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A Moot Point: Court Of Appeals For The Eleventh Circuit Holds That The Doctrine Of Equitable Mootness Is Applicable In A Chapter 9 Bankruptcy Case.

The consummation of a plan of reorganization typically involves a series of complex actions by the debtor and its stakeholders (for example, existing debt and equity are extinguished and new debt and equity issued in their place). If an appeal of a confirmation order is taken, and the appeal reaches the appellate court following consummation of the plan, it raises the difficult question of whether it is possible to grant effective relief to the appellant at that stage. As a constitutional matter, courts — including appellate courts — cannot hear matters that have become moot. Constitutional mootness, however, has a high bar of requiring a showing that no relief is possible at the time. Bankruptcy appeals create the unique problem that relief might technically be possible, but due to the actions taken in connection with consummation of the plan, it may no longer be possible to grant the relief requested in any practical manner. The doctrine of equitable mootness has been developed as a bridge between the rigorous requirements of constitutional mootness and the practicalities of an appellate court no longer being able to grant effective relief following consummation of a plan of reorganization.

Although equitable mootness has been applied in numerous different situations, it had not previously been considered by a circuit court of appeals in the context of a municipal bankruptcy case under chapter 9 of the Bankruptcy Code. That changed when, on August 16, 2018, the United States Court of Appeals for the Eleventh Circuit issued a decision holding that equitable mootness is applicable in chapter 9 municipal bankruptcy cases. This decision, which reversed the lower courts, noted that the doctrine of equitable mootness can apply particularly where a claimant does not seek a stay pending appeal.

Background

Jefferson County filed for bankruptcy relief in November of 2011. In June of 2013, the County announced the terms of an agreement with almost all of its major creditors, whereby the County would issue and sell in public markets new sewer warrants, with the proceeds and other funds being used to redeem and retire the prior sewer warrants (totaling about $3.2 billion) at a reduced amount of about $1.8 billion. Pursuant to the agreement, the County (or the bankruptcy court if the County failed to act) would implement a series of single-digit-percent sewer rate increases over 40 years, which the County would not be able to decrease in a given fiscal year unless it could somehow offset the decrease.

At the confirmation hearing, a group of Jefferson County ratepayers objected to the County's proposed plan. They argued, among other things, that by taking the ability to set rates out of the hands of elected Jefferson County commissioners, the plan infringed on their rights to vote and to be free from overly burdensome debt without due process. The bankruptcy court confirmed the plan over the ratepayers' objections. The confirmation order provided for the bankruptcy court to retain jurisdiction for the 40-year life of the new sewer warrants to, among other things, adjudicate controversies regarding the implementation or enforcement of the approved rate structure and

issuance of the new sewer warrants. The bankruptcy court exercised its discretion to waive the automatic stay of the effectiveness of a confirmation order when it entered the confirmation order.[1]

The ratepayers filed their notice of appeal on December 1, 2013, two days before the plan's effective date. The ratepayers, however, did not seek a stay of the implementation of the confirmation order from either the bankruptcy court or the district court (which acts as the first level of appeal for bankruptcy cases) pending the appeal, nor did they request that their appeal be expedited. In December of 2013, pursuant to the terms of the confirmation order, the County issued the new sewer warrants. The proceeds from the sale of those warrants went in part towards retiring the prior sewer warrants, with more than $1.454 billion going into a clearinghouse system to pay individual and institutional investors.

In their appeal, the ratepayers argued that the bankruptcy court had allowed the County commissioners to bind the County as a whole, impermissibly reducing the autonomy of the County and the political voice of the voters of Jefferson County. The ratepayers also argued that the bankruptcy court could not constitutionally retain jurisdiction to conform sewer rates to the plan over a 40-year period (which rate instead had to be set in compliance with Alabama law). The County moved to dismiss the ratepayers' appeal, arguing that any challenges to the confirmation order were constitutionally, equitably and statutorily moot because the plan had been consummated and the transactions that were contemplated could not be unwound.

The district court rejected each of the County's mootness arguments. The district court concluded that, with respect to constitutional mootness, while the consummation of the plan might limit the scope of relief available to ratepayers, the court still could fashion some form of meaningful relief. The district court also held that equitable mootness does not apply to constitutional challenges to a confirmation order in a chapter 9 proceeding, despite the failure of the ratepayers to seek, let alone obtain, a stay of the confirmation order.[2] The County appealed that decision to the Court of Appeals for the Eleventh Circuit.

Decision

The Court of Appeals agreed with the district court that the case is not constitutionally moot. The Court of Appeals noted that constitutional mootness emanates from the "case or controversy" requirement of Article III, and agreed with the district court that the ratepayers did not meet their heavy burden of establishing that the courts lacked the legal authority to issue the relief sought by the ratepayers.

The Court of Appeals, however, reversed the district court on the basis that the ratepayers' appeal is equitably moot. The Court of Appeals identified several considerations for deciding whether the doctrine of equitable mootness bars an appeal (e.g., when permitting an appeal to proceed will impact actions taken in good faith reliance on a final and unstayed judgment), but noted that overall, the more complex the transaction and the longer the time that has passed since confirmation of the plan, the harder it will be to undo the past. Consistent with the decisions of other courts in the chapter 11 context, however, the Court of Appeals also made clear that regardless of the complexity and time that has passed, if the relief sought does not undermine actions taken in reliance on the judgment, then effective relief may be possible. Importantly, courts will be less likely to find an appeal equitably moot if the aggrieved party did everything it could to limit the passage of time by seeking a stay pending appeal, and that the appeal itself be expedited.

Turning to the question of whether equitable mootness applies in the chapter 9 context, the Court of Appeals reasoned that because the doctrine is driven by its principles rather than any particular

codification or arbitrary limitation, there was no reason to reject the doctrine entirely in chapter 9 cases. The Court of Appeals dismissed the ratepayers' argument that chapter 9 bankruptcies implicate issues of sovereignty, whereas corporations or individuals and their bankruptcies do not. Indeed, the Court of Appeals noted that these principles will sometimes weigh more heavily in the chapter 9 context precisely because of how many people will be affected by municipal bankruptcies.

The Court of Appeals also noted that the ratepayers never asked any court to stay the implementation of the plan.[3] When the County commenced the appeal, the confirmation order (and the plan) had been in effect for more than a year. Moreover, the County and others have taken significant and irreversible steps in reliance on the unstayed plan which was confirmed by the bankruptcy court, including issuing over $1 billion of new sewer warrants, which were sold based on a commitment—backed up by an unstayed court order—to set sewer rates at particular amounts over the course of the next 40 years, and used the proceeds to retire the old sewer warrants. The Court of Appeals found that the relief sought—even if limited to striking the provision of the plan giving the bankruptcy court jurisdiction with respect to future rates—would seriously undermine actions taken in reliance on the confirmation order.

Finally, the Court of Appeals was not persuaded by the ratepayers' argument that the plan has resulted in an end-run around political processes. Although the County has indeed bound itself to raise rates for decades according to a particular schedule and with limited exceptions, elected officials can and often do bind their successors—and consequently, their constituents—to all kinds of unavoidably long-lasting financial effects. The Court of Appeals stated that it knows of no authority for the proposition that such government action becomes an illegal end-run around constitutional governance. As a result, after evaluating the factors relevant to an equitable mootness determination, the Court of Appeals held that the ratepayers' appeal was equitably moot.

Discussion

The Court of Appeals noted that the doctrine of equitable mootness emerged at least a few decades ago in the various federal courts of appeals in connection with corporate bankruptcy cases, and that, while the Supreme Court has never endorsed the doctrine, neither they—nor any court of appeals—have ever rejected it outright. The Eleventh Circuit saw no reason the underlying purpose of equitable mootness in chapter 11—namely, the inability to grant effective relief post-consummation of a plan—would not apply equally to a municipal bankruptcy case. Although the decision is not binding on other circuits, it is difficult to see why other circuits would reach a different conclusion about the applicability of the doctrine of equitable mootness in chapter 9 cases. Likewise, the decision may offer some insights into how the doctrine may apply in appeals in a PROMESA[4] case involving Puerto Rico or its instrumentalities, as PROMESA relies heavily on chapter 9 concepts.

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