

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:)
)
PATRIOT COAL CORPORATION, *et. al.*,) Case No. 12-51502-659
) Chapter 11
)
Debtors.) Jointly Administered

**ORDER DENYING PETTRY CLAIMANTS' MOTION FOR
RECONSIDERATION OF ORDER SUSTAINING DEBTORS'
SEVENTEENTH OMNIBUS OBJECTION TO CLAIMS
(Pettry Litigation Claims)**

The matter before the Court is the Notice of Pettry Claimants' Motion for Reconsideration of Order Sustaining Debtors' Seventeenth Omnibus Objection to Claims and Reorganized Debtors' Response in Opposition to Pettry Claimants' Motion for Reconsideration of Order Sustaining Seventeenth Omnibus Objection to Claims. A hearing was held on January 28, 2014 at which the Pettry Claimants and Reorganized Debtor Eastern Associated Coal Corporation, together with Debtor Patriot Coal Corporation and its affiliated Reorganized Debtors, appeared by counsel. Oral argument was presented. The Court rules as follows.

Reorganized Debtor Eastern Associated Coal Corporation (hereinafter "Reorganized Debtor Eastern Associated Coal") was among the defendants in the West Virginia State Court Litigation¹ commenced by the Pettry Claimants over 11 years ago. Reorganized Debtor Eastern Associated Coal adopted and joined in various motions for summary judgment filed by other defendants in the West Virginia State Court Litigation, and on January 11, 2013, all of the defendants' motions for summary judgment were granted² and all remaining claims were dismissed with prejudice.³ The

¹The West Virginia State Court Litigation was filed in the Circuit Court of Marshall County, West Virginia and is styled *Denver Pettry et al. v. Peabody Holding Company, et al.*, Civil Action No. 06-C-124M.

²It appears that the grant of summary judgment in favor of the various defendants was in large part due to the failure of the Pettry Claimants to respond, either in writing or orally, to the arguments set forth by the defendants in their dispositive motions and supporting memoranda. See Order Granting Defendants'

Petry Claimants' Motion to Alter or Amend the Judgment and Motion for Relief from Judgment of the West Virginia State Court were denied on April 22, 2013.⁴ To this Court's knowledge, no subsequent action in any West Virginia State Court has taken place that affects the finality of these aforementioned West Virginia State Court orders.

The Petry Claimants seek reconsideration of this Court's Order Sustaining Debtors'

Motions for Summary Judgment and Dismissing All Remaining Claims With Prejudice, at 1, January 11, 2013.

³As included in this Court's November 8, 2013 Order, the West Virginia State Court stated the following:

Considering the arguments set forth by the defendants in their dispositive motions and supporting memoranda, and in light of Plaintiffs' failure to respond to such arguments (either in writing or orally at the November 9, 2012 hearing), the Court after due consideration grants all pending motions for summary judgment...

Further, after careful deliberation and in light of Plaintiffs' counsel's systemic, egregious, and willful misconduct in connection with their prosecution of this case, the Court also dismisses with prejudice all remaining claims in this matter and deems all other pending motions moot...Plaintiffs' counsel has engaged in a consistent pattern of dilatory and obstructionist conduct with the apparent sole purpose of delaying this action. The Court has provided Plaintiffs' counsel numerous opportunities during the past year to adjust his behavior, fully engage in this litigation, and remedy the prejudice that his conduct has reaped. Plaintiffs' counsel failed to avail himself of these opportunities....

See Order Granting Defendants' Motions for Summary Judgment and Dismissing All Remaining Claims with Prejudice, at 1-2, January 11, 2013.

⁴The West Virginia State Court therein states the following:

After due consideration, this Court reaffirms the findings contained in its January 11, 2013 Order and affirms its findings that Plaintiffs have engaged in a pattern of misconduct in this litigation that interferes with this Court's ability to bring this case to a conclusion and otherwise control and manage its docket. Plaintiffs' conduct constitutes an abuse of the civil justice system and rises to the level of intentional, willful conduct, and is in bad faith. After due and additional consideration of all the circumstances, this Court finds Plaintiffs' partial attempts to explain some of its dilatory conduct unavailing and unpersuasive.

See Order Denying Plaintiffs' Rule 59 Motion to Alter or Amend Judgment and Rule 60 Motion for Relief from Judgment, at p. 8, April 22, 2013.

Seventeenth Omnibus Objection to Claims, entered on November 8, 2013 (hereinafter the “November 8 Order”) under Section 502(j) for which Rule 60 serves as a guide. The Pettry Claimants’ Motion for Reconsideration of Order Sustaining Seventeenth Omnibus Objection to Claims is permitted by Bankruptcy Rule 3008. The crux of the Pettry Claimants’ argument is that the West Virginia State Court violated the automatic stay when it granted various motions for summary judgment dismissing the Pettry Claimants’ claims, and therefore, because the Pettry Claimants believe they should still have a valid action in the West Virginia State Court, the Pettry Claimants believe they are entitled to a claim against Reorganized Debtor Eastern Associated Coal.

Section 1738 of Title 28 states that the “records and judicial proceedings of any court in any [State of the United States] ... shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State...” 28 U.S.C. § 1738 (2012). Federal Rule of Civil Procedure 60(b), as made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9024, states that:

[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

...

(4) the judgment is void;

...

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b) (2012); Fed. R. Bankr. P. 9024 (2012). In a Rule 60(b) evaluation, “[c]ourts may consider whether delay would prejudice the debtors or other creditors, the reason for the delay and its length and impact on efficient court administration, whether the creditors acted in good faith, whether clients should be penalized for counsel’s mistake or neglect, and whether claimants have a meritorious claim.” *Kirwan v. Vanderwerf (In re Kirwan)*, 164 F.3d 1175, 1177-1178 (8th Cir. 1999) (citations omitted). “[N]either a Rule 60(b)(4) nor a Rule 60(b)(6) motion may be used as a substitute for a timely appeal of a judgment.” *Hunter v. Underwood*, 362 F.3d 468, 475 (8th Cir. 2004) (citing *Kocher v. Dow Chem. Co.*, 132 F.3d 1225, 1229, 1231 (8th Cir. 1997)). Section 502(j)

allows reconsideration of a claim that has been allowed or disallowed for cause or “according to the equities of the case.” 11 U.S.C. § 502(j) (2012).

State courts and bankruptcy courts have concurrent jurisdiction to determine the applicability of the automatic stay. *Vasile v. Dean Witter Reynolds, Inc.*, 20 F.Supp.2d 465, 499 (E.D.N.Y. 1998), *aff'd*, 205 F.3d 1327 (2d Cir. 2000) (citing *In re Baldwin-United Corp. Litigation*, 765 F.2d 343, 347 (2d Cir. 1985) (the court in which the litigation claimed to be stayed has jurisdiction to determine whether the proceeding pending is subject to the automatic stay)); *In re Siskin*, 258 B.R. 554, 562 (Bankr. E.D.N.Y. 2001) (citations omitted) (“state courts can decide whether the automatic stay applies to proceedings before them”); *Garg v. Eresian*, 951 N.E.2d 368, 368 (Mass. App. 2011); *In re Cummings*, 201 B.R. 586, 588 (Bankr. S.D. Fla. 1996) (citations omitted) (“It is well-settled that state courts have concurrent jurisdiction with bankruptcy courts to determine the applicability of the automatic stay”). “The bankruptcy court does not have the power to preclude another court from dismissing a case on its docket or to affect the handling of a case in a manner not inconsistent with the purpose of the automatic stay.” *Dennis v. A.H. Robins Co., Inc.*, 860 F.2d 871, 872 (8th Cir. 1988).

It was within the purview of the West Virginia State Court to determine the effectiveness and applicability of the automatic stay. Likewise, it is the West Virginia State Court that determines how to adjudicate the matters in that court. The West Virginia State Court entered both the Order Granting Defendants’ Motions for Summary Judgment and Dismissing All Remaining Claims With Prejudice on January 11, 2013 and the Order Denying Plaintiffs’ Rule 59 Motion to Alter or Amend Judgment and Rule 60 Motion for Relief from Judgment on April 22, 2013. Therefore, this Court accorded full faith and credit to the judicial proceedings and judgments rendered by the West

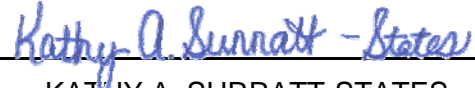
Virginia State Court in this matter in its November 8 Order.⁵

The status of the Pettry Claimants' claims has not changed in the West Virginia State Court in that the motions for summary judgment of the various defendants, to the inclusion of Reorganized Debtor Eastern Associated Coal, remain granted and all other claims remain dismissed with prejudice. This Court therefore continues to accord full faith and credit to the proceedings and judgments rendered by the West Virginia State Court. As such, there is no basis for this Court to have overruled Reorganized Debtors' Seventeenth Omnibus Objection to Claims and there is no basis for this Court to reconsider the November 8 Order. The Pettry Claimants' belief that the West Virginia State Court's orders are void does not make those orders void nor does this belief challenge the effectiveness of those orders in this Court. A change in the status of the West Virginia State Court Litigation might require a different stance by this Court, in equity or otherwise, however, this is not the case at this time. As such, this Court's November 8 Order is not void under Rule 60(b)(4) nor is there any other reason that justifies the relief sought by the Pettry Claimants under Rule 60(b)(6). Further, there is no cause or basis in equity for this Court to reconsider the November 8 Order under Section 502(j).

In any event, this Court's November 8 Order is final. While neither Rule 60(b)(4) or (b)(6) contemplate a time limit to seek relief from a judgment, see Rule 60(c), nevertheless, Rule 60(b) does not serve as a substitute for a timely appeal. The time for the Pettry Claimants to appeal the November 8 Order has long past without action by the Pettry Claimants. This Court's Order Sustaining Debtors' Seventeenth Omnibus Objection to Claims remains final and the relief accorded under Section 502 and Bankruptcy Rule 3007 remains undisturbed. Therefore,

⁵The Court also acknowledges the applicability of both *res judicata* and the Rooker-Feldman doctrine in that this Court will not serve as a second forum for claims already decided by the West Virginia State Court nor will this Court sit in direct review of the West Virginia State Court decisions, however, at this time, the Court does not deem any further discussion on the same necessary.

IT IS ORDERED THAT the Notice of Pettry Claimants' Motion for Reconsideration of Order Sustaining Debtors' Seventeenth Omnibus Objection to Claims is **DENIED**.



KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: February 10, 2014
St. Louis, Missouri 63102

Copies to:

All Creditors and Parties in Interest.