creditor appealed. City filed motion to dismiss the appeal as equitably moot.

The Bankruptcy Appellate Panel held that:

- City did not waive argument that creditor's appeal from confirmation order was equitably moot by raising it through motion to dismiss the appeal rather than in its answering brief;
- Creditor's appeal of bankruptcy court's order confirming city's Chapter 9 plan generally was equitably moot;
- To the extent creditor sought through its appeal only a greater payment on its unsecured claim, an effective remedy was theoretically possible, and thus, that claim was not equitably moot;
- Bankruptcy court did not clearly err in finding that city's Chapter 9 plan was proposed in good faith;
- Bankruptcy court did not clearly err in finding that separate classification of capital markets/bond creditor claims was appropriate;
- Bankruptcy court did not clearly err in finding that city's Chapter 9 plan properly included capital market creditor's unsecured claim and other unsecured claims in same class;
- Bankruptcy court did not clearly err in finding that city's Chapter 9 plan satisfied the "best interests of creditors" test; and
- Bankruptcy court did not err in not discounting retiree health benefit claims in class of general unsecured claims to present value.

Debtor city did not waive argument that creditor's appeal from confirmation order in Chapter 9 case was equitably moot by raising it through motion to dismiss the appeal rather than in its answering brief. Creditor was not prejudiced or harmed by city's raising the equitable mootness issue in the motion to dismiss.

Capital market creditor's appeal of bankruptcy court's order confirming city's Chapter 9 plan generally was equitably moot. Creditor attempted to obtain a stay of the confirmation order pending appeal, but the stay motion was denied and the plan had been substantially consummated, and to reverse the confirmation order at this point would have a potentially devastating impact on creditor constituencies whose settlements with the city were incorporated in the plan and who were not appearing before the reviewing court, and reversing the confirmation order would knock "the props out from under the" plan and would leave the bankruptcy court with an unmanageable situation on remand.

To the extent capital market creditor sought through its appeal of bankruptcy court's order confirming city's Chapter 9 plan only a greater payment on its unsecured claim, an effective remedy was theoretically possible, and thus, that claim was not equitably moot.

Bankruptcy court did not clearly err in finding that city's Chapter 9 plan was proposed in good faith. The plan was the product of extended negotiations over a period of years pre- and post-petition resulting in multiple collective bargaining agreements and settlements with creditor constituencies, and while capital market creditor asserted that city gerrymandered class of general unsecured class to minimize creditor's vote against confirmation of the plan, treatment of its claim was the same as the treatment of the claims of all other creditors in class.

Bankruptcy court did not clearly err in finding that separate classification of capital markets/bond creditor claims was appropriate in city's Chapter 9 case. Through a combination of different disposition arrangements for their collateral and different payment terms for the secured and unsecured portions of the city's debts to each bond creditor, including different percentage recoveries, separate classification of the bond creditor claims made legitimate business and economic sense.

Bankruptcy court did not clearly err in finding that city's Chapter 9 plan properly included capital market creditor's unsecured claim and other unsecured claims, including retiree health benefit claimants, in same class. Within the class, all creditors received the same percentage payout on their allowed unsecured claims.

Bankruptcy court did not clearly err in finding that city's Chapter 9 plan satisfied the "best interests of creditors" test. Although capital market creditor asserted it received an approximate 1% distribution on its unsecured claim and other creditors received higher percentages on their claims, creditor's argument ignored the 100% payout it received on its allowed secured claim on the effective date of the plan and the approximately \$2 million distribution it was entitled to receive from the reserve fund held by its bond indenture trustee, and creditor received the same payment treatment on its unsecured claim afforded to all of the other general unsecured claimants in the class.

Bankruptcy court did not err in not discounting retiree health benefit claims in class of general unsecured claims to present value in city's Chapter 9 case. Bankruptcy Code provision governing allowance of claims did not require the court to discount the claims to present value.