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Connecticut Supreme Court Defines Bankruptcy Effect on Contracts

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Bankruptcy “does not constitute a per se breach of contract and does not excuse performance by the other party in the absence of some further indication that the [debtor] either cannot, or does not, intend to perform,” held the Supreme Court of Connecticut in a lengthy opinion on Nov. 21, 2017.

The supreme court rejected the trial court’s erroneous finding that the plaintiff debtor’s bankruptcy petition “constituted a breach of [contract, permitting] the defendant to terminate that agreement.” Because the trial court never found that the debtor (CCT) “either could not or did not intend to perform its obligations as a result of its bankruptcy filing”, it had not “breached the... agreement by filing for bankruptcy protection.” Nothing in the contract itself supported the trial court’s “conclusion that filing the [bankruptcy] petition constituted a breach by [CCT].”

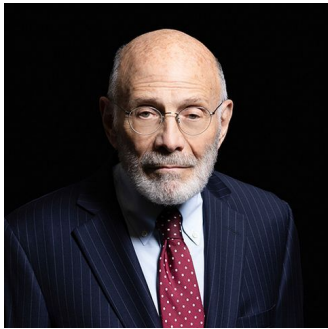
Equally important, the Supreme Court rejected the lower court’s enforcement of an “ipso-facto” bankruptcy termination clause, reasoning that the contractual language in this case “only” gave the nondebtor defendant (“Zone”) “the option to terminate.” Nor, on the facts of this case, could Zone rely on the so-called judicially created “ride-through” exception to evade the Bankruptcy Code’s invalidation of ipso-facto termination clauses.

A New York bankruptcy court had dismissed CCT’s Chapter 11 case one month before the commencement of the suit in the Connecticut state

court. Although CCT had originally sued Zone in the bankruptcy court, that court “declined to retain jurisdiction” after dismissal of the Chapter 11 case because, among other things, the CCT suit “primarily involved questions of state contract law.”

In this article for *The Bankruptcy Strategist*, of counsel Michael Cook analyzes the Supreme Court of Connecticut’s opinion in *CCT Communications, Inc. v. Zone Telecom, Inc.*

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