

July 2019

How Do You Deal with Rejection?

The United States Supreme Court recently resolved a conflict between lower courts regarding the effect of a bankrupt debtor's rejection of a contract on the non-debtor party. Lower federal courts were divided over whether the rejection (1) merely excused the debtor from performing under the contract and granted the non-debtor party an unsecured claim for damages resulting from the debtor's breach of contract, or (2) effectively rescinded the contract, so that the non-debtor party no longer had any benefits received from the contract.

In the case before the Court, the debtor had agreed to license its trademark. The debtor rejected the license agreement in its Chapter 11 case. The licensee sought to continue use of the trademark after rejection of the agreement. The bankruptcy court ruled that the licensee could not continue to use the trademark post-rejection. The Supreme Court disagreed, explaining that rejection of a contract does not terminate any of the rights obtained by the non-debtor party under the contract.

Mission Product Holdings v. Tempnology, LLC, 139 S. Ct. 1652 (2019).

Lender's Attorneys' Fees Allowed

The federal bankruptcy statute limits certain contractual benefits that may be claimed by an unsecured creditor in a bankruptcy case. For example, interest accruing on a debt after the date of the bankruptcy filing may not be claimed.

A federal appeals court in Richmond recently ruled that attorneys' fees incurred by a lender after filing of a borrower's bankruptcy case could be included in the lender's claim, where the loan documents require the borrower to pay the lender's attorneys' fees. Even though the proof of claim form asks for the amount of the claim at the commencement

of the bankruptcy case, a lender can amend the claim at a later date to include the post-petition attorneys' fees. *Summitbridge National Investments v. Faison*, 915 F.3d 288 (4th Cir. 2019).

Partnership Agreement Blocks Pledge

A partner in a Delaware partnership pledged his partnership interest as collateral to secure his personal guaranty of a loan. When the lender sought to recover on the guarantee, the partner filed a bankruptcy in his native North Carolina. His bankruptcy trustee opposed the lender's claim to the partnership interest, because the partnership agreement restricted a partner's ability to pledge his interest without the consent of the managing partners, which had not been obtained. North Carolina law would not enforce this restriction on a pledge of the partnership interest. Delaware law allows the restriction.

The bankruptcy judge determined that Delaware law governs the effect of a partnership agreement for a partnership formed in Delaware. The pledge was not enforceable, as the partner had no authority to pledge his interest.

In re Mason, 2019 Bankr. LEXIS 999 (Bankr. E.D.N.C Mar. 31, 2019).

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This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation. Congress has required bankruptcy attorneys to state: "I am a debt relief agency. I help people file for bankruptcy relief under the Bankruptcy Code." 11 U.S.C. § 528. If you wish to receive "Notes on Debtor/Creditor Relations", go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word "here".