FILED
United States Court of Appeals
Tenth Circuit

February 16, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: FOG CAP RETAIL INVESTORS LLC,

Debtor.

SUMMIT INVESTMENT MANAGEMENT LLC; SBN FCCG LLC; SBN EDGE, LLC,

Appellants,

v.

TOM H. CONNOLLY,

Appellee.

No. 22-1297
(D.C. No. 1:20-CV-03823-PAB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON**, **KELLY**, and **EID**, Circuit Judges.

Appellants Summit Investment Management LLC ("Summit"), SBN FCCG LLC ("SBN FCCG"), and SBN Edge, LLC ("SBN Edge") appeal from the district court's order affirming (1) an oral ruling of the bankruptcy court[1] granting the

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] December 16, 2020.

Trustee's Amended Motion Seeking Approval of Claims Subordination Stipulation with Foot Locker Retail, Inc. ("Foot Locker") and Authorization to Make an Interim Distribution to Creditors (collectively, the "amended settlement agreement"), and (2) the bankruptcy court's Order[2] Approving Stipulations Between Trustee and Foot Locker Retail, Inc. and Stratford Holdings, LLC ("Stratford"). In re Fog Cap Retail Invs., LLC, No. 20-CV-03823, 2022 WL 3443685 (D. Colo. Aug. 17, 2022). Our jurisdiction arises under 28 U.S.C. § 158(d)(1). On appeal, Appellants raise the same seven issues rejected by the district court. For substantially the same reasons relied upon by the district court, we affirm the bankruptcy court's oral ruling and order.

Background

Because the parties are familiar with the facts, we summarize the operative facts as found by the bankruptcy court and the district court. I Aplt. App. 23 n.2. Fog Cap Retail Investors, LLC ("Fog Cap" or "Debtor") was formed to hold leasehold interests for investment purposes. Id. at 23. SBN FCCG is the sole member (owner) of Debtor and a creditor of Debtor. Id. Summit and SBN Edge are other creditors of Debtor. Id. SBN FCCG, Summit, and SBN Edge are interrelated entities and are also related to Debtor. Id.; VI Aplt. App. 1201–02.

Stratford is a creditor and the owner of the property at issue in this case. I Aplt. App. 23. In 1977, Stratford's predecessor-in-interest entered a 30-year lease of

[2] December 17, 2020.

the property with Foot Locker's predecessor-in-interest. Id. In 1995, Foot Locker subleased the property to a dry-cleaning business. Id. at 23–24. In 2002, Foot Locker sold and assigned all its interests in the property to Debtor, and Debtor assumed all Foot Locker's obligations under its original lease agreement with Stratford pursuant to an assignment and assumption agreement. Id. at 24. The dry-cleaning business operated until 2008, when Debtor evicted the business. Id. The property sat vacant for four years until Debtor surrendered its entire leasehold interest to Stratford in 2012. Id. At that point, the property had been contaminated by toxic dry-cleaning chemicals. Id.

In 2012, Oklahoma initiated an environmental enforcement action against Stratford and the former dry cleaners. Id. Stratford then sued both Foot Locker and Debtor in federal court in the Western District of Oklahoma (the "Oklahoma litigation") to recover costs and damages from its remediation efforts. Id. at 25. Claims included breach of contract based on the lease and assumption agreements, as well as claims under the Resource Conservation and Recovery Act ("RCRA") and Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") and other claims. Id. at 24–25; VI Aplt. App. 1254. Summit and SBN FCCG are also named defendants in the Oklahoma litigation. VI Aplt. App. 1205.

In 2016, Debtor filed for voluntary relief under Chapter 11 in Colorado, resulting in an automatic stay of the Oklahoma litigation under 11 U.S.C. § 362. I Aplt. App. 25; VI Aplt. App. 1207–08. Debtor liquidated its assets by December 2016, but the parties disagreed on where the environmental claims should be

resolved. VI Aplt. App. 1208–09. After significant proofs of claim were filed against Debtor (including up to $20,726,324 by Stratford and $21,668,943 by Foot Locker), and after Debtor filed objections, the bankruptcy court granted relief from the automatic stay on January 12, 2017, so the parties could pursue their claims in the Oklahoma litigation. I Aplt. App. 25; III Aplt. App. 631–32; VI Aplt. App. 1209. In April 2017, the bankruptcy court converted Debtor's Chapter 11 case into a Chapter 7 liquidation and appointed Appellee Tom H. Connolly as Trustee. VI Aplt. App. 1210.

On September 28, 2020, the Trustee filed a motion seeking approval for: (1) a claim subordination stipulation with Foot Locker ("Foot Locker stipulation"), and (2) a stipulation with Summit and SBN FCCG ("Summit stipulation"). I Aplt. App. 78–88. The bankruptcy court did not approve the first proposed Foot Locker stipulation and gave the Trustee the opportunity to amend. VI Aplt. App. 1216. But the court approved the Summit stipulation, which included the following key terms: (1) Summit and SBN FCCG agreed to estimate their claims at $0 for the bankruptcy proceeding but could seek reconsideration under 11 U.S.C. § 502(j); (2) Trustee intended to make interim distributions on allowed claims, and any distribution to Stratford would be credited against any damages awarded in the Oklahoma litigation; and (3) the stipulation would have no preclusive effect in the Oklahoma litigation. VI Aplt. App. 1214–16; I Aplt. App. 94–96.

On November 5, 2020, the Trustee filed a motion seeking approval of an amended stipulation with Foot Locker and an interim distribution to creditors.[3] I Aplt. App. 121. Trustee provided notice of the amended settlement to all parties. Id. at 138. The settlement included, in relevant part: (1) Stratford's claim (originally $20,726,324) would be fixed in the bankruptcy case at $6,500,000 (alleged past costs incurred); (2) Foot Locker's claim would be subordinated to all allowed claims except Summit and SBN FCCG; (3) in exchange, judgment would be entered in the Oklahoma litigation for Foot Locker against Debtor on claims of contractual indemnity and liability under the sale and assignment agreements, with damages to be determined at trial; (4) Trustee would make an interim distribution to creditors; (5) Trustee would then pursue a tax carry-back refund of $800,000;[4] and (6) the settlements would have no preclusive effect in the Oklahoma litigation (except for Debtor's liability on contractual claims). Id. at 133–35. The interim distribution amounts included: $2,329,842.98 to Stratford, $9,786.53 to SBN Edge, and $0 to Foot Locker, Summit, and SBN FCCG. Id. at 141. On November 13, 2020, Summit, SBN FCCG, and SBN Edge objected to the amended settlement, specifically to the interim distribution and Stratford's allowed claim of $6,500,000. Id. at 158–72.

On November 12, 2020, the Trustee filed a copy of the stipulation with Stratford ("Stratford stipulation") reflecting the terms contemplated in Trustee's

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[3] The motion also sought approval to settle a separate dispute concerning a $330,000 deposit held by Debtor, which is not on appeal.

[4] The Trustee confirmed receipt of a tax refund of $827,137.15 on January 18, 2022. I Aplt. App. 29 n.5.

November 5 motion: Stratford's claim in the bankruptcy case would be fixed at $6,500,000; Trustee would make an interim distribution and seek a tax refund; and the stipulation would have no preclusive effect in the Oklahoma litigation. Id. at 142–46 (Stratford stipulation); see also id. at 124–27 (November 5 amended settlement). Unlike the November 5 settlement agreement, the Trustee did not provide separate notice for the Stratford stipulation. Id. at 47.

After a hearing on the various settlement motions, the bankruptcy court in an oral ruling on December 16, 2020, approved the amended settlement motion including the Foot Locker stipulation, the Stratford stipulation, and the interim distribution. VI Aplt. App. 1223–24, 1266. The bankruptcy court entered judgment, and Summit, SBN FCCG, and SBN Edge appealed. I Aplt. App. 253–58. On appeal, the district court affirmed the bankruptcy court's oral ruling. Id. at 22–61.

Discussion

We review the bankruptcy court's decision using the same standard of review as the district court. In re Peterson Distrib., Inc., 82 F.3d 956, 959 (10th Cir. 1996). We review legal determinations de novo, factual findings for clear error, and discretionary decisions for abuse of discretion. Id.; see Franklin Sav. Ass'n v. Off. of Thrift Supervision, 31 F.3d 1020, 1023 (10th Cir. 1994). Mixed questions primarily consisting of legal conclusions are reviewed de novo, and "we are cognizant in our review of the requirement that the Bankruptcy Code must be construed liberally in favor of the debtor and strictly against the creditor." In re Brown, 108 F.3d 1290,

1292 (10th Cir. 1997). While we owe it no deference, "we may look to the district court's intermediate appellate analysis to inform our review[.]" In re Paige, 685 F.3d 1160, 1178 (10th Cir. 2012).

I. The bankruptcy court did not relinquish jurisdiction when it lifted the automatic stay.

First, Appellants argue the bankruptcy court relinquished jurisdiction when it entered its order terminating the automatic stay and allowing claims to proceed in the Oklahoma litigation. Aplt. Br. at 18, 20 (citing III Aplt. App. 631–32). They further assert that even if granting relief from the stay did not completely divest the bankruptcy court's jurisdiction, the continuation of the Oklahoma litigation constituted further action divesting the bankruptcy court of jurisdiction. Id. at 21. The district court disagreed, noting that a bankruptcy court does not relinquish its jurisdiction when it grants relief from stay, and that otherwise it exercised "related to" jurisdiction over the settlement motions. I Aplt. App. 34–35, 37–38. We agree.

a. Section 362 does not provide that granting relief from stay relinquishes the bankruptcy court's jurisdiction.

Whether granting relief from the automatic stay divests the bankruptcy court's jurisdiction to approve a settlement is a legal question we review de novo. See In re Johnson, 575 F.3d 1079, 1082 (10th Cir. 2009). The jurisdiction of bankruptcy courts is determined by statute. Celotex Corp. v. Edwards, 514 U.S. 300, 307 (1995). District courts have original jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11[,]" 28 U.S.C. § 1334(b), and "all the property . . . of the debtor as of the commencement of such case, and of property of

the estate[,]" id. § 1334(e)(1). District courts can then refer any "proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy court. Id. § 157(a). Here, a Chapter 11 proceeding is automatically referred to the bankruptcy court to exercise jurisdiction. D.C.COLO.LCivR 84.1(a).

Under 11 U.S.C. § 362, a bankruptcy petition triggers an automatic stay of actions to collect, assess, or recover prepetition claims against a debtor. Id. § 362(a)(1) & (6); Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 589 (2020). The bankruptcy court proceeding partially strips the concurrent jurisdiction of other courts, but "the exclusivity of the bankruptcy court's jurisdiction reaches only as far as the automatic stay provisions of 11 U.S.C. § 362." Scenic Tours Pty Ltd v. Haimark, Ltd., No. 1:16-CV-01276, 2017 WL 1684138, at *4 (D. Colo. May 3, 2017) (quoting Chao v. Hosp. Staffing Servs., Inc., 270 F.3d 374, 383 (6th Cir. 2001)). Sections 362(d), (e) and (f) discuss the bankruptcy court's ability to grant relief from the automatic stay, but these sections say nothing about the bankruptcy court relinquishing jurisdiction by doing so. "[I]f the bankruptcy court grants relief from the stay with respect to certain property or claims . . . the bankruptcy court retains jurisdiction over those matters, although its jurisdiction is concurrent with that of other courts of competent jurisdiction." See, e.g., Chao, 270 F.3d at 383 (collecting cases).

b. Appellants' cited cases are inapposite.

The district court found the cases cited by Appellants supporting their position to be inapplicable, and we agree. I Aplt. App. 35–37. On appeal, the Appellants

argue that "numerous analogous cases" support their position. Aplt. Br. at 24. But these cases do not change our conclusion.

First, Appellants rely on cases where the bankruptcy court granted relief from stay for a specific claim, then decided the merits of that claim — here, the bankruptcy court did not adjudicate any claims on the merits but approved a settlement. For example, in Wilson v. Bill Barry Enterprises, Inc., the bankruptcy court granted a creditor relief from the stay to file an unlawful detainer action in state court after rent was not paid on a lease by the debtor. 822 F.2d 859, 860 (9th Cir. 1987). When the debtor filed a petition for reinstatement of the lease in response, the Ninth Circuit held the bankruptcy court had relinquished jurisdiction over the petition because it was part of the same statutory structure as the unlawful detainer action. Id. at 860–61. Unlike the bankruptcy court in Wilson, here the bankruptcy court did not attempt to adjudicate the merits of any claims for which it granted relief from stay, but approved a settlement between parties, which "in no way constitutes an adjudication of the merits of the claims being settled." In re Junk, 566 B.R. 897, 905 (Bankr. S.D. Ohio 2017); see In re Ambac Fin. Grp., Inc., 457 B.R. 299, 308 (Bankr. S.D.N.Y. 2011), aff'd, No. 11 Civ. 7529, 2011 WL 6844533 (S.D.N.Y. Dec. 29, 2011), aff'd, 487 F. App'x 663 (2d Cir. 2012). We find In re Thompson, 231 B.R. 802 (D. Colo. 1999), and In re Fox, No. 87-03694S, 1989 WL 112790 (Bankr. E.D. Pa. Sept. 27, 1989), to be inapposite for similar reasons.

Second, Appellants cite to cases discussing whether subsequent action by a court with concurrent jurisdiction divests the bankruptcy court's jurisdiction. Aplt.

Br. at 24–26. Appellants suggest that the continuation of proceedings in the Oklahoma litigation constituted such an action that required the bankruptcy court to relinquish its jurisdiction. Id. But the subsequent action contemplated in the cited cases is distinguishable from this case, where the proceedings merely continued. For example, in In re Oakes, the court's reference to "action . . . taken which would compel [the bankruptcy court] to relinquish jurisdiction" is specifically discussing In re Ridgemont Apartment Associates, where the state court appointed a receiver who took possession of the property at issue and collected rents before foreclosure. In re Oakes, 129 B.R. 477, 479 (Bankr. N.D. Ohio 1991) (citing In re Ridgemont Apartment Assocs., 105 B.R. 738 (Bankr. N.D. Ga. 1989)). There has been no similar subsequent action taken in the Oklahoma litigation. We find In re Anderson, 129 B.R. 44 (Bankr. E.D. Pa. 1991), inapposite for similar reasons.

Third, we agree that the bankruptcy court maintained "related to" jurisdiction. I Aplt. App. 37–38. The settlement motions here affect the administration of the bankruptcy estate. See In re Gardner, 913 F.2d 1515, 1518 (10th Cir. 1990). In re Incor, Inc. does not change this conclusion and is clearly distinguishable because it involved a proceeding between a creditor and a third-party to recover property in which the debtor had no interest. 113 B.R. 212, 214–15 (D. Md. 1990); Aplt. Br. at 27.

c. The bankruptcy court did not abuse its discretion.

Finally, at oral argument, Appellants characterized their jurisdictional appeal as requesting (1) de novo review of their claim that the bankruptcy court had no

jurisdiction to act at all, but if it did, then (2) abuse of discretion review of whether the bankruptcy court should have exercised jurisdiction. See Oral Argument at 07:12–07:21, 09:09–09:51. A bankruptcy court abuses its discretion when it commits an error of law, relies on clearly erroneous factual findings, or otherwise acts arbitrarily. In re Stewart, 970 F.3d 1255, 1263 (10th Cir. 2020). As explained above, the bankruptcy court committed no legal error, and the Appellants have not argued the bankruptcy court relied on erroneous factual findings. The only argument remaining is the Appellants' suggestion that the bankruptcy court arbitrarily interfered with the Oklahoma litigation out of impatience with that litigation's progress. Aplt. Br. at 19–20, 23–24.

We disagree — the bankruptcy court has the authority to approve settlements under Federal Rule of Bankruptcy Procedure 9019(a). It comprehensively analyzed whether the settlement was fair and equitable and the propriety of the interim distribution, VI Aplt. App. 1225–66, and each approved settlement and stipulation contained prophylactic language addressing the lack of preclusive effect in the ongoing Oklahoma litigation.

II. The bankruptcy court did not decide CERCLA claims.

Second, Appellants argue that the bankruptcy court improperly decided CERCLA liability, without jurisdiction to do so, when it approved the settlement motions. Aplt. Br. at 29, 31. The district court disagreed, explaining that the bankruptcy court did not resolve any CERCLA claims, and therefore did not reach

arguments regarding the bankruptcy court's subject matter jurisdiction over CERCLA claims. I Aplt. App. 40–42.

We agree. Neither the Foot Locker nor Stratford stipulation contemplate any party's CERCLA (or RCRA) liability, and both address the lack of any preclusive effect. Id. at 134–35 ¶¶ 3, 9 (Foot Locker stipulation); 144–46 ¶¶ 2, 8–9 (Stratford stipulation). Debtor's agreement to an entry of judgment for Foot Locker in the Oklahoma litigation goes to Debtor's **contractual** liability under the Portfolio Sale Agreement and Assignment and Assumption Agreement and Bill of Sale, not CERCLA claims. Id. at 134. The Stratford stipulation sets Stratford's claim at $6,500,000 for "bankruptcy distribution only, and not for purposes of . . . setting, resolving, or capping the amount of Fog Cap's liability in the Oklahoma Litigation," and any distribution amounts are credited against Stratford's recovery as determined by the Oklahoma litigation. Id. at 145.

Also as explained by the district court, the bankruptcy court properly considered expert testimony solely to determine the "chance of success of the litigation on the merits" under the four-part test used to evaluate the fairness of a settlement, not to decide CERCLA or RCRA liability. Id. at 42; see In re Rich Glob., LLC, 652 F. App'x 625, 631 (10th Cir. 2016); Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

Finally, Appellants contend that because Oklahoma limits recovery of repair and restoration costs to the depreciated value of the property itself, the bankruptcy court necessarily decided liability on CERCLA claims by making an interim

distribution greater than the depreciated value. Aplt. Supp. Auth. (citing Schneberger v. Apache Corp., 890 P.2d 847 (Okla. 1994)); Oral Argument at 12:41–13:35. Because Appellants failed to raise this argument below and do not argue plain error on appeal, this argument is likely waived. See Richison v. Ernest Grp., Inc., 634 F.3d 1123, 1130–31 (10th Cir. 2011). But regardless, Appellants make an apples-to-oranges comparison: the interim distribution is the product of a settlement between the Debtor and Stratford, not an adjudication on the merits or a damages award.

III. The Foot Locker and Stratford stipulations did not abridge or modify Appellants' individual rights.

Third, Appellants argue the bankruptcy court erred in approving the settlement motions and stipulations between the Trustee, Foot Locker, and Stratford. Aplt. Br. at 36–37. They argue the existence of the Oklahoma litigation signals objections to Stratford and Foot Locker's alter ego and veil piercing claims in that litigation, and that a settlement cannot impair individual rights of a non-settling creditor or other party in interest. Id. at 37. The district court recognized a distinction between "a claim objection [that] involves the individual rights of the objecting creditor, such as a dispute over competing lien rights" — third-party rights that must be considered before approving a settlement — versus "a claim objection that only disputes a creditor's entitlement to a distribution from an estate or its assets" — which need not factor into the bankruptcy court's approval of a settlement. I Aplt. App. 44–45 (quoting In re DVR, LLC, 606 B.R. 80, 85 (D. Colo. 2019)).

Reviewing this mixed question de novo, we agree with the distinction. First, we note that no property rights of Appellants, such as lien rights, are at issue here. And second, Appellants have not demonstrated that an entry of judgment against Debtor on contractual liability impairs or restricts the Appellants' ability to defend against alter ego or veil piercing claims. Appellants make this argument throughout their briefs. See Aplt. Br. at 37–38, 49–50, 52–53; Aplt. Reply Br. at 18–20, 25–27. But they do not challenge with facts or argument the "very high probability that the debtor is liable under the various [contract] provisions" or the Trustee's contention that there is no "reasonable argument against the Debtor's [contractual] liability[.]" VI Aplt. App. 1251. Thus, the Trustee understandably agreed to a default judgment in exchange for Foot Locker's claim subordination and deferral of any claim allowance (resulting in Foot Locker receiving nothing in the interim distribution).

The Foot Locker stipulation is not a merits adjudication, but a settlement between two parties, which is encouraged by bankruptcy law. See In re S. Med. Arts Cos., Inc., 343 B.R. 250, 255 (B.A.P. 10th Cir. 2006). The Debtor's contractual liability to Foot Locker may hold negative implications for Appellants depending upon the eventual resolution of the alter ego and veil piercing claims. But nothing in the settlements purports to decide any aspect of these claims or restricts Appellants' ability to defend against them. Moreover, if the prophylactic provisions of the settlements are not honored, the proper forum for that dispute is in the Oklahoma litigation, not this appeal.

IV. The bankruptcy court did not violate Appellants' due process rights when it approved the Stratford stipulation despite the lack of proper notice.

Fourth, Appellants argue the bankruptcy court erred by approving the Stratford stipulation because there was neither proper notice nor a separate evidentiary hearing. Aplt. Br. at 38–39 (citing Fed. R. Bankr. P. 9019(a) (requiring notice and hearing for approval of settlement) & 2002(a)(3) (requiring 21 days' notice for hearing on approval of settlement)). Unlike the amended settlement motion filed on November 5, 2020 (with the Foot Locker stipulation and interim distribution schedule attached), there was no accompanying notice for the Stratford stipulation filed November 12, 2020, nor a separate hearing. I Aplt. App. 47. However, Appellants received actual notice of the Stratford stipulation, shown by their specific objection to Stratford's $6,500,000 claim in their November 13, 2020, objections to the amended settlement motion. Id. at 159, 166–71. Appellants also had just under a month between the Stratford stipulation's filing and the December 9, 2020, hearing, and indeed objected to the Stratford stipulation at the hearing. V Aplt. App. 952, 992–94.

Reviewing de novo, we see no due process violation. Due process requires that parties receive notice "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." In re Gledhill, 76 F.3d 1070, 1083 (10th Cir. 1996) (quoting Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 13 (1978)). In bankruptcy proceedings, actual notice is adequate even if formal notice is not received, and

formal notice is not mandatory. See In re Azbill, No. 06-8074, 2008 WL 647407, at *6 (B.A.P. 6th Cir. Mar. 11, 2008); see also In re Kong, No. CC-15-1371, 2016 WL 3267588, at *7 (B.A.P. 9th Cir. June 6, 2016). Here, the amended settlement agreement, the Foot Locker stipulation, and the interim distribution schedule (all properly noticed) contemplated the material terms of the Stratford stipulation, particularly the allowance of Stratford's claim for $6,500,000. I Aplt. App. 124–26, 133–35, 137. Appellants fail to identify a material term in the Stratford stipulation for which they did not receive actual notice through the amended settlement motion and its attachments.

V. The bankruptcy court did not err in allowing the Trustee to make an interim distribution.

Fifth, Appellants argue that the bankruptcy court erred by approving the interim distribution. Appellants contend the bankruptcy court improperly conflated the benefit of approving the settlement with the benefit of the interim distribution itself[5] and that an interim distribution should be disallowed where the total amount to be distributed to all creditors is unclear. Aplt. Br. at 43–46.

Key facts support the bankruptcy court's exercise of discretion in approving the distribution. To approve an interim distribution, the Trustee must show: (1) the

[5] Appellants' brief purports to revive its previous argument that an interim distribution is only proper for "allowed" and liquidated claims under 11 U.S.C. § 502(a) and (b), but we characterize the argument in their brief as an extension of their earlier jurisdictional argument which we have rejected. Aplt. Br. at 46. Moreover, the Stratford claim was allowed, Foot Locker's claim awaits resolution in the Oklahoma litigation, and Foot Locker did not receive a distribution here. I Aplt. App. 52–53.

interim distribution would provide an economic benefit to the estate and (2) the distribution cannot contravene the express provisions of the code, including the distribution scheme in 11 U.S.C. § 726(a). VI Aplt. App. 1232–34 (citing In re Bird, 565 B.R. 382 (Bankr. S.D. Tex. 2017); Law v. Siegel, 571 U.S. 415 (2014); Czyzewski v. Jevic Holding Corp., 580 U.S. 451 (2017)). Appellants do not challenge the finding that the interim distribution would not violate any bankruptcy code provision. See id. at 1233, 1264–65. And the bankruptcy court did not abuse its discretion in finding that the interim distribution economically benefited the estate by (1) reducing Debtor's potential liability and (2) generating an $800,000 tax refund that was available for a limited time. I Aplt. App. 51–52. In fact, the timing of the interim distribution was **necessary** to generate the tax refund. See id. at 72.

Appellants also argue that interim distributions are improper where the total amount to be distributed to creditors is unclear, citing In re Graybill, No. 6:17-BK-00294, 2021 WL 6845189, at *5 (Bankr. M.D. Fla. Dec. 28, 2021). Aplt. Br. at 43–44, 46. We are not persuaded. In In re Graybill, there were four creditors total, and at the time of the proposed interim distribution the largest creditor's claim was disputed pending an appeal of a motion for credit. 2021 WL 6845189, at *1–2. Because the proposed interim distribution would pay three creditors 100% of their claims when it was unclear whether the largest creditor would receive 100% of her claim, the court did not approve the distribution. Id. at *5. The interim distribution here is distinguishable; except for the U.S. Trustee who is entitled to interim compensation under 11 U.S.C. § 331, each creditor here would receive the same pro

rata percentage — 35.84% — of its allowed claim in the interim distribution. I Aplt. App. 141; VI Aplt. App. 1220–21. And the claims of all other creditors — Summit, SBN FCCG, and Foot Locker — were either subordinated to the allowed claims or set at $0 in the bankruptcy proceeding.[6] See I Aplt. App. 95 ¶ 1 (Summit stipulation), 134 ¶ 3 (Foot Locker stipulation); VI Aplt. App. 1210 (listing all creditors), 1263. The distribution here does not risk potentially uneven treatment of creditors' allowed claims, and all other creditors' claims are subordinated to the allowed claims or set at $0.

VI. The bankruptcy court did not err in approving a deferred allowance of Foot Locker's claim.

Sixth, Appellants argue that the bankruptcy court erred by not disallowing Foot Locker's claim under 11 U.S.C. § 502(e)(1)(B), which mandates that "the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor" if "such claim . . . is contingent as of the time of allowance or disallowance of such claim[.]" Aplt. Br. at 47. Appellants argue Foot Locker's claim is contingent because it "shall be allowed in the amount of damages and costs awarded . . . in the Oklahoma Litigation[.]" I Aplt. App. 134 (Foot Locker stipulation); Aplt. Br. at 48. The Trustee argues that the stipulation did "not provide

[6] Summit and SBN FCCG's claims were estimated at $0, subject to reconsideration under 11 U.S.C. § 502(j). I Aplt. App. 95. Notably, under § 502(j), "[r]econsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim" but once a reconsidered claim is allowed, no additional payments can be made until the holder of the reconsidered allowed claim "receives payment . . . proportionate in value to that already received by such other holder."

for present 'allowance,'" but instead deferred allowance of Foot Locker's claim until the conclusion of the Oklahoma litigation, at which point Foot Locker's claim would be allowed as a prepetition claim under § 502(e)(2). Aplee. Br. at 37. The district court agreed with Trustee and affirmed the bankruptcy court's approval of the Foot Locker stipulation.

Reviewing de novo, we affirm approval of the Foot Locker stipulation, including its deferring allowance of Foot Locker's claim until after the Oklahoma litigation (along with its agreement to subordinate its claim), and Debtor's agreement in turn to an entry of judgment in favor of Foot Locker on its contractual indemnity and liability claims. I Aplt. App. 134. Appellants' argument that § 502(e)(1)(B) mandates present disallowance of Foot Locker's claim is not well taken. Section 502(e)(1)(B) says the "court shall disallow" claims that are "contingent as of the time of allowance or disallowance" — but the bankruptcy court neither allowed nor disallowed the claim, instead approving a stipulation that the claim "shall be allowed" at the conclusion of the Oklahoma litigation. I Aplt. App. 134; see In re Pettibone Corp., 162 B.R. 791, 809 (Bankr. N.D. Ill. 1994). That Foot Locker's claim is not presently allowed is further evidenced by the interim distribution schedule, listing allowed claims and not including Foot Locker's claim (or Summit or SBN FCCG, for that matter). I Aplt. App. 141. Because the claim will become "fixed" after the Oklahoma litigation, § 502(e)(2) will apply then to allow the claim as if it had been fixed before the bankruptcy petition was filed.

To the extent that Appellants repeat their argument that the entry of default judgment on Debtor's contractual liability to Foot Locker prejudices their defense against alter ego claims, we have already rejected that argument. See supra Part III.

VII. The bankruptcy court did not err in approving the settlement agreement because it was fair and equitable.

Seventh, Appellants argue that the settlement agreement and stipulations were not fair or equitable because the bankruptcy court did not have subject matter jurisdiction, because the agreements did not properly consider their third-party rights, and because they were prejudiced by the entry of judgment on Debtor's contractual liability. Aplt. Br. at 51–53. Like the district court, we have considered these arguments and find no abuse of discretion in the bankruptcy court's approval of the settlement. See I Aplt. App. 56–58 & n.13; Reiss v. Hagmann, 881 F.2d 890, 891–92 (10th Cir. 1989) (abuse of discretion review). The bankruptcy court comprehensively analyzed the settlement under the four-factor test from TMT Trailer, the fourth factor of which considers creditors' interests. VI Aplt. App. 1226–29, 1238–61; see In re Rich Glob., 652 F. App'x at 631; TMT Trailer, 390 U.S. at 424. Again, we reject Appellants' argument that an entry of default judgment on Debtor's contractual liability prejudices them.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge