Paul | Weiss

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Restructuring Department Bulletin

Alice Eaton Honored by Futures and Options
Alice Eaton was the 2024 Dream Big Award honoree by Futures and Options, a nonprofit organization dedicated to setting New York City youth up for success. Alice delivered remarks at the organization's annual Dream Big Event, where she was honored for helping make Futures and Options' mission possible.

Liz Osborne Named IFLR1000 Woman Leader
IFLR recognized restructuring partner Liz Osborne among its 2024 IFLR1000 Women Leaders. The elite ranking annually honors the most prominent women lawyers who hold leadership roles within their firms and have outstanding expertise and experience working on complex deals within their markets.

Substantially Consummated Plan Not Equitably Moot Where Remedy Could be Fashioned Without Upsetting the Reorganization
In *In re ConvergeOne*, 2024 WL 4555545 (S.D. Tex. Oct. 23, 2024), the U.S. District Court for the Southern District of Texas held that an appeal of a substantially consummated plan was not equitably moot because a remedy could be fashioned that did not disturb the plan or the actions of third parties. The doctrine of equitable mootness is a form of appellate abstention that favors the finality of consummated reorganizations. Generally, equitable mootness applies if the (a) plan of reorganization has not been stayed; (b) plan has been substantially consummated; and (c) relief requested by the appellants would either affect the rights of third parties or success of the plan.

In *ConvergeOne*, an ad hoc group of "minority lenders," who were excluded from participating in the plan's equity rights offering objected to confirmation arguing that such treatment violated section 1123(a)(4) of the Bankruptcy Code, which requires a reorganization plan to treat each claim in a class equally, unless the claimant agrees otherwise. The Bankruptcy Court, however, confirmed the plan, finding the backstop necessary and reasonable. The minority lenders appealed.

The debtors and the "majority lender" group moved to dismiss the appeal as equitably moot arguing, among other things, that the plan was substantially consummated and that any relief in favor of the "minority lenders" would unwind the plan and "destroy third party rights." The District Court disagreed. Relying on Fifth Circuit rulings that suggest equitable mootness should be used "sparingly," the court held that it could fashion relief without unwinding the plan or harming third parties—specifically, by ordering the "majority lenders" to sell the "minority lenders" the share of equity they would have been offered.

This decision underscores the importance of equitable considerations in bankruptcy, particularly the balance between finality and the right to appellate review. Stakeholders should be aware that even substantially consummated plans may be subject to appeal if a court can fashion a remedy that does not disrupt the reorganization or harm third parties.

DID YOU KNOW...

In *Rite Aid*, Judge Kaplan addressed the technical question of whether debtors must file a formal motion to assume a non-residential real property lease rather than a simple notice of assumption. Based on the plain language of the statute, the court held that debtors may assume such a lease "by any mechanism that clearly and unequivocally expresses an intention to assume" – including by filing and serving a notice of intent to assume on the counterparty.

Judge Kaplan's decision hinged on the unambiguous language of section 365(d)(4) which provides that a court may extend the deadline by which a debtor must assume or reject a lease "on the ***motion*** of the trustee." The statute, however, does not provide that a debtor must file a formal motion to assume a lease and, instead, simply provides that a lease is deemed rejected "if the trustee does not assume or reject the unexpired lease" by the deadline. Accordingly, the court concluded that filing a formal motion is not a prerequisite to assumption under section 365, and that a debtor may "assume" a lease under section 365 by any mechanism that "clearly and unequivocally expresses an intention to assume." This decision confirms the effectiveness of a common practice used in complex chapter 11 cases for assumption or rejection of executory contracts.

Questions? Please contact any of our Restructuring Partners to discuss these or other topics in greater depth.

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