

United States Court of Appeals for the Fifth Circuit

No. 23-10376

IN RE HUNTER MOUNTAIN INVESTMENT TRUST,

Petitioner.

Petition for a Writ of Mandamus
to the United States District Court
for the Northern District of Texas
USDC No. 19-34054
USDC No. 3:23-CV-737



A True Copy
Certified order issued Apr 12, 2023

Styl W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

UNPUBLISHED ORDER

Before CLEMENT, SOUTHWICK, and HIGGINSON, *Circuit Judges.*

PER CURIAM:

Petitioner Hunter Mountain Investment Trust (“HMIT”) seeks a writ of mandamus compelling the bankruptcy court to hear on an expedited basis its pending motion for leave to file an adversary proceeding. Petitioner contends that some of the claims it seeks to assert in the adversary proceeding may be subject to a statute-of-limitations defense if it is unable to file its claims before April 16, 2023, which is four days away.

A writ of mandamus is “a drastic and extraordinary remedy reserved for really extraordinary causes.” *In re Depuy Orthopaedics, Inc.*, 870 F.3d 345, 350 (5th Cir. 2017) (quoting *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004)). Mandamus is appropriate where (1) the petitioner has shown



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that it has a “clear and indisputable” right to the writ, (2) the petitioner has no other adequate means to attain the relief it seeks, and (3) the court is “satisfied that the writ is appropriate under the circumstances.” *Id.* (quoting *In re Lloyd’s Reg. N. Am., Inc.*, 780 F.3d 283, 288 (5th Cir. 2015)).

On March 28, 2023, HMIT sought leave in the bankruptcy court to file an adversary proceeding¹ and requested a hearing on the motion within three days. HMIT invoked Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure, which provides that “the court for cause shown may in its discretion” reduce the time allotted for certain matters. FED. R. BANKR. P. 9006(c)(1). HMIT’s request rested on the contention that it may face a limitations defense if its adversary proceeding is not filed before April 16, 2023.

On March 31, the bankruptcy court denied the expediting hearing. It noted that HMIT’s motion for leave was 37 pages long with 350 pages of attachments and explained that the parties “should be afforded a reasonable opportunity to respond” to the motion. The court further reasoned that, while HMIT “has alleged that it may be facing a statute of limitations defense as to some claims after April 16, 2023, it appears that [HMIT] has known about the conduct underlying the desired lawsuit for well over a year, based on activity that has occurred in the bankruptcy court.” The purported “need for an emergency hearing,” therefore, was “dubious.” The court ruled that the motion would be heard on the ordinary twenty-one-day schedule and instructed counsel to contact the courtroom deputy to arrange for a setting no sooner than April 19, 2023.

Petitioner has not shown a “clear and indisputable” right to the writ.

¹ HMIT is subject to a Chapter 11 bankruptcy plan containing a “gatekeeper” provision that requires “the bankruptcy court’s approval of [a] claim as ‘colorable’” before any lawsuit is filed. *In re Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 435 (5th Cir. 2022).

This standard “require[s] more than showing that the court misinterpreted the law, misapplied it to the facts, or otherwise engaged in an abuse of discretion.” *Lloyd’s Reg.*, 780 F.3d at 290. Petitioner argues that, by denying the request for expedited hearing, the bankruptcy court abused its discretion and “create[ed]” or “facilitat[ed] development of” a state-law statute-of-limitations defense. But the court did no such thing. It was petitioner who approached the brink of the limitations period before seeking leave to assert its claims; the bankruptcy court simply adhered to its usual hearing schedule. (To the extent HMIT attempts to proffer an explanation for its delay in asserting the claims, any such arguments can be raised to the court that ultimately resolves the claims’ timeliness.) And while at least one opposing party appears to have raised the argument that the court should deny petitioner’s request to expedite *so that* the limitations period would run,² the bankruptcy court did not rule on that basis.

The bankruptcy court’s denial of petitioner’s request for expedited hearing was not only within its discretion under Rule 9006 but indeed appropriate in light of the size and complexity of petitioner’s motion and proposed pleading.³ This is not an extraordinary circumstance warranting

² One of the motion’s opponents argued that the request to expedite should be denied because “if the Motion to Expedite were granted, . . . it would . . . likely impair what will otherwise be valid affirmative defenses.” The opponent continued, “[i]t is hard to imagine a greater prejudice that could be imposed on a putative defendant than a court intervening to thwart a complete and valid affirmative defense that is on the cusp of ripening” We need not decide, though, whether such reasoning by a court could warrant mandamus relief, because the bankruptcy court did not adopt this rationale.

³ In asserting that it has a “clear and indisputable right” to an expedited hearing, petitioner directs our attention to our decision in *Newby v. Enron*, 542 F.3d 463 (5th Cir. 2008). But *Newby* did not involve mandamus and is otherwise inapt. In *Newby*, the district court denied leave to file claims on the basis that any such claims would be futile because, by the time the court would hear the motion for leave, the state-law limitations period on the proposed claims would have expired. *Id.* at 467. We held that this denial was an error

extraordinary relief.

Petition DENIED.

because the district court should have allowed the state court to decide whether the claims, even if filed after the limitations period, relate back to the federal motion for leave and may therefore be considered timely. *Id.* at 470. Thus, the district court should not have decided that the claims would be futile on the basis of untimeliness. *Id.* This case presents no such problem. The bankruptcy judge has not denied petitioner leave to file its adversary proceeding nor made any futility determination based on untimeliness. When the bankruptcy court ultimately assesses whether petitioner’s proposed claims are “colorable” as required by the bankruptcy plan, the court may need to weigh the timeliness question. At that stage, *Newby* may guide the court’s analysis. But *Newby* says nothing about expedited hearing nor does it otherwise instruct that mandamus relief is warranted here.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
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April 12, 2023

Ms. Karen S. Mitchell
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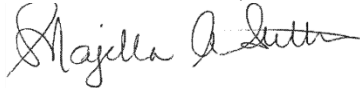
No. 23-10376 In re: Hunter Mountain Investment Trust
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Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Majella A. Sutton, Deputy Clerk
504-310-7680

cc w/encl:

Ms. Melissa Sue Hayward
Mr. Roger Lee McCleary
Mr. Sawnie A. McEntire
Mr. Brent Ryan McIlwain
Mr. Richard Barrett Phillips Jr.
Mr. Jeffrey N. Pomerantz