

OVED & OVED

ATTORNEYS

March 31, 2022

VIA ECF

Hon. Alison J. Nathan
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *In re Avianca Holdings S.A.*, Case No. 21-cv-10118-AJN

Dear Judge Nathan:

We represent Appellants in the above-referenced action and write in brief response to Appellees' letter, dated March 31, 2022, submitting a recent Ninth Circuit Court of Appeals opinion, *In re Pac. Gas and Elec. Co.*, 2022 WL 911780 (9th Cir. Mar. 29, 2022), regarding equitable mootness. This decision has no application to the present appeal and, as such, the Court should disregard it.

As Appellants demonstrated in their opposition brief (Dkt. 18), Appellees failed to meet their threshold burden to show that the Plan has been substantially consummated. Instead, Appellees made conclusory assertions that they engaged in a handful of allegedly "complex," but unidentified, transactions, while, tellingly, failing to even claim that they had completed numerous "key steps" identified in the Plan as necessary to substantially consummate the Plan. Dkt. 18 pp. 14-18. In contrast to Appellees' insufficient showing, the debtors in *In re Pac. Gas and Elec. Co.* had already "disbursed more than \$42 billion to more than 2,800 creditors and other parties in interest," including creating "fully funded" trusts that paid out claims to individuals such that the plan had been substantially consummated. *Id.*, 2022 WL 911780, *2. As such, the case is distinguishable and does not support the application of the equitable mootness doctrine here.

Moreover, Appellants demonstrated in their opposition brief that in the Second Circuit, failing to seek a stay is not fatal to an appeal even if a plan has been substantially consummated. Indeed, all a creditor must show is that it would not be inequitable to fashion relief for the creditor, which Appellants amply demonstrated. Dkt. 18 pp. 23-24. It is thus entirely irrelevant whether the Ninth Circuit employs a different standard.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Glen Lenihan

Glen Lenihan

cc: Appellees' counsel (via ECF)

