



8th Cir.: Discrimination Claim Accrued Late in Employer's Bankruptcy Action not Discharged David J. Riewald

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By Susan M. Schaecher

An employee did not waive a discrimination claim that accrued after the deadline for creditors to submit proofs of claims in his employer's bankruptcy action by failing to submit a request for payment of administrative expense claims, according to the 8th U.S. Circuit Court of Appeals.

Chapter 11 of the Bankruptcy Code permits a business to restructure its finances so that it can continue to operate. Generally, the bankruptcy court's entry of an order confirming the reorganization plan discharges all debts arising prior to the date of confirmation. A cause of action that accrues prior to confirmation is a claim dischargeable upon confirmation, even if a jurisdictional prerequisite (like exhaustion of administrative remedies) has not been met. But before a claim can be discharged, the creditor must receive notice of the bankruptcy filing and deadlines for asserting claims.

Northwest Airlines, Inc. sought Chapter 11 bankruptcy protection in 2005. In 2007, it offered a promotion to Carlos Sanchez, but rescinded it after obtaining an "accommodation assessment" of his physical limitations. At that time, the deadline for regular creditors to submit proofs of claim in the bankruptcy action had long passed. Two months after Northwest officially rescinded Sanchez's promotion, the bankruptcy court confirmed Northwest's reorganization plan. It also approved a notice that required the filing of administrative expense claims by a date that fell four months after the date Northwest had rescinded the promotion offer.

Sanchez filed intra-union grievances and an Equal Employment Opportunity Commission charge alleging that the rescission of the promotion violated the Americans with Disabilities Act. After exhausting those administrative remedies, he filed a court action. Northwest contended the claim had been discharged in bankruptcy. Sanchez admitted he had received the initial notice of Northwest's bankruptcy filing, but he denied receiving any other correspondence regarding the bankruptcy.

The lower court held that Sanchez's failure to file a request for payment by the deadline for making administrative claims resulted in the discharge of his discrimination claim.

On appeal, the 8th Circuit reversed based on its analysis of the notice that required the submission of administrative expense claims. The notice defined what constituted an administrative expense and identified five categories of claims for which no claim needed to be filed. The circuit court concluded that Sanchez's claim came within the exception for "liabilities incurred in the ordinary course of business by the Debtors." Noting that engaging in prohibited acts of discrimination was not necessary to Northwest's course of business, the court declared courts must focus, instead, on "the utility of the underlying exercise." Engaging an employee to perform Sanchez's duties was necessary to carry out Northwest's day-to-day operations, and the liability was incurred in the ordinary course of Northwest's business, the court concluded.

The circuit court also found that the notice was "dense with legalese" and did not fairly apprise Sanchez of the possibility his claim would be discharged if he did not submit it by the deadline for administrative claims.

Sanchez v. Northwest Airlines, Inc., 8th Cir., No. 10-2393 (Oct. 14, 2011).

Professional Pointer: Employers can draft reorganization plans to manage some of the problems that may develop from the addition of a creditor late in the bankruptcy action. The Bankruptcy Code defines administrative expenses incurred during the pendency of the bankruptcy and payable by the debtor. It does not establish a bar date for claims for administrative expenses, but permits the parties to set such a date. In *Sanchez*, the plan required that claims be made by a certain date, but also listed exceptions to that requirement, one of which allowed Sanchez's claim to survive.

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Editor's Note: *This article should not be construed as legal advice.*

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