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In re Winn-Dixie Stores Inc.: A Lesson in Claim Amendment

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In one of the latest decisions in the Winn-Dixie Stores bankruptcy cases, the Bankruptcy Court for the Middle District of Florida sustained the objection of Winn-Dixie and 23 of its affiliates (debtors) to the amended claims of two of its creditors, holding that the *res judicata* effect of a confirmed plan of reorganization prevented creditors who failed to protect their interests prior to confirmation of the plan from amending their claims post-confirmation. *In re Winn-Dixie Stores Inc.*, 381 B.R. 804 (Bankr. M.D. Fla. 2008).

Facts

Early on in the bankruptcy cases of the southern grocery giant, Winn-Dixie Stores Inc., the bankruptcy court permitted the debtors to reject their lease with IRT Partners LP for a store located in Stanley, N.C., and their lease with Equity One Inc. for a store located in Orlando, Fla. Pursuant to the rejection order, the two creditors filed proofs of claim against the debtors—IRT in the amount of $20,364.24 and Equity One for $87,498.59. The debtors objected to these claims on the basis that they were overstated. IRT and Equity One did not respond to this objection, and the bankruptcy court entered an order sustaining the objection and reducing the IRT claim to $11,636.71 and the Equity One claim to a $16,913.96.

On Nov. 9, 2006, the court confirmed the debtors' joint plan of reorganization, following proper disclosure and notice to all interested parties; the plan became effective on Nov. 21, 2006. Pursuant to the plan, all allowed unsecured claims were entitled to receive a distribution of new common stock issued by the debtors in exchange for their claims. The claims of IRT and Equity One, classified under the plan as unsecured Class 13 landlord claims, fell under this category. Neither IRT nor Equity One objected to or appealed the confirmation of the plan.

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The plan contained two pertinent sections. Section12.13 provided that distributions of new common stock to unsecured creditors would be in "complete satisfaction of any claim such creditors would have against Debtors." Section 4.3 provided that each holder of a claim received its distribution of new common stock in "full satisfaction, settlement, release and discharge of and in exchange for Class 13 Landlord Claims," which included the IRT and Equity One claims. Equity One accepted shares of new common stock on Dec. 22, 2006, while IRT received its shares on Jan. 9, 2007.

On Jan. 5, 2007, Equity One filed an amended proof of claim in the amount of $878,478.41, asserting additional rejection damages allowable under §502 of the Code. That same day, IRT filed a claim in the amount of $185,244.67, amending it's original claim and alleging additional rejection damages as well. The debtors objected to these amendments, asserting the claims were barred by the terms of the confirmed plan of reorganization.

Conclusions of Law

In determining whether the doctrine of *res judicata*, or "a thing adjudicated," barred the amendments of the IRT and Equity One claims, the bankruptcy court examined the specific language of the debtors' confirmed plan and the effect that *res judicata* has on confirmed plans generally. Policy considerations were also relevant to the court's determination.

The debtors' arguments in opposition to the amendments to the claims centered around the *res judicata* effect of the confirmation order and the failure of IRT and Equity One to amend their claims in a timely fashion. The debtors asserted that the terms and specific language contained in the plan of reorganization precluded IRT and Equity One from amending their claims to assert additional amounts. The bankruptcy court noted that "a creditor's treatment under a confirmed plan of reorganization creates a contractual relationship between the debtor and creditor." In other words, the prior claim is wiped out and is replaced by a new claim, determined by the criteria as set forth in the confirmed plan. In addition to this argument, the debtors also pointed out that the confirmation order had a *res judicata* effect. Furthermore, IRT and Equity One were given ample opportunity to amend their rejection damages claims prior to confirmation of the plan, but they failed to do so.

According to the court in *In re New River Shipyard Inc.*, cited by the debtors in support of their argument, the doctrine of *res judicata* in bankruptcy proceedings bars the court from "relitigating issues that have already been litigated…[and] also bars the court from litigating issues that may have been litigated." *In re New River Shipyard Inc.*, 355 B.R. 894, 912 (Bankr. S.D. Fla. 2006). The bankruptcy court agreed with this determination and observed that claims asserted after plan confirmation have a disruptive effect on the orderly adjudication of claims.

The arguments of IRT and Equity One in support of their amendments focused on the practice of allowing claims to be freely amended, as well as reservation of rights language contained in the last paragraph of each claim. IRT and Equity One cited *In re International Horizons* for the proposition that in the Eleventh Circuit claim amendments should be "freely allowable." *In re International Horizons*, 751 F.2d 1213 (11th Cir. 1985). The relevant holding in that case was that "in a bankruptcy case, amendment to a claim is freely allowed where the purpose is to cure a defect in the claim as originally filed, to describe the claim with greater particularity or to plead a new theory of recover on the facts set forth in the original claim." While the bankruptcy court recognized that *International Horizons* was the controlling precedent, it distinguished the holding in that case from the facts related to IRT's and Equity One's claims. The bankruptcy court instead found that "the holding [in *International Horizons*] does not support the proposition that a claim can be freely amended at any point in time." The bankruptcy court pointed out that the Eleventh Circuit had noted that the amended claim at issue in *International Horizons* had not been timely asserted and the appellant in that case had not objected to the confirmed plan, and as such, "the court concluded that equitable considerations did not support the amendment as the appellant was given every chance to assert its rights yet failed to do so in a timely fashion." This was the same criticism that the bankruptcy court had with the amended claims of IRT and Equity One, a criticism that led the bankruptcy court to the determination that amendment of the claims under the circumstances was not permissible.

Ultimately, the bankruptcy court held that "a creditor cannot reasonably expect to sit on its rights throughout the process leading up to confirmation, then argue that it is entitled to relief post-confirmation, without consideration to the specified terms of the confirmed plan."

As an alternative argument, IRT and Equity One pointed to language in the last paragraph of each proof of claim that their right to amend the claims post-confirmation had been preserved. The last paragraph states: "Claimant reserves the right TO amend and supplement this rejection damages claim as estimated amounts are fixed and additional information becomes available." (emphasis in original). Additionally, IRT and Equity One claimed that they did not originally include a damages calculation for unpaid future rent in their proofs of claim prior to the confirmation of the plan because they were attempting to mitigate their damages. The bankruptcy court quickly dealt with this assertion, pointing to the fact that the two creditors could have approximated their damages at any time prior to confirmation. Furthermore, the bankruptcy court found that the language in the last paragraph of each statement of claim was standard language that could not reasonably be considered to operate as a post-confirmation reservation of rights.

Ultimately, the bankruptcy court held that "a creditor cannot reasonably expect to sit on its rights throughout the process leading up to confirmation, then argue that it is entitled to relief post-confirmation, without consideration to the specified terms of the confirmed plan." If the court allowed a creditor, who failed to protect its interest prior to plan confirmation despite adequate opportunity to do so, to amend its claim post-petition in direct contravention of the plan's provisions, then the confirmed plan would be rendered meaningless. The result would be to "open [P]andora's box"—where no resolution or finality, the motivating forces behind plan confirmation, would result. As such, the court sustained the debtors' objections to the amended claims of IRT and Equity One and later entered an order disallowing those amended claims.

Conclusion

Creditors should take heed of this decision and strive to file timely, complete and accurate claims on the basis that claim amendments, particularly those subsequent to confirmation, may not be allowed. ■

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