SPORTS AND ENTERTAINMENT ALERT
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Acquiring Sports Franchises in Bankruptcy—You Take the Bad With the Good

We expect the professional sports industry's financial woes to drive an increasing number of teams to seek bankruptcy, sell, or relocate in the near future. The recent Arizona bankruptcy court decision thwarting the Phoenix Coyotes' move to Ontario, Canada presents important lessons for those considering selling or acquiring a team or other asset in bankruptcy.

The Case

Ice hockey is a tough sell in warm climates, and it's hot in Arizona. After the NHL's Phoenix Coyotes suffered several years of losses, owner Jerry Moyes put the team into bankruptcy. He didn't have to look hard for a buyer: Jim Balsillie the co-CEO of RIM, the Blackberry maker, has long sought a hockey franchise to move to his hometown area of Hamilton, Ontario. Balsillie's offer dwarfed all other suitors', but he conditioned it on the court acting before June 29, 2009 to authorize the Coyotes' relocation to Hamilton. Moyes filed a motion with the bankruptcy court, asking it to approve the sale quickly.

Though Balsillie's offer was the highest on the table, the NHL opposed the sale, primarily because it would create unwanted competition for two existing teams in or near the Ontario market. Seeing the parallels for their sports, the NFL, NBA and Commissioner of MLB filed a brief supporting the NHL.

The NHL asserted that:

- Balsillie had to assume and assign the league's agreements with the Coyotes in their entirety, including the requirement to obtain the NHL's consent to a change in ownership or relocation; and
- The sale didn't provide for adequate assurance of future performance of the Coyotes' agreements with the NHL, including the requirement that the Coyotes play their home games in Arizona. Nor did it compensate the NHL for losses resulting from defaults under those agreements.

The Coyotes contended that there was a "bona fide dispute" regarding antitrust claims that the team had recently asserted against the NHL sufficient to justify authorization of the sale over the NHL's objection. The Coyotes argued that the bankruptcy court could effectively override the requirement that the team assume and assign its agreements with the NHL by simply approving the sale of the team to Balsillie free and clear of all claims and interests.

The Decision

The court reminded the sports industry of the well-established principle that anyone looking to obtain the benefits of a debtor's pre-bankruptcy agreements must also assume the contracts' burdens. The court left the door open to a possible settlement between the parties, but held that it could not approve the sale in the short timeframe that Moyes and Balsillie requested.

On the contract question, the court held that it could not simply excise from the Coyotes/NHL agreements the requirement that the team play its home games in Arizona.

On the default question, it found that the Coyotes' motion failed to address the NHL's right to compensation for loss of the expansion opportunity in Ontario.

On the antitrust question, the court held that professional sports league franchise movement restrictions are not always invalid as a matter of law. The question of what restraints are reasonable will depend on the circumstances, and the mere existence of pending litigation does not establish a "bona fide dispute" to justify the sale in bankruptcy court. In fact, the court noted that the Coyotes and Balsillie had not even bothered to apply for NHL approval of the sale and relocation (as required by their contract with the league) until the court itself mentioned that failure. So, since the NHL had not yet applied its relocation requirements to the sale/relocation request, there was no legal or factual record regarding an alleged antitrust violation for it to analyze.

What This Means To You

The case presents valuable lessons for those looking to buy or sell and/or relocate teams through a bankruptcy, or to oppose those deals. The court:

- protected the NHL's contractual rights and did not simply force it to accept the highest offer in sight;
- recognized that the opportunity to establish a franchise in a particular market is a league right for which compensation can be required if a team seeks to infringe upon it;
- acknowledged that collective league action in areas such as establishing divisions and scheduling must be permitted; but also
- indicated that the NHL could not declare a default against the Coyotes simply because the team proposed to change ownership. League restrictions on relocation must be reasonable.

Sellers and buyers of professional sports teams now know to afford a league ample time to consider a proposed sale and relocation before asking a bankruptcy court to approve a sale over the league's objection. In each case, the facts will likely determine the outcome, and the parties will have to surmount complicated legal issues. Consult with counsel before acting.

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