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U.S. Supreme Court Denies Review of Challenge to Equitable Mootness Doctrine

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In a decision that will likely impact bankruptcy proceedings around the country, the Supreme Court recently denied the petition for writ of certiorari of David Hargreaves, which challenged the equitable mootness doctrine.[1] As a result, the concept of equitable mootness remains anything but moot.

The dispute arose after oilfield logistics company Nuverra Environmental Solutions, Inc.'s prepackaged plan of reorganization was confirmed by the Delaware bankruptcy court in 2017. Hargreaves, a holder of a $450,000 unsecured note against Nuverra, objected to his treatment under Nuverra's plan, because he received a lower recovery than other unsecured creditors. The bankruptcy court ruled that the recoveries of these unsecured trade creditors, though better than the recoveries afforded noteholders such as Hargreaves, were a permissible "horizontal" gift from secured creditors to the unsecured trade creditors to ensure ongoing relationships with parties important to Nuverra's reorganization.[2]

Hargreaves appealed the Delaware bankruptcy court's confirmation order and filed a motion for stay of the order pending appeal, which was denied. The District Court of Delaware applied the Third Circuit's test for equitable mootness: "(1) whether a confirmed plan has been substantially consummated; and (2) if so, whether granting the relief requested in the appeal will (a) fatally scramble the plan and/or (b) significantly harm third parties who have justifiably relied on plan confirmation."[3] The District Court ruled Hargreaves' appeal was equitably moot. The Third Circuit agreed with the District Court and again ruled that Hargreaves' appeal was equitably moot. The Third Circuit reasoned, "the only way to give Hargreaves the money he wants is to give all [creditors in his class] a 100% refund . . . which would fatally scramble the Plan and significantly harm third parties."[4]

Finally, Hargreaves petitioned the Supreme Court for writ of certiorari, and challenged the application of the doctrine of equitable mootness, which has been frequently invoked in bankruptcy proceedings. It is important to note that equitable mootness is different from true mootness. True mootness is the inability of a court to alter the result of a proceeding (for example if the convicted had died in the case of a criminal appeal), while equitable mootness is a court's unwillingness to alter the result of a proceeding, despite the possibility of doing so (for example an appellate court's unwillingness to require a change to a bankruptcy court's confirmation of a plan of reorganization).

In his petition, Hargreaves argued that that federal courts should not even be able to apply the equitable mootness doctrine in cases where they would otherwise have jurisdiction. Hargreaves argued that, equitable mootness is now so frequently invoked, that Article III courts that should review the decisions of bankruptcy courts do not.[5] In their amicus brief many prominent bankruptcy scholars supported Hargreaves' position.[6] In its response brief, Nuverra argued that debtors rely on the decisions of bankruptcy courts when crafting their plans of reorganization and requesting confirmation.[7] Nuverra further argued that if appellate courts were to rehash confirmed plans, this would harm the process for debtors and creditors.

Ultimately the Supreme Court denied Hargreaves' petition without comment, meaning that the doctrine of equitable mootness may continue to be applied by courts sitting in review of bankruptcy proceedings. As a result, debtors will continue to rely on equitable mootness as the ultimate fallback position in an appeal of a confirmed and effective plan.

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1. *Hargreaves v. Nuverra Envtl. Sols., Inc. et al.*, 834 Fed. App'x 729 (3d Cir. 2021), cert. denied, 595 U.S. (U.S. Oct. 12, 2021)(No. 21-17).

2. *In re Nuverra Env't Sols., Inc.*, 590 B.R. 75, 81 (D. Del. 2018).

3. *In re Nuverra Env't Sols., Inc.*, 590 B.R. at 89.

4. *In re Nuverra Env't Sols., Inc.*, 834 F. App'x 729, 736 (3d Cir. 2021).

5. Petition for Writ of Certiorari, *Hargreaves v. Nuverra Envtl. Sols., Inc. et al.*, 595 U.S. (No. 21-17).

6. Amicus Curiae Supporting Petitioner, *Hargreaves v. Nuverra Envtl. Sols., Inc. et al.*, 595 U.S. (No. 21-17).

7. Respondent's Brief, *Hargreaves v. Nuverra Envtl. Sols., Inc. et al.*, 595 U.S. (No. 21-17).