

ARTICLES

The Third Circuit Affirms a Debtor's Ability to Reject an Expired CBA

By Zachary I. Shapiro – June 1, 2016

Trump Taj Mahal Associates, LLC, and certain affiliated entities (collectively, the debtors) owned and operated the Trump Taj Mahal Casino in Atlantic City, New Jersey. Taj Mahal and UNITE HERE Local 54, the largest of the debtors' employee unions, were party to a CBA that was negotiated in 2011 and had a three-year term. On September 9, 2014, prior to the expiration of the CBA, the debtors commenced Chapter 11 cases in the U.S. Bankruptcy Court for the District of Delaware. On September 14, 2014, the CBA expired pursuant to its terms. However, notwithstanding the expiration of the CBA, the National Labor Relations Act (NLRA) obligated the debtors to continue to honor the terms of the expired CBA until the parties reached a new agreement or a bargaining impasse.

After the expiration of the CBA, the debtors and the union attempted to negotiate modifications to the CBA, but those efforts were ultimately unsuccessful. As a result, on September 26, 2014, the debtors filed a motion, pursuant to section 1113 of the Bankruptcy Code, seeking authorization to reject the CBA. About three weeks later, the bankruptcy court, following evidentiary hearings, granted the debtors' motion and approved the rejection of the CBA. The union appealed the court's order authorizing the rejection. Thereafter, the parties jointly petitioned the Third Circuit for a direct appeal, and the Third Circuit granted the request.

Does the Bankruptcy Court Lack Jurisdiction to Authorize the Rejection of an Expired CBA?

Section 1113 provides that a debtor may reject a CBA if the bankruptcy court finds that (1) the debtor has "ma[de] a proposal" to its employees "which provides for those necessary modifications in the employees' benefits and protections that are necessary to permit the reorganization," (2) "the authorized representative of the employees has refused to accept such proposal without good cause," and (3) "the balance of the equities clearly favors rejection of such agreement." Section 1113, it is important to note, prohibits a debtor from terminating or modifying a CBA without first complying with the procedural and substantive requirements of the section.

In the bankruptcy court, the union opposed the debtors' right to reject the CBA on several substantive grounds. However, on appeal, the union only appeared to press, and thus the Third Circuit only addressed, whether the rejection of the CBA was improper because the bankruptcy court lacked jurisdiction to authorize such rejection.

The Union Argued That Only Unexpired CBAs Could Be Rejected

The union argued that because a debtor cannot reject an expired contract or lease pursuant to section 365 of the Bankruptcy Code, a debtor similarly cannot reject an expired CBA pursuant to section 1113. Therefore, the union argued, because the CBA had expired, the debtors were not permitted to reject the CBA pursuant to section 1113, just as the debtors were not permitted to reject an expired contract or lease pursuant to section 365. Instead, the union argued that, pursuant to the NLRA, the

debtors were required to continue to honor the terms of the CBA until the parties reached a new agreement or a bargaining impasse.

Third Circuit Ruled that Section 1113 Applies to Both Expired and Unexpired CBAs

The Third Circuit disagreed with the union and ruled that section 1113 applies to both expired and unexpired CBAs. In doing so, the Third Circuit noted that Congress, in enacting section 1113, attempted to balance “the concerns of economically-stressed debtors in avoiding liquidation and the unions’ goals of preserving labor agreements and maintaining influence in the reorganization process.” To the Third Circuit, that balance would be upset if a debtor could not reject the continuing obligations of an expired CBA even after meeting the procedural and substantive requirements of section 1113.

The Third Circuit also disagreed with the union’s contention that the principles of section 365 (i.e., that a debtor can reject only an “executory” or unexpired contract) limit a debtor’s power to reject a CBA under section 1113. In the Third Circuit’s view, that argument simply “ignore[d] an important distinction between a CBA and any other executory contract: [under the NLRA] the key terms and conditions of a CBA continue to burden the debtor after the agreement’s expiration. Rejection of those terms, therefore, is not a moot issue as would be in the case of other contracts or leases.”

[Zachary I. Shapiro](#) is an associate at Richards, Layton & Finger, P.A., in Wilmington, Delaware.