

RUBIN LLC

December 2019

FIRST DEPARTMENT ENFORCES REPURCHASE PROVISION IN BANKRUPTCY CLAIMS PURCHASE AGREEMENT

In a victory for claims traders, a New York State appeals court enforced the express terms of a repurchase provision in a claims purchase agreement that required the defendant/claims seller to repay the purchase price plus interest to the plaintiff claims purchaser.[1] The appellate court unanimously reversed the decision of the trial court that granted the defendant's motion to dismiss the claims purchaser's complaint. Rubin LLC represented the claims purchaser in its successful appeal.

Background

The claims purchaser entered into an Assignment of Claim with a creditor to purchase its claim against a bankrupt entity in a chapter 11 case. The agreement provided that, upon the occurrence of specified "impairment" events enumerated in the agreement (including the filing of an objection to the purchased claim), the claims purchaser could immediately demand repayment of the purchase price, plus interest. After the bankruptcy claim was purchased from the creditor/assignor, the chapter 11 case was converted to a chapter 7 liquidation and the chapter 7 trustee filed an objection to the purchased claim. Because the filing of an objection constituted an impairment under the agreement, the claims purchaser invoked the repayment provision in the agreement and demanded immediate repayment of the purchase price for the claim, together with interest. The creditor/claim seller initially agreed to repay the purchase price, but it changed its mind. Instead, it communicated with the bankruptcy trustee regarding the objection, and the trustee withdrew the objection to the claim 37 days after the objection had been filed. The claim seller's refusal to comply with its repurchase obligations under the agreement compelled the claims purchaser to commence a state court litigation in the New York County Supreme Court for breach of contract and for indemnification.

The Trial Court Ruling

In the state court action, the defendant/assignor filed a pre-answer motion to dismiss the complaint. The trial court granted the motion and dismissed the complaint, reasoning that, because the objection to the claim was withdrawn, the claims purchaser received the benefit of its bargain under the agreement and thus sustained no damages. The trial court further held that an interpretation of the agreement that would permit the claims purchaser to receive the purchase price plus interest would result in a windfall to the claims purchaser, and such an interpretation would be commercially unreasonable and contrary to the reasonable expectations of the parties. The claims purchaser appealed.

The Appellate Court Ruling

On appeal, the claims purchaser argued that the trial court's interpretation of the agreement was contrary to the plain meaning and express terms of the provisions of the agreement requiring the defendant/assignor to immediately repay the purchase price, upon demand, following the occurrence of an impairment. The claims purchaser cited to two cases involving the enforcement of repurchase provisions in bankruptcy claims purchase agreements that were substantially similar to the repurchase provision in this case, *Longacre Master Fund, Ltd. v. ATS Automation Tooling Sys. Inc.*, 496 F. Appx. 135 (2d Cir. 2012), and *Deutsche Bank Sec. Inc. v. Lexington Drake L.P.*, 2010 WL 4941997 (N.Y. Sup. Ct. Nov. 22, 2010). In *Longacre*, the Second Circuit Court of Appeals enforced an impairment/repurchase provision upon the filing of an objection against the purchased claim, even though the objection was intended as a placeholder to be withdrawn. See *Longacre Master Fund, Ltd. v. ATS Automation Tooling Sys. Inc.*, 496 F. Appx. at 138. Similarly, the New York County Supreme Court in *Deutsche Bank* held that an objection to a purchased claim constituted an impairment under a claims purchase agreement, and enforced the seller's repurchase obligation, even though the claims purchaser voluntarily settled the objection. See *Deutsche Bank Sec. Inc. v. Lexington Drake L.P.*, 2010 WL 4941997 at *6.

The Appellate Division agreed with the claims purchaser. The appellate court found that the trial court's interpretation of the agreement "requires a deviation from the express text, impermissibly rendering certain provisions without meaning or effect." 2019 WL 4418897 at *1. In particular, the appellate court concluded that "[t]he objection constitutes an impairment under the agreement, triggering plaintiff's right to demand immediate payment under the agreed-to formula, notwithstanding that the impairment was later removed. The complaint therefore states a valid cause of action and should be reinstated." *Id.*

Implications

For claims traders, this decision is welcome confirmation that the express terms of industry-standard impairment/repurchase provisions in claims purchase agreements will be enforced under New York law. The plain language agreed upon by commercial parties will not be disregarded as commercially unreasonable or contrary to the reasonable expectations of the parties.

[1] The case is *TRC Master Fund, LLC v. AP Gas & Electric (TX) LLC*, 2019 WL 4418897 (1st Dep't Sep. 17, 2019).

If you have questions concerning the content of this Alert or would like more information about Rubin LLC, please contact:

Paul A. Rubin

Rubin LLC

345 Seventh Avenue, 21st Floor

New York, NY 10001

Tel: 212.390.8054

E-Mail: prubin@rubinlawllc.com

Web: www.rubinlawllc.com

This communication has been prepared for informational purposes only and is not intended and should not be considered legal advice. Viewers should not act upon this information without seeking professional counsel based on their specific situations.

If you would like to add a colleague or need to change your contact information, please send an email to asst@rubinlawllc.com.