

February 26, 2021

By ECF

The Hon. Vincent L. Briccetti
U.S. District Court for the Southern District of New York
United States Courthouse
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White Plains, NY 10601

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Re: U.S. Bank National Association v. Windstream Holdings, Inc., et al., No. 20-cv-4276 (VB)
(consolidated cases)

Dear Judge Briccetti:

We represent U.S. Bank National Association (the “Trustee”) in the above-captioned action and write in response to the letter by Appellees Windstream Holdings, Inc. and its debtor subsidiaries (“Debtors”) on February 19, 2021, submitting a Second Circuit opinion (the “Opinion” or “Op.”) as supplemental authority in this appeal.

First, the Opinion is expressly non-precedential per its own terms. Op. 1.

Second, were the Opinion precedential, it still would not apply here. In that appeal, the Bankruptcy Court granted a motion by Debtors over objection by creditor GLM DWF, Inc. (“GLM”). Op. 2. When GLM appealed, it sought no stay in the Bankruptcy Court. It sought no stay in the District Court. And it sought no stay in the Second Circuit. Nor did GLM seek to expedite either of its appeals. Op. 6.

Here, following entry of the Confirmation Order, the Trustee promptly sought to expedite its appeals, which this Court denied, determining that mere risk of equitable mootness was not irreparable harm. (20-cv-04276 #18) Because the Trustee expedited its own filings, these appeals were fully briefed on September 10. On September 1, based on Debtors’ statements regarding Plan consummation, the Trustee sought a stay from the Bankruptcy Court, which was denied. (19-bk-22312 ##2482, 2519) On September 2, the Debtors, in their opening appeal argument, contended that these appeals would become equitably moot upon Plan consummation. (20-cv-04276 #36) Two days later, the Trustee sought a stay in this Court. (20-cv-04276 #44) On September 28 – with the stay request and this Court’s ruling pending – the Debtors substantially consummated the Plan, asserting that these appeals are now equitably moot. (19-bk-22312 #2544) Thus, unlike GLM, the Trustees took prompt affirmative steps seeking judicial intervention before Plan consummation.



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In any event, an appeal of a confirmation order is not equitably moot if a partial remedy can be fashioned. Unlike GLM’s situation, this Court has already held that “[t]here is no indication that this Court will be unable to grant appellants effective relief” because it “could still fashion a partial remedy,” which “is sufficient to prevent [this] case from being moot.” (20-cv-04276 #65 at 4)

Respectfully,

/s/ J. Christopher Shore
J. Christopher Shore

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