Bankruptcy Litigation Committee
ABI Committee News

In This Issue **Volume 7, Number 6 / June 2010**

Vacating a Judgment under Rule 60(b)(4): A Review of the *Espinosa* Decision

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This article addresses the requirements for vacating a judgment or order as void under Rule 60(b)(4) of the Federal Rules of Civil Procedure, including a review of the Supreme Court's recent decision in *United Student Aid Funds Inc. v. Espinosa,* as it pertains to Rule 60(b)(4).

Fed. R. Civ. P. 60(b)(4)

Rule 60(b), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9024, permits relief from a final judgment or order.[1] Rule 60(b)(4) specifically provides that "the court may relieve a party or its legal representative from a final judgment, order, or proceeding [if]…the judgment is void."[2] Courts have narrowly construed the concept of a "void" order under Rule 60(b)(4) because of the threat to finality of judgments and the risk that litigants will sleep on their rights or use Rule 60(b)(4) to circumvent an appeal process they elected not to follow.[3] Consequently, relief is granted under Rule 60(b)(4) in the most exceptional of cases.[4]

A judgment is void under Rule 60(b)(4) if the court that rendered the decision lacked jurisdiction over the subject matter or parties.[5] A lack of subject-matter jurisdiction, however, will not always render a final judgment void under Rule 60(b)(4).[6] A party seeking to void the judgment must demonstrate more than the court erred in asserting subject-matter jurisdiction over the claim. Rather, the party must establish the court's exercise of jurisdiction over the claim amounted to a "plain usurpation of judicial power."[7] Only when the jurisdictional error is "egregious" will a court treat the judgment as void.[8] A judgment may also be void under Rule 60(b)(4) if it is entered in a manner inconsistent with due process.[9] Specifically, inadequate notice or failure to provide notice or service of process may result in a lack of due process rendering a judgment void.[10]

A motion under Rule 60(b)(4) must be made "within a reasonable time."[11] However, courts have held that a motion to vacate a judgment as void may be brought at any time, regardless of the statute of limitations and other deadlines.[12] In addition, a court, on its own motion, may set aside a judgment as void provided notice is given of the contemplated action and an opportunity to be heard.[13]

The *Espinosa* Decision

The Supreme Court rejected an attempt to use Rule 60(b)(4) to void an order confirming the Debtor's plan. In doing so, it clarified the application of Rule 60(b)(4) in bankruptcy cases. Recently, the Supreme Court considered whether an order confirming the discharge of a student loan debt without an undue hardship finding or an adversary proceeding, or both, is a void judgment under Rule 60(b)(4).[14] In *Espinosa*, the debtor filed a chapter 13 plan that proposed to repay the principal on his student loan debt and discharge the interest once the principal was repaid.[15] Under the Bankruptcy Code, a debtor may obtain a discharge of government-sponsored student loan debts only if failure to discharge that debt imposes an "undue hardship" on the debtor.[16] The Bankruptcy Rules require a debtor seeking such a discharge to obtain an undue-hardship determination from a bankruptcy court through an adversary proceeding.[17] The debtor in *Espinosa* did not initiate an adversary proceeding to obtain a determination of undue hardship.[18] The student loan creditor received notice of the plan from the bankruptcy court but did not object to the plan, contest the debtor's failure to file an adversary proceeding or appeal the confirmation order.[19]

After the debtor completed the payments on his student loan principal, the bankruptcy court discharged the debtor's student loan interest. Several years later, the creditor commenced efforts to collect the unpaid interest on the student loans.[20] The debtor filed a motion to enforce the discharge order by directing the creditor to cease all efforts to collect the unpaid interest on the student loan debt. The creditor opposed the motion and filed a cross-motion under Rule 60(b)(4) seeking to set aside as void the bankruptcy court's order confirming the plan on two grounds.[21] First, the creditor argued that the plan provision authorizing the discharge of the loan interest violated the Bankruptcy Code, which requires the court to find undue hardship before discharging a student loan debt, and the Bankruptcy Rules, which require the court to make the undue hardship finding in an adversary proceeding.[22] Second, the creditor argued that its due-process rights had been violated because the debtor failed to serve it with a summons and complaint as required by the Bankruptcy Rules.[23] The bankruptcy court denied the creditor's cross-motion and the creditor appealed. The district court reversed, finding that the creditor was denied due process because the confirmation order was issued without the required adversary proceeding.

On appeal, the Ninth Circuit found that the bankruptcy court erred in confirming the plan without making an undue hardship determination in an adversary proceeding, but held that such error was not a basis to set aside the confirmation order as void under Rule 60(b)(4). The Ninth Circuit acknowledged that the debtor's failure to serve the creditor with a summons and complaint before seeking a discharge of the debt violated the Bankruptcy Rules, but found the service defect was not a basis to declare the judgment void because the

creditor received actual notice of the plan and failed to object.[24]

The Supreme Court's Decision

The Supreme Court unanimously held that there was neither a jurisdictional error nor violation of due process to render the bankruptcy court's order void under Rule 60(b)(4).[25] In reaching its decision, the Court found that the order confirming the debtor's plan was a final judgment, from which the creditor did not appeal. The Court noted that Rule 60(b)(4) provides an "exception to finality" that allows a party to seek relief from a final judgment under a limited set of circumstances, such as when a judgment is "void." The Court explained:

> A void judgment is a legal nullity. Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, it suffices to say that a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final… The list of such infirmities is exceedingly short; otherwise, Rule 60(b)(4)'s exception to finality would swallow the rule. A judgment is not void, for example, simply because it is or may have been erroneous… Similarly, a motion under Rule 60(b)(4) is not a substitute for a timely appeal… Instead, Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard.[26]

The Court observed that federal courts considering Rule 60(b)(4) motions challenging a judgment as void because of a jurisdictional defect generally reserve relief for the exceptional case in which the court that rendered judgment lacked even an "arguable basis" for jurisdiction.[27] The Court found that the case presented no reason to engage in such an "arguable basis" inquiry or to define the precise circumstances in which a jurisdictional error would render a judgment void because the creditor did not argue that the bankruptcy court's error was jurisdictional.[28]

The Court also rejected the creditor's argument that it did not receive adequate notice of the debtor's proposed discharge of the student loan interest—meaning, service of the requisite summons and complaint commencing an adversary proceeding.[29] The Court found that the failure to serve the creditor with a summons and complaint was a procedural error that did not amount to a violation of the creditor's constitutional right of due process. Due process requires notice "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[30] In this case, the creditor received actual notice of the filing and the debtor's plan and the creditor could have timely filed an objection and appealed from an adverse ruling.[31] Consequently, its due-process rights were satisfied and the creditor was not entitled to relief under Rule 60(b)(4).[32]

The creditor also urged the Supreme Court to expand the universe of judgment defects that support Rule 60(b)(4) relief.[33] The creditor, relying on 11 U.S.C. § 523(a)(8), argued that

the confirmation order was void because the bankruptcy court lacked statutory authority to confirm the debtor's plan absent a finding of undue hardship.[34] Specifically, the creditor maintained that the § 523(a)(8) imposes a "'self-executing' limitation on the effect of a discharge order that rendered the order legally unenforceable, and thus void, if it is not satisfied."[35] The Supreme Court disagreed, noting a failure to find undue hardship in accordance with § 523(a)(8) was not on par with the jurisdictional and notice failings that entitle a party to relief under Rule 60(b)(4).[36] Although the bankruptcy court's failure to find undue hardship before confirming the plan was a legal error, the Supreme Court ruled that the order remained enforceable and binding because the creditor had notice of the error and failed to object or timely appeal.[37]

Finally, the creditor argued that failure to void the order would encourage unscrupulous debtors to abuse the chapter 13 process. The Supreme Court acknowledged the potential for abuse but concluded that expanding the availability of "relief under Rule 60(b)(4) is not an appropriate prophylaxis."[38] The Court recognized other ways to address improper conduct in bankruptcy proceedings and noted "the specter of such penalties should deter bad-faith attempts to discharge student loan debt without the undue hardship finding Congress required."[39]

Conclusion

The Court's decision reinforces the importance of the finality of judgments. A party receiving actual notice cannot later assert a violation of due process in an effort to void a judgment under Rule 60(b)(4). Accordingly, a party moving to vacate a judgment or order as void for lack of due process should be mindful that courts will narrowly construe the statute when adjudicating a motion to vacate under Rule 60(b)(4).

1. Rule 60(b) provides:
On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. *See also Gonzalez v. Crosby*, 545 U.S. 524, 528-29 (2005).

2. *Id.*

3. *See Wendt v. Leonard*, 431 F.3d 410, 412 (4th Cir. 2005).

4. *See Gaydos v. Guidant Corp.*, 496 F.3d 863, 866 (8th Cir. 2007).

5. *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1216 (11th Cir. 2009); *Wendt,* 431 F.3d at 412.

6. *Wendt*, 431 F.3d at 413.

7. *In re Valley Food Services LLC*, 377 B.R. 207, 212 (8th Cir. 2007) *citing Hunter v. Underwood*, 362 F.3d 468, 475 (8th Cir. 2004).

8. *Id.*; *United States v. Tittjung*, 235 F.3d 330, 335 (7th Cir. 2000).

9. *Wendt*, 431 F.3d at 413.

10. *Id.* at 853-54, *citing In re Chess*, 268 B.R. 150, 155 (Bankr. W.D. Tenn. 2001).

11. *See* Fed. R. Civ. P. 60(c). A motion under Rule 60(b)(1), (2) and (3) must be made "no more than a year after the entry of the judgment or order of the date of the proceeding."

12. *See Hacienda Hearing & Cooling Inc. v. United Artist Theatre Co.,* 406 B.R. 643, 648 (Bankr. Del. 2009) *citing United States v. One Toshiba Color TV*, 213 F.3d 147, 157 (3d Cir. 2000) (noting is final judgment is void, "no passage of time can transmute [it] into a binding judgment" and further stating that "a court may always take cognizance of a judgment's void status whenever a Rule 60(b) motion is brought."); *In re Ruehle*, 296 B.R. 146, (Bankr. N.D. Ohio 2003).

13. *In re Missouri Prop. Ltd.*, 211 B.R. 914, 924 (Bankr. W.D. Mo. 1996).

14. *United Student Aid Funds Inc. v. Espinosa*, No. 08-1134, 2010 WL 1027825, *3 (U.S. March 23, 2010).

15. *Espinosa*, 2010 WL at *3.

16. *Id.*; 11 U.S.C. §§ 523(a)(8) and 1328.

17. *See* Federal Rules of Bankruptcy Procedure 7001(6), 7003, 7004 and 7008.

18. *Espinosa*, 2010 WL at *3.

19. *Id.*

20. *Id.* at *4.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Espinosa v. United Student Aid Funds Inc.*, 553 F.3d 1193, 1200-1202 (9th Cir. 2008).

25. *Espinosa*, 2010 WL at *7.

26. *Id.* at *6.

27. *Id. citing Nemaizer v. Baker*, 793 F.2d 58, 65 (C.A.2 1986).

28. *Id.*

29. *Id.* at *7.

30. *Id.*; *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

31. *Id.*

32. *Id.*

33. *Id.* at *7.

34. Under § 523(a)(8) of the Bankruptcy Code, “student loan debts guaranteed by governmental units are not dischargeable ‘unless’ a court finds undue hardship.” *See* 11 U.S.C. § 523(a)(8).

35. *Id.* at *7.

36. *Id.*

37. *Id.* at *8.

38. *Id.*

39. *Id., citing Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992).