



Eighth Circuit BAP Addresses Parens Patriae Standing and Laches in Context of Chapter 7

EIGHTH CIRCUIT BANKRUPTCY MONITOR

In [*State of North Dakota ex rel. Stenehjem v. Bala \(In re Racing Services, Inc.\)*](#) the Eighth Circuit BAP (Judges Dow, Nail and Shodeen) concluded the North Dakota Attorney General lacked standing to file a chapter 7 proof of claim on behalf of eligible nonprofit organizations, but that its tardy filing of a proof of an assigned claim was not barred by laches or subject to disallowance under section 502(b)(1).

The underlying bankruptcy case began as a chapter 11 in 2004; it was converted to a chapter 7 case shortly thereafter. A settlement between the Estate and the State of North Dakota infused about \$15 million into the Estate. A number of creditors then asserted new proofs of claim and the bankruptcy court sustained objections to each of them. After that, the State filed a proof of claim, purportedly filed on behalf of eligible non-profit organizations under the doctrine of *parens patriae*. The only charity identified by name, however, was a charity called Team Makers. The State had taken assignment of Team Makers' own claim "for the express purpose of eliminating any question regarding its ability to pursue the Claim against the Debtor's estate for the charity's benefit."

Following an evidentiary hearing, the bankruptcy court sustained objections to the State's claim, finding that the State lacked standing under the doctrine of *parens patriae* and that its claim was barred by laches and subject to disallowance under section 502(b). The Eighth Circuit BAP agreed the State lacked *parens patriae* standing to assert the claim on behalf of charities generally, but reversed the bankruptcy court's holding that the State's claim, to the extent it was based on assignment of Team Makers' claim, was barred by laches or was subject to

disallowance under section 502(b).

The BAP began with the standing question. To have *parens patriae* standing, a state “must prove two elements: a quasi-sovereign interest distinct from that of a particular party, and injury to a substantial segment of the state’s population.” As to the first element, the assertion of a quasi-sovereign interest is insufficient to confer standing if “the relief sought is limited to monetary damages for injuries suffered to individual parties” because “such an award will not compensate the state for any harm done to its quasi-sovereign interest.” As to the second element, while there is no bright line rule on how many people must be affected for a state to invoke the doctrine, it requires more than “injury to an identifiable group of residents.”

The BAP agreed that the State failed to show standing. The State argued primarily that it had broad authority to regulate gambling (the debtor operated a pari-mutuel horse racing and technology business) and to oversee charitable organizations for the benefit of the public. The BAP held the State’s argument failed to address how the State’s interest was distinct from Team Makers’ as required for *parens patriae* standing. The BAP further found the State failed to show injury to a substantial segment of North Dakota’s population, rather than merely to Team Makers. Particularly, the State put on no evidence to show any other charitable organization had been affected, or the “substance or magnitude of the ‘indirect effects’ of the injury allegedly caused by the Debtor.”

The BAP then turned to whether the State’s claim, to the extent premised on the assignment from Team Makers, was barred by laches. The BAP found that it was not, because it was filed in time to permit distribution under section 726(a). The Court held that where a statute expressly speaks to timing, the doctrine of laches plays no role. In so doing, the Court rejected contrary arguments that a claimant with knowledge of the proceedings may not unduly delay the filing of its proof of claim (although the State conceded the delay and prejudice elements of laches). The Court held that by enacting section 726(a) “Congress intended to permit distribution to late filed claims of known creditors so long as the claims are filed in time to permit the distribution” and that because “the statutory scheme for claims allowance and priority in Chapter 7 cases is expressly set forth in the Bankruptcy Code it would be improper for a court to employ the doctrine of laches to modify that scheme.”

The BAP also disagreed that the claim was subject to disallowance under section 502(b). On appeal, the parties essentially conceded that the claim could not be disallowed under section 502(b)(9) when it was tardily filed as permitted under section 726(a), but the appellees argued that the claim still was subject to disallowance under section 502(b)(1). In particular, they argued that the claim could be disallowed under section 502(b)(1) because the doctrine of laches made the claim “unenforceable against the debtor . . . under . . . applicable [North Dakota] law[.]” The BAP rejected this argument because under section 502(b) the enforceability of a claim is measured as of the petition date and, by “definition, the laches defense was not available as of the date the Debtor’s petition was filed” because the factual predicate for the laches argument was delay in filing the proof of claim.

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