IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION Plaintiff, v. ALEJANDRO GARCÍA PADILLA et al., Defendants.	CIVIL NO. 16-2101 (FAB)

DEFENDANTS' SUR-REPLY BRIEF

Plaintiff's "Reply in Support of Motion for Partial Summary Judgment" [Dkt. 37] doubles down on the far-fetched theory that the word "composition" in Section 903(1) of the Bankruptcy Code, includes any measure that "'adjust[s] ... creditors rights.'" Reply 2, 4 (quoting Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 585 (1935)). But neither Radford nor any of the other authorities cited in plaintiff's Reply Brief—most for the first time—holds anything of the sort. Rather, as defendants explained in their response brief, a "composition" is a voluntary restructuring of debt.

Radford, the case on which plaintiff now places primary reliance, does not remotely support plaintiff's position. That case involved the constitutionality of a novel federal bankruptcy statute that deprived banks of their ability to foreclose on farms as to which the farmer had missed mortgage payments. See 295 U.S. at 575. The Court noted, as background, that the farmer in that case had filed "a petition praying that he be afforded an opportunity to effect a composition of his debts." Id. (emphasis added). But, as the Court further explained, the farmer "failed to obtain the acceptance of the requisite majority in number and amount to the composition proposed." Id. At that point, the provisions of the federal statute at issue kicked in to give the farmer relief. Id. The

Court held that those provisions amounted to a "taking" of the bank's property without just compensation. See id. at 601-02.

Nothing in Radford calls into question the ordinary meaning of the word "composition" as a voluntary restructuring of debt; to the contrary, the decision confirms that meaning. The farmer there tried, but failed, to reach a voluntary restructuring of debt with its creditors. See id. at 575. The farmer tried to defend the constitutionality of the challenged federal statute that thereafter limited the bank's rights in the mortgaged property by analogizing it to a composition. But the Court rejected that analogy. As the Court explained, "[s]o far as concerns the debtor, the composition is an agreement with the creditors in lieu of a distribution of the property in bankruptcy—an agreement which originates in a voluntary offer by the bankrupt, and results, in the main, from voluntary acceptance by his creditors." Id. at 585 (internal quotation omitted). And "[s]o far as concerns dissenting creditors, the composition is a method of adjusting among creditors rights in property in which all are interested." Id.

That discussion is entirely consistent with the ordinary meaning of "composition" discussed above. The farmer there sought to reach a "composition" of his debts through a voluntary restructuring with his creditors. The Court's observation that, with respect to creditors, a "composition" is "a method of adjusting ... rights in property in which all are interested," id., is a truism: a restructuring of a debtor's debts obviously adjusts each creditor's rights. To say that a composition involves an adjustment of a creditor's rights is not to say that anything that adjusts a creditor's rights is a composition. Plaintiff's argument, in short, is based on a logical fallacy.

That point is further confirmed by plaintiff's citation to "the predecessor to the Bankruptcy Code, the Bankruptcy Act." Reply 4. According to plaintiff, that Act "stated that a 'plan of composition' 'may include provisions modifying or altering the rights of creditors generally, or of

any class of them ... and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.'" Id. (quoting 11 U.S.C. § 403(a) (repealed)). By its plain terms, that provision states the same truism as above: a "composition" may contain provisions altering creditors' rights. Again, to say that a composition involves an adjustment of a creditor's rights is not to say that anything that adjusts a creditor's rights is a composition.

Similarly, the legislative history cited by plaintiff does not support its argument. Plaintiff's quote from the legislative history of Chapter 9 says nothing about the meaning of the word "composition." Reply 4 (quoting H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 263 (1977)). To the contrary, where that legislative history does use the word "composition," it gives the word the ordinary meaning advanced by defendants. See, e.g., H.R. Rep. No. 95-595 at 220 ("Most business arrangements, that is, extensions or compositions (reduction) of debts, occur out-of-court. The out-of-court procedure, sometimes known as a common law composition, is quick and inexpensive. However, it requires near universal agreement of the business's creditors, and is limited in the relief it can provide for an overextended business. When an out-of-court arrangement is inadequate to rehabilitate a business, the bankruptcy laws provide an alternative. An arrangement or reorganization accomplished under the Bankruptcy Act binds nonconsenting creditors, and permits more substantial restructuring of a debtor's finances than does an out-of-court work out."); id. at 397-98 ("Section 903 is derived, with stylistic changes, from section 83 of current chapter IX. It sets forth the primary authority of a state, through its constitution, laws, and other powers, over its municipalities. The proviso in section 83, prohibiting state composition procedures for municipalities, is deleted. In light of the recent Supreme Court case, National League of Cities v. Usery, 426 U.S. 833 (1976), maximum flexibility for the states in solving the debt problems of their municipalities is advisable. In addition, a general policy of the bill is to

encourage work-outs short of bankruptcy court. In view of the potential severe dislocation entailed in a Chapter 9 case, and the danger for too much federal court intervention in the affairs of a municipality, the deletion of the proviso recognizes the power of the States to assist municipal work-outs short of bankruptcy court.").

Plaintiff's reliance on a handful of bankruptcy preemption cases fares no better. By their plain terms, those cases stand for no more than the proposition that "'the presence or absence of a discharge provision is not the sole criterion of the invalidity or validity, respectively, of state legislation in the field covered by federal law.'" Reply 5 (quoting In re Wisconsin Builders Supply Co., 239 F.2d 649, 652 (7th Cir. 1956)); see also id. at 5 n.4 (citing First Nat'l Bank v. Robinson, 107 F.2d 50, 53 (10th Cir. 1939); In re Weedman Stave Co., 199 F. 948, 950 (E.D. Ark. 1912)). But that proposition has no bearing on the meaning of the word "composition," and plaintiff does not even attempt to establish such a link.

Indeed, once one moves beyond plucking random words from different sources without any analysis of their meaning, it is quite clear that a "composition" refers to a restructuring of debt. It started out requiring unanimity of agreement among creditors, and was eventually liberalized to allow confirmations of "compositions" when debtors reached agreement with a certain threshold of their creditors. See, e.g., Continental Ill. Nat'l Bank & Trust Co. of Chi. v. Chicago, R.I. & P. Ry. Co., 294 U.S. 648, 671 (1935) ("By Act March 2, 1867 ... the debtor for the first time was permitted, either before or after an adjudication in bankruptcy, to propose terms of composition to his creditors to become binding upon their acceptance by a designated majority and confirmation by the judge."); Nassau Smelting & Refining Works v. Brightwood Bronze Foundry Co., 265 U.S. 269, 271 (1924) ("Composition is a settlement by the bankrupt with his creditors. In a measure, the composition supersedes, and is outside of, the bankruptcy proceedings. It originates in a

voluntary offer by the bankrupt; and results, in the main, from voluntary acceptance by his creditors. It cannot be confirmed unless there has been such acceptance by the requisite majority. When confirmed the bankrupt is discharged from all debts other than those agreed to be paid by the terms of the composition and not affected by a discharge. Thus, the composition binds creditors with scheduled claims, although they do not prove."); Friend v. Talcott, 228 U.S. 27, 35 (1913) ("'The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition, and those not affected by a discharge.'") (quoting Chapter 14 of the Bankruptcy Act); Wilmot v. Mudge, 103 U.S. 217, 220 (1880) ("The composition proceeding is ... one of the modes which the bankrupt law authorizes of releasing the debtor and securing to his creditors an equal share of his means."); In re Odell, 18 F. Cas. 575, 575 (S.D.N.Y. 1877) ("Under a composition, a sum of money is paid in satisfaction of the debt. The debts are not discharged; they are paid and satisfied with the assent of the creditors."); In re Reiman, 20 F. Cas. 490 (S.D.N.Y. 1874) (discussing composition procedures at length). There is no reason to think that Congress departed from this traditional understanding in using the word "composition" in Section 903(1).

The other arguments in plaintiff's Reply Brief simply rehash the arguments they made, without avail, in their opening brief, and defendants addressed in their Opposition Brief. Accordingly, defendants will not further address those arguments here.

CONCLUSION

For the foregoing reasons, this Court should deny plaintiff's Motion for Partial Summary Judgment.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

In San Juan, Puerto Rico, this 22nd day of July, 2016.

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