Proposed amendment to Bankruptcy Rule 4001(c)

A Benjamin Goldgar to: rules_support 04/06/2016 11:38 AM

I am writing to suggest an amendment to Rule 4001(c) that would largely exempt chapter 13 cases from the Rule's requirements.

Rule 4001(c) concerns motions to obtain credit. The subparts of the Rule lay out elaborate requirements for these motions and also contain demanding service and notice provisions. Subpart (1)(A) requires a motion and says the motion must be accompanied "by a copy of the credit agreement." Although the agreement must be attached, Subpart (1)(B) then requires a statement in the motion itself describing the "location within the relevant documents" of all material provisions of the proposed credit agreement as well as a summary of many of the agreement's terms. Subpart (1)(C) calls for service of the motion on all creditors. And subpart (2) effectively imposes a 14-day notice requirement, since it provides that a "final hearing" can begin "no earlier than 14 days after service of the motion."

These extensive requirements make sense in a chapter 11 case and perhaps in a chapter 7 case where a trustee is operating a business. Requests from a chapter 11 debtor-in-possession (or a chapter 7 trustee) will likely involve a large loan and a custom agreement with complex terms. It makes sense to demand full disclosure of all the terms and 14-days notice to all creditors of the motion.

But the requirements of Rule 4001(c) make no sense in chapter 13 cases. In chapter 13 cases, debtors generally want credit to buy a car or house or sometimes to refinance an existing mortgage loan. The dollar amounts are small, especially with cars. The loan agreements are conventional, the terms easily discerned. The only party in interest who ever expresses a view on these motions is the chapter 13 trustee -- in 13 years as a bankruptcy judge, not once have I seen a creditor object -- and the trustee does not require two weeks to consider the terms of a car loan or mortgage. The 14-day notice requirement also causes problems for a debtor who needs to buy a car quickly (usually because the last car has stopped working or been damaged in an accident). Under the Rule as written, the debtor can get the financing (and the car) before 14 days have passed only if he establishes "immediate and irreparable harm" at an interim hearing. And then, he has to return for a final hearing that in practical terms is no more than a formality.

In short, implementing Rule 4001(c) as written in chapter 13 cases is cumbersome, wasteful, and unnecessary.

Rather than put chapter 13 debtors (and their lawyers) through what is really a chapter 11 wringer, Rule 4001(c) should be rewritten to minimize the requirements for motions to obtain credit in chapter 13 cases. It would be enough if the motions were subject only to Rule 4001(c)(1)(A) -- requiring a debtor to file a motion with a copy of the credit agreement attached. Chapter 13 motions should not be subject to Rule 4001(c)(1)(B), specifying the contents of these motions. Service under Rule 4001(c)(1)(C) should be sufficient as long as the chapter 13 trustee is served. And the motions should not be subject to the 14-day notice requirement in Rule 4001(c)(2) or the "final hearing" concept. Seven days notice (or whatever local practice requires) and a single hearing would plenty.

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