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Bankruptcy stay doesn't stop union boycott

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Trump Entertainment Resorts Inc. and some of its affiliates sought entry of an order against UNITE HERE Local 54 enforcing the automatic stay of Section 362 of the Bankruptcy Code.

The debtors own and operate the Trump Taj Mahal Hotel Casino in Atlantic City, N.J., which employs members of the union.

The debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, and the union had actual notice of the debtors' bankruptcy petition.

A few days after the petition was filed, the collective bargaining agreement between the debtors and union expired. The debtors made a proposal to the union regarding certain changes to the CBA, which the union rejected.

The union began contacting potential customers of the debtors to discuss its ongoing dispute with the debtors and encouraging the customers to boycott the Taj Mahal.

The union organized a phone bank for the purpose of making such communications with potential customers. The union also e-mailed or sent letters directly to organizations that had contracted to hold conventions at the Taj Mahal.

Moreover, the union sent similar communications to prospective individual convention attendees, and at least one organization canceled its contract with the debtors on account of the union's communications.

The debtors filed a motion in the bankruptcy court to reject the CBA. The court authorized the rejection of the CBA and the debtors' unilateral implementation of the terms of its contract proposals.

The debtors then filed a stay motion, arguing that the union's communications with potential Taj Mahal customers violated the automatic stay authorized by Section 362 of the Bankruptcy Code.

The union filed an objection arguing that its communications with potential Taj Mahal customers did not violate the automatic stay or were otherwise protected by the Norris-LaGuardia Act and the First Amendment.

At a hearing on their motion, the debtors abandoned their requests for most of the relief initially sought, asking the court only for what amounted to a declaratory judgment that the union's contact with potential Taj Mahal customers violated the automatic stay.

The NLA provides that no court shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of the act. Section 4 of the NLA defines specific acts that cannot be subject to a court-issued injunction, including: "Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling or by any other method not involving fraud or violence."

It was clear to the court that the dispute between the union and debtors, which centered mainly on the reduction of pension and health-care benefits, qualified as a "labor dispute" under the NLA. Similarly, the court had no difficulty in finding that the union's communications with potential Taj Mahal customers were protected under the NLA as "giving publicity to the existence of, or the facts involved in, any labor dispute."

However, since the debtors filed for bankruptcy, the union's protections under the NLA arguably collided with the Bankruptcy Code's automatic stay.

According to the court, the terms of the automatic stay and NLA statutes might not give rise to direct conflict. In substance, however, if the statutes were read to cover the same conduct, application of the automatic stay would essentially repeal the NLA in the bankruptcy context. It was incumbent upon the court to adopt an interpretation that would, if possible, avoid such a result while giving effect to both statutes.

The court found that the union had a strong interest in proceeding with its activities unimpeded by the federal courts. While the automatic stay is not a court-issued injunction per se, application of the stay would result in significant court interference with the union's activities.

Additionally, application of the automatic stay to the union's activities would have a substantial negative impact on the union's bargaining position with respect to a new collective bargaining agreement with no corresponding obligation on the part of the debtors to abstain from the use of the economic weapons available to them.

In the court's view, the debtors were attempting to use the automatic stay to shift bargaining power in their favor. The debtors would not have that ability outside of bankruptcy, and the court saw no reason under the facts why they should be granted that ability in bankruptcy.

The court found that, based on the union's superior competing legal interest, as embodied by the NLA and its underlying policy against court interference with labor relations, the union also

had not acted to obtain possession or exercise control over property of the debtors' bankruptcy estate. Thus, Section 362(a)(3) of the Bankruptcy Code was inapplicable to the union's conduct.

Because the court determined that the automatic stay did not apply to the union's conduct, it declined to address the "thorny issues" surrounding the union's claim that application of the stay would result in a violation of the First Amendment.

The case is *In re Trump Entertainment Resorts Inc.*, 2015 W.L. 4480285 (Bankr. Del. July 21).