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# Chapter 11 Debtors Exempt From Their Obligations Under An Expired Collective Bargaining Agreement

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**May 5, 2016** - The Third Circuit's decision in *In re Trump Entertainment* presents interesting opportunities for employers with expired collective bargaining agreements ("CBAs") seeking to reorganize their companies under Chapter 11 of the Bankruptcy Code. [1] In *In re Trump Entertainment*, the Court held that a debtor may reject an expired CBA under Section 1113 of the Bankruptcy Code despite the specific limitations on such rejections contained in the National Labor Relations Act ("NLRA"). The Third Circuit's ruling may provide extra bargaining power and flexibility to companies whose reorganization efforts are impacted by CBAs and labor disputes.

In *Trump Entertainment*, the debtors were the owners and operators of the Trump Taj Mahal Casino. In 2011, they had entered into a CBA that required the debtors to contribute $3.5 million per year to its pension and an additional $10-12 million per year for healthcare and welfare expenses. A few months prior to expiration of the CBA, the debtor and its union engaged in good faith negotiations to amend and extend the CBA. However, these negotiations ultimately proved unsuccessful and by September 2014, the debtor had $286 million in secured debt and only $12 million in working capital. As a result, the debtor filed for Chapter 11 bankruptcy and as soon as the CBA expired moved to reject the CBA under Section 1113 of the Bankruptcy Code. The Bankruptcy Court granted the debtor's motion effectively rendering the expired CBA unenforceable and freeing the debtor from the pension and healthcare funding obligations. The union promptly filed a direct appeal to the Third Circuit.

This case presented a matter of first-impression as it involved a conflict between two federal statutes; Section 1113 of the Bankruptcy code, and the NLRA. The NLRA states that an employer cannot unilaterally change the terms of a CBA even after it expires.[2] In contrast, Section 1113 of the Bankruptcy Code allows a debtor to reject its CBA if: (i) the debtor proposed modifications to its CBA that would allow the company to successfully reorganize; (ii) the employees' authorized representative rejected the employer's proposals; and (iii) the bankruptcy court determined that the "balance of equities clearly favors" rejecting the CBA.[3] The debtor argued that there should be no

distinction between unexpired CBAs and expired CBAs under Section 1113 of the Bankruptcy Code and therefore it was entitled to reject the contract as it had satisfied the other requirements of Section 1113. In contrast, the union argued that an expired CBA could not constitute a "contract" which could be rejected under the terms of Section 1113 of the Bankruptcy Code.

The Court broadly reviewed the legislative purpose behind both statutes before holding that there should be no distinction between expired and unexpired CBAs under Section 1113 of the Bankruptcy Code. In further support for its holding, the Third Circuit noted that this was consistent "with the purpose of the Bankruptcy Code which gives debtors latitude to restructure their affairs."[4] The Court expanded on this holding by noting that it is preferable for a company to reject its CBA for the sake of preserving jobs than adhering to the stringent terms of its CBA which results in the permanent loss of jobs.[5]

The Third Circuit's decision may help strengthen reorganizing corporations bargaining position as it expands their ability to shed continuing obligations under an expired CBA. Although this comes at the expense of unions' potential negotiating positions, a potential debtor's power is still tempered by the fact that the potential debtor must comply with the strict procedural requirements of Section 1113 of the Bankruptcy Code.

**Footnotes**

[1] 810 F.3d 161 (2016).

[2] 29 U.S.C. 158(a)(5)

[3] 11 U.S.C. § 1113

[4] Id. at 173.

[5] Id. at 174.

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