

Milbank

AARON L. RENENGER

Partner

1850 K Street NW, Suite 1100 | Washington, DC 20006

T: 202-835-7505

arenenger@milbank.com | milbank.com

May 31, 2022

VIA ECF

The Honorable Vernon S. Broderick
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *In re Avianca Holdings S.A., et al.*, Case No. 1:21-cv-10118

Dear Judge Broderick:

We write on behalf of Appellees in the above-captioned proceeding pursuant to Federal Rule of Bankruptcy Procedure 8014(f) to advise the Court of a recent significant decision: *McDonald v. PG&E Corp.*, No. 20-17366, DC No. 4:20-cv-04568-HSG, 2022 WL 1657452 (9th Cir. May 25, 2022).¹ A copy of the decision is attached hereto as **Exhibit A**.

McDonald is pertinent to issues currently pending before the Court in connection with Appellees' motion to dismiss filings [Dkt. Nos. 13, 14, 15, 22, 23], as it concerns the grounds for dismissal of a bankruptcy appeal as equitably moot. In *McDonald*, the Ninth Circuit concluded that the appellant's failure to seek a stay pending its appeal of the bankruptcy court's confirmation order, together with the substantial consummation of the debtors' reorganization plan and the inability of the bankruptcy court to fashion effective and equitable relief without "knocking the props out from under the plan[,]” rendered the appeal equitably moot.

The same is true here.² Appellees' reorganization plan (the “Plan”) was confirmed by the Bankruptcy Court on November 2, 2021 (the “Confirmation Order”), and became effective on December 1, 2021. As detailed in Appellees' motion to dismiss filings, Appellants failed to seek any stay of the Plan's consummation pending the appeal, and Appellees implemented many of

¹ We also note our previous letter [Dkt. No. 28] advising the Court of another recent significant decision, in which another Ninth Circuit panel reached a similar conclusion.

² As in the Ninth Circuit, courts in the Second Circuit often find that failure to seek a stay pending appeal is outcome-determinative concerning equitable mootness. *See* Dkt. No. 14 at 17-20 (collecting cases).

MILBANK LLP

NEW YORK | LOS ANGELES | WASHINGTON, D.C. | SINGAPORE
LONDON | MUNICH | BEIJING | HONG KONG | SEOUL | TOKYO



2011133220607000000000002

Honorable Vernon S. Broderick
May 31, 2022

Page 2

the complex, interrelated transactions mandated by the Plan months ago. *See* Dkt. No. 14 at 1-3, 8-11, 14-20; Dkt. No. 15 ¶¶ 6-13; Dkt. No. 22 at 1-3, 6-9; Dkt. No. 23 ¶¶ 5-7. Reversal of the Confirmation Order would knock the props out from under the Plan, resulting in a chaotic and uncertain return to the Bankruptcy Court. *See* Dkt No. 14 at 20-25; Dkt. No. 22 at 9-10.

We thank Your Honor for your attention to this matter.

Respectfully submitted,

/s/ Aaron L. Renenger
Aaron L. Renenger

cc: Counsel of Record (via ECF)

Exhibit A

2022 WL 1657452

Only the Westlaw citation is currently available.
United States Court of Appeals, Ninth Circuit.

Theresa Ann MCDONALD, Appellant,
v.
PG&E CORPORATION, Pacific Gas
and Electric Company, Appellees,
Office of the U.S. Trustee, Trustee-Appellee,
Official Committee of Tort Claimants; Official
Committee of Unsecured Creditors, Creditors-Appellees.

No. 20-17366

Submitted May 17, 2022 *

FILED May 25, 2022

Appeal from the United States District Court for the Northern
District of California, [Haywood S. Gilliam, Jr.](#), District Judge,
Presiding, D.C. No. 4:20-cv-04568-HSG

Attorneys and Law Firms

Theresa Ann McDonald, Plumas Lake, CA, Pro Se.

[Peter J. Benvenuti](#), Esquire, Thomas B. Rupp, Keller
Benvenuti Kim, LLP, San Francisco, CA, [Jared R.
Friedmann](#), [Theodore Elias Tsekerides](#), Weil Gotshal &
Manges, LLP, New York, NY, [Bradley Schneider](#), Esquire,
Munger, Tolles & Olson, LLP, Los Angeles, CA, for
Appellees.

[David J. Richardson](#), Baker & Hostetler, LLP, Los Angeles,
CA, for Creditor-Appellee Official Committee of Tort
Claimants.

Before: [CANBY](#), [TASHIMA](#), and [NGUYEN](#), Circuit Judges.

MEMORANDUM **

*1 This appeal has been held in abeyance since September 23, 2021, pending resolution of *Adventist Health System/West v. Fire Victim Trust (In re Pacific Gas & Electric Company)*, No. 21-15447. The stay is lifted.

Theresa Ann McDonald appeals pro se from the district court's order dismissing her bankruptcy appeal. We have jurisdiction under 28 U.S.C. §§ 158(d) and 1291. We review de novo the district court's legal conclusions and for clear error its factual findings. *JPMC 2007-C1 Grasslawn Lodging, LLC v. Transwest Resort Props. Inc. (In re Transwest Resort Props., Inc.)*, 801 F.3d 1161, 1168 (9th Cir. 2015). We affirm.

The district court properly dismissed McDonald's appeal as equitably moot because McDonald did not obtain a stay pending appeal, there has been substantial consummation of debtors' plan, and the bankruptcy court could not fashion effective and equitable relief "without completely knocking the props out from under the plan and thereby creating an uncontrollable situation for the bankruptcy court." *Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 677 F.3d 869, 881 (9th Cir. 2012) (setting forth factors for determining equitable mootness).

We reject as without merit McDonald's contention that the bankruptcy court lacked authority to enter its plan confirmation order.

McDonald's motion to expedite (Docket Entry No. 29) is denied as moot.

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2022 WL 1657452

Footnotes

* The panel unanimously concludes this case is suitable for decision without oral argument. See [Fed. R. App. P. 34\(a\)\(2\)](#).

** This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.