

BANKRUPTCY BLOG

# Say what you mean; Mean what you say

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Toys R Us filed for Chapter 11 protection in September 2017 with more than \$5 billion in funded debt, arising mostly out of financing owners received to fund taking the company private.

Ultimately, under a confirmed Chapter 11 plan, which incorporated a settlement among interested parties, Toys R Us gave a near total release of all avoidance actions to pre- and post-petition creditors.

Prior to filing bankruptcy, Toys R Us accumulated a \$9.5 million bill with UP Supply Chain Solutions, Inc. (“UPS”), for customs brokerage, and UPS continued services to the retailer on credit after bankruptcy filing. However, prior to confirmation of the plan, UPS was paid in full for all its pre- and post-petition bills — a total of about \$12 million.

Despite the broad release under the plan of all pre- and post-petition creditors, a liquidating trust set up under the plan attempted to “claw back” the millions paid to UPS under preferential transfer rules, arguing that the plan release did not apply to UPS because it had been paid in full and could not be considered a pre- or post-petition creditor under the plan. In other words, the trust argued that UPS was not a released creditor.

Notably, the trust sought to introduce parole evidence that UPS was not intended to be released under the settlement and plan. The Bankruptcy Court, however, concluded the settlement and plan were unambiguous as to the release and, as a consequence, any parole evidence should be excluded. As a result, the Court granted summary judgment to UPS on the trust’s claim, noting, “[i]t is difficult to fathom how UPS, a creditor owed millions of dollars at the time of the bankruptcy filing and that also extended postpetition credit to [Toys R Us], could be neither a prepetition creditor nor a postpetition creditor.”

The moral of the story? Make sure your settlement agreements and plan documents mean what you say and say what you mean.

*TRU Creditor Litigation Trust v. UPS Supply Chain Solutions Inc.*, Adv. no. 19-3087, (Bankr. E.D. Va., March 29, 2022).

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