

Mission Product Holdings, Inc. v. Tempnology, LLC, No. 17-1657

Today, the Supreme Court held in an 8-1 decision that when a debtor, acting under Section 365 of the Bankruptcy Code, rejects a contract licensing its trademarks, the contract is not rescinded and the debtor thus cannot revoke the trademark license.

Background: Section 365 of the Bankruptcy Code allows a debtor to assume or reject any executory contract. When Tempnology entered bankruptcy, it invoked Section 365 to reject a trademark licensing deal with Mission Product, hoping to end Mission Product's license rights. Mission Product resisted that effort, arguing that a contract rejection under Section 365 merely frees the debtor from future performance and constitutes a breach of contract, without rescinding the contract. The First Circuit disagreed, relying on a Fourth Circuit decision that Congress overturned through a Bankruptcy Code amendment addressing certain intellectual property (but not trademarks).

Issue: Whether rejection of a contract under Bankruptcy Code Section 365 rescinds the contract and allows the debtor to end a trademark license and otherwise reclaim property transferred under the contract.

Court's Holding: In an 8-1 decision authored by Justice Kagan, the Supreme Court held that rejection of a trademark licensing contract under Section 365 of the Bankruptcy Code does not rescind the contract and thus does not end the trademark license. The Court gave two reasons for its ruling. First, Section 365 specifies that rejection of a contract by a debtor results in a breach of the contract, which is distinct from a rescission and allows the counter-party to choose to either terminate or continue the contract under established contract-law principles. Second, preserving a counter-party's contractual rights adheres to the general bankruptcy rule that a debtor's bankruptcy estate cannot possess anything more than the debtor itself possessed outside of bankruptcy.

Justice Gorsuch dissented, contending that the suit was moot because the relevant contract had expired and there was no viable theory to recover damages.