
Business Credit News

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“RULE 6003 – Does Anyone Care?”

By: David Balovich

Bankruptcy Rule 6003 is a creditor driven rule added to the Bankruptcy Code to restrict the relief available to debtors in the early stages of the bankruptcy proceedings. Prior to Rule 6003, debtors routinely filed, among other things, critical vendor motions, motions to sell assets or assign leases, with the court in the first few days of bankruptcy and often with little or no notice to creditors.

Rule 6003 became effective December 1, 2007, and limits the relief a debtor can expect to receive during the first twenty days of the bankruptcy case. Until now, creditors and trustees have generally ignored Rule 6003. However, with the increase in corporate filings this year more attention is being paid to the rule and its application. Many U.S. Trustees have been invoking Rule 6003 in their objections to first-day motions.

Under the terms of Rule 6003 in order for a debtor to receive relief during the first twenty days of bankruptcy he must prove that a denial would cause it “immediate and irreparable harm”. And there lies the problem because Rule 6003 does not define what evidence debtors must show to meet the immediate and irreparable harm standard.

Few courts have published opinions on what the immediate and irreparable harm standard really means and the few courts that have rendered opinions have not been severe in their rulings, as a strict interpretation of the rule would seem to demand. Courts have found that the possibility of serious reduction to the value of the debtor’s estate was sufficient. Another court ruled that the immediate and irreparable harm standard could be met where the possibility existed that a debtor would be unrepresented by counsel during the first twenty days of a bankruptcy case, causing potential prejudice if a motion to dismiss was filed by creditors. Thus, courts have adopted the opinion to the severe and uncompromising language of Rule 6003, finding that the possibility of any real prejudice to a debtor may qualify under the immediate and irreparable harm standard.

Rule 6003 affects three main types of first-day relief. The first being any application to employ counsel, consultants, accountants, or other professionals. Some courts have allowed this form of relief, particularly with respect to the retention of counsel. Their conclusion is based on the fact that a corporation cannot represent itself pro se, therefore, a corporate debtor could face immediate and irreparable harm in a dismissal hearing if retention of counsel was denied or postponed

The second use of Rule 6003 is to limit the debtor’s ability to designate certain creditors as critical vendors during the first twenty days of bankruptcy. Denying this type of relief may not only harm the debtor’s efforts to reorganize but also those creditors who rely on the debtor for their own financial survivor. Critical vendor payments are generally approved, regardless of Rule 6003, if the debtor can show that the creditor has threatened to withhold post-petition goods or services if not paid, or the creditor cannot be easily replaced; or a creditor requires payment for prepetition services before post-petition performance will be guaranteed. This makes sense as the loss of a critical vendor that cannot be easily replaced would undoubtedly cause a debtor immediate and irreparable harm

The final use of Rule 6003 is in limiting a debtor’s ability to sell its assets through a Section 363 sale, or assign its leases during the first twenty days of the case. This prohibition could force many debtors with rapidly depreciating assets into a Chapter 7 bankruptcy and destroy substantial value for creditors.

While Rule 6003 may appear to restrict a debtor during the first twenty days of a bankruptcy case, courts have taken a generally liberal approach to enforcement of the rule that is supposed to restrict abusive behavior and protect creditors by providing notice of debtor motions that supposedly are harmful to creditors.

It should be obvious that it is in the debtor’s and creditors best interest to try to avoid the restrictive limitations found in Rule 6003. The ability of the debtor to retain counsel, sell assets and assign leases in a speedy manner often preserves substantial

value for the estate and far outweighs the notice issues created by the rapid action that prompted creditors to pressure Congress for the creation of Rule 6003 in the first place.

The majority of courts have been willing to allow the debtor relief in the first twenty days in spite of Rule 6003, as long as the debtor presents evidence that there exists the potential for “immediate and irreparable harm” if relief is not granted.

I wish you well

***** **NOVEMBER 2018** *****

Day	Date	Group	Location	Time
Tues	6	Austin Construction	Tres Amigos Restaurant, 7535 E Highway 290, Austin, TX	11:30
Thurs	8	SW Food Credit Group	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:00
Tues	13	Corpus/Victoria/La/RI	Holt Cat, Corpus Christi TX & Conference Meeting	11:30
Thurs	15	Fuel & Lube/Heavy Eq.	Phone Conference Meeting 1-800-791-2345	2:30
Fri	16	SW Electrical Group	Onion Country Creek Club, Austin TX	11:30
Tues	20	Austin Construction	Tres Amigos Restaurant, 7535 E Highway 290, Austin, TX	11:30
Tues	27	SA Construction	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:30
Thurs	29	HVAC Credit Group	Texas Air Products, San Antonio TX	11:30

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