Docket #0014 Date Filed: 7/14/2020

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Bankruptcy Case No. 20-32243**
Debtors.[1]	§	**(Jointly Administered)**
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,	§	
Appellant,	§	**Civil Action No. 4:20-CV-01970**
v.	§	
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	
Appellees.	§	

APPELLANT CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK'S REPLY IN SUPPORT OF ITS MOTION TO EXPEDITE APPEAL

Appellant Credit Agricole Corporate and Investment Bank submits this reply in support of its Motion to Expedite Appeal (Docket Entry No. 6).

SUMMARY

Credit Agricole's motion to expedite requested two very limited forms of relief: (1) an expedited oral argument setting after briefing concludes in the ordinary course, and (2) the filing

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

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of joint status reports updating the Court on key proceedings in the bankruptcy. SpeedCast does not argue that either of these narrow requests would cause it any harm or prejudice.

SpeedCast instead launches a full-blown offensive on the merits of Credit Agricole's appeal, while at the same time arguing that briefing on the merits should be stayed. SpeedCast's attacks are meritless and Credit Agricole should have opportunity to fully and fairly respond to them. The best course is for this Court to set an appropriate and prompt briefing schedule to ensure that all parties are heard on the many novel issues in this appeal.

ARGUMENT IN REPLY

I. Credit Agricole does not need a stay for expedited consideration of this appeal.

SpeedCast claims that Credit Agricole is not entitled a timely oral argument setting because Credit Agricole did not seek a stay of the financing order in the Bankruptcy Court. (Docket Entry No. 12 at 7). It cites no authority to support this position and there is none. Credit Agricole neither needed nor had a basis to pursue the extraordinary relief of a stay before the Bankruptcy Court.

Federal Rule of Bankruptcy Procedure 8013 allows a party to seek expedited consideration of an appeal if it can "explain what justifies considering the appeal ahead of other matters." FED. R. BANKR. P. 8013(a)(2)(B). It does not require a party to obtain a stay of the order being appealed.

This appeal impacts how money will be paid out to creditors at the conclusion of the bankruptcy. SpeedCast does not dispute that there are certain milestones in the postpetition financing agreement that, any day, could place the bankruptcy on a fast track to sale or reorganization. (Docket Entry No. 6 at 3–4 (citing ROA.592–94)). Credit Agricole does not know when those milestones will be triggered, only SpeedCast and the DIP Lenders know that. Once money is paid out, however, redistributing it among creditors will be more complex. These

facts "explain what justifies" considering this appeal ahead of other matters. FED. R. BANKR. P. 8013(a)(2)(B).

By contrast, a stay pending appeal is "extraordinary relief." *Pendergest-Holt v. Certain Underwriters at Lloyd's of London*, 751 F. Supp. 2d 876, 900 (S.D. Tex. 2010). It requires a showing of "irreparable injury," among other factors. *Id*. "Irreparable" injuries are imminent ones. *See Humana, Inc. v. Avram A. Jacobson, M.D., P.A.*, 804 F.2d 1390, 1394 (5th Cir. 1986). Stays are thus typically granted on an emergency basis in cases were imminent future action threatens to cut off appellate rights. This is not such a case. Credit Agricole does not need extraordinary relief, it just needs a timely oral argument and decision after the case is fully briefed in the ordinary course.

Because SpeedCast has not set forth any meritorious reason to delay argument or decision in this matter, Credit Agricole's motion to expedite should be granted and this matter should be promptly set for argument shortly after briefing is complete.

II. Credit Agricole has the right to fully brief SpeedCast's merits arguments.

SpeedCast's remaining arguments go to the merits of this appeal and the contentions in SpeedCast's motion to dismiss. They should not be addressed in the context of a scheduling motion. But because SpeedCast's statements are legally incorrect and overbroad, Credit Agricole briefly responds to them below.

First, SpeedCast claims that this appeal is statutorily moot under section 364(e) of the Bankruptcy Code. (Docket Entry No. 12 at 5.) It is not. Appeals of cross-collateralization orders, such as roll-ups, are not moot under Section 364(e) because Section 364 does not authorize them. *See, e.g., Matter of Saybrook Mfg. Co., Inc.*, 963 F.2d 1490, 1493–96 (11th Cir. 1992). Credit Agricole has the right to fully brief this argument—and other alternative arguments—in response

to the motion to dismiss. SpeedCast cannot ask this Court to simply presume that its motion to dismiss is meritorious and stay the merits briefing on that basis.

Further, in this appeal, in a rather unique way, mootness and the merits are fused together; they cannot be separated or decided apart. Among other overlapping issues, both the motion to dismiss and the merits briefs implicate whether roll-ups are authorized by Section 364 of the Bankruptcy Code. As the Eleventh Circuit explained, "[w]e cannot determine if this appeal is moot under section 364(e) until we decide the central issue in this appeal—whether cross-collateralization is authorized under section 364." *Id.* at 1493. Credit Agricole has the right to fully brief the merits—including the rights to see any counterarguments that SpeedCast makes in response and to reply—before the Court decides the merits of this appeal. Credit Agricole has not even had a chance to respond to the motion to dismiss yet, and, based on the Court's docket, Credit Agricole has until July 30, 2020, to do so. (Docket Entry No. 9).

Second, SpeedCast claims that Credit Agricole has waived its right to argue that roll-ups are not permitted under Section 364 of the Bankruptcy Code. This is again a merits argument that SpeedCast must raise in its appellee's brief—not in response to a motion for a scheduling order (or, for that matter, in the motion to dismiss). That SpeedCast attempts to raise it now only underscores how intertwined the issues in this case are, and why the Court should consider SpeedCast's motion to dismiss and the merits together.

In any case, there are many reasons why SpeedCast's waiver argument fails. To begin, whether roll-ups are authorized under the Bankruptcy Code is a pure question of law that the Court may reach for the first time on appeal, in a "well-settled" exception to the waiver rule. *Forte v. Wal-Mart Stores, Inc.*, 780 F.3d 272, 276 (5th Cir. 2015); *see, e.g., Villas at Parkside Partners v. City of Farmers Branch, Tex.*, 726 F.3d 524, 582 n.26 (5th Cir. 2013) ("Waiver is

also inappropriate here because the impact of the severance clause is a pure question of law. As such, it falls within the well-settled discretionary exception to the waiver rule [that] exists where a disputed issue concerns a pure question of law.") (quotation omitted).

Further, by seeking to dismiss the appeal as moot, SpeedCast has opened the door to this issue. Mootness is a new issue and one going to this Court's subject-matter jurisdiction. *See North Carolina v. Rice*, 404 U.S. 244, 246 (1971) ("Mootness is a jurisdictional question."). Arguments concerning subject matter jurisdiction cannot be waived. *Robinson v. Wal-Mart Stores Tex., L.L.C.*, 561 F. App'x 417, 417 n.1 (5th Cir. 2014) (per curiam). And even if this matter did not implicate jurisdiction—which it does—having affirmatively raised this issue on appeal, SpeedCast cannot attempt to limit how Credit Agricole may respond to its mootness arguments. *See Cousin v. Trans Union Corp.*, 246 F.3d 359, 373 n.22 (5th Cir. 2001) (holding that the court may consider "responsive arguments to the appellee's own contentions").

To be clear, this is just a short preview of the arguments—among others—that Credit Agricole is entitled to fully and fairly address in the due course of briefing in this appeal.[2]

CONCLUSION

Credit Agricole respectfully requests that the Court grant its motion to expedite, set this matter for a prompt oral argument after briefing on the merits is complete, and order the parties to file joint status reports on the progress of proceedings in the Bankruptcy Court.

[2] Credit Agricole reserves the right to make additional, different, or more nuanced arguments in its reply brief on the merits and its response to SpeedCast's motion to dismiss—the proper place for the parties to make these arguments and for the Court to consider them.

Dated: July 14, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This reply complies with the type-volume limitation of Federal Rule of Bankruptcy Procedure 8013(f)(3)(C) because it has 1,282 words, excluding the items that do not count toward the limit set forth in Federal Rule of Bankruptcy Procedure 8015(g).

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CERTIFICATE OF SERVICE

In accordance with the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of this motion was served on the following counsel of record on July 14, 2020:

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