

874 F.3d 787, \*, 2017 U.S. App. LEXIS 20596, \*\*;  
Bankr. L. Rep. (CCH) P83,176; 64 Bankr. Ct. Dec. 216

Despite these objections, the bankruptcy court confirmed the Plan following a four-day hearing. *In re MPM Silicones, LLC*, 2014 Bankr. LEXIS 3926, 2014 WL 4436335 (Bankr. S.D.N.Y. Sept. 9, 2014), *aff'd*, 531 B.R. 321 (S.D.N.Y. 2015). Confirmation was facilitated by Chapter 11's "cramdown" provision, which allows a bankruptcy court to confirm a reorganization plan notwithstanding non-accepting classes if the plan "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b)(1).

The bankruptcy court concluded that the Plan was fair to the Subordinated Notes holders, despite no recovery, because the 2006 Indenture called for their subordination to the Second-Lien Notes. *In re MPM Silicones, LLC*, 2014 Bankr. LEXIS 3926, 2014 WL 4436335, at \*2-\*11. It held the plan was fair to the Senior-Lien Notes holders because the 2012 Indentures did not require payment of the make-whole premium in the bankruptcy context and because the interest rate on the proposed replacement notes, even though well below a "market" rate, was determined by a formula that complied with the Code's cramdown provision. 2014 Bankr. LEXIS 3926, [WL] at \*11-\*32.

The bankruptcy court's confirmation order triggered an automatic 14-day stay during which Debtors could not consummate the Plan. See Fed. R. Bankr. P. 3020(e). Appellants aggressively took advantage of this period and attempted **[\*\*9]** to block the implementation of the Plan. Specifically, prior to the expiration of the automatic stay, appellants moved in the bankruptcy court to extend the stay pending their appeal of the confirmation order, which the court denied. See 15-1682 JA 4099, 4173. They then promptly moved the district court for a stay, which was also denied. See 15-1682 JA 183, 185. Appellants then appealed the denial of the stay to this Court, and we dismissed the appeal for lack of jurisdiction. 15-1682 JA 4872-73. Despite these efforts, the Debtors contend this appeal is equitably moot, a contention with which we do not agree.

The appellants appealed the confirmation order to the district court which affirmed the bankruptcy court's confirmation order. 531 B.R. 321. The district court essentially agreed with the bankruptcy court, concluding that: (i) the relevant indentures unambiguously prioritize the Second-Lien Notes over the Subordinated Notes, *id.* at 326-31; (ii) the below market interest rate selected by the bankruptcy court complied with the Code, *id.* at 331-34; and (iii) under their indentures, the Senior-Lien Notes holders are not entitled to the make-whole premium in the context of a bankruptcy, *id.* at 335-38. The Subordinated Notes holders, the First-Lien Notes holders, and the 1.5-Lien Notes holders **[\*\*10]** separately appealed.<sup>4</sup>

<sup>4</sup> The appeals by the First-Lien Notes holders (No. 15-1682) and 1.5-Lien Notes holders (No. 15-1824) were consolidated and heard in tandem with the appeal by the Subordinated Notes holders (No. 15-1771).

### **[\*794] III**

[HN1] "We exercise plenary review over a district court's affirmance of a bankruptcy court's decisions, reviewing *de novo* the bankruptcy court's conclusions of law, and reviewing its findings of facts for clear error." *In re Lehman Bros., Inc.*, 808 F.3d 942, 946 (2d Cir. 2015) (internal quotation marks omitted).

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