

September 25, 2012

Delaware Court Denies Motion to Stay Order, Pending Appeal

In re W.R. Grace & Co., et al., 2012 U.S. Dist. LEXIS 88887 (D. Del. June 27, 2012)

Appellants must justify the need for staying a court's decision on four criteria, and here, the Third Circuit found that the burden was not met for any of them.

In [*In re W.R. Grace & Co.*](#), the Delaware District Court denied the motion of Garlock Sealing Technologies, LLC, to stay the court's amended order confirming the debtors' joint plan of reorganization, pending Garlock's appeal to the Third Circuit. Garlock had objected to confirmation of the joint plan, but the court found that Garlock lacked standing, and concluded that the substantive objections were unfounded in any event. Garlock appealed and filed an emergency motion seeking to stay the confirmation order to prevent alleged irreparable harm to its set-off and contribution claims should the joint plan become effective before its appeal could be adjudicated.

An appellant bears the burden of justifying the need for the "extraordinary remedy" of staying a court's decision, pending an appeal by presenting satisfactory evidence, on all four of the following criteria: (1) the likelihood of the appellant's success on the merits; (2) irreparable harm to appellant absent a stay; (3) lack of harm to other parties should the stay be granted; and (4) that the public interest supports granting a stay. The court found that Garlock failed to meet its burden with respect to each of the four factors.

First, the court described Garlock's attempts to demonstrate its likelihood of success on the merits as essentially the same arguments put forth in the original objection to confirmation. Having previously rejected those arguments, the court declined to restate its views, referencing its extensive memorandum opinion overruling Garlock's objections.

The court likewise dismissed Garlock's argument for irreparable harm, noting that solely alleging the risk of equitable mootness is not sufficient to demonstrate irreparable harm. An appellant must assert additional factors to equitable mootness or else this factor would always be met in appeals of this nature. Furthermore, Garlock only alleged potential monetary losses due to the loss of set-off and contribution claims, which does not constitute irreparable harm.

Garlock based its irreparable harm argument on the court's decision to grant a stay in *In re L.A. Dodgers, LLC*, 465 B.R. 18 (D. Del. 2011). The court drew key distinctions between the cases and found Garlock's reliance inapposite. In *L.A. Dodgers*, the stay was granted because of factors in addition to the risk of equitable mootness—particularly the potential loss of leverage and bargaining power to the applicant should it be forced to renegotiate “unique sports-related marketing or media opportunities.” Such losses could not simply be remedied by money damages, in contrast to the insufficient payments that Garlock alleged it would suffer. In addition, the court noted that the appellant in *L.A. Dodgers* filed its emergency motion the day after the order was issued whereas Garlock waited until the evening of the last day permitted under the rules to file its motion.

Garlock failed to prevail on the third factor because the court determined that after a decade since the original petition date, the debtors and their creditors should not be forced to endure further delays with respect to emergence from bankruptcy and the payment of claims. Consequently, the court found that other parties would be harmed if a stay were granted.

With respect to the fourth factor, the court found that the general public policies in favor of encouraging quick and successful reorganizations and the finality of bankruptcy judgments militated against the requested stay.

Finally, the court was troubled by Garlock's failure to address why it should not be required to post a *supersedeas* bond. The court was aware from previously filed motions that a stay in this case could potentially cause approximately \$100 million in damages. Under such circumstances, an appellant has the burden of demonstrating why a *supersedeas* bond should not be required. Garlock failed to address the issue, and the court considered it as another factor weighing against the motion.

Keywords: litigation, bankruptcy, insolvency, Third Circuit, stay pending appeal, irreparable harm; equitable mootness

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