Business Bankruptcy Case Developments - 2019

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I. ADMINISTRATIVE MATTERS

A. Jurisdiction and Constitutional Authority

Bankruptcy Jurisdiction Depends on "Time-of-Filing," and Personal Jurisdiction is "Nationwide"
Double Eagle Energy Servs., LLC v. Markwest Utica Emg., LLC, 936 F.3d 260 (5th Cir. 2019) (Costa, J.)

After filing its chapter 11 case, the debtor filed a lawsuit against two contract counterparties. At the time the suit was filed, the lawsuit was a civil proceeding related to the bankruptcy case and, thus, no party moved to dismiss it for lack of personal or subject matter jurisdiction. Later in the bankruptcy case, the debtor assigned its claims to a creditor. The defendants seized on this action by moving to dismiss that lawsuit for lack of "related to" bankruptcy jurisdiction, as well as lack of personal jurisdiction. Based on the recommendation from the federal magistrate, the district court dismissed the lawsuit for lack of personal and subject matter jurisdiction.

In this decision, the Fifth Circuit returned to the basics. First, the Court reminds us that, [a]lthough courts have not often considered the time-of-filing rule for cases related to bankruptcy, it applies to bankruptcy jurisdiction no less than it applies to diversity or federal question jurisdiction." In other words, because the lawsuit was properly filed under 28 U.S.C. § 1334(b) at the time, and bankruptcy jurisdiction "existed at the outset of this case," the Court concluded that such jurisdiction "never went away." The district court erred in dismissing for lack of subject matter jurisdiction.

Next, the Court addressed the lower court's dismissal based on lack of personal jurisdiction—a decision the Court of Appeals explained had been "infected" by the district court's failure to focus on the "time-of-filing" rule. In general, personal jurisdiction requires two things: authorization for service and a constitutionally sufficient relationship (or "minimum contacts"). For diversity cases, service is provided under FRCP 4, which requires the defendant to be subject to personal service in the forum state. Had jurisdiction in this case depended on diversity, personal jurisdiction would have been lacking due to the absence of the defendants' contacts with Louisiana, where the lawsuit was filed.

However, because jurisdiction in this case existed under the bankruptcy jurisdictional statute (28 U.S.C § 1334(b)), the plaintiff had another avenue of service—Bankruptcy Rule 7004—which allows nationwide service, with the forum being the *entire* United States. Because the defendants could be properly served under Bankruptcy Rule 7004, the district court erred in dismissing for lack of personal jurisdiction.

B. Executory Contracts and Unexpired Leases

Rejection of a Trademark License Does not Cut Off the Licensee's Rights to Use the Trademark.
Mission Prod. Holdings v. Tempnology, LLC, ___ U.S. ___, 139 S. Ct. 1652, 203 L. Ed. 2d 876 (2019) (Kagan, J.)[1]

The *Mission Product* ruling represents the Supreme Court's most recent decision to address the intersection of IP law and bankruptcy law. The Bankruptcy Code provides its own the definition of "intellectual property," which contains at least one glaring omission.[2] The definition does not include "trademarks" or any reference to the Lanham Act. Legislative history suggests that this omission was intentional.[3] The Court held in this case that the omission of "trademarks" from the definition of "intellectual property" ultimately did not compel different treatment for "trademark" licenses upon their rejection. In her concurring opinion, Justice Sotomayor noted that the majority's decision "leaves Congress with the option to tailor a provision for trademark licenses, as it has repeatedly in other contexts."[4]

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[1] Justice Gorsuch wrote his own separate dissent, concluding that the case was moot because the license had since terminated under its own terms.
[2] 11 U.S.C. § 101(35A).
[3] *See* S. Rep. No. 100-505, at 5-6 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3200, 3204 ("[T]he bill does not address the rejection of executory trademark, trade name, or service mark licenses by debtor-licensors.").
[4] Concurring Op. at 2.

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