

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
EXIDE TECHNOLOGIES, et al.) Bankruptcy No. 02-11125 (KJC)
)

)
STAMFORD COMPUTER GROUP, INC.,)
)
Appellant,)
)
v.) Civ. No. 04-0056-SLR
)
EXIDE TECHNOLOGIES,)
)
Appellee.)

MEMORANDUM ORDER

I. INTRODUCTION

On January 23, 2004, appellant Stamford Computer Group filed this appeal from a December 1, 2003 bankruptcy court order rejecting an unexpired lease for computer equipment between appellant and appellee Exide Technologies. (D.I. 1) This court has jurisdiction pursuant to 28 U.S.C. § 158(a).

Appellee has filed a motion to dismiss on the grounds of equitable mootness. (D.I. 8) Appellant disputes the facts supporting appellee's motion to dismiss and filed a cross motion to remand to the bankruptcy court for further fact finding on appellee's motion to dismiss. (D.I. 13) Because the court finds that equitable mootness is not applicable under the facts alleged

by appellee, the court will deny appellee's motion to dismiss and deny appellant's motion to remand as moot. The court also concludes that the bankruptcy court's order should be affirmed and the appeal denied.

II. BACKGROUND

On April 15, 2002, appellee, the debtor-in-possession, filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On October 23, 2003, appellee submitted a fourth amended joint plan of reorganization for confirmation. The plan provided for, among other things, the rejection of all executory contracts and unexpired leases not otherwise assumed. (D.I. 6 at 3)

On October 27, 2003, appellee filed a motion for an order to reject an unexpired lease for computer equipment, of which appellant was the lessor. Appellant challenged the rejection of the lease on the grounds that it was not in the estate's best interest. (Id.)

An evidentiary hearing was held on November 24, 2003, at which time the bankruptcy court granted appellee's motion to reject. Testimony was heard from two witnesses, the chief restructuring officer for appellee and a representative of appellant. The court found that rejection of the unexpired lease was an exercise of sound business judgment and in the best interest of the estate. (D.I. 7 at 79-80) The order was

subsequently entered on December 1, 2003.

III. STANDARD OF REVIEW

In undertaking a review of the issues on appeal, the court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to that court's legal conclusions. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). A finding of fact is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." U.S. v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948).

With mixed questions of law and fact, the court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercises 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991) (citing Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir. 1981)). The district court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a de novo basis bankruptcy court opinions. In re Hechinger, 298 F.3d 219, 224 (3d Cir. 2002).

IV. DISCUSSION

A. Equitable Mootness

The doctrine of equitable mootness directs that an appeal from a bankruptcy court order may be dismissed as moot, even where the court has jurisdiction and relief can be granted, if the implementation of that relief would be inequitable under the circumstances. See In re PWS Holding Corp., 228 F.3d 224, 236 (3d Cir. 2000). The Third Circuit has enumerated five nonexclusive factors to be considered in determining whether the merits of a bankruptcy appeal should be reached:

(1) whether the reorganization plan has been substantially consummated, (2) whether a stay has been obtained, (3) whether the relief requested would affect the rights of parties not before the court, (4) whether the relief requested would affect the success of the plan and (5) the public policy of affording finality to bankruptcy judgments.

In re Continental Airlines, 91 F.3d 553, 560 (3d Cir. 1996). Of these considerations the most crucial for the court is whether the reorganization plan has been substantially consummated. In re Zenith Elec. Corp., 329 F.3d 338, 343-44 (3d Cir. 2003). For a plan to be substantially consummated, it requires more than that the elements of the plan have been implemented; rather “granting of the appeal [must] unravel the plan, upon which numerous parties were at that point in reliance.” Id. at 344.

Appellee has failed to allege facts to support this first factor. Appellee contends that the rejection order has been

substantially consummated. (D.I. 9 at 7) This is not, however, the central consideration with respect to equitable mootness under Third Circuit precedence. It must be shown that the plan has been substantially consummated, which appellee has not demonstrated. Although appellant did not seek a stay of the rejection order it has appealed, that alone is not dispositive of equitable mootness. Further, appellant filed notice of its intent to appeal on December 9, 2003; therefore, appellee was well aware that appellant would challenge the bankruptcy court's order and was on notice (as were other creditors) that the bankruptcy court's rejection order may not be final.

Consequently, having found that appellee has failed to demonstrate that the plan has been substantially consummated such that reversal of the bankruptcy court order would be inequitable, the court finds that the doctrine of equitable mootness does not bar the present appeal.

B. The Rejection Order

Appellant contends that the bankruptcy court's factual finding that appellee exercised sound business judgment in rejecting the lease is clearly erroneous. Appellant contends that the record before the bankruptcy court was insufficient to show appellee exercised sound business judgment and that the record suggests that appellee's judgment was motivated by whim.

(D.I. 6)

The bankruptcy court heard evidence that the chief restructuring officer had sought advice from appellee's information technology department as to whether retaining the leased equipment was consistent with the appellee's needs. (D.I. 7, app. 1 at 53-62) The IT department reported to her that it was not. (Id. at 54) The chief restructuring officer also sought advice from appellee's accounting department to determine what the cost of assuming the lease would in fact be. (Id. at 61) Further, the chief restructuring officer testified that discussions occurred between appellee and appellant in an effort to reach a settlement. (Id. at 54, 61) Appellee determined, however, that the cost of assuming the lease outweighed the benefits to the estate of rejecting the lease and obtaining new equipment and software licenses from other sources. (Id. at 54) The chief restructuring officer testified that she did not have personal knowledge of all the facts upon which this conclusion was formed, but that she did rely upon summaries and recommendations of appellee's employees. (Id. at 54, 56, 59, 61, 62) While appellant contends that it would have been more cost effective for appellee to have assumed the unexpired lease, appellee's judgment to the contrary was not unreasonable. Further, the fact that the chief restructuring officer relied on summaries and recommendations is not evidence of whim, but instead evidence of sound business practices. Consequently, the

court finds that the bankruptcy court's finding that appellee exercised sound business judgment was not clearly erroneous.

V. CONCLUSION

At Wilmington this 25th day of June, 2004, having reviewed the appeal in the above captioned case, and the motions related thereto;

IT IS ORDERED that:

1. Appellee's motion to dismiss on the grounds of equitable mootness is **denied**. (D.I. 8)
2. Appellant's motion to remand is **denied as moot**. (D.I. 13)
3. The appeal is **denied** and the December 1, 2003 bankruptcy court order rejecting the unexpired lease is affirmed.

Sue L. Robinson
United States District Judge