United States of America

“Mission Product Holdings”

Decision of the Supreme Court

20 May 2019 – Case No. 17–1657

*Mission Product Holdings, Inc. v. Tempnology, LLC,
NKA Old Cold LLC*

Bankruptcy Code, § 365

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Keywords Trademarks · Bankruptcy · Rejection as contract rescission vs rejection as contract breach · Debtor’s rejection of a licencing contract · Transfer of rights

1. Under § 365, a debtor’s rejection of an executory contract in bankruptcy has the same effect as a breach outside bankruptcy. Such an act cannot rescind rights that the contract previously granted.
2. The debtor-licensor’s rejection of that contract does not deprive the licensee of its rights to use the trademark. A rejection breaches a contract but does not rescind it and that means all the rights that would ordinarily survive a contract breach remain in place.
 - a. § 365(g) provides that rejection “constitutes a breach of [an executory] contract”. “Breach” is neither a defined nor a specialized bankruptcy term – it means in the Code what it means in contract law outside bankruptcy.
 - b. 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). Because rejection “constitutes a breach,” the same result must follow from rejection in bankruptcy. In preserving a counterparty’s rights, § 365 reflects the general bankruptcy rule that the estate cannot possess anything more than the debtor did outside bankruptcy. 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.

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