

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-14697

D. C. Docket No. 04-60360-CV-JIC
BKCY No. 02-22675-BKC-PG

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
August 30, 2005
THOMAS K. KAHN
CLERK

In Re: EAST COAST BEVERAGE CORP.,

Debtor.

GARY J. ROTELLA & ASSOCIATES, P.A.,

Plaintiff-Appellant,

versus

EAST COAST BEVERAGE CORP.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(August 30, 2005)

Before BARKETT and MARCUS, Circuit Judges, and GEORGE*, District Judge.

*Honorable Lloyd D. George, United States District Judge for the District of Nevada,
sitting by designation.

PER CURIAM:

Gary J. Rotella & Associates, P.A. ("Rotella") appeals the district court's order dismissing as moot his appeal from the bankruptcy court's award of fees. The district court reasoned that because the debtor's plan of reorganization had been substantially consummated, the court lacked the ability to reverse the transactions made under the plan's terms and grant the requested relief. On appeal, Rotella argues that: (i) East Coast Beverage Corp. ("the debtor") waived the equitable mootness issue by failing to raise it before the bankruptcy court; (ii) there is no record evidence that the plan has been substantially consummated; (iii) even if the plan has been substantially consummated, there is no evidence that the court could not fashion effective relief.

As an initial matter, we hold that the mootness issue was not waived and the district court had the authority to consider whether the plan's substantial consummation mooted Rotella's claim. Furthermore, while the district court erred in making findings of fact as to whether the reorganization plan had been substantially consummated, that fact is now undisputed. Moreover, in light of Rotella's failure to seek a stay, the numerous transactions effectuated under that plan's provisions preclude the grant of any meaningful relief. Rotella's appeal was thus properly dismissed as moot.

AFFIRMED.