53 F.3d 1064, 27 Bankr.Ct.Dec. 309, 63 USLW 2690, Bankr. L. Rep. P 76,494, 149 L.R.R.M. (BNA) 2268

Briefs and Other Related Documents

United States Court of Appeals,
Ninth Circuit.
In re RUFENER CONSTRUCTION, INC., Debtor.
CARPENTERS HEALTH AND WELFARE TRUST FUNDS FOR CALIFORNIA, et al., Creditors-Appellants,
v.
Jerome ROBERTSON, Trustee-Appellee.
No. 93-16098.
Argued and Submitted Dec. 15, 1994.
Decided May 8, 1995.

Employee trust funds sought priority status for claims for unpaid contributions to employee benefit trusts in employer's Chapter 7 case. The Bankruptcy Court, Arthur S. Weissbrodt, J., denied priority status. Trust funds appealed. The United States District Court for the Northern District of California, Saundra Brown Armstrong, J., affirmed. Trust funds appealed. The Court of Appeals, Reinhardt, Circuit Judge, held that: (1) provision of Bankruptcy Code limiting power of bankrupt company to unilaterally terminate or modify terms of collective bargaining agreement did not apply in Chapter 7 case, and (2) trust funds' appeal was not "frivolous," justifying award of attorney fees to debtor under federal appellate rules, merely because issue had not been previously decided by federal court.
Affirmed.

West Headnotes

[1] KeyCite Notes

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3113 k. Collective Bargaining Agreements.

Provision of Bankruptcy Code limiting power of bankrupt company to unilaterally terminate or modify terms of collective bargaining agreement applied only to bankruptcy filed under Chapter 11, and did not apply to Chapter 7 case with respect to claims of employee benefit trusts against debtor-employer. Bankr.Code, 11 U.S.C.A. §§ 1113, 1113(f).

[2] KeyCite Notes

361 Statutes

361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k205 k. In General.

361 Statutes KeyCite Notes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k208 k. Context and Related Clauses.

When Court of Appeals looks to plain language of statute in order to interpret its meaning, it does more than view words or subsections in isolation; court derives meaning from context, and this requires reading relevant statutory provisions as whole.

[3] KeyCite Notes

51 Bankruptcy
51II Courts; Proceedings in General
51II(C) Costs and Fees
51k2182 Grounds and Circumstances
51k2187 k. Frivolity or Bad Faith; Sanctions.

Appeal by employee trust funds from bankruptcy court's order denying priority status to trust funds' claims against Chapter 7 debtor-employer on ground that provision of Bankruptcy Code limiting power of bankrupt company to unilaterally terminate or modify terms of collective bargaining agreement did not apply in Chapter 7 cases was not "frivolous," entitling Chapter 7 trustee to attorney fees under federal appellate rules, merely because no court had ever ruled on or faced issue of applicability of that provision of Code in Chapter 7 cases. Bankr.Code, 11 U.S.C.A. § 1113(f); F.R.A.P.Rule 38, 28 U.S.C.A.

[4] KeyCite Notes

170A Federal Civil Procedure
170AXX Sanctions
170AXX(F) On Appeal
170Ak2837 Grounds
170Ak2839 k. Frivolousness in General.

It would be gross abuse of Court of Appeals' discretion under federal appellate rule authorizing award of attorney fees for frivolous appeal to penalize litigants for raising colorable legal claims simply because they are ones of first impression. F.R.A.P.Rule 38, 28 U.S.C.A.

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CA, for creditors-appellants.
*1065 Heinz Binder (argued), Mark V. Isola, Binder & Malter, San Jose, CA, for trustee-appellee.
Appeal from the United States District Court for the Northern District of California.

Before: TANG, REINHARDT, and RYMER, Circuit Judges.

REINHARDT, Circuit Judge:
Section 1113(f) of the bankruptcy code limits the power of a bankrupt company to unilaterally terminate or modify the terms of a collective bargaining agreement. Some courts have found that this provision also affects the priority accorded debts payable under a collective bargaining agreement in the bankruptcy priority scheme. In this case, we decide whether § 1113(f) applies to bankruptcies filed under Chapter 7 of the Code. We hold that it does not.

BACKGROUND

Rufener Construction Co. filed a Chapter 7 bankruptcy petition. Over the following two months, the Operating Engineers Trust Funds and the Carpenters Trust Funds (hereinafter "Trust Funds") filed separate claims against the estate totaling almost $75,000. The claims were for employee benefit contributions payable under collective bargaining agreements. The agreements required contributions to employee benefit trust funds on the basis of hours of work performed. The Trust Funds sought payment for work performed prior to the bankruptcy filing and asserted priority status for the claims. The Trustee objected. During discovery, the Trustee learned that the claim of priority status was based on § 1113(f) of the Code rather than § 507, the provision that usually governs claims for wages and benefits. After a full hearing, the bankruptcy court denied priority status holding that § 1113(f) is inapplicable to Chapter 7 proceedings. The Trust Funds appealed to the district court briefing solely the issue of whether § 1113(f) applies to Chapter 7. The district court affirmed, and this further appeal followed.

ANALYSIS

I.

[1] Under any construction of the statutory provision at issue, the Trust Funds remain entitled to assert their claims against the estate for the amounts owed. However, unless they are awarded priority status for their claims, the funds available for disbursement to creditors may be exhausted before the Trust Funds receive any payment. The bankruptcy code establishes a detailed priority scheme for the payment of unsecured claims. All claims at a particular priority level are paid on a pro rata basis; however, claims of a particular priority level are not paid until all claims of a higher priority have been satisfied. Thus, it is important to the Trust Funds to establish the highest possible priority for their claims.
The Trust Funds contend that § 1113(f) covers their claims and affords them super-

priority status. Although the super-priority status issue was vigorously disputed before the bankruptcy court, that court's determination that § 1113(f) has no applicability to a Chapter 7 proceeding obviated the need for it to resolve the dispute. Similarly, the district court did not need to consider that issue.[FN1] Accordingly, on appeal to us, the parties present only the question whether § 1113(f) applies to Chapter 7 proceedings. That question is one of first impression.[FN2]

FN1. There is a split of authority on this issue: whether claims which fall within the ambit of § 1113(f) are entitled to "super-priority" status. *Compare In re Unimet Corp.*, 842 F.2d 879 (6th Cir.1988) *with In re Roth American*, 975 F.2d 949 (3d Cir.1992). The Trust Funds assert that if we find § 1113(f) applicable to Chapter 7 proceedings, we should remand to the bankruptcy court for a ruling on the super-priority status issue. Because of our holding that § 1113(f) is inapplicable to Chapter 7 proceedings, such a remand is unnecessary. We express no opinion on the super-priority issue here.

FN2. Only one prior case involved the application of § 1113(f) and a Chapter 7 bankruptcy. *See In re St. Louis Globe-Democrat, Inc.*, 86 B.R. 606 (Bkr.E.D.Mo.1988). However, the circumstances of that case did not require the court to discuss the propriety of the application of § 1113(f). The case was originally filed under Chapter 11 and then a year later was converted to Chapter 7. The court never examined whether § 1113(f) was applicable *after* the conversion to Chapter 7 bankruptcy. It addressed only the accrual of the benefits during the Chapter 11 reorganization period.

All other courts and commentators that have mentioned the Chapter 7 issue have simply assumed that § 1113 did not apply to such proceedings without analyzing or discussing the question in detail. *See, for example, In re Roth American*, 975 F.2d 949, 956, n. 9 (3d Cir.1992); *In re Rayman*, 170 B.R. 286, 291 (D.Md.1994); Bruce H. Charnov, *The Uses and Misuses of the Legislative History of Section 1113 of the Bankruptcy Code*, 40 Syracuse L.Rev. 925, 929 n. 19 (1989); Mark S. Pulliam, et al, *Collier Labor Law and the Bankruptcy Code* ¶ 3.04[2] n. 17 (1993).

*1066 Congress enacted section 1113 of the Bankruptcy Code in response to the Supreme Court decision in *NLRB v. Bildisco*, 465 U.S. 513, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984). In *Bildisco*, the Court held that a Chapter 11 debtor-in-possession could unilaterally reject a collective bargaining agreement. Unhappy with this result, Congress enacted § 1113 which imposes several procedural requirements that trustees and debtors must follow in order to reject a collective bargaining agreement. These requirements include meeting with the employees' authorized representative, conferring in good faith with that representative in an attempt to reach mutually satisfactory modifications of the agreement, and obtaining court approval of any rejection of the agreement if the balance of the equities clearly favors rejection. The final provision of § 1113 states:

No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.

11 U.S.C. § 1113(f).

The Trust Funds argument centers on the first five words of the provision-"No provision of this title." The "title" in this phrase means Title 11, which encompasses the entire bankruptcy code. The Trust Funds argue that under the plain language of the statute, no

provision of the entire bankruptcy code may be construed to permit the unilateral termination of a collective bargaining agreement absent compliance with the provisions of § 1113. Under their reading *all* collective bargaining agreements are protected by § 1113(f), regardless of the chapter under which the debtor files bankruptcy.
In response, the Trustee points to the plain language of § 103(f). Section 103 is found in chapter 1 of the code. This chapter is entitled "General Provisions," and section 103 is captioned "Applicability of chapters." Section 103(f) provides:
Except as provided in section 901 of this title,[FN3] subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.
FN3. Chapter 9 of the Bankruptcy Code governs the adjustment of debts of municipalities. Section 901 sets out which provisions of Title 11 apply to filings of municipalities.

11 U.S.C. § 103(f). The Trustee argues that because § 1113 falls within subchapter I of Chapter 11, under the plain language of § 103(f), provision 1113(f) is limited to Chapter 11 bankruptcies.
The Trust Funds reply that "no provision of this title" necessarily includes § 103(f). In their view, § 103(f) cannot be construed as limiting the applicability of § 1113(f) to Chapter 11 cases because if § 1113(f) were so limited, Chapter 7 trustees would be free to unilaterally terminate collective bargaining agreements. This construction of § 103(f) would, they argue, necessarily violate the plain language of § 1113(f). Because this construction places § 103(f) and § 1113(f) in conflict, the Trust Funds argue that § 103(f) must yield under the rule that the more recent enactment prevails. In support of this argument, the Trust Funds cite numerous cases construing § 1113(f) broadly and holding that some provision of the Bankruptcy Code must give way to § 1113(f). However, all of the cases they cite for this proposition involve Chapter 11 bankruptcies. [FN4]
FN4. *But cf. In re St. Louis Globe Democrat,* 86 B.R. 606 (Bkr.E.D.Mo.1988), discussed in note 2.

[2] Both parties' arguments present plausible constructions of the statute, and both arguments rely heavily on "plain language" theories of interpretation. However, both parties cannot prevail, and we must go beyond a cursory textual analysis to determine the correct construction of the statute. A more rigorous examination of the statutory text reveals that the Trust Funds misunderstand*1067 the meaning of "plain language" in statutory construction. When we look to the plain language of a statute in order to interpret its meaning, we do more than view words or sub-sections in isolation. We derive meaning from context, and this requires reading the relevant statutory provisions as a whole. *See Beno v. Shalala,* 30 F.3d 1057, 1068 (9th Cir.1994). *See also Smith v. U.S.,* 508 U.S. 223, ---- - ----, 113 S.Ct. 2050, 2054-57, 124 L.Ed.2d 138 (1993) ("Statutory construction[ ] is a holistic endeavor."). Indeed, the "plain language" of § 1113(f) requires us to examine all of the provisions of the section. The final portion of § 1113(f) states that an agreement cannot be terminated "prior to compliance with the provisions of this section."
Reading § 1113 as a whole, without simply focusing on § 1113(f), it is clear that its provisions do not apply to Chapter 7 proceedings. First, the language of the provisions embraces concepts incompatible with Chapter 7 proceedings. Subsection (a) describes a "trustee" as used in § 1113 as one that "has been appointed under the provisions of this

chapter"-i.e. a Chapter 11 trustee. Moreover, subsections (a) through (e), make explicit reference to the "debtor in possession," a concept of Chapter 11 not Chapter 7.
Second, the procedural requirements imposed by § 1113 appear ill-suited to a liquidation proceeding. Many of the provisions of the section are premised on the notion that the company is still conducting business. The section regulates the manner in which collective bargaining agreements may be implemented, modified, or terminated during the period of reorganization-a period in which the active business of the debtor proceeds apace.[FN5] Chapter 11 proceedings ordinarily involve companies that plan to continue operations, and the bankruptcy code provides them with a limited amount of protection from creditors so that they can reorganize operations and become once more a viable business entity. In contrast, petitions filed under Chapter 7 are usually for the purposes of liquidation. Ordinarily, the company has ceased operations, and all of its remaining assets will be distributed to debtors on a pro rata basis subject to statutory priority requirements. With few exceptions, companies in Chapter 7 bankruptcy are not engaging in operations to which the terms of collective bargaining agreements would be relevant, and little purpose would be served by the debtor's complying with the requirements of § 1113.
FN5. For example, portions of § 1113(e) provide: "If during the period when the collective bargaining agreement continues in effect, and if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court ··· may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by a collective bargaining agreement."

Viewing all of the component sections of § 1113 together, we are compelled to reject the Trust Funds' construction of the statute. Although the line between plain and ambiguous is not always clear, we conclude that the meaning of § 1113(f) is "plain" in that this provision is plainly inapplicable to Chapter 7 proceedings. Because the text of § 1113 shows that subsection (f) of that provision applies only to Chapter 11 bankruptcies, we need not rely on other provisions of the bankruptcy code for additional guidance. [FN6] Therefore, we need not address the parties' arguments regarding § 103(f) or its implicit repeal. We simply note instead that the result we reach is wholly consistent with, if not required by, that section.[FN7]
FN6. Moreover, as pointed out by the district court, if Congress intended § 1113 to have general applicability, it made little sense to place it in Chapter 11 of the code rather than Chapter 1 which contains all of the other provisions of general application.

FN7. In this case, we could stop our inquiry at a purely textual analysis of the statute; however, it is sometimes helpful to examine legislative history to ensure that the result we reach by our interpretation of the language of the statute is not wholly contrary to the statutory purpose. The little legislative history available for § 1113 supports our construction. While there is no authoritative legislative history or committee report for § 1113, a review of the Congressional Record reveals some helpful comments. The proponents of the amendment to the code continually referred to its application in "reorganization" cases. The term "reorganization" is a creature of Chapter 11 bankruptcy. Although this does not demonstrate that the legislators affirmatively wanted to restrict § 1113 to Chapter 11 cases, it strongly suggests that they were not considering its viability outside the Chapter 11 context.

*1068 Reading the language of § 1113 in its entirety, we conclude that it is applicable only to bankruptcies filed under Chapter 11. Thus, we so hold.

II.

[3] The Trustee argues that the Trust Funds' appeal is frivolous, and he seeks attorneys' fees under Federal Rule of Appellate Procedure 38. [FN8] He contends that the meritlessness of the Trust Funds' argument is evidenced by the fact that no court has ever ruled on or faced the issue of the applicability of § 1113(f) in Chapter 7 cases.

FN8. This rule, captioned "Damages for Delay" states:

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

F.R.A.P. 38.

[4] However, the absence of authority may cut the other way. *See, e.g. Jaeger v. Canadian Bank of Commerce,* 327 F.2d 743, 746 (9th Cir.1964). The issue presented here had not been previously decided by a federal court, and the interpretation urged by the Trust Funds was plausible, not frivolous. It would be a gross abuse of our discretion under F.R.A.P. 38 to penalize litigants for raising colorable legal claims simply because they are ones of first impression. The request for fees is denied.

CONCLUSION

A careful analysis of § 1113 in its entirety shows that the section, including § 1113(f), applies only to bankruptcies filed under Chapter 11. Accordingly, the district court's order is affirmed. Each side shall bear its own costs.

AFFIRMED.

In re Rufener Const., Inc.
53 F.3d 1064, 27 Bankr.Ct.Dec. 309, 63 USLW 2690, Bankr. L. Rep. P 76,494, 149 L.R.R.M. (BNA) 2268