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CLIENT ALERT - U.S. SUPREME COURT UNANIMOUSLY DETERMINES THAT STATUTE GOVERNING BANKRUPTCY SALE APPEALS IS NOT JURISDICTIONAL

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On April 19, 2023, the United States Supreme Court issued its decision in *MOAC Mall Holdings LLC v. Transform Holdco LLC*, in which the Court considered whether 11 U.S.C. § 363(m) is jurisdictional. A unanimous Court held that § 363(m) is not jurisdictional, determining that the language of the statute "takes as a given the exercise of judicial power over any authorization under § 363(b) or § 363(c)." This determination is based upon the requirement that for a statutory precondition to be jurisdictional, Congress must clearly state the intent. When considering the language of § 363(m), the Court found that the language allowing a court to "reverse or modify" any authorization that is covered under § 363(m) "takes as a given the exercise of judicial power." Thus, rather than implicate a court's power to consider the appeal, the Court found that the statutory language constrains the effect of a court's reversal or modification under certain circumstances, namely when the sale or lease is to a good-faith purchaser or when the authorization is stayed pending appeal. For these reasons, the Court decided that § 363(m) was more akin to a "statutory limitation" that required parties to take certain "certain procedural steps at certain specified times" rather than a jurisdictional statement. Finally, the Court noted that the statutory context which placed § 363(m) apart from other jurisdictional provisions over bankruptcy matters supported its determination.

Effects of the Ruling

The implications of the Court's ruling are demonstrated by the facts of the case that was at issue. The petitioner, MOAC Mall Holdings LLC, had objected to the assignment of a lease by a successor to the debtor, and then sought to have the bankruptcy court's order allowing the assignment stayed pending appeal because of the restrictions in § 363(m). The bankruptcy court denied the stay, determining that the assignment at issue was not covered by § 363(m), and additionally emphasizing that the opposing party, Transform Holdco LLC, "explicitly represented that it would not invoke § 363(m)." However, upon receiving an adverse ruling in the appeal, Transform Holdco changed its tune, invoking § 363(m). While the district court was "appalled" by Transform Holdco's reversal, it decided that it was bound by precedent from the Second Circuit Court of Appeals holding that § 363(m) was jurisdictional, thus precluding arguments of waiver or judicial estoppel. Based upon this determination, the district court dismissed the appeal. Now that the Supreme Court has held otherwise, parties facing similar situations in the future will be able to assert waiver, judicial estoppel, or similar arguments against parties who attempt such an about-face.

Conclusion

Businesses purchasing assets from a bankruptcy estate should keep this ruling in mind when facing an appeal by an objecting party. If the purchaser indicates no intention to assert § 362(m) in the future, a court may consider defenses such as waiver or estoppel based upon such a representation based upon the Supreme Court's decision that § 362(m) is not jurisdictional.

Alternatively, the appealing party must remember that the strictures of § 363(m) are still effective against parties that do not follow the needed procedural steps, namely seeking a stay pending an appeal of court authorizations under § 363(b) or § 363(c). However, the Supreme Court's decision allows parties denied a requested stay pending an appeal, similar to MOAC Mall Holdings LLC, options to protect their rights in the event that an opposing party later seeks to invoke § 363(m).

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