UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.
_____/

Bankr. No. 13-53846
Chapter 9
Hon. Steven W. Rhodes

John P. Quinn,

Appellant,

v.

City of Detroit, Michigan,

Appellee.
_____/

Dist. Ct. Case No.
14-CV-14899

District Judge:
Hon. Bernard A. Friedman

Magistrate Judge:
Hon. R. Steven Whalen

APPELLANT QUINN'S RESPONSE TO CORRECTED MOTION OF APPELLEE THE CITY OF DETROIT, MICHIGAN FOR AN ORDER PURSUANT TO FED. R. CIV. P. 12(b)(1) DISMISSING APPEAL AS EQUITABLY AND CONSTITUTIONALLY MOOT

For the reasons set forth in the following Brief, I request that the reference motion be denied.

BRIEF IN SUPPORT OF APPELLANT QUINN'S RESPONSE TO CORRECTED MOTION OF APPELLEE THE CITY OF DETROIT, MICHIGAN FOR AN ORDER PURSUANT TO FED. R. CIV. P. 12(b)(1) DISMISSING APPEAL AS EQUITABLY AND CONSTITUTIONALLY MOOT

CONCISE STATEMENT OF ISSUES PRESENTED

I. DOES FED. R. CIV. P. APPLY IN BANKRUPTCY APPEALS?

Appellant answers, No.

II. DOES THIS COURT HAVE SUBJECT-MATTER JURISDICTION OF THIS APPEAL?

Appellant answers, Yes.

III. SHOULD THE COURT REFUSE TO EXERCISE THE JURISDICTION CONGRESS HAS ENTRUSTED TO IT TO REVIEW AND CORRECT THE BANKRUPTCY COURT'S FAILURE TO OBEY THE LAW– JURISDICTION IT HAS A VIRTUALLY UNFLAGGING OBLIGATION TO EXERCISE?

Appellant answers, No.

IV. WOULD THE EXERCISE OF THE COURT'S JURISDICTION IN THIS APPEAL CAUSE CHAOS IN THE BANKRUPTCY COURT OR ANY OTHER PERVERSE RESULT?

Appellant answers, No.

V. WOULD THE EXERCISE OF THE COURT'S JURISDICTION IN THIS APPEAL ADVERSELY AFFECT THE RIGHTS OF ANY PARTY NOT BEFORE THE COURT?

Appellant answers, No.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Bennett v. Jefferson Cnty., Case No. 2:14-CV-0213-SLB, 2014 U.S. Dist. LEXIS 139655 (N.D. Ala., Sept. 30, 2014)

Church of Scientology of California v. United States, 506 U.S. 9 (1992)

County of Los Angeles v. Davis, 440 U.S. 625 (1979)

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)

Harmon v. Holder, 758 F.3d 728 (6th Cir. 2014)

Honig v. Doe, 484 U.S. 305 (1988)

In re American HomePatient, Inc., 420 F.3d 559 (6th Cir. 2005)

In re Pacific Lumber Co., 584 F.3d 229 (5th Cir. 2009)

In re SemCrude, 728 F.3d 314 (3rd Cir. 2013)

In re Superior Offshore International, Inc., 591 F.3d 350 (5th Cir. 2009)

In re Thorpe Insulation Co., 677 F. 3d 869 (9th Cir. 2012)

Intera Corp. v. Henderson, 428 F.3d 605 (6th Cir. 2005)

Lexmark International, Inc. v. Static Control Components, Inc., __ U.S. __, 134 S.Ct. 1377, 188 L.Ed. 2d 392 (2014)

Paulman v. Gateway Venture Partners III, L.P. (In Re Filtercorp, Inc.), 163 F. 3d 570 (9th Cir.1998)

Sprint Communications, Inc. v. Jacobs, 571 U.S. __ 134 S.Ct. 584, 187 L.Ed. 2d 505 (2013)

SunAm. Corp. v. Sun Life Assurance Co. of Can., 77 F.3d 1325 (11th Cir.

ABBREVIATIONS, ACRONYMS, RECORD REFERENCES AND SHORTENED DOCUMENT NAMES USED IN THIS BRIEF

I will use the following format to reference items in Appellant John P. Quinn's Designation of the Contents of the Record ("Record Designation"): "R. N_1, Doc. N_2 ," where N_1 is the Item No. in the Record Designation and N_2 is the Bankruptcy court's docket number.

Short Form	Document or Entity Referenced
Appelee's Corrected Motion	Corrected Motion of Appellee the City of Detroit, Michigan for an Order Pursuant to Fed.R.Civ.P. 12(b)(1) Dismissing Appeal as Equitably and Constitutionally Moot, February 23, 2015, ECF No. 36
Appellee's Brief	Brief in Support of Corrected Motion of Appellee the City of Detroit, Michigan for an Order Pursuant to Fed.R.Civ.P. 12(b)(1) Dismissing Appeal as Equitably and Constitutionally Moot, February 23, 2015, ECF No. 36
Brief on Appeal	Appellant Quinn's Brief on Appeal, January 29, 2015, ECF No. 21
GRS	General Retirement System of the City of Detroit
Confirmation Order	Order Confirming Eighth Amended Plan of Adjustment of Debts of the City of Detroit, R. 30, Doc. 8272
PFRS	Police and Fire Retirement System of the City of Detroit
POA	Eighth Amended Plan for the Adjustment of the Debts of the City of Detroit, R. 27, Doc. 8045

ARGUMENT

I. INTRODUCTION.

In considering the Appellee's claim of mootness, the Court should assume that the Appellant's claims of error are entirely meritorious. If they were not this motion would be of no consequence: the parade of horrors envisioned by the Appellee if the Court dares to consider the merits of the appeal would be averted even with consideration of the merits if the Appellant's claims of error lacked merit.

And what errors by the bankruptcy court has the Appellant identified? They are not abuses of discretion, misinterpretations of evidence or mistaken judgments. They are straightforward violations of law, specifically, refusal to follow the clear mandates of 11 U.S.C. §§ 941 (Brief on Appeal at 31-37) and 1123(a)(4) (*Id.* at 20-31) and the Sixth Circuit's requirements for enjoining claims against parties other than a bankruptcy debtor. (*Id.* at 37-40).

So the question presented by the Appellee's Corrected Motion is: Should this Court refuse to exercise the jurisdiction Congress has entrusted to it, 28 U.S.C. §§ 28(a)(1), 1334(a), to review and correct the bankruptcy court's failure to obey the law – jurisdiction the Supreme Court

says the Court has a "virtually unflagging" "obligation" to exercise? *Lexmark International, Inc. v. Static Control Components, Inc.*, __ U.S. __, 134 S.Ct. 1377, 1386, 188 L.Ed. 2d 392 (2014), citing *Sprint Communications, Inc. v. Jacobs*, 571 U.S. __, __, 134 S.Ct. 584, 591, 187 L.Ed. 2d 505, 513 (2013) and *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)).

The Appellee's answer is "Yes." To arrive at this answer it argues that granting the Appellant relief, even if that relief is legally required, would plunge the Appellee back into insolvency and visit untold miseries upon its residents, including me. Fortunately, the situation is not so hopeless. As we shall see, this Court is not on the horns of a dilemma: it is not being forced to choose between shirking its duty as a court of law – to review and correct the bankruptcy court's errors of law – and dooming the City's efforts to rebuild itself.

II. THIS APPEAL IS WITHIN THE COURT'S SUBJECT-MATTER JURISDICTION.

A. FED. R. CIV. P. 12(b)(1) Does Not Apply in this Appeal.

The Appellee begins by acknowledging the Court's jurisdiction over this appeal. Appellee's Corrected Motion at 1. (The acknowledgment is correct. *Infra* at 4-7.) Then it seeks dismissal pursuant to FED. R. CIV. P.

12(b)(1), which provides for dismissal of a civil action for lack of subject matter jurisdiction. Appellee's Brief 9. It supports its reliance on that rule with a citation to *Alexander v. Barnwell Cnty. Hosp.*, 498 B.R. 550, 557 (D.S.C. 2013). The *Alexander* court, in turn, cited *Friends of Animals v. Salazar*, 670 F. Supp. 2d 7, 11 (D. D.C. 2009) for the proposition that "[a] motion to dismiss for mootness is properly brought under Federal Rule of Civil Procedure 12(b)(1)." *Alexander*, 498 B.R. at 557. The plaintiff in *Friends of Animals* invoked the district court's original jurisdiction, and the mootness at issue was constitutional mootness. As we shall see, constitutional mootness does give rise to an issue of subject-matter jurisdiction because a case that is moot in that sense presents no active case or controversy for purposes of U.S. CONST. art. III, § 2. But equitable mootness is not a jurisdictional issue. It concerns the question whether it is prudent to exercise appellate jurisdiction, not whether that jurisdiction exists.

In any event, FED. R. CIV. P. 12 does not apply to this appeal. The Federal Rules of Civil Procedure apply here only "to the extent provided by the Federal Rules of Bankruptcy Procedure." FED. R. CIV. P. 81(2); *See* FED. R. CIV. P. 1. The Bankruptcy Rules make parts of Rule 12 applicable

in some bankruptcy proceedings (*See* FED. R. BNKR. P. 1011(b) and (c), 7013.) but not in appeals. *Id.*, Chapter VIII.

B. This Appeal Is Not Constitutionally Moot.

In support of its argument that the appeal is constitutionally moot, the Appellee cites no constitutional provision and no precedent. It relies on a district-court decision from the Fourth Circuit, apparently not reported in the Federal Supplement 3d, *Alexander*, *supra*, which in turn cites no constitutional provision or precedent on the issue of constitutional mootness; and that case is easily distinguished. Appellee's Brief at 42.[1]

The lynchpin of the *Alexander* court's cursory constitutional-mootness analysis is its determination that "Appellant seeks a remedy that would require undoing the Plan in its entirety." *Id.* at 559. A quick look at my Brief on Appeal discloses that I seek no such remedy. Rather, I seek only: (1) reversal of an injunction that is not part of the Plan of Adjustment ("POA") and indeed is not even mentioned in the POA;[2] and (2) remand to

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[1] The Appellee also quotes language from *Khan v. Aurora Loan Servs., LLC (In re Khan)*, No. 14-10841, 2014 WL 3529445 (E.D. Mich. July 16, 2014), but does not rely on the holding in that case.

[2] Although the Appellant appears to seek a determination that my appeal is moot in its entirety, it does not present any argument suggesting that my claim of error regarding the injunction is moot, either constitution-

the bankruptcy court to give the Appellee an opportunity to file another amended plan of adjustment and the bankruptcy court an opportunity to determine whether the amended plan complies with 11 U.S.C. §§ 941 and 1123(a)(4) with reference to Class 11. Brief on Appeal at 45-46. The Appellee seem to argue that such a limited remedy is impossible in this case, Appellee's Brief at 39, and I refute that argument below. See *infra* at 9, 14-17, 18-21. But the fact that I do not seek to undo of the POA is sufficient to distinguish *Alexander*.

Despite the Appellant's failure to present any serious argument on the issue of constitutional mootness, a brief discussion of the relevant authorities may be helpful.

If a case is moot the case or controversy that is a prerequisite to federal judicial jurisdiction under Article III of the Constitution is lacking. *Honig v. Doe*, 484 U.S. 305, 317 (1988). "The burden of establishing mootness rests with the party seeking dismissal. *See County of Los Angeles v. Davis*, 440 U.S. 625 (1979). This burden is a heavy one. *United States v. W.T. Grant Co.*, 345 U.S. 629 (1953)." *Beta Upsilon Chi Upsilon*

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ally or equitably. In fact, it does not refer to that claim of error anywhere in its Corrected Motion or Brief.

Chapter at the Univ. of Fla. v. Machen, 586 F.3d 908, 916 (11th Cir. 2009) (Some internal citations omitted). Similarly, *Harmon v. Holder*, 758 F.3d 728, 732-733 (6th Cir. 2014). The Appellant has done precious little to shoulder this burden.

So how does a case become moot on appeal? In *Church of Scientology of California v. United States*, 506 U.S. 9 (1992), the district court ordered a state court clerk to comply with an IRS summons requiring production of documents as to which the church claimed a privilege. While the church's appeal from that order was pending, the clerk delivered the documents to the IRS. The court of appeals consequently dismissed the appeal as moot. The Supreme Court reversed. Even though it was no longer possible to grant the relief the church sought in the district court (preventing delivery to the IRS), it was not impossible to grant the church any effective relief whatsoever, for example, return or destruction of all copies of the documents. An appeal is constitutionally moot only if it is "impossible for the court to grant any effectual relief whatever," *Id.* at 12. "But '[a] case does not become moot simply because an appellate court is unable completely to restore the parties to the status quo ante.' *SunAm. Corp. v. Sun Life Assurance Co. of Can.*, 77 F.3d 1325, 1333 (11th Cir.

1996) (citing *Church of Scientology*, 506 U.S. at 12-14). 'The ability of the appellate court to "effectuate a partial remedy" is sufficient to prevent mootness.' Id. (quoting *Church of Scientology,* 506 U.S. at 13, 113 S.Ct. 447)." *In re Fontainebleau Las Vegas Holdings, LLC*, 434 B.R. 716, 739 (S.D. Fla. 2010).

It is certainly possible for this Court to (1) reverse the injunction that purports to prevent Class 11 members affected by ASF Recoupment from pursuing claims against GRS; and (2) consider whether the POA violates 11 U.S.C. § 941 or 1123(a)(4) with reference to Class 11 and, if it does, remand the case to the bankruptcy court to try to correct the error. That possibility is all it takes to avoid constitutional mootness.

III. THE COURT NEED NOT BE CONCERNED THAT BY EXERCISING ITS JURISDICTION IN THIS APPEAL IT WILL CAUSE CHAOS IN THE BANKRUPTCY COURT OR ANY OTHER PERVERSE RESULT.

"As Judge Easterbrook of the Seventh Circuit described the difference, constitutional mootness is characterized by an 'inability to alter the outcome' while equitable mootness involves an 'unwillingness to alter the outcome.' *Matter of UNR Indus., Inc.*, 20 F.3d 766, 769 (7th Cir.1994)." *In re Carr*, 321 B.R. 702, 706 (E.D. Va. 2005). The "judge-made origin [of equitable mootness], coupled with the responsibility of federal courts to

exercise their jurisdictional mandate, obliges [the court] . . . to proceed most carefully before dismissing an appeal as equitably moot." *In re SemCrude*, 728 F.3d 314, 318 (3rd Cir. 2013). "Following confirmation of a reorganization plan by a bankruptcy court, an aggrieved party has the statutory right to appeal the court's rulings. Once there is an appeal, there is a 'virtually unflagging obligation' of federal courts to exercise the jurisdiction conferred on them. [Citing *Colo. River Water Conservation Dist.*, *supra.*] Before there is a basis to forgo jurisdiction, granting relief on appeal must be almost certain to produce a 'perverse' outcome – 'chaos in the bankruptcy court' from a plan in tatters and/or significant 'injury to third parties.' Only then is equitable mootness a valid consideration." *Id*. (Some citations omitted.)

I discussed equitable mootness in my Brief on Appeal at 42-45. I incorporate that discussion and will not repeat it here except to the extent necessary to maintain continuity within this brief and to respond to points raised in the Appellee's Corrected Motion and Brief.

A. The Appellee Makes No Argument that My Claim of Error Regarding the Injunction Preventing Retirees Affected by ASF Recoupment from Asserting Claims Against GRS Is Equitably Moot. The Appellee Has Thereby Abandoned the Issue of Equitable Mootness as to That Claim of Error.

"[E]quitable mootness applies to specific claims, not entire appeals. 'In exercising its discretionary power to dismiss an appeal on mootness grounds, a court cannot avoid its obligation to scrutinize each individual claim, testing the feasibility of granting the relief against its potential impact on the reorganization scheme as a whole.'" *In re Pacific Lumber Co.*, 584 F.3d 229, 241 (5th Cir. 2009) (Citation omitted.)

As noted above (note 6), the Appellant has not argued the question whether my claim of error regarding the injunction that purports to prevent claims against GRS by retirees affected by ASF Recoupment is moot, either constitutionally or equitably. Nonetheless, I have addressed that question with reference to constitutional mootness because constitutional mootness goes to subject-matter jurisdiction, and issues of subject-matter jurisdiction must be addressed whenever they are raised, even obliquely. But equitable mootness is not jurisdictional, so a failure to argue the issue constitutes abandonment of the issue. *Intera Corp. v. Henderson*, 428 F.3d 605, 615 (6th Cir. 2005). Moreover, Appellee's equitable-mootness

argument addresses only the question whether appellate relief would jeopardize the POA, and the injunction from which I appeal is no part of the POA. *See* Brief on Appeal at 38-39.

B. This Court Should Not Take the Unprecedented Step of Expanding the Application of Equitable Mootness to Apply it to a Case Arising under Chapter 9 of the Bankruptcy Code.

A few months ago, Debtor's counsel cited *Bennett v. Jefferson Cnty.*, Case No. 2:14-CV-0213-SLB, 2014 U.S. Dist. LEXIS 139655, at 52 (N.D. Ala., Sept. 30, 2014)[3] to support the argument, on behalf of a different client, that "[r]ecent authority confirms that the doctrine of 'equitable mootness does not apply to challenges to a Confirmation Order in Chapter 9 proceedings' because 'it is based on Chapter 11 concepts that may by inapplicable to or inappropriate for [a] Chapter 9 case.'" Exhibit B: Franklin's Motion for Stay Pending Appeal of Confirmation Order in *Stockton,* at 11. Now they tell us *Bennett* is bad law. Appellee's Brief at 14-24.

Bennett is, in any event, only persuasive authority. On the other hand, there is no reported case applying equitable mootness in a Chapter 9 case and, so far as the parties' research discloses, only two unreported,

[3] A copy of the *Bennett* opinion is in the appendix to my Brief on Appeal.

out-of-circuit (and therefore non-precedential) cases in which equitable mootness was applied in a Chapter 9 case, but without any discussion of the question whether it is appropriate to expand the doctrine into Chapter 9 territory. (Those cases are *Alexander*, *supra*, and *Lionel v. City of Vallejo*, 551 F. App'x 339 (9th Cir. 2013), *See* Appellee's Brief at 14.)

Before equitable mootness is applied in the Chapter 9 context, careful attention must be paid to the federalism concerns that are unique in the Bankruptcy Code to Chapter 9. Federalism, of course, is a two-way street: both the states' sovereignty and federal sovereignty must be respected in their respective spheres. Defining the jurisdiction of federal courts and governing the exercise of that jurisdiction fall exclusively within the sphere of federal sovereignty. It is therefore significant that the parties insisting that the Court forego the exercise of its appellate jurisdiction in this case include the State of Michigan (ECF No. 34) and one of its political subdivisions (ECF No. 36). The Court's obligation to "proceed most carefully before dismissing an appeal as equitably moot," *SemCrude*, 728 F.3d at 318, takes on special significance when the parties seeking to use equitable mootness to prevent the exercise of jurisdiction are state entities who have no business telling a federal court when it should or should not

exercise its jurisdiction, especially in bankruptcy, an areas of exclusive federal jurisdiction. U.S. Const., art. I, § 8.

C. The Claims of Error in this Appeal Do Not Satisfy the Criteria for Declining to Exercise Jurisdiction on the Ground of Equitable Mootness.

The Appellant has correctly identified the three factors used to determine whether a case is "equitably moot" in the Fifth and Sixth Circuits. They are the same factors identified in my Brief on Appeal at 41. I will discuss each in turn.

1. A stay was not obtained.

The only significance of a stay with reference to equitable mootness is that a plan of reorganization or adjustment is unlikely to be substantially consummated if its implementation has been stayed promptly after confirmation. "However, neither the Bankruptcy Code nor any other statute predicates the ability to appeal a bankruptcy court's ruling on obtaining a stay."[4] *SemCrude*, 728 F.3d at 322.

It is worth noting that I sought a partial stay in the bankruptcy court,

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[4] The quoted passage includes this footnote 8: "The Bankruptcy Code does forbid appellate review of certain un-stayed orders. *See* 11 U.S.C. § 363(m) (order to sell or lease property); id. § 364(e) (order to obtain post-petition financing). Because of these statutory bars, however, equitable mootness is irrelevant in those instances."

asking only that those portions of the POA which would reduce monthly pension payments be stayed. R. 32, Doc. 8413. The denial of that stay has had minimal impact on consummation of the POA insofar as it is relevant to this appeal. GRS did not begin reducing pension payments until March 1, 2015. As noted in my Brief on Appeal at 44, the reduction of pension payments will not be substantially consummated for decades to come, since it is accomplished by altering pensions every month over the lifetimes of Class 11 members and their beneficiaries.

2. The relevant portions of the POA have not been substantially consummated.

See Brief on Appeal at 43-44.

3. The relief I seek would not adversely affect rights of parties not before the Court or the success of the POA.

This is where the rubber hits the road in equitable-mootness analysis. "The last, and most important factor, is whether the relief requested would affect either the rights of parties not before the court or the success of the plan." *In re American HomePatient, Inc.*, 420 F.3d 559, 564 (6th Cir. 2005) (No stay, substantial confirmation, but appellants make "plausible argument," *Id*. at 565, they can have relief on appeal without impairing plan or reorganization, so motion to dismiss denied.) The "no harm, no foul" rule

applies: if relief can be provided for the appellant without impairing the rights of absent parties or the success of the plan, then there is no reason not to exercise jurisdiction even in the absence of a stay and the presence of substantial consummation. Thus, for example, in *In re Ormet Corp.*, 355 B.R. 37 (S.D. Ohio 2006), the appellant had not sought a stay and the plan had been substantially consummated, but equitable mootness was no bar to the exercise of appellate jurisdiction because relief could be granted without unraveling the plan of reorganization.

It is important to note what the relief I seek does not do:

1. It does not affect the amount the Appellee must pay to GRS to fund pensions. Any increased payments to retirees would come from funds already held by GRS, funds it is to receive pursuant to the POA and investment earnings on those funds.

2. It therefore does not reduce the funds available to the Appellee to satisfy the claims of other creditors, to provide services to its residents and to carry out revitalization projects.

3. It does not affect the Appellee's liability, if it has any, for pension payments. Even assuming the Appellee is directly liable to retirees for our monthly pensions, the relief I seek would affect only GRS's liability for those

pensions. If it were determined that GRS has no such liability, then I would lose on the merits as to the § 941 issue.

4. It does not undo the Grand Bargain. The Appellant asserts that "the reinstatement of the City's prepetition pension . . . obligations or the loss of the revenue to be received as a result of ASF Recoupment will . . . eliminate the obligation of the State and the DIA Funding Parties to provide their respective portions of the Outside Funding and to support the Plan because the confirmation of the Plan as presented is a condition of such obligations." Appellee's Brief at 41. In support of this assertion the Appellant cites §§ IV.D.3 and IV.E.3. of the POA. On the basis of the assertion, the Appellant concludes that "even an attempt to partially reverse the Confirmation Order . . . would destroy the Plan . . ." *Id.*

This reasoning works only if the relief sought by an appellant would restore the *City's* prepetition pension obligations and only if the *City* were to suffer a loss of the revenue expected from ASF Recoupment. As noted above, the relief I seek would have no effect on the City's pension obligations, only on those of GRS.[5] And all the revenue from ASF Recoupment go to GRS, not the City. Confirmation Order at 95-98; POA at

[5] The City and GRS are distinct entities. Brief on Appeal at 33.

40-41, 809-810. Even GRS need not forego the revenue from ASF Recoupment if the relief I seek is granted. In this appeal, I do not dispute GRS's claim on the funds to be recovered via ASF Recoupment; rather, I maintain that the method prescribed in the POA to collect those funds from retirees violates 11 U.S.C. § 1123(a)(4). Brief on Appeal at 20-31. And I have suggested a method for collection of those funds that would not violate § 1123(a)(4). *Id.* at 44-45.

Moreover, the provisions of the POA the Appellant cites do not support the assertion in support of which they are cited. § IV.D.3 sets forth preconditions to the State's duty to make its contribution to the Grand Bargain, and § IV.E.3 describes the conditions for the DIA Funding Parties' participation in the DIA Settlement. One of the preconditions in § IV.D.3 is that the Confirmation Order be entered as a final order by December 31, 2014. The Confirmation Order was entered on November 12, 2014 and is a final order. *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1982). Nothing in the cited provisions, nor anywhere else, so far the Appellant informs us, suggests that the State's or the Funding Parties' obligations are extinguished if some portion of that final order is determined on appeal to be legally defective. In fact, on December 31,

2014, more than a month after commencement of this appeal, R 31, Doc. 8369, the State certified that the conditions precedent to the State's payment of the State Contribution had been "satisfied or otherwise addressed." Exhibit A: Notice Regarding Conditions Precedent to State Contribution. Nothing in that certification suggests that any subsequent event, including any action this Court might take on appeal, might result in a withdrawal or nullification of the certification. On February 9, 2015, the State paid the State Contribution in full; and on December 10, 2014, the effective date of the POA, the initial $23 million payment on the DIA Funding Parties' "irrevocable commitments" (POA at 57, ¶ IV.E.1) was delivered to GRS and PFRS. Exhibit A to Appellee's Brief at 3, ¶ 4.

a. The exercise of jurisdiction to hear this appeal would have no adverse effect on the interests of any party not before the Court.

GRS is before the Court in this appeal and has indicated it intends to be heard on the merits. Stipulated Order Amending Scheduling Order, February 9, 2015, ECF No. 27; Stipulated Order Amending Scheduling Order, February 26, 2015, ECF No. 39. The same is true of the State of Michigan (ECF No. 25, ECF No. 38) and the Detroit Retired City Employees Association (ECF No. 29). The question whether any of them (or any party

they represent) would be affected by addressing the merits of my appeal therefore is not part of equitable-mootness analysis. Since the Appellee's ability to pay the claims of other creditors would be unaffected by granting me relief on this appeal, it is difficult to see how the interests of those creditors could be affected by granting me relief. In any event, the relief I seek is a remand, so all parties to the proceedings in the bankruptcy court can assert in that court any interests they might have relevant to the issues I raise on appeal.

b. It is possible to grant me relief without adversely affecting the success of the POA as a whole.

The Appellant makes the all-or-nothing argument that, because neither the bankruptcy court nor this Court can amend the POA, the only relief that could be granted in this appeal would be rejection of the POA in its entirety. This underestimates the nimbleness and flexibility of this Court in the exercise of its appellate jurisdiction. It also underestimates the zeal of the federal judiciary to exercise its jurisdiction when called upon whenever possible. Even when the relief sought by the appellant is, for prudential reasons, impossible to grant, courts considering appeals from confirmation orders strive to find alternative, usually more limited, remedies rather than simply refusing to exercise appellate jurisdiction. *See*, *e.g.*: *Semcrude*, 728

F.3d 323 *et seq.* (criticizing all-or-nothing approach and suggesting several forms of alternative relief that might be workable); *In re Superior Offshore International, Inc.*, 591 F.3d 350, 354 (5th Cir. 2009) ("Remedies can be crafted for [deficiencies in the plan noted by appellant] without completely undoing the Plan. Under these circumstances, equitable mootness does not apply.") (Footnote omitted.); *In re Thorpe Insulation Co.*, 677 F. 3d 869, 883 (9th Cir. 2012) (Appeal not equitably moot because circuit court lists four possible remedies that would not destroy plan and suggests bankruptcy court might find more on remand.); *UNARCO Bloomington Factory Workers v. UNR Industries, Inc.*, 124 B.R. 268, 280-282 (N.D. Ill. 1990) (Some but not all relief sought by appellant has become impossible. Dismissal granted only as to the relief that has become impossible.)

It is not even necessary that the appellate court be able to devise an appropriate remedy; often the appropriate ruling on appeal, after a finding of error, is a remand to give the bankruptcy court an opportunity to fashion a remedy:

> [M]ost importantly, we look to whether the bankruptcy court on remand may be able to devise an equitable remedy. Because traditional equitable remedies are extremely broad and vest great discretion in a court devising a remedy, we expect that if there is violation of Appellants' legal rights from the plan, the bankruptcy court should be able to find a remedy that is

> appropriate. The plan has thus far proceeded to a point where it may not be viable totally to upset the plan . . . Yet, that does not mean that there could not be plan modifications adequate to give remedy for any prior wrong. Where equitable relief, though incomplete, is available, the appeal is not moot.

Paulman v. Gateway Venture Partners III, L.P. (In Re Filtercorp, Inc.), 163 F. 3d 570, 578 (9th Cir.1998).

The Appellee is correct that only it can modify the POA: neither this Court nor the bankruptcy court can do that. However, this Court can inform the Appellee that the POA violates the Bankruptcy Code, and upon remand the Bankruptcy Court can give the Appellee an opportunity to submit an amended POA that does not violate the Code. If the Appellee proves unable or unwilling to submit an amended POA that does not violate the Code, would not cause chaos and would not leave the POA in tatters, then the bankruptcy court can use its equitable powers to deal with that situation. The fact that some of the errors below cannot be corrected without the cooperation of the Appellant does not mean they cannot be corrected at all. Rather, they mean the Appellant needs to cooperate.

I have suggested what I think is a fairly straightforward and obvious remedy for the violation of 11 U.S.C. § 1123(a)(4). Brief on Appeal at 44 - 45. Devising a remedy to the § 941 violation may be more complicated and require access to information and abilities I lack. That complexity and need

for input by smarter, more informed people does not justify a conclusion that the task is impossible before it has been attempted.

CONCLUSION

The Court's subject-matter jurisdiction is clear. No effort has been made to suggest any reason why it should not exercise that jurisdiction to reverse the bankruptcy court's imposition of an injunction that was not mentioned in the POA and not sought by any party. With reference to the other claims of error, the Appellant has not borne its burden of showing that it is impossible to remedy the errors without creating chaos, leaving the POA in tatters or negatively impacting the rights of parties not before the Court.

All I am asking the Court to do is to "say what the law is," *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), and send the case back to the bankruptcy court for application of that law to the extent possible in the current circumstances of the case.

The motion should be denied.

/s John P. Quinn
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Dated: March 2, 2015

CERTIFICATE OF SERVICE

I certify that on March 2, 2015, I am electronically filing the foregoing paper with the Clerk of the Court using the ECF system which will send notification of the filing to the following: Bruce Bennett and Heather Lennox, both of Jones Day, counsel for the Appellee City of Detroit; and all other persons entitled to service or notice in this matter.

s/ John P. Quinn
John P. Quinn
Appellant *in Propria Persona*
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Dated: March 2, 2015