Bankruptcy Law

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By Daniel Gill
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- District courts need more thorough review before declining

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2. District courts need more thorough review before declining

District courts overly rely on a legal doctrine to avoid hearing appeals from bankruptcy plan confirmations even though they have a "virtually unflagging obligation" to hear such appeals, the Eighth Circuit said.

The doctrine of "equitable mootness" allows district courts to avoid ruling on the merits of bankruptcy plan confirmation appeals. But reviewing courts must conduct a "rigorous test" of the confirmation order —including examining whether the parties were treated equitably and the plan is legally sufficient— before invoking the doctrine, the U.S. Court of Appeals for the Eighth Circuit said Thursday.

The appeals court's decision stems from a federal district court in Iowa's use of the doctrine to avoid reviewing an investor's appeal of fish farmer VeroBlue Farms USA Inc.'s Chapter 11 plan confirmation by a bankruptcy court.

The district court judge must make further factual inquiries before invoking the doctrine to decline the appeal, the Eighth Circuit held.

Those inquiries include whether money paid to creditors could be recovered if confirmation were overturned, and whether there are relief options for those whose rights were impaired by the plan, the appellate court said.

Reviewing the merits of an appellant's challenge "go to the very integrity of the bankruptcy process," the court said. Such reviews "should almost always be the preferred disposition," Judge James B. Loken wrote.

The appellant, preferred shareholder FishDish LLP, had argued that VeroBlue's plan was filed in bad faith, was underfunded, and wasn't in creditors' best interests, according to the opinion.

'Part of the Plan'

District courts, which can hear appeals of bankruptcy courts' reorganization plan confirmation orders, often apply equitable mootness when a confirmed plan is substantially consummated.

Courts justify use of the doctrine with the idea that undoing a confirmation order isn't practically feasible after plan distributions have been made to hundreds or thousands of creditors.

Frequent use of equitable mootness has been much criticized, the Eighth Circuit said. A motion to dismiss a plan appeal "ironically" has become part of the plan itself, it said, quoting a 2015 Third Circuit opinion.

The U.S. Supreme Court hasn't yet "expressly adopted" the equitable mootness doctrine, the Eight Circuit said.

At least three petitions for review on the issue are pending before the Supreme Court, according to research by Bloomberg Law.

Judges L. Steven Grasz and Jonathan A. Kobes joined the opinion.

Horwood Marcus & Berk Chartered represented FishDish. Elderkin & Pirnie PLC represented VeroBlue Farms.

The case is In re: VeroBlue Farms USA, Inc. , 2021 BL 294741, 8th Cir., No. 19-3487, 8/5/21 .

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