

ALERTS

Divided Ninth Circuit Directs Review of Lender's Appeal from Cramdown Order

July 24, 2015

A lender's appeal from an order confirming a Chapter 11 debtor's cramdown reorganization plan is not equitably moot when the lender "diligently sought a stay" and the court could grant effective relief, held the U.S. Court of Appeals for the Ninth Circuit on July 1, 2015. *In re Transwest Resort Properties, Inc.*, 2015 WL 3972917 (9th Cir. July 1, 2015) (2-1). Review of the lender's appeal would not unfairly affect "third parties or entirely unravel the plan," reasoned the court when reversing the district court's dismissal and remanding to the district court for disposition of the merits.

The court applied four established criteria to find that the lender's appeal was not equitably moot: (1) whether the appellant sought a stay pending appeal; (2) "whether substantial consummation of the plan occurred"; (3) whether the relief sought would affect "third parties not before the court"; and (4) whether the relief sought would entirely unravel the plan. The case ostensibly deals with the standard of appellate review for the judicially created doctrine of "equitable mootness," which allows an appellate court "not to reach the merits of a bankruptcy appeal." But, as discussed in this *Alert*, the merit of the lender's appeal from a questionable reorganization plan confirmation order undoubtedly influenced the Ninth Circuit's holding.

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