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Alert

Eleventh Circuit Permits Lower Court Judgment to Be Vacated After Settlement

July 26, 2016

Parties to an appeal who condition a settlement on the vacating of the lower court's judgment "may still [have] an appropriate remedy," held the U.S. Court of Appeals for the Eleventh Circuit on July 12, 2016. *Hartford Cas. Ins. Co. v. Crum & Forster Specialty Ins. Co.*, 2016 U.S. App LEXIS 12813, *15 (11th Cir. July 12, 2016). Reversing the district court's "narrow" refusal to vacate its judgment after the parties had settled, the Eleventh Circuit found that "exceptional circumstances" warranted the vacatur. *Id.*, at *3, *14.

Relevance

The U.S. Supreme Court had previously rejected a settling appellant's requiring the vacatur of a lower court judgment because, as the losing party, it had "voluntarily forfeited [its] legal remedy by the ordinary processes of appeal … ." *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 25, 29 (1994) (*held*, "mootness by reason of settlement does not justify vacatur of a judgment under review."). In *Bancorp*, a debtor and creditor settled after the Supreme Court had granted certiorari to decide whether there was a "new value exception" to the absolute priority rule in Chapter 11 of the Bankruptcy Code. The creditor had asked the Court to vacate the Ninth Circuit's decision upholding the existence of the new value exception, but the debtor opposed. Despite the parties' settlement, the Court allowed the Ninth Circuit's decision to stand, reasoning that the "party seeking relief from the judgment below caused the mootness [of the appeal] by voluntary action." *Id.*, at 24. Also, reasoned the Supreme Court, despite the parties' settlement, a court "must … take account of the public interest" and not upset "the orderly operation of the federal judicial system" by using vacatur "as a refined form of collateral attack on" unfavorable judgments. *Id.* at 26-27. The Court wanted to protect the public interest because "[j]udicial precedents are presumptively correct and valuable to the legal community as a whole." *Id.* Still, the Court stressed that its approach was "equitable" in nature and that "exceptional circumstances" may warrant vacatur. *Id.* at 29. But "those exceptional circumstances do not include the mere fact that the settlement agreement provides for vacatur." *Id.* at 29.

After *Bancorp*, parties understandably questioned whether they could ever effectively settle a case pending appeal. For example, a party worried about similar litigation arising in the future would understandably want the vacatur of an adverse lower court decision. *Hartford* suggests a way around *Bancorp*.

Facts

The plaintiff ("C") sued the defendant insurer ("H") in a garden-variety contractual dispute over "the scope of an insurance policy." 2016 U.S. App. LEXIS 12813, at 3. The district court granted summary

judgment in favor of C, and H appealed. While the case was awaiting oral argument, the Eleventh Circuit "ordered the parties to take part in a mediation conference" that later failed. After oral argument, the Eleventh Circuit again "ordered the parties to take part in a second mediation" that "resulted in a conditional settlement agreement" made "expressly contingent upon the issuance of a valid, final, written order by a court of competent jurisdiction vacating" the district court's summary judgment orders against H. *Id.*, at *4. The parties also provided that if the district court's orders were not vacated, the dispute would "remain live" and the settlement agreement would be void. *Id.*

The Eleventh Circuit stayed H's appeal to enable the parties to seek a vacatur in the district court under Fed. R. Civ. P. 60(b)(6) ("On motion … , the court may relieve a party or its legal representative from a final judgment, order, or proceeding for … any … reason that justifies relief."). Relying on *Bancorp*, the district court denied the motion, finding no "exceptional circumstances" warranting vacatur and that the parties had voluntarily settled. Moreover, said the district court, there was no public interest to "be served" by a vacatur. *Id.*, at *5.

The Eleventh Circuit held that the district court had "applied the [*Bancorp*] standard incorrectly," and reversed. *Id*. at *6. First, said the court, the district court ignored decisions by two other circuits. *Motta v. District Director of INS*, 61 F.3d 117, 118 (1st Cir. 1995) (vacatur warranted when parties settled after Court of Appeals suggested they do so "[d]uring oral argument;" appellant concerned with precedential effect of decision below because it was "a repeat player before the courts"; *held*, "equities plainly favor vacatur" because parties had no "undue control over judicial precedents"; interest of settling and benefits of efficiency outweighed any competing consideration; only slight harm to public interest in preserving precedent; if lower court "decision stands, all possibility of a settlement is eliminated"; "exceptional circumstances" present.); *Major League Baseball Props. Inc. v. Pac. Trading Cards Inc.*, 150 F.3d 149, 152 (2d Cir. 1998) (court ordered parties to mediate with help of staff counsel; settlement agreement contingent on vacatur of district court opinion; vacatur of lower court opinion "a necessary condition of settlement"; leaving adverse precedent on the books could subject plaintiff to a defense of acquiescence in future litigation; "[u]nlike Bancorp, … the victor in the district court wanted a settlement as much as, or more than, the loser did …"; settlement benefited both parties and caused minor damage to public interest; facts "met the exceptional circumstances" test of *Bancorp*.).

The Eleventh Circuit in *Hartford* "embrace[d] the equitable nature of the Supreme Court's *Bancorp* inquiry." *Id.*, at *12. It weighed "the benefits of settlement to the parties and to the judicial system (and thus to the public as well) against the harm to the public in the form of lost precedent." According to the court, the "scales decisively [tipped] in favor of vacating the" district court's orders. *Id.*

First, the parties "did not begin their negotiations leading to settlement unprompted. It was only after the second time [the Eleventh Circuit] referred their dispute to mediation that [they] agreed to settle." *Id*. Because that agreement was "expressly conditioned" on the vacatur of the district court opinion, H had not voluntarily forfeited its "legal remedy by the ordinary processes of appeal … ." *Id.*, at *13.

Moreover, "both parties to this settlement desire vacatur because settlement would otherwise be impossible." *Id.* In the court's view, the "parties' interests are best served through the voluntary disposition of this case, and further proceedings are curtailed, conserving judicial resources." Moreover, the "slight value of preserving" the district court's opinion as a "precedent" is "outweighed by the direct and substantial benefit of settling this case to [the parties] and to the judicial system (and thus to the public as well)." *Id.* In the view of the Eleventh Circuit, "the District Court's erroneous bright-line

approach … fails to recognize that the public interest is not served only by the preservation of precedent. Rather, [it] is also served by settlements when previously committed judicial resources are made available to deal with other matters, [thus] advancing the efficiency of the federal courts." *Id.*, at *15. The interests of the "parties, the judicial system and the public taken together" may very well warrant "vacatur [as] an appropriate remedy … . [P]reservation of precedent [should not be] considered in isolation." *Id.*, at *16.

Comment

Hartford is a pragmatic and result-driven way around the Supreme Court's *Bancorp* holding. As shown, the Eleventh Circuit, like the First and Second, ordered mediation to effect a settlement, a fact that purportedly distinguished their cases from *Bancorp*. Because most Circuits already effectively require mediation as part of the appeal process (*see, e.g.*, 2d Cir. Local Rule 33.1(c) ("staff counsel may direct counsel … to participate in a conference to explore the possibility of settlement … "), shrewd parties will rely on *Hartford*, *Motta* and *Major League Baseball* to argue that this court-required mediation is an "exceptional circumstance" permitting vacatur of a lower court judgment when the parties require it.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or the author.

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