ALERT MEMORANDUM

Delaware Bankruptcy Judge Declines to Order Arbitration of Key Pension Claims

April 3, 2024

In a memorandum opinion and order issued on March 27, 2024, in *In re Yellow Corporation, et. al.*, Judge Craig T. Goldblatt denied motions filed by multiemployer pension funds to arbitrate debtors' objections to pension withdrawal liability claims in the United States Bankruptcy Court for the District of Delaware. Judge Goldblatt's decision notably departs from courts' longstanding tendency to enforce arbitration clauses, and rests on the court's finding that the importance of the resolution of the claim to the larger case outcome and the value of the bankruptcy process counsel in favor of keeping such claims in bankruptcy court. The court's opinion in *In re Yellow Corporation* illustrates a willingness for the bankruptcy court to apply a thoughtful case-by-case analysis in considering whether to keep a dispute even where a competing federal statute mandating arbitration exists.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or to the Cleary authors below.

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I. Background

The debtors—Yellow Corporation ("Yellow Corp.") and its affiliates (together "Yellow") —were a transportation company that was among the largest freight trucking companies in the country. Yellow filed chapter 11 bankruptcy petitions in August 2023 in the United States Bankruptcy Court for the District of Delaware after a dispute with the Teamsters Union that left the company in financial distress.[1]

Prior to bankruptcy, the debtors participated in several multiemployer pension plans, including the Central States, Southeast and Southwest Areas Pension Fund ("Central States"), which plans funded pension benefits as part of the collective bargaining agreements of their union member employees.[2] Those pension plans are regulated by the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), which amended the Employee Retirement Income Security Act of 974 ("ERISA"). The MPPAA was enacted to address the problem that occurred when an employer withdrew participation from a multiemployer pension plan; while the plan remained liable to provide pension benefits to employees, the withdrawn employer no longer contributes to the plan, and thus other participating employers were likely to exit to avoid having to pay for the unfunded benefits of the companies that exit the plan. The MPPAA accordingly addressed the gaps in ERISA that led to the "death spiral" that could occur when an employer withdrew from a plan,[3] and imposes liability on employers who exit the plan to cover their unfunded obligations to the plan.

When the debtors filed their chapter 11 bankruptcy petitions, Central States filed proofs of claim for $4.8 billion in withdrawal liability under the MPPAA, and other pension plans filed similar proofs totaling $1.5 billion. Section 1399(b) of the MPPAA requires a plan sponsor to provide a withdrawing employer with a formal assessment to include the amount of liability and a schedule for payments.[4] If the employer disputes liability, it must raise its objections to the pension fund, but if the parties are unable to resolve the matter, the MPPAA provides that either the employer or the pension fund may initiate arbitration.[5]

Central States and the other funds filed motions to "compel arbitration of withdrawal liability disputes," or, alternatively, to grant relief from the automatic stay to permit arbitration against the debtors under § 1401(a).[6] The debtors objected to the motions, arguing that the bankruptcy court should decide whether to allow the claims against the bankruptcy estates. The largest holder of publicly traded stock of Yellow Corp., MFN Partners, also objected to the motion, asserting that the value of its equity holdings would be determined by whether or not the claims were allowed. Additionally, in objecting to the funds' proofs of claim, the debtors take issues with the validity of a regulation issued by the Pension Benefit Guaranty Corporation ("PBGC"), the regulation under which the funds calculated the withdrawal liability.[7] The PBGC filed a motion contending that the Administrative Procedure Act ("APA") requires the bankruptcy court to accept as valid the regulation, arguing that the only way to challenge agency regulations is to file a lawsuit in federal court against the agency.[8]

II. Judge Goldblatt's Opinion

Judge Goldblatt concluded that the bankruptcy court should retain jurisdiction over the determination of the MPPAA withdrawal claim, where he noted the determination rested on the framing of the specific relief being sought. Judge Goldblatt concluded that Central States' request should be viewed as a motion for relief from the stay, where he found "no suggestion in the language of the [MPPAA]," nor in the FAA, that

[1] *In re Yellow Corporation, et. al.,* Case No. 23-11069 (CTG), D.I. 2765 at 1.
[2] *In re Yellow Corp.* D.I. 2765 at 7.
[3] *Milwaukee Brewery Workers' Pension Plan v. Joseph Schlitz Brewing Co*., 513 U.S. 414, 416–417 (1995) (citing H.R.Rep. No. 96–869, pt. 1, pp. 54–55 (1980)).
[4] 29 U.S.C. § 1399(b).
[5] 29 U.S.C. § 1401(a).
[6] *In re Yellow Corp.* D.I. 2765 at 9.
[7] *Id.* at 3.
[8] *Id.* at 9.

allowed a plan sponsor to "obtain a court order directing the employer to commence an arbitration,"[9] and no basis under the Bankruptcy Code for the court to compel arbitration. With this context, the court considered "whether the MPPAA's directive that disputes over withdrawal liability be subject to arbitration imposes a mandatory obligation to grant such relief."[10]

The court found that the MPPAA does *not* require it to grant the motions and permit the withdrawal liability claims to be arbitrated.[11] First, Judge Goldblatt analyzed the apparent conflict between the MPPAA and the Bankruptcy Code. The MPPAA states that "[a]ny dispute between an employer and the plan sponsor of a multiemployer plan concerning a determination made under sections 1381 through 1399 of this title shall be resolved through arbitration,"[12] but § 502(b) of the Bankruptcy Code states that when an objection is filed to a proof of claim, the "court … shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount."[13] Relying on precedent reconciling the Federal Arbitration Act ("FAA") and the Bankruptcy Code,[14] the court here found that it must "[reconcile] the Bankruptcy Code's dispute resolution mechanisms and a statutory requirement to arbitrate."[15]

The court found that Third Circuit precedents, *Hays and Co v. Merrill Lynch, Pierce, Fenner & Smith, Inc*. and *In re Mintze*,[16] while not addressing the particular issue at hand, were instructive in evaluating the conflict and attempting to harmonize the statutes that were in tension with each other for the purpose of claims allowance.[17] Judge Goldblatt read the *Hays* decision to stand for the principle that "to defeat arbitration one would need to show a conflict between the Bankruptcy Code and arbitration," and that the fact that the "Bankruptcy Code generally contemplates the centralization of disputes before a bankruptcy court is insufficient to defeat arbitration."[18] Notably, the *Hays* court found that the task was "carefully [to] determine whether any underlying purpose of the Bankruptcy Code would be adversely affected" by enforcing an arbitration clause."[19]

While no prior cases applied this principle in the claims allowance context, Judge Goldblatt found, the "closest case" is *Mintze*.[20] The *Mintze* court addressed the question in the context of determining whether an adversary proceeding should be subject to arbitration, holding that, even though "the outcome of Mintze's recission claim would affect her bankruptcy plan and distribution of monies,"[21] that was an insufficient basis to decline to enforce an arbitration provision.[22] The court held that, given the "strong policy in favor of arbitration," one must find an "inherent conflict between arbitration and another federal statute's underlying purpose" to decline to enforce an arbitration clause.[23] However, Judge Goldblatt declined to read *Mintze* to hold that the existence of a contractual or statutory arbitration provision required that such claim determination be

[9] *Id.* at 11.
[10] *Id.* at 13.
[11] *Id.* at 14.
[12] 29 U.S.C. § 1401(a)(1).
[13] 11 U.S.C. § 502(b).
[14] *See Epic Systems Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (finding in the context of a conflict between the FAA and Bankruptcy Code that, when "confronted with two Acts of Congress allegedly touching on the same topic," courts are "not at liberty to pick and choose among congressional enactments and must instead strive to give effect to both").
[15] *In re Yellow Corp.* D.I. 2765 at 15.
[16] *Hays and Co v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 885 F.2d 1149 (3d Cir. 1989); *In re Mintze*, 434 F.3d 222 (3d Cir. 2006).
[17] *In re Yellow Corp.* D.I. 2765 at 16.
[18] *Id.* at 16–17 (citing *Hays*, 885 F.2d 1149).
[19] *Hays*, 885 F.2d at 1161.
[20] *In re Yellow Corp.* D.I. 2765 at 18–19.
[21] *Mintze*, 434 F.3d at 227 (citing *In re Mintze*, 288 B.R. 95 (Bankr. E.D. Pa. 2003)).
[22] *In re Yellow Corp.* D.I. 2765 at 19.
[23] *Mintze*, 434 F.3d at 229 (citing *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24, (1983); *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 220 (1985); and *Shearson/American Exp. v. McMahon*, 482 U.S. 220, 226 (1987)).

arbitrated.[24] In particular, Judge Goldblatt found that the MPPAA's arbitration provision created a strong presumption in favor of granting stay relief to permit the claim to be liquidated through arbitration—one that nevertheless may still be overcome "in appropriate circumstances where the imperatives of the bankruptcy case … so require."[25]

Ultimately, the court concluded that "the unusual circumstances of this case" weighed heavily in favor of allowing the court to oversee the claims allowance, including that an arbitral process could potentially exclude other parties in interest from participating, that the dispute was one of the most important issues in the case, and that there was a risk of delay associated with arbitration.[26] Judge Goldblatt also considered how an arbitration decision would be reviewable by a district court the same way as a bankruptcy court claims determination would be reviewed, eliminating the danger that exists in many FAA cases in which an arbitrator's decision is unreviewable due to narrow bases under the FAA under which arbitral awards are subject to judicial review.[27]

Finally, the court did not find persuasive the PBGC's argument that the APA bars a bankruptcy court from considering the validity of agency regulations, noting that this argument instead weighed in favor of denying the stay relief motion.[28] The PBGC asked the court to prohibit the debtors from challenging the validity of its regulation in connection with the claims allowance process, arguing that challenges to an agency regulation can only be made in a suit against the agency in federal court.[29] Judge Goldblatt held that, while the question need not be decided at this stage in litigation, the PBGC may "participate as a party in interest in the claims allowance process for the purpose of defending its regulation, including advancing the argument that this Court is precluded from considering any challenge thereto."[30] The court found the suggestion that the parties would otherwise need to potentially commence a federal court action in addition to the MPPAA arbitration weighed in favor of proceeding with the claims allowance process in bankruptcy court.[31]

Thus, the court ultimately denied the various pension funds' motions for relief from the automatic stay and the PBGC's motion for a determination that the court may not consider the validity of its regulation. The withdrawal liability claims will remain in bankruptcy court and Judge Goldblatt, rather than an arbitrator, will decide these key claims disputes.

III. Implications

Judge Goldblatt's opinion in *Yellow Corp.* illustrates an instance in which an arbitration clause—often respected and enforced by courts—may not be given effect in specific circumstances.

The decision indicates a willingness for the bankruptcy court to overcome the presumption of enforcement for arbitration clauses, notwithstanding courts' general inclination to enforce such clauses. In coming to his decision, Judge Goldblatt added additional dimension to the Second Circuit's decision in *In re Sonnax Indus., Inc*.,[32] which set out a 12-factor balancing test for determining whether to permit a prepetition claim to be liquidated in a different tribunal. The court found the test "to be of only some assistance," declining to find that each factor should be weighed equally.[33] In doing so, Judge Goldblatt recognized the risk that a bankruptcy court "may place too much weight on the sound operation of the bankruptcy process" and that some commentators

[24] *In re Yellow Corp.* D.I. 2765 at 21.
[25] *Id.* at 25, 27.
[26] *Id.* at 28–29.
[27] *See generally* 9 U.S.C. § 10(a).
[28] *In re Yellow Corp.* D.I. 2765 at 31.
[29] *Id.*
[30] *Id.* at 37.
[31] *Id.* at 39.
[32] 907 F.2d 1280 (2d Cir. 1990).
[33] *Id.* at 27 (citing *In re Owens Corning*, 419 F.3d 195, 210 (3d Cir. 2005) ("[t]oo often, the factors in a checklist fail to separate the unimportant from the important, or even to set out a standard to make the attempt…. This often results in rote following of a form containing factors where courts tally up and spit out a score without an eye on the principles")).

argue that bankruptcy courts may unduly weigh the importance of keeping matters in the bankruptcy court,[34] yet the court still found that other factors "counsel strongly in favor of the bankruptcy court's retention of jurisdiction over that dispute."[35] As such, Judge Goldblatt's decision outlined and weighed the unique aspects of the case and the importance of the claim to the case resolution his decision to retain jurisdiction over the claim.

IV. Conclusion

It remains to be seen how the debtors' dispute regarding pension liability claims will be resolved on the merits—but such objections are now left to be resolved in bankruptcy court by Judge Goldblatt, rather than in arbitration, as the MPPAA would otherwise dictate. It also remains to be seen whether any party will appeal Judge Goldblatt's order, or whether other courts will follow the approach he set out for considering similar motions.

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[34] *See, e.g.,* Jonathan M. Seymour, *Against Bankruptcy Exceptionalism,* 89 U. Chi. L. Rev. 1925 (2022).

[35] *In re Yellow Corp.* D.I. 2765 at 28.