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Caesars Venue Decision Sets Important Precedent

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In a battle over proper venue for the Chapter 11 cases of In re Caesars Entertainment Operating Co. Inc. and its affiliates, when the United States Bankruptcy Court for the District of Delaware was confronted with the issue of whether to allow the case to proceed in its court, where an involuntary petition for relief under Chapter 11 was first filed, or whether to allow the case to proceed in the United States Bankruptcy Court for the Northern District of Illinois, where Caesars subsequently filed a voluntary Chapter 11 petition, the Delaware court held that the case should proceed in the Illinois Court.[1]

Background

Following the acquisition of Caesars in 2008, in one of the largest leveraged buyouts in history, a number of economic factors and industry trends left Caesars unable to service its debt load and limited its ability to address certain capital and operational deficiencies. In the months and years preceding the commencement of the Caesars Chapter 11 cases, Caesars engaged in a series of transactions with the purpose of extending its liquidity and ordinary course operating runway. These transactions were and are the subject of several lawsuits commenced by Caesars' noteholders.

Even after the consummation of the transactions, Caesars remained overleveraged and proceeded to negotiate with certain key creditors terms of a prenegotiated Chapter 11 case culminating with the execution of a restructuring support and forbearance agreement. The RSA required Caesars to file a voluntary petition for relief under Chapter 11 after Jan. 15, 2015, but before Jan. 20, 2015, with timing focused on the preservation of the right to assert that certain transfers of value were subject to voiding powers.

On Jan. 12, 2015, Appaloosa Investment Limited Partnership I, OCM Opportunities Fund VI LP and Special Value Expansion Fund LLC (collectively, the "petitioning creditors") preempted Caesars voluntary filing and filed with the Delaware court an involuntary petition for relief under Chapter 11 with respect to Caesars (the "involuntary case"). On Jan. 15, 2015, Caesars and 172 of its direct or indirect subsidiaries filed voluntary petitions for relief under Chapter 11 in the Illinois court (collectively, the "voluntary case").

On the date of the filing of the voluntary case, the petitioning creditors filed a motion in the involuntary case seeking a determination pursuant to Bankruptcy Rule 1014(b) that both the voluntary and involuntary cases should be administered by the Delaware court (the "venue motion"). Caesars filed an objection to the venue motion, arguing that the cases should proceed before the Illinois court.

Bankruptcy Court Analysis

Bankruptcy Rule 1014(b) provides that when two petitions for relief involving the same debtor are filed in two different courts, the court in which the first-filed petition is pending may determine (1) in the interest of justice, or (2) for the convenience of the parties, the district or districts in which any of the cases should proceed. Thus, the Delaware court had the power to determine whether the cases should stay in Delaware or be transferred. The Honorable Kevin Gross, U.S. bankruptcy judge for the District of Delaware, noted that Bankruptcy Rule 1014(b) provides for a flexible and two-prong analysis. Judge Gross began his reasoning and decision-making process with the "convenience of the parties" prong.

Convenience of the Parties

In determining the convenience of the parties, courts often apply the factors set forth in the Fifth Circuit case of In re Commonwealth Oil Refining Co.[2]: (1) proximity of creditors of every kind to the court; (2) proximity of the debtor to the court; (3) proximity of witnesses necessary to the administration of the estate; (4) location of assets; and (5) economic administration of the estate. Analyzing these factors as applied to Caesars, Judge Gross was not convinced that Delaware was significantly more or less convenient or accessible for the various parties in interest and their professionals or that the nature, operation and distribution of the business favored one location over the other, particularly in this modern age of travel and communications and with accessibility of electronic books and records.

Because a comprehensive balance sheet restructuring will be the central tenet of Caesars' Chapter 11 cases, as contrasted with the need for immediate and significant asset sales or the restructuring of operations, Judge Gross concluded that location of the underlying assets of the business and proximity to the court house should not be a factor as related to the choice between Delaware and Illinois. For future consideration, it is nonetheless of interest and significance that Judge Gross did comment that were the District of Nevada under consideration, he may very well have found the balance tipping in its favor.[3]

Next, Judge Gross turned to what he considered the most important CORCO factor: economic and efficient administration of Caesars' estate. Judge Gross held the ability of both the Delaware court and the Illinois court to administer the bankruptcy cases in a just and efficient matter is equal and that both are convenient forums for the parties and their professionals. As a result, Judge Gross concluded that the CORCO factors were a "push" and turned to the "interest of justice" prong.

Interest of Justice

Judge Gross noted that the "interest of justice" test is a broad and flexible standard that is applied on a case-by-case basis. The key issue was whether Judge Gross should defer to the judgment of Caesars or the judgment of the petitioning creditors with respect to choice of venue. Although courts have consistently held that a debtor's choice of forum is entitled to a certain level of deference if venue is proper, the petitioning creditors argued that they were entitled to deference based on the fact that they initiated the involuntary case prior to the filing of the voluntary case.

The petitioning creditors cited the judicially created "first-filed" rule as support (the "first-filed" rule is most commonly applied in nonbankruptcy cases where there is concurrent civil litigation pending with respect to the same dispute). Caesars, on the other hand, argued that "the first-filed rule is inapplicable to a collective proceeding such as bankruptcy."[4]

Judge Gross noted that even if the first-filed rule were to apply, the "anticipatory filing" exception to the rule also would and should apply given the facts and circumstances at hand. The anticipatory filing exception applies "when the first-filing party instituted suit in one forum in anticipation of the opposing party's imminent suit in another, less favorable, forum."[5] The Delaware court agreed with Caesars that the involuntary case was clearly an "anticipatory filing" and held that Caesars' judgment with respect to the venue in which it will best be able to reorganize is entitled to "just enough deference to permit it to proceed in its chosen forum."[6]

The decision also noted policy concerns with respect to venue selection. Judge Gross stated that he recognized that rewarding the petitioning creditor's preemptive filing would "set a bad precedent for future bankruptcy cases and limit the ability of future debtors to openly negotiate with creditors prior to filing a voluntary bankruptcy petition. It is contrary to the interest of justice to favor the petitioning creditors in such a scenario."[7] He noted that the Illinois Court and the judge assigned to the case are no less capable or available to restrain Caesars from breaching its duties and preventing fraud. Finally, Judge Gross stated that he was confident that his decision to allow the case to proceed in the Illinois court would in no way reduce the opportunity for creditors to obtain appropriate relief.

Conclusion

This decision memorializes and further secures an important precedent regarding the determination of venue in cases where conflicting petitions are pending in different districts, especially where creditors file an involuntary petition in anticipation of a debtor filing a voluntary petition in a different district. While many sound and compelling reasons remain for the filing of an involuntary petition for relief, the Delaware court's decision to defer to the debtor's choice of venue and its statement that allowing the anticipatory involuntary filing of the petitioning creditors would set a bad precedent, may serve to deter similar anticipatory filings in the future. The analysis by Judge Gross also has ramifications for the more usual and customary venue transfer motions where there is only one pending case and a party seeks a transfer of venue in the interest of justice or for the convenience of the parties.[8]

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[1] In re Caesars Entertainment Operating Co. Inc., 15-10047 (KG), Doc. 227 (Bankr. D. Del. Feb. 2, 2014).

[2] In re Commonwealth Oil Refining Co., 596 F.2d 1239, 1247 (5th Cir. 1979).

[3] Notwithstanding Judge Gross' comment, Bankruptcy Rule 1014(b) does not on its face limit the court's consideration of which districts are eligible as the appropriate venue to those proposed by the parties.

[4] In re Caesars, Doc. 227 at 17.

[5] E.E.O.C. v. Univ. of Pennsylvania, 850 F.2d 969, 976 (3d Cir. 1988).

[6] In re Caesars, Doc. 227 at 18.

[7] Id. at 20.

[8] See 28 U.S.C. § 1412, which allows the court to transfer bankruptcy cases in the interest of justice or for the convenience of the parties.

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