

January 2024

Protection for Bankruptcy Sale Buyers

The federal bankruptcy statute provides protection to non-debtor parties that purchase or lease property from a debtor in bankruptcy. The statute requires a debtor seeking to sell or lease property other than in the ordinary course of business to first obtain authorization from the bankruptcy court. Once the bankruptcy judge gives approval, the statute protects the non-debtor party from reversal of that approval on appeal. The statute states in part:

“The reversal or modification on appeal ... of a sale or lease of property does not affect the validity of a sale or lease ... unless ... such sale or lease were stayed pending appeal.”

Recently, the Supreme Court was asked to determine whether this protection could be waived by a purchaser, so as to permit an appeal to go forward even where no stay pending appeal was granted.

In its Chapter 11 case, Sears obtained permission to assign its lease in Mall of America (“MOA”) over the objection of its landlord. The landlord sought a stay pending appeal of that decision, which the bankruptcy judge denied because Transform, Sears assignee, represented to the court that it would not invoke the statutory protection against an appeal by MOA. However, when MOA appealed, Transform sought to dismiss the appeal based on the statutory protection. Transform argued that the statute deprived the appellate court of jurisdiction to consider the appeal and, therefore, could not be waived by Transform.

The Supreme Court disagreed, and affirmed the decision of the lower court that Transform had waived its ability to invoke the statutory protection.

MOAC Mall Holdings v. Transform Holdco, 598 U.S. 288 (2023).

Bankruptcy Shell Game

In 2017, Georgia-Pacific (“Old GP”) split into two new entities: Georgia-Pacific (“New GP”), which kept all of the operating assets; and Bestwall LLC, which kept Old GP’s insurance coverage and assumed all of the asbestos liabilities. New GP agreed to indemnify Bestwall from any losses due to asbestos liabilities. Bestwall filed a Chapter 11 case in North Carolina and immediately sought a preliminary injunction to prevent any asbestos claimants from suing New GP and to require them to resolve their claims solely in the bankruptcy court. Bestwall admitted that the purpose of the 2017 restructuring was “to provide [Bestwall] with the option to seek a resolution of the asbestos claims [in the bankruptcy court]... without subjecting the entire Old GP enterprise to a Chapter 11 reorganization.”

The bankruptcy judge granted the preliminary injunction, which was affirmed by the appellate court. The appellate court concluded that consideration of whether this corporate restructuring was an abuse of the bankruptcy process could be postponed to confirmation of a plan. *Bestwall LLC v. Official Comm. of Asbestos Claimants*, 71 F.4th 168 (4th Cir. 2023).



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 by email, go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word “here”.