

미국연방대법원 2019. 5. 20. 선고 Mission Product vs Tempnology 판결 - 라이선스 계약서에서 계약해지 (termination) 사유 - 파산, bankruptcy 사유 발생 시 라이선스 계약의 종료 관련 라이선스의 권리 관계



미국연방대법원 판결

- Licensor 상표등록권자 Tempnology vs Licensee 상표사용권자 Mission Product
- 의류 분야 등록상표의 사용허락 라이선스 계약 기간 중 Licensor 상표등록권자 Tempnology 도산 상황 발생 - 미국법원에 소위 Chapter 11 파산신청 접수
- 미국 파산법에 따라 채무자(debtor)는 이행해야 할 계약상 채무의 이행을 거절하는 부인권(rejection) 행사할 수 있음
- 본 상표사용허락 라이선스 계약에서는 Licensor 상표권자가 채무자로 상대방 채권자, licensee에 대해 라이선스 계약상 채무이행을 거절하는 부인권 행사함.

- 라이선서의 채무는 대상 상표사용을 허용하는 내용이므로 위 부인권 행사로 licensee의 상표사용권한이 소멸되는지 쟁점
- 라이선서의 부인권 행사 후 라이선시가 상표사용을 계속하는 경우 상표권침해에 해당하는지 여부가 쟁점
- 미국연방대법원 - 라이선시 계속 상표사용권한 인정함

미국판결 요지 - 부정, 라이선시는 대상 상표를 계속 사용할 수 있음

Petitioner Mission Product Holdings, Inc., entered into a contract with Respondent Tempnology, LLC, which gave Mission a license to use Tempnology's trademarks in connection with the distribution of certain clothing and accessories. Tempnology filed for Chapter 11 bankruptcy and sought to reject its agreement with Mission. Section 365 of the Bankruptcy Code enables a debtor to "reject any executory contract"—meaning a contract that neither party has finished performing. 11 U. S. C. §365(a). It further provides that rejection "constitutes a breach of such contract." §365(g). The Bankruptcy Court approved Tempnology's rejection and further held that the rejection terminated Mission's rights to use Tempnology's trademarks. The Bankruptcy Appellate Panel reversed, relying on Section 365(g)'s statement that rejection "constitutes a breach" to hold that rejection does not terminate rights that would survive a breach of contract outside bankruptcy. The First Circuit rejected the Panel's judgment and reinstated the Bankruptcy Court's decision.

Held:

1. This case is not moot. Mission presents a plausible claim for money damages arising from its inability to use Tempnology’s trademarks, which is sufficient to preserve a live controversy. See *Chafin v. Chafin*, 568 U. S. 165, 172. Tempnology’s various arguments that Mission is not entitled to damages do not so clearly preclude recovery as to render this case moot. Pp. 6–7.

2. A debtor’s rejection of an executory contract under Section 365 of the Bankruptcy Code has the same effect as a breach of that contract outside bankruptcy. Such an act cannot rescind rights that the contract previously granted. Pp. 7–16.

(a) Section 365(g) provides that rejection “constitutes a breach.” And “breach” is neither a defined nor a specialized bankruptcy term—it means in the Code what it means in contract law outside bankruptcy. See *Field v. Mans*, 516 U. S. 59, 69. Outside bankruptcy, a licensor’s breach cannot revoke continuing rights given to a counterparty under a contract (assuming no special contract term or state law). And because rejection “constitutes a breach,” the same result must follow from rejection in bankruptcy. In preserving a counterparty’s rights, Section 365 reflects the general bankruptcy rule that the estate cannot possess anything more than the debtor did outside bankruptcy. See *Board of Trade of Chicago v. Johnson*, 264 U. S. 1, 15. And conversely, allowing rejection to rescind a counterparty’s rights would circumvent the Code’s stringent limits on “avoidance” actions—the exceptional cases in which debtors may unwind pre-bankruptcy transfers that undermine the bankruptcy process. See, e.g., §548(a). Pp. 8–12.

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