

1st Circ. Injects Uncertainty Into Stay Relief Denials

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On Aug. 4, 2014, the United States Court of Appeals for the First Circuit held that a bankruptcy court order denying a request for relief from the automatic stay to continue certain prepetition litigation was not “final” under 28 U.S.C. § 158(d)(1) and accordingly dismissed the appeal for lack of jurisdiction. The First Circuit’s decision represents a split from the vast majority of other circuits that have reviewed the matter, which consider all stay relief denials to be “final” and therefore appealable as of right. In rejecting a bright-line rule for stay relief denials, *Pinpoint IT Services LLC v. Rivera (In re Atlas IT Export Corp.)*, No. 13-9003, 2014 U.S. App. LEXIS 14949 (1st Cir. Aug. 4, 2014) injects uncertainty into these bankruptcy appeals even prior to any consideration of the merits.

In the federal appellate system, the general rule is that courts do not have jurisdiction to decide an appeal unless the order appealed from is “final,” as distinguished from “interlocutory.” The rule serves to avoid the inefficiency of piecemeal reviews.

Outside of bankruptcy, every civil action in federal court has traditionally been viewed as a “single judicial unit” from which only one appeal would lie. Courts across jurisdictions recognize, however, that the “single judicial unit” rule and traditional finality concepts are unworkable in bankruptcy cases, each of which involves within the larger case multiple parties (e.g., debtor, creditors, creditor committees, equity holders, professionals, plaintiffs and defendants) and multiple disputes (e.g., adversary proceedings, administrative applications, contested matters).

Unwarranted delay could result if a party whose rights had been fully litigated below is forced to wait for the conclusion of the entire bankruptcy case before taking appeal. To ensure efficient case administration and fairness to litigants, courts employ a flexible approach to finality in the context of bankruptcy appeals.

In *Pinpoint*, the First Circuit considered whether a litigant had a right to immediate appellate review of an order denying the litigant’s request for relief from the automatic stay to continue certain prepetition litigation. To answer that question, the First Circuit, in a matter of first impression, had to determine whether the bankruptcy court’s order was “final” against the backdrop of a clear majority rule among circuits that all orders denying stay relief are “final.”



Douglas R. Gooding

The First Circuit's Decision

The First Circuit's ruling in *Pinpoint* centers on a race-to-the-courthouse contract dispute between *Pinpoint*, a Virginia company, and *Atlas*, a Puerto Rico company. *Pinpoint* sued *Atlas* in federal district court in Virginia. *Atlas* moved to change venue, but before the judge could rule, *Atlas* sued *Pinpoint* in federal district court in Puerto Rico.

In the Puerto Rico action, *Pinpoint* filed an answer and counterclaims against *Atlas* that were the same as its claims against *Atlas* in the Virginia action. After the judge in the Virginia action denied *Atlas*' request to change venue, *Atlas* filed its answer and counterclaims in the Virginia action, and *Pinpoint* asked that court to enjoin the Puerto Rico action. *Atlas* then filed for Chapter 7 bankruptcy.

The trustee in *Atlas*' bankruptcy case asked the bankruptcy court for relief from the automatic stay to permit the Puerto Rico action to continue, conceding that both *Atlas*' claims and *Pinpoint*'s counterclaims in that action should be allowed to proceed. Over *Pinpoint*'s objection, the bankruptcy court granted the relief *Atlas* requested. *Pinpoint* then asked the bankruptcy court to further modify the automatic stay so that the Virginia action could also proceed, arguing that the stay kept the judge in the Virginia action from applying the "first-filed" rule, which would require the court in the "first-filed" Virginia action to decide the case — not the court in the "second-filed" Puerto Rico action.

The bankruptcy court denied *Pinpoint*'s motion. It reasoned that *Pinpoint* was not harmed by the stay of the Virginia action because it could litigate the "first-filed" rule in the Puerto Rico action. On the other hand, it reasoned that the bankruptcy estate would be harmed by lifting the stay of the Virginia action because, among other things, the estate did not have resources to litigate in Virginia.

Pinpoint appealed the bankruptcy court's denial of its motion for relief from the automatic stay to the bankruptcy appellate panel (BAP), which dismissed for lack of jurisdiction on the basis that the order appealed from was not "final" and appealable as of right. *Pinpoint* then appealed the BAP's decision to the First Circuit under 28 U.S.C. § 158(d)(1), which permits a court of appeals to review appeals from "final decisions, judgments, orders, and decrees" entered by the BAP on appeal from an order of a bankruptcy judge.

The First Circuit dismissed *Pinpoint*'s appeal for lack of jurisdiction, ruling that the BAP's order was not "final" because the underlying bankruptcy court order was not "final." The First Circuit acknowledged that seven of the eight circuits to have considered the question have held that all orders denying stay relief are "final" and appealable as of right, but observed its obligation to "decide afresh" an issue of first impression in the First Circuit.

Rather than following a blanket rule, the First Circuit broadened its analysis and, in accordance with First Circuit precedent, asked "whether the [bankruptcy court order] definitively decided a discrete, fully developed issue that is not reviewable somewhere else."

In concluding that the bankruptcy court's order did not meet that test for finality, the court articulated the issue raised by *Pinpoint* in its stay relief request very precisely: Did the "first-filed" rule require the bankruptcy court to lift the stay so that the judge in the "first-filed" Virginia action could adjudicate the contract dispute? Because the bankruptcy court's order did not decide the "first-filed" issue, the court reasoned, the order was not "final."

Nothing, the court reasoned, foreclosed the “first-filed” issue or the underlying merits of the contract dispute, both of which Pinpoint could litigate in the Puerto Rico action. In the court’s view, what the bankruptcy court decided was a venue issue, observing, as a side, that orders granting or denying venue transfer are usually not “final” and appealable as of right. The court rejected the argument that a stay relief denial is “final” because it is tantamount to an injunction in the nonbankruptcy civil context, reasoning that operation of the stay is the default position in bankruptcy, while in the ordinary civil context, it is not.

The Dissent

In a dissenting opinion emphasizing the value of uniformity in federal bankruptcy law, Judge William Kayatta agreed that the bankruptcy court’s order denying stay relief should stand, but said that the court should have decided the matter by ruling on the merits instead of by ruling the order not “final” and nonappealable, creating a circuit split.

Articulating the “discrete issue” at hand more narrowly than the majority, Judge Kayatta observed that the bankruptcy court had indeed made a “final” decision against Pinpoint: the court in the Puerto Rico action, instead of the court in the Virginia action, would decide the “first-filed” issue.

Judge Kayatta said that venue decision, made possible by a federal injunction against the Virginia action, was different than a nonappealable venue transfer decision of a district court involving one federal court surrendering jurisdiction to another. By using the bankruptcy court’s involvement as an occasion to mischaracterize the effect of the venue decision, the court, in Judge Kayatta’s view, insulated from interlocutory review an injunction that would plainly be reviewable were it entered by an Article III court, instead of an Article I bankruptcy court. That, in Judge Kayatta’s view, turned bankruptcy’s more “flexible approach to finality” on its head.

What it Means

While Pinpoint is noteworthy insofar as the First Circuit rejected a widely adopted bright-line rule under which all stay relief denials are “final” and appealable as of right, the case outcome is less surprising against the backdrop of particular facts of Pinpoint.

There, prepetition litigation between the debtor and its creditor on their contract dispute was permitted to proceed, despite the stay relief denial, due to the prepetition pendency of that litigation in two forums. In other, more usual scenarios in which the alternative to stay relief is a continued stay of prepetition litigation, it is likely that a court in the First Circuit would find the bright-line rule long espoused by sister circuits more persuasive.

More broadly, Pinpoint illustrates that in absence of bright-line rules, flexibility in finality in bankruptcy appeals carries a side effect of ambiguity. In analyzing whether the bankruptcy court order “definitively decided a discrete, fully developed issue that is not reviewable somewhere else,” the majority and dissent in Pinpoint reached different conclusions based on how narrowly or broadly each articulated the issue at hand.

The dissent accused the majority of framing the issue too broadly for reasons (e.g., balance of harms) that properly addressed the merits of the appeal. The majority would likely accuse the dissent of articulating an issue so narrowly that (in the dissent’s own words) the outcome is “rarefied” and any practical harm “speculative.” Both could be accused of drawing an arbitrary line in the sand. Their

positions considered together, the majority and the dissent inject uncertainty into appeals of stay relief denials even prior to any consideration of the merits of such appeals. Only time will tell how that uncertainty will manifest in bankruptcy appellate practice.

—By Douglas R. Gooding and Meg McKenzie Feist, Choate Hall & Stewart LLP

Douglas Gooding chairs the finance and restructuring group at Choate Hall & Stewart in Boston. Meg McKenzie Feist is an associate in the group.

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