



May 3, 2024

NAVIGATING ADVERSARY AVENUE: INJUNCTIVE RELIEF IN BANKRUPTCY VIA ADVERSARY PROCEEDINGS

Hon. Michael B. Kaplan, U.S.B.J.
Chief Judge, United States Bankruptcy Court
District of New Jersey

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I AGENDA



- I. Introduction
- II. Bases of the Bankruptcy Court's power to grant injunctive relief
- III. An overview of Adversary Proceedings in Bankruptcy Court
- IV. Initiating an Adversary Proceeding to obtain injunctive relief under 11 U.S.C. § 105
- V. Applications of 11 U.S.C. § 105 in Adversary Proceedings
- VI. Obtaining injunctive relief under the Federal Rules of Civil Procedure via an Adversary Proceeding

I INTRODUCTION

- **What are the bases of the Bankruptcy Court's power to grant injunctive relief?**
 - Injunctive relief in the main bankruptcy case; and/or
 - **Injunctive relief in Adversary Proceedings**, by way of:
 - (1) Relief under Section 105 of the Bankruptcy Code; and/or
 - (2) Relief under the Federal Rules of Civil Procedure.
- **Why is injunctive relief important in bankruptcy proceedings?**
 - Allows for the protection of parties' assets
 - Allows for the preservation of parties' rights
 - Ensures fairness and equity
- **What does injunctive relief accomplish?**
 - Necessary stay of proceedings
 - Asset preservation
 - Enforcement of Plans
 - Protection of debtors and creditors
 - Avoidance of fraudulent transfers

I INJUNCTIVE RELIEF IN BANKRUPTCY CASES

- **Injunctive Relief in the Main Bankruptcy Case**
 - Automatic Stay (11 U.S.C. § 362)
 - Although a court order is not required, some debtors seek a court order confirming a worldwide stay (helpful for enforcing the stay in jurisdictions outside the United States)
 - Other litigants may file motions for a ruling that the automatic stay does not apply (but this would occur via an Adversary Proceeding)
 - Co-Debtor Stay (11 U.S.C. §§ 1201, 1301)
 - Injunctive Relief at the Conclusion of a Bankruptcy Case
 - Plan Releases
 - Channeling Injunctions
 - Discharge Injunctions (11 U.S.C. § 524)
- **Injunctive Relief in Adversary Proceedings**
 - **11 U.S.C. § 105 (Discretionary Stay)**
 - **Federal Rules of Civil Procedure**

AN OVERVIEW OF ADVERSARY PROCEEDINGS IN BANKRUPTCY COURT

- **Under what rules are Adversary Proceedings governed by?**
 - Part VII of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), which largely follow the Federal Rules of Civil Procedure
 - Bankruptcy Rule 7001 provides a nonexclusive list of claims for relief that must be made by filing an Adversary Proceeding complaint. This includes:
 - **An action to obtain an injunction or other equitable relief (with exceptions)**
- **How do I commence an Adversary Proceeding?**
 - Under Federal Rule of Civil Procedure 3, made applicable to bankruptcy proceedings by Bankruptcy Rule 7003, a plaintiff commences a lawsuit in bankruptcy court by filing a complaint that includes short and plain statement of the grounds for the Court’s subject matter jurisdiction over the case.
 - See Fed. R. Bankr. P. 7008; Fed. R. Civ. P. 8(a)(1); see also *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)
- **Other considerations?**
 - Standing
 - Jurisdiction
 - Venue

DISCRETIONARY INJUNCTION UNDER SECTION 105 OF THE BANKRUPTCY CODE

- **11 U.S.C. § 105 (Discretionary Stay)**
 - “(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”
 - Injunctive relief is just one form of relief that Section 105(a) of the Bankruptcy Code provides to moving parties.

| SEEKING A SECTION 105 INJUNCTION



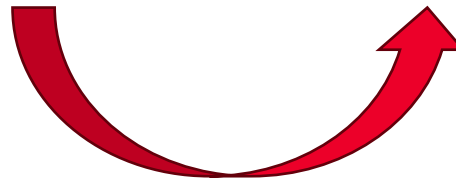
- A request for injunctive relief under Section 105 falls within Part VII of the Bankruptcy Rules
 - These rules require the commencement of an Adversary Proceeding **by filing a complaint** as a condition to obtaining relief, **except** when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief.
 - Courts have been **near universal** in reversing injunctions which have been issued without compliance with Rule 7001 (entitled, “Scope of Rules of Part VII”).
- Often, a Chapter 11 debtor initiates an Adversary Proceeding by filing a complaint to stop a lawsuit asserting claims or causes of action against certain non-debtor entities
 - Such a complaint generally alleges that the lawsuit should be stopped because allowing for its continuation would damage the debtor’s reorganization process by:
 - (1) Distracting the attention of the non-debtor defendants from the Chapter 11 case;
 - (2) Asserting claims against the property of the estate.
- Alternatively, an Adversary Proceeding can be used to seek declaratory judgment that the automatic stay is extended to claims against non-debtors in the lawsuit

| BURDEN OF PERSUASION

A complaint for **injunctive relief** must set out:

1. A claim for irreparable harm if the injunction is not granted;
2. The likelihood of success on the merits of the Chapter 11 case;*
3. That any harm to the debtor outweighs any harm to defendants if the injunction is not granted;
4. That the injunction is in the public interest.

* Likelihood of success on the merits refers to the likelihood of a successful reorganization and **not** the likelihood of success of the adversary proceeding. See *In re Excel Innovations, Inc.*, 502 F. 3d 1086, 1095–96 (9th Cir. 2007), *cert. denied*, 553 U.S. 1017 (2008).



| BURDEN OF PROOF

- Just as required by the Federal Rules of Civil Procedure:
 - The plaintiff initiating the Adversary Proceeding to obtain injunctive relief **bears the burden of producing** sufficient evidence to warrant the issuance of an injunction, as well as the burden of **persuading** the court that the injunction should be granted.
- Most courts hold that the plaintiff must prove the facts by a **preponderance of the evidence**.
 - See, e.g., *In re Stadium Management Corp.*, 95 B.R. 264, 268 (D. Mass. 1988)
- Some courts have held that the burden of persuasion must be carried **by clear and convincing evidence**.
 - See, e.g., *In re Codfish Corp.*, 97 B.R. 132, 135 (Bankr. D.P.R. 1988)

APPLICATION OF SECTION 105 IN ADVERSARY PROCEEDINGS

- **Scenario #1: Extending the Automatic Stay to non-Debtors**

- Examples:

- In re LTL Management LLC (Case No. 12-12825 (MBK))
 - Debtor initiated adversary proceeding to request injunctive relief and extend automatic stay to certain non-debtors.
 - Bankruptcy Court granted preliminary injunction.
- In re Diocese of Camden, New Jersey (Case No. 20-21257 (JNP))
 - To enjoin the continued prosecution of certain lawsuits against the Diocese of Camden, New Jersey, and/or non-debtor parishes, schools, etc., the Diocese of Camden, New Jersey, sought entry of an order pursuant to Section 105.
 - In response, the Bankruptcy Court stayed all abuse actions as against certain non-debtor defendants.
- In re G-I Holdings, Inc. (Case No. 01-30135 (RG))
 - G-I sought preliminary injunction barring the filing or prosecution of present and future asbestos claims against non-debtor. Committee intervened and opposed the request and argued that the Bankruptcy Court should not extend jurisdiction over a non-debtor third party by extending the automatic stay.
 - Bankruptcy Court granted preliminary injunction.

APPLICATION OF SECTION 105 IN ADVERSARY PROCEEDINGS

- **Scenario #2: Enjoining a Lawsuit Asserting Claims/Causes of Action Against Certain Non-Debtor Entities**
 - Examples:
 - In re LTL Management LLC (Case No. 12-12825 (MBK))

OBTAINING INJUNCTIVE RELIEF UNDER FRCP VIA ADVERSARY PROCEEDINGS

- **Preliminary Injunctions**
 - An injunction that applies pending the determination of the adversary proceeding on its merits.
 - The purpose of a preliminary injunction is to maintain the status quo pending the trial and determination of the action.
- **Temporary Restraining Orders**
 - Similar to a preliminary injunction but does not require advanced notice prior to issuance.
 - If it is issued without notice, its duration is limited to fourteen (14) days.
- **Permanent Injunctions**

OBTAINING INJUNCTIVE RELIEF UNDER FRCP VIA ADVERSARY PROCEEDINGS

- **Preliminary Injunctions**

- Criteria for granting a preliminary injunction generally:

- The moving party bears the burden of establishing that:

- (1) They are likely to succeed on the merits
- (2) They are likely to suffer irreparable harm in the absence of preliminary relief
- (3) The balance of equities tips in their favor
- (4) An injunction is in the public interest

- See *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 18–19 (2008).

OBTAINING INJUNCTIVE RELIEF UNDER FRCP VIA ADVERSARY PROCEEDINGS



- **Preliminary Injunctions**

- Criteria for granting a preliminary injunction:

- When properly considered in the bankruptcy context, the full test is generally stated as follows:

- (1) There must be danger of imminent, irreparable harm to the estate or the debtor's ability to reorganize
 - (2) There must be a reasonable likelihood of a successful reorganization
 - (3) The court must balance the relative harm as between the debtor and the creditor who would be restrained
 - (4) The court must consider the public interest

- This requires a balancing of the public interest in successful bankruptcy reorganizations with other competing societal interests

- See, e.g., *In re Monroe Well Service, Inc.*, 67 B.R. 746, 752–53 (Bankr. E.D. Pa. 1986).

OBTAINING INJUNCTIVE RELIEF UNDER FRCP VIA ADVERSARY PROCEEDINGS

- **Preliminary Injunctions**

- When asked to stop an individual from engaging further in abusive litigation, courts consider the balancing of harms with particular care and set forth additional factors to determine whether a litigant's future access to the courts should be restricted:
 - The litigant's history of litigation and in particular whether it entailed vexatious, harassing, or duplicative lawsuits,
 - The litigant's motive in pursuing litigation,
 - Whether the litigant is represented by counsel,
 - Whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel, and
 - Whether other sanctions would be adequate to protect the courts and other parties.
 - See, e.g., *Barney v. Lane*, 2021 Bankr. LEXIS 1538, at *34–35 (Bankr. D. Wyo. Mar. 4, 2021).

OBTAINING INJUNCTIVE RELIEF UNDER FRCP VIA ADVERSARY PROCEEDINGS

- **Temporary Restraining Orders**

- Criteria for granting temporary restraining order

- Threatened or actual conduct is likely to result in immediate and irreparable injury, loss, or damage
- The complaint or affidavit must allege “specific facts” which clearly demonstrates that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or such party’s attorney can be heard.
- Moving attorney must certify in writing what efforts, if any, were made to provide notice of the request—and why notice should not be required
- The temporary restraining order may remain in effect for a period of time not exceeding 14 days, but the court has discretion, for good cause and on application made within the 14-day period, to extend the temporary restraining order for an additional ten days unless the opposing party consents to a longer period. See FRCP 65(b).

OBTAINING INJUNCTIVE RELIEF UNDER FRCP VIA ADVERSARY PROCEEDINGS

- **Permanent Injunctions**

- Criteria for granting permanent injunction

- There is a four-factor test that must be satisfied in order to obtain permanent injunctive relief:
 - (1) There is proof of irreparable injury
 - (2) There is no adequate remedy at law
 - (3) Upon weighing the balance of hardships, an injunction is appropriate
 - (4) A permanent injunction would not be against the public interest.
 - See, e.g., *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).



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