

Client Alert

Finance and Restructuring Practice Group

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“All Sales Final”: First Circuit Defends Bankruptcy Sale Against Spurned Bidder Attack

Affirming the Bankruptcy Code’s aversion to upsetting court-approved sales on appeal, on January 12, 2018, the U.S. Court of Appeals for the First Circuit held that a bankruptcy court’s “good-faith” finding protected a bankruptcy sale from appeal by a spurned bidder that claimed the auction sale was tainted by collusion and fraud. The case, *In re Old Cold, LLC*, underscores the importance of bankruptcy sale buyers seeking a good-faith finding and waiver of the automatic 14-day stay of orders when asking a bankruptcy account to approve a sale.

Background and Bankruptcy Court Decision

When the financial condition of Tempnology, LLC deteriorated to the point that it could no longer remain viable, the company filed a chapter 11 bankruptcy case and quickly sought a court-approved asset sale. Tempnology accepted a stalking-horse offer from Schleicher and Stebbins Hotels LLC (“S&S”), a secured lender that held a majority equity interest in Tempnology and controlled two members of Tempnology’s management committee prior to the filing. The S&S offer of \$6.95 million consisted of forgiveness of existing secured debt owed to S&S. This stalking-horse offer was followed by an auction, at which Mission Product Holding, Inc. (“Mission”) offered \$1.5 million cash. After a day-long auction process, Tempnology accepted an offer from S&S for \$2.7 million in debt forgiveness, the assumption of certain debts, and leaving cash and certain assets in the estate. Following a two-day evidentiary hearing, the bankruptcy court approved the sale and included in its order language waiving a default rule staying the order’s effect for 14 days. The court specifically found no evidence of collusion or misconduct between Tempnology’s management and S&S, and found that S&S was a “good-faith purchaser” within the meaning of Bankruptcy Code section 363(m).

Mission appealed the bankruptcy court’s decision to a bankruptcy appellate panel, which affirmed the sale order. The appellate panel cited the “finality rule” of Bankruptcy Code section 363(m), which provides that the successful appeal of a sale order will not disturb the sale if the buyer acted in good faith, and if the sale is not stayed pending appeal. Mission appealed the panel’s ruling to the First Circuit Court of Appeals.

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