UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Mission Product Holdings, Inc. v. Schleicher & Stebbins Hotels, L.L.C. and Old Cold, LLC

No. No. 19-9004, United States Court of Appeals for the First Circuit (October 1, 2020)

SUMMARY

The First Circuit affirmed a bankruptcy court order granting a secured creditor relief from the automatic stay under 11 U.S.C. § 362(d)(2), holding that the appeal was not moot despite the creditor's post-order disbursement of the debtor's remaining cash, because cash is fungible and disgorgement remains practicable when the recipient is a party to the appeal. The court also held that the bankruptcy court retained jurisdiction to decide the stay relief motion while a petition for certiorari was pending on a separate issue, as the stay relief did not interfere with the rights on appeal. On the merits, the court rejected the debtor's argument that the creditor implicitly waived its liens by matching a bid structure that "left behind" assets in the estate, finding no evidence of waiver and noting that such a theory would create an impermissible "lien laundry." Finally, the bankruptcy court did not abuse its discretion in denying discovery and an evidentiary hearing on the stay relief motion, as the creditor's lien validity was undisputed and the waiver claim lacked factual support.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Kayatta, Circuit Judge; Howard, Chief Judge; Selya, Circuit Judge
JURISDICTION	Federal
DECIDED	October 1, 2020
DOCKET	No. 19-9004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Bankruptcy Appellate Panel for the First Circuit of an order of the United States Bankruptcy Court for the District of New Hampshire granting relief from the automatic stay.
STANDARD OF REVIEW	Abuse of discretion for the stay relief order; de novo for jurisdiction; clear error for factual findings.
PRECEDENTIAL VALUE	Published
PARTIES	Mission Product Holdings, Inc. v. Schleicher & Stebbins Hotels, L.L.C., Old Cold, LLC

TOPICS

bankruptcy · automatic stay · secured transactions · appellate jurisdiction · mootness · waiver · standard of review

PRACTICE AREAS

Bankruptcy

QUESTIONS PRESENTED

1. Whether the appeal is moot due to the disbursement of the remaining cash to S&S.
2. Whether the bankruptcy court was divested of jurisdiction to decide the stay relief motion because Mission's petition for a writ of certiorari was pending.
3. Whether the bankruptcy court erred in granting relief from the automatic stay, including whether S&S waived its liens, and whether the bankruptcy court should have allowed discovery and an evidentiary hearing.

HOLDINGS

1. The appeal is not moot because cash is a fungible asset, and the court can order disgorgement of the cash from the party on appeal, which is feasible and provides meaningful relief.
2. The bankruptcy court retained jurisdiction because the stay relief motion did not interfere with the subject of the pending appeal. The appeal concerned only the merits of Mission's claim against the debtor, not the priority of that claim, and the stay relief order did not take away any benefit that the Supreme Court appeal might grant.
3. S&S did not waive its liens. The auction, the APA, and the sale order contained no reference to such a waiver, and there is no evidence that S&S intended to relinquish its security interest. The argument that a bidder could wash assets clean of liens by leaving them behind is unsupported by law and would allow lien laundering.
4. The bankruptcy court did not abuse its discretion in denying discovery and an evidentiary hearing because there were no disputed issues of material fact. The claim that S&S waived its liens was meritless based on the written record, and further discovery would have been a fishing expedition.

KEY QUOTATIONS

> *"Simply put, contrary to Mission's assertion that the stay relief order would 'impermissibly interfere with the rights on appeal,' we find no such interference."* (at 16)

> *"the argument that S & S waived its liens is poppycock."* (at 25)

> *"But '[u]nlike other assets . . . (e.g. real property, conveyances), cash is a fungible item.'"* (at 14)

> *"We discern no similar possibility of confusion here, where the appeal concerned only the merits, rather than the priority of Mission's claim against the debtor."* (at 16)

FACTUAL BACKGROUND

In 2012, the debtor granted Mission intellectual property licenses. The parties' relationship soured, and the debtor filed for Chapter 11 bankruptcy. The debtor listed S&S as a secured creditor with a $5.55 million claim. The debtor obtained post-petition financing from S&S, secured by a first-priority lien. The bankruptcy court confirmed the validity of S&S's liens, and no objections were filed. The debtor moved to sell its assets at auction, and S&S won with a credit bid. The sale left behind certain assets, including cash, inventory, and accounts receivable. S&S later sought relief from the automatic stay to collect the remaining cash, arguing that its liens exceeded the value of the property. Mission objected, claiming that S&S had waived its liens by leaving the assets behind in the auction.

PROCEDURAL HISTORY

The debtor Old Cold, LLC filed for Chapter 11 bankruptcy. S&S, a secured creditor, moved for relief from the automatic stay to collect remaining cash assets. The bankruptcy court granted the motion. Mission appealed to the BAP, which affirmed. Mission then appealed to the First Circuit. Meanwhile, the Supreme Court granted certiorari on a related issue regarding rejection of an executory contract. The Supreme Court later ruled in Mission's favor on that issue, but the stay relief order was entered before that ruling.

DISPOSITION

affirmed

CASES CITED

- Mission Prod. Holdings, Inc. v. Tempnology, LLC, 139 S. Ct. 1652 (2019)
- Mission Prod. Holdings, Inc. v. Tempnology, LLC, 879 F.3d 389 (1st Cir. 2018)
- In re Old Cold, LLC, 879 F.3d 376 (1st Cir. 2018)
- In re Old Cold, LLC, 602 B.R. 798 (B.A.P. 1st Cir. 2019)
- Soares v. Brockton Credit Union, 187 F.3d 623 (1st Cir. 1998) (per curiam) (table), 1998 WL 1085827
- Matos v. Matos (In re Matos), 790 F.2d 864, 865 (11th Cir. 1986)
- Greylock Glen Corp. v. Community Savings Bank, 656 F.2d 1, 3-4 (1st Cir. 1981)
- 255 Park Plaza Assocs. Ltd. P'ship v. Conn. Gen. Life Ins. Co. (In re 255 Park Plaza Assocs. Ltd. P'ship), 100 F.3d 1214, 1216 (6th Cir. 1996)
- Oakville Dev. Corp. v. FDIC, 986 F.2d 611, 613 (1st Cir. 1993)
- Miami Ctr. Ltd. P'ship v. Bank of N.Y., 838 F.2d 1547, 1550 (11th Cir. 1988)
- Egbert Dev., LLC v. Cmty. First Nat’l Bank (In re Egbert Dev., LLC), 219 B.R. 903, 905-06 (B.A.P. 10th Cir. 1998)
- Boudreau v. U.S. Bank Tr., N.A. (In re Boudreau), No. 61-cv-10747, 2017 WL 740993, *2–3 (D. Mass. Feb. 24, 2017)
- Rochman v. Ne. Utils. Serv. Grp. (In re Pub. Serv. Co. of N.H.), 963 F.2d 469, 473 (1st Cir. 1992)
- Hicks, Muse & Co. v. Brandt (In re Healthco Int'l, Inc.), 136 F.3d 45, 48 (1st Cir. 1998)

- Spirtos v. Moreno (In re Spirtos), 992 F.2d 1004, 1006–07 (9th Cir. 1993)
- Salomon v. Logan (In re Int'l Envtl. Dynamics, Inc.), 718 F.2d 322, 326 (9th Cir. 1983)
- Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, 32 (1st Cir. 1994)
- In re Vitreous Steel Prod. Co., 911 F.2d 1223, 1234 (7th Cir. 1990)
- United States v. Fleet Bank of Mass. (In re Calore Express Co.), 288 F.3d 22, 35, 39 (1st Cir. 2002)
- City of Portsmouth v. Nash, 493 A.2d 1163, 1165 (N.H. 1985)
- In re Stavriotis, 977 F.2d 1202, 1204 (7th Cir. 1992)
- Pub. Serv. Co. of N.H. v. Hudson Light & Power Dep't, 938 F.2d 338, 346 (1st Cir. 1991)
- Hebbring v. U.S. Tr., 463 F.3d 902, 908 (9th Cir. 2006)
- United States v. Rodríguez-Rosado, 909 F.3d 472, 477 (1st Cir. 2018)
- PC P.R., LLC v. Empresas Martínez Valentín Corp. (In re Empresas Martínez Valentín Corp.), 948 F.3d 448, 455 n.6 (1st Cir. 2020)
- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 814 F.2d 844 (1st Cir. 1987)
- Fin. Oversight & Mgmt. Bd. v. Ad Hoc Grp. of PREPA Bondholders (In re Fin. Oversight & Mgmt. Bd.), 899 F.3d 13, 23 (1st Cir. 2018)
- United States v. $46,588.00 in U.S. Currency & $20.00 in Canadian Currency, 103 F.3d 902, 904 n.5 (9th Cir. 1996)
- Craig v. Educ. Credit Mgmt. Corp. (In re Craig), 579 F.3d 1040, 1046 n.5 (9th Cir. 2009)