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 APPELLEE'S MOTION TO CONSOLIDATE APPEALS AND MODIFY WORD LIMIT FOR CONSOLIDATED RESPONSE

I, John P. Quinn, Appellant in Case No. 14-CV-14899, respond as follows to the referenced motion (docket entry 16) filed by the Appellee City of Detroit:

1. As the Appellee would have learned had its counsel complied with Local Rule (Civil) 7.1(a), I do not oppose this motion, provided effective provisions are made to deal with the problems identified below.

2. I am currently not an active member of the bar of this Court. As a party representing myself I have only limited access to ECF. I cannot file

electronically in any case other than Case No.14-CV-14899, nor am I notified of events or filings in any other case, nor do I have access to documents filed in any other case except via the costly use of PACER. The appellant suggests that the eight appeals it wants the Court to consolidate be assigned a single case number. Motion, (docket entry 16) Exhibit A, § 2. If that case number is not 14-CV-14899, the consolidation will result in loss of my access to ECF and will have the same effect on any party in any of the other seven appeals who has similarly limited ECF access and whose appeal does not have the same case number as the number that would be assigned to the consolidated case. This would significantly increase the cost of pursuing the appeal for me and each similarly situated party in any of the other appeals to be included in the consolidated case. It would also deprive the Court of much of the efficiency provided by ECF.

3. I suspect that appellant(s) in one or more of the cases the Appellee seeks to consolidate have no access to ECF. The proposed consolidation would impose upon any such appellant the burden of serving a paper copy of his or her brief and any other filings upon each other appellant in the consolidated appeal. It would also make it necessary for appellants who do have access to ECF to serve paper copies of their briefs and any other filings on each appellant in the consolidated case who lacks access to ECF. This would result in a drastic increase

in the cost of pursuing the appeals, and that cost would be imposed upon appellants who may soon experience severe reductions in income, including reductions of as much as 20% in their pensions.

4. Assuming the Court has, in the other seven appeals, entered scheduling orders similar to its Scheduling Order in this case (docket entry 13), this motion comes rather late in the game. It may not be practical at this late date to devise a way to consolidate the appeals while avoiding the increased costs discussed above unless the Court modifies the briefing schedule.

5. As is briefly explained in the Brief supporting this Response, and as will become clear once the various briefs on appeal are filed, the Appellee's suggestions that the issue of equitable mootness will be dispositive of all eight appeals and that "the relevant law and facts underlying the issue of equitable mootness will be identical in every Appeal" (Motion, docket entry 16 at 5 - 6) are mistaken. Whether or not the appeals are consolidated, the application of equitable mootness will need to be separately analyzed with reference to the issues raised and arguments presented in each of the eight appeals.

6. If the Court and its staff are inclined to plow through the 30,000-word brief the Appellant seeks to submit, I do not object.

WHEREFORE, I request that the Court deny the referenced motion without prejudice to Appellee's finally complying with Local Rule 7.1(a) by attempting to confer with the appellants in all the appeals it seeks to consolidate and, if necessary, with the Court's staff, with the aim of devising an agreed proposed order that would provide the relief the Appellee seeks while avoiding or at least minimizing the costs and inefficiencies discussed above.

BRIEF IN SUPPORT OF APPELLANT QUINN'S RESPONSE TO APPELLEE'S MOTION TO CONSOLIDATE APPEALS AND MODIFY WORD LIMIT FOR CONSOLIDATED RESPONSE

CONCISE STATEMENT OF ISSUE PRESENTED

SHOULD THE COURT, IN THE EXERCISE OF ITS DISCRETION, DENY THE REQUESTED CONSOLIDATION UNLESS AND UNTIL THE APPELLANT COMPLIES WITH LOCAL RULE 7.1(a) IN AN EFFORT TO DEVISE AN AGREED PROPOSED ORDER THAT WOULD GRANT CONSOLIDATION WHILE AVOIDING OR AT LEAST MINIMIZING THE COSTS AND INEFFICIENCIES THAT WOULD RESULT FROM UNCONDITIONAL CONSOLIDATION IN THE PARTICULAR CIRCUMSTANCES OF THE EIGHT APPEALS THE MOVANT SEEKS TO CONSOLIDATE?

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Cantrell v. Gaf Corp., 999 F.2d 1007 (6th Cir. 1993)

Curreys of Neb., Inc. v. United Producers, Inc.,526 F.3d 942 (6th Cir. 2008)

J4 Promotions, Inc. v. Splash Dogs, LLC, 2010 BL 178452, at *1 (S.D. Ohio Aug. 3, 2010)

Fed.R.Civ.P. 42(a)

E.D.Mich. Local Rule (Civil) 7.1(a)

E.D.Mich. Electronic Filing Policies and Procedures R8(e)

ARGUMENT

The Appellee correctly notes that, in deciding whether to consolidate these eight appeals, the Court should consider, among other factors, the burden on the parties and the relative expense to all involved of consolidated as opposed to separate consideration of the appeals [Motion, docket entry 16, at 6, § 5, citing *J4 Promotions, Inc. v. Splash Dogs, LLC*, 2010 BL 178452, at *1 (S.D. Ohio Aug. 3, 2010)] . Local Rule 7.1(a) provides a mechanism by which the parties themselves can attempt to hammer out those issues before imposing the burden of doing so on the Court.

Such an effort would be particularly appropriate here. As explained in the above Response, the limited availability of ECF to non-attorney parties representing themselves and the requirement that parties without access to ECF be served with hard copies of filed papers [E.D.Mich. Electronic Filing Policies and Procedures R8(e)], could give rise, in the event of consolidation, to expenses and practical complexities that are not usually present. These sorts of problems would be most effectively addressed if the parties talked to one another before communicating by means of a formal motion and responses.

Admittedly, the Appellant's delay in raising the issue of consolidation complicates the problem of devising a way to consolidate these appeals, either

with agreement of the parties or by a decision on this motion. This appeal has been pending in this Court since December 29, 2014 (docket entry 10). I believe some of the other appeals the Appellant seeks to consolidate with this one have been pending even longer. By now, the appellants are preoccupied with the final preparation of our briefs on appeal, which are due next week. We therefore have little time to discuss consolidation with the Appellee. Even if we were to arrive at an agreement to present to the Court, it is doubtful it could be implemented before our briefs are due.

The Appellee suggests that consolidation is especially appropriate here because a single issue, equitable mootness, will be dispositive in all eight appeals and will turn on the same law and facts in each appeal. But equitable mootness is not so cut-and-dried as that. In deciding the issue, the Sixth Circuit considers several factors, including "the nature of the relief requested and whether it amounts to a piecemeal revision of the plan or a wholesale rewriting of it," whether "the creditor's requested relief would . . . require abandonment of the plan," and whether the appellants present "a plausible argument that the implementation of their suggested changes to the confirmation plan would not require any of the actions undertaken pursuant to the plan to be reversed." *Curreys of Neb., Inc. v. United Producers, Inc.*,526 F.3d 942, 950 (6th Cir. 2008).

In my Brief on Appeal I intend to argue that the Plan of Adjustment's violation of 11 U.S.C. § 1123(a)(4) with reference to the "ASF Recoupment"can be remedied simply by complying with that statute and that doing so will not have any negative impact on implementation of other provisions of the Plan. It seems unlikely that a similar analysis would apply, for example, to the application of equitable mootness to the question whether the Bankruptcy Court's consent analysis conflicts with 11 U.S.C. § 903 or whether dismissal of the bankruptcy would have resulted in a greater recovery for retirees. (See Ochadleus Appeal, Case No. 14-CV-14872.) I will also explain how the application of both § 1123(a)(4) and equitable mootness to the claims of retirees (like me) is entirely different from its application to the claims of current employees (*e.g.*, the appellant Cipillone in Case No. 14-CV-14910).

Whether or not these appeals are consolidated, the issues they present will still require separate analysis.

s/ John P. Quinn
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Dated: January 21, 2015

CERTIFICATE OF SERVICE

I certify that on January 21, 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.

s/ John P. Quinn
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Dated: January 21, 2015