

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at <http://www.ca2.uscourts.gov/>). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the ninth day of February two thousand and nine.

PRESENT:

JOSÉ A. CABRANES,  
SONIA SOTOMAYOR,  
*Circuit Judges,*  
JED S. RAKOFF,  
*District Judge.\**

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AD HOC COMMITTEE OF KENTON COUNTY  
BONDHOLDERS,

*Appellant,*

v.

No. 07-3979-bk

DELTA AIR LINES, INC., KENTON COUNTY  
AIRPORT BOARD, UMB BANK, N.A., as Trustee,  
POST EFFECTIVE DATE COMMITTEE as successor  
to the Official Committee of Unsecured Creditors  
of Delta Air Lines, Inc.,  
*Appellees.\*\**

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\* The Honorable Jed S. Rakoff, of the United States District Court for the Southern District of New York, sitting by designation.

\*\* The Clerk of Court is directed to amend the official caption in this case to conform to the listing of the parties above.

**FOR APPELLANT:**

THOMAS E. LAURIA (J. Christopher Shore, *on the brief*),  
White & Case LLP, New York, NY.

**FOR APPELLEES:**

MARSHALL S. HUEBNER (James I. McClammy,  
Benjamin A. Tisdell, Russell Capone, *on the brief*),  
Davis Polk & Wardwell, New York, NY, *for Appellee  
Delta Air Line Inc.*

WILLIAM W. KANNEL (Daniel S. Bleck, Matthew C.  
Hurley, Ian A. Hammel, *on the brief*), Mintz, Levin,  
Cohn, Ferris, Glovsky and Popeo, P.C., Boston, MA,  
*for Appellee UMB Bank, N.A.*

Selinda A. Melnik, Edwards Angell Palmer & Dodge,  
LLP, New York, NY (Wilbert L. Ziegler, Matthew C.  
Smith, Ziegler & Schneider, P.S.C., Covington, KY,  
*on the brief*), *for Appellee Kenton County Airport Board.*

Appeal from a judgment of the United States District Court for the Southern District of  
New York (John G. Koeltl, *Judge*).

**UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED,  
ADJUDGED, AND DECREED** that the judgment of the District Court is **AFFIRMED**.

Appellant Ad Hoc Committee of Kenton County Bondholders appeals from an August 28,  
2007 judgment of the District Court, affirming a Settlement Order entered by the Bankruptcy Court  
on April 24, 2007. We assume the parties' familiarity with the underlying factual and procedural  
history of the case, though we revisit key portions of that history here.

Appellant is a group of Bondholders, who hold approximately \$50 million in face amount of  
the approximately \$400 million in bonds issued by the Kenton Country Airport Board ("KCAB"),  
pursuant to a 1992 Trust Indenture, between KCAB and Star Bank, N.A., the predecessor-in-  
interest to UMB Bank, N.A. (the "Trustee"), and guaranteed by Delta Air Lines, Inc. ("Delta"). On  
September 14, 2005, Delta filed a petition for bankruptcy protection under Chapter 11 of the  
Bankruptcy Code. On March 8, 2007, Delta filed a motion, pursuant to Rule 9019 of the Federal  
Rules of Bankruptcy Procedure, seeking approval from the Bankruptcy Court of a settlement  
agreement, entered into by Delta, KCAB, and the Trustee. Appellant filed timely objections to the  
motion. On April 24, 2007, the Bankruptcy Court approved the settlement agreement. Appellant  
filed an appeal, arguing, *inter alia*, (1) that the Bankruptcy Court lacked jurisdiction to impose a  
settlement that released claims against KCAB, Delta, the Trustee, and other Bondholders; and (2)  
that, in the first instance, the Trustee lacked authority to bind dissenting Bondholders to a

settlement, which reduced the principal and interest that would be repaid under the KCAB Bonds. Appellant also sought a stay pending appeal, which was denied by the Bankruptcy Court on April 26, 2007, and by the District Court on May 2, 2007.

On August 27, 2007, the District Court affirmed the Settlement Order. First, the District Court determined that appellant's claims were "equitably moot." Specifically, it determined that in light of the fact that "irreversible financial transactions . . . ha[d] occurred, and because Delta has entered into a whole new set of agreements," appellant could not show how vacating the Settlement Order, even if it were possible, would not create an unmanageable situation for the Bankruptcy Court. J.A. at 69. The District Court then noted that even if it were to consider the merits of appellant's arguments, contrary to appellant's assertions, (1) the Bankruptcy Court did have jurisdiction to impose a settlement that released claims against KCAB, Delta, the Trustee, and other Bondholders, and (2) the Trustee did have authority to bind dissenting Bondholders to a settlement reducing the principal and interest that would be repaid under the KCAB Bonds. Appellant filed a timely notice of appeal. Before this Court, appellant argues that its appeal is not equitably moot, and renews the arguments made before the District Court and Bankruptcy Court.

We note that "[i]n an appeal from a district court's review of a bankruptcy court's decision, we conduct an independent examination of the bankruptcy court's decision." *In re Flanagan*, 503 F.3d 171, 179 (2d Cir. 2007) (citing *In re Bethlehem Steel Corp.*, 479 F.3d 167, 172 (2d Cir. 2007)). We review the bankruptcy court's factual findings for clear error, and its legal conclusions *de novo*. *Id.* Additionally, a district court's determination that an appeal is "equitably moot" is (by definition) an equitable decision, and we review a district court's fashioning of equitable relief for abuse of discretion. *See Onwubiko v. United States*, 969 F.2d 1392, 1397 (2d Cir. 1992), *implicit overruling on other grounds recognized by Polanco v. U.S. Drug Enforcement Admin.*, 158 F.3d 647, 651 (2d Cir. 1998). *See generally Abrahamson v. Bd. of Educ. of Wappingers Falls Cent. Sch. Dist.*, 374 F.3d 66, 76 (2d Cir. 2004). Approvals of Bankruptcy Rule 9019 settlements are also reviewed for abuse of discretion. *In re Iridium Operating, LLC*, 478 F.3d 452, 461 n.13 (2d Cir. 2007).

Upon a review of the relevant case law and the record in this case, we conclude that the District Court did not err—much less abuse its discretion—in determining that appellant's claim is equitably moot. In particular, we agree fully with the District Court's conclusion that

[b]ecause of the irreversible financial transactions that have occurred, and because Delta has entered into a whole new set of agreements relating to its use of the Cincinnati/Northern Kentucky Airport as a hub of its operations, the appellants cannot show that a vacatur of the Settlement Order, even if it were possible, would not knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the Bankruptcy Court.

J.A. at 69 (internal quotation marks omitted). However, we note that even if we were to consider the merits of appellant's arguments, for substantially the reasons stated in the Bankruptcy Court's thorough and well-reasoned decision of April 25, 2007, we would affirm the Settlement Order.

**CONCLUSION**

We have considered all of appellant's claims on appeal and found them to be without merit. Accordingly, the judgment of the District Court is **AFFIRMED**.

FOR THE COURT,  
Catherine O'Hagan Wolfe, Clerk of Court

By \_\_\_\_\_