

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: : Chapter 11
: :
MONTGOMERY WARD HOLDING : Bankruptcy Case No. 00-4667-RTL
CORP., a Delaware corporation, :
et al. :
: :
Debtors. : Jointly Administered
: :

STATE OF ILLINOIS, STATE OF :
PENNSYLVANIA AND STATE OF :
MARYLAND, :
: :
Appellants, : **CONSOLIDATED APPEALS**
: :
v. : Civil Action No. 01-192-JJF
: Civil Action No. 01-249-JJF
MONTGOMERY WARD, LLC, et al. :
: :
Appellees. :

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Counsel for Appellees.

MEMORANDUM OPINION

October 6, 2003

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion For Rehearing (D.I. 41) filed by Appellants, the States of Illinois, Pennsylvania and Maryland. By their Motion, Appellants contend that the Court "inadvertently" entered final judgment affirming the Bankruptcy Court's March 1, 2001 Order, because the Court's Final Judgment Order (D.I. 40) conflicts with the Third Circuit's decision in In re Hechinger Investment Co. of Delaware, Inc., 335 F.3d 243 (3d Cir. 2003). For the reasons discussed, the Court will deny Appellants' Motion For Rehearing.

DISCUSSION

The facts related to this action are set forth fully in the Court's previous decisions. (D.I. 29, 38). After concluding that Appellants were entitled to a separate, final judgment order pursuant to Federal Rule of Civil Procedure 58, the Court entered a Final Judgment Order (D.I. 40) on the decision it previously reached and entered by Memorandum Order dated November 25, 2002. (D.I. 29). Appellants now contend that the Court entered its Final Judgment Order "inadvertently" because the Third Circuit's decision in Hechinger is controlling, and therefore, the Bankruptcy Court's March 1, 2002 decision should have been reversed.

The Court's entry of a Final Judgment Order affirming the Bankruptcy Court's March 1, 2001 Order was not entered

inadvertently. As a procedural matter, Appellants filed a Motion For Entry Of Final Judgment In Accordance With Rule 58 Of The Federal Rules Of Civil Procedure (D.I. 31) requesting the Court to enter a final judgment in accordance with Rule 58. Appellants did not request the Court to vacate and reconsider the decision it reached on the merits in its November 25, 2002 Memorandum Order. After concluding that Appellants were entitled to relief under Rule 58, the Court entered a Final Judgment Order consistent with its November 25, 2002 decision and consistent with the scope of relief requested by Appellants.

By their Motion For Rehearing, Appellants are, in reality, requesting the Court to vacate its Final Judgment Order and reverse the November 25, 2002 decision on the merits. The Debtors/Appellees contested Appellants' assertions that the Court's November 25, 2002 Memorandum Order was inadequate. The Debtors/Appellees maintained that the Court was not required to enter a separate, final judgment order and that Appellants' time for filing an appeal had expired because their local counsel failed to forward the Court's November 25, 2002 Memorandum Order to them. The Debtors/Appellees currently oppose Appellants' attempt to secure a reversal of the Court's decision on the merits in this case through the procedural vehicle of a Motion For Rehearing.

The Debtors/Appellees have appealed the question of whether

the Court was required to enter a final judgment under Rule 58 to the Court of Appeals for the Third Circuit. If the Court enters the relief that Appellants' seek by their Motion For Rehearing which, in essence, would be a reversal of the Court's November 25, 2002 decision on the merits, the Court may adversely affect the Debtors' ability to appeal the Rule 58 final judgment issue. If Debtors/Appellees are successful in their appeal of the Rule 58 issue, the Appellants' ability to appeal the Court's November 25, 2002 decision could be time-barred.

In sum, the Court's resolution of the instant motion is intended to preserve both parties' ability to seek appellate review of the Court's decisions. If the Court was required to enter the Final Judgment Order as Appellants successfully argued, Appellants' retain the ability to seek reversal of the merits decision based on the Hechinger case, and the Debtors/Appellees retain the ability to oppose such an appeal. For these reasons, the Court will deny Appellants' Motion For Rehearing.

In addition, to clarify the record for purposes of the pending appeal, the Court will also amend the November 25, 2002 Memorandum Order (D.I. 29), the cover page of the August 20, 2003 Memorandum Opinion (D.I. 38) and the August 20, 2003 Order (D.I. 39) to reflect that this action stemmed from Bankruptcy Case No. 00-4667-RTL and two sentences of page 2 of its August 20, 2003 Memorandum Opinion. In these two sentences, the Court mistakenly

referred to the Debtors/Appellees as Appellants.

CONCLUSION

For the reasons discussed, the Court will deny Appellants' Motion For Rehearing. In addition, the Court will amend its November 25, 2002 Memorandum Order and its August 20, 2003 Memorandum Opinion and Order in the manner set forth above.

An appropriate Order will be entered.

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ORDER

At Wilmington, this 6th day of October 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Appellants' Motion For Rehearing (D.I. 41) is DENIED.
2. The November 25, 2002 Memorandum Order, the Cover Page of the August 20, 2003 Memorandum Opinion and the August 20, 2003 Order is amended to reflect that this action arises out of Bankruptcy Case No. 00-4667-RTL.
3. Page 2 of the Court's August 20, 2003 Memorandum Opinion (D.I. 38) is amended to read as follows:

According to Appellees, Federal Rule of Civil Procedure 58 is not applicable to bankruptcy appeals which are

governed by the 8000 series of the Federal Rules of Bankruptcy. In the alternative, Appellees contend that even if Rule 58 applies, the Court should deny relief, because it was clear to Appellants that the Court's Memorandum Order disposed of the sole issue in the case, and Appellants' failure to file an appeal was based on the failure of their local counsel to apprise them of the Court's decision and not on any confusion regarding the entry of the Court's Memorandum Order.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE