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## The New Gold Standard for Sports PSLs: The Provisions that Allow the Golden State Warriors to Overpower a Bankruptcy Estate

Michael Medved

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# A NEW GOLD STANDARD FOR SPORTS PSLs: THE PROVISIONS THAT ALLOW THE GOLDEN STATE WARRIORS TO OVERPOWER A BANKRUPTCY ESTATE

Michael Medved\*

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## INTRODUCTION

For the 2019–20 National Basketball Association season, the Golden State Warriors are set to leave their current home of Oracle Arena in Oakland to move across the bay to the brand-new Chase Center in San Francisco.<sup>1</sup> True to the ethos of their Silicon Valley backgrounds, the Warriors’ ownership implemented an innovative financing mechanism to assist their move. The Warriors organization references this financing scheme as a “‘membership’ program.”<sup>2</sup> This program is synonymous with what previous sports franchises referred to as a “Personal Seat License” (“PSL”) agreement.<sup>3</sup> In essence, the Warriors solicited their rabid and

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<sup>1</sup> Jim Harrington, *Golden State Warriors unveil stunning new arena in San Francisco*, THE MERCURY NEWS (Aug. 26, 2019), <https://www.mercurynews.com/2019/08/26/golden-state-warriors-unveil-new-amazing-new-arena-in-san-francisco-photos/>.

<sup>2</sup> Al Saracevic, *Warriors Reveal Long-Term Chase Center Season-Ticket Plan*, S.F. CHRON. (July 19, 2017), <https://www.sfchronicle.com/sports/article/Warriors-new-offer-Season-tickets-for-30-years-11300137.php>.

<sup>3</sup> Martin J. Greenberg & M’Kenzee Galloway, *Personal Seat Licenses in the NBA: Golden State Warriors*, GREENBERG L. OFFICES (Feb. 1, 2018), [https://www.greenberglawoffice.com/personal-seat-licenses/#\\_ftn83](https://www.greenberglawoffice.com/personal-seat-licenses/#_ftn83).

wealthy fanbase to help with the costs of constructing this new arena. Of note, Bruce Schoenfeld of the *New York Times* speculates that this decision was not made on a whim but rather has been in the works for quite some time as he claims:<sup>4</sup> “Once Warriors’ owners Joe Lacob and Peter Guber decided their team needed a new arena, in San Francisco – and they seemingly made that decision before they bought the team in 2010 – they also knew who would pay for it: the fans.”<sup>5</sup>

Within the new Chase Center, 12,000 of the available 18,064 seats for Warriors’ home games will be set aside for purchasers of the Warriors’ PSL membership.<sup>6</sup> For most seats the membership fee for the Warriors’ PSL reported to be \$15,000.<sup>7</sup> Although, for some select seats this fee reported as being as high as \$35,000.<sup>8</sup> Moreover, this fee for the membership is for the right to purchase a season ticket and is not incorporated in the “actual cost of the season ticket.”<sup>9</sup> The price of the actual tickets reported to be \$600 per seat, which amounts to \$26,400 for the season.<sup>10</sup> The Warriors’ PSL offering is further unlike previously implemented PSLs, differing in a few key respects. The general nature of the Warriors’ PSLs offering is that it requires “season-ticket buyers to pay a one-time fee that will enable you to buy your seats for 30 years.”<sup>11</sup>

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<sup>4</sup> Bruce Schoenfeld, *What Happened When Venture Capitalists Took Over the Golden State Warriors*, THE N.Y. TIMES MAG. (Mar. 30, 2016), <https://www.nytimes.com/2016/04/03/magazine/what-happened-when-venture-capitalists-took-over-the-golden-state-warriors.html?searchResultPosition=1>.

<sup>5</sup> *Id.*

<sup>6</sup> Ron Leuty, *How the Warriors Shift the Ticket Lineup to Deliver ‘the Right Value’*, S.F. BUS. TIMES (Jun. 22, 2018), <https://www.bizjournals.com/sanfrancisco/news/2018/06/22/golden-state-warriors-season-tickets-chase-oracle.html>.

<sup>7</sup> *Id.*

<sup>8</sup> Scott Ostler, *Warriors’ New Arena Gives Some Season-Ticket Holders Sticker shock*, S.F. CHRON. (Mar. 1, 2018), <https://www.sfchronicle.com/sports/ostler/article/Warriors-new-arena-gives-some-season-12720962.php?psid=ixvj>.

<sup>9</sup> Patrick Murray, *Just How Lucrative Will the Chase Center Be For The Warriors*, FORBES (Sept. 9, 2018), <https://www.forbes.com/sites/patrickmurray/2018/09/09/just-how-lucrative-will-the-chase-center-be-for-the-warriors/#53b634102b29>.

<sup>10</sup> See Ostler, *supra* note 8.

<sup>11</sup> Scott Polacek, *Warriors’ Season Tickets to Require Fans to Buy 30-Year Membership at New Arena*, BLEACHER REP. (July 19, 2017), <https://bleacherreport.com/articles/2722678-warriors-season-tickets-to-require-fans-to-buy-30-year-membership-at-new-arena>.

The first of these differences in the Warriors' PSL from previous PSL arrangements is a "refund." "In a unique twist yet to be used in any pro sport, the Warriors promise to pay back that fee after 30 years."<sup>12</sup> Arguably, though, this refund does more for the Warriors from a public relations standpoint than function as offering its fans a true refund.<sup>13</sup> For after being "[a]djusted for inflation, that money won't be worth much down the road."<sup>14</sup> A dollar today is worth more than a dollar tomorrow.<sup>15</sup> A dollar today is worth *much more* than a dollar in thirty years.<sup>16</sup>

This article will focus on how this second key difference implemented in the Warriors' PSL would affect an eventual bankruptcy proceeding of a purchaser into their "membership program." In the event of a purchaser filing for bankruptcy liquidation under chapter seven of the bankruptcy code, the PSL will join the rest of the bankrupt's assets in becoming property of the now-bankrupt purchaser's creditors estate. Purchasers into the Warriors' offering can be either individuals or corporations. This article will provide an analysis of how the debtor, estate, and team will likely fare in terms of recouping the value of the PSL as an asset in the event of a purchaser's liquidation in bankruptcy.

## I. BACKGROUND

### A. *Rise of the National Basketball Association*

Following the turn of the millennium in the year 2000, the National Basketball Association ("NBA") and its franchises saw a tremendous ascension in terms of their financial value. The most recent NBA franchise sold were the Houston Rockets, in 2017, selling for what currently holds as a record \$2.2 billion.<sup>17</sup> In context, the Miami Heat sold

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<sup>12</sup> See Saracevic, *supra* note 2.

<sup>13</sup> *Id.*

<sup>14</sup> Rick Welts, *Golden State Warriors Season Tickets Will Require a 30 Year PSL Agreement at Chase Center*, FROMTHISSEAT.COM, <http://www.fromthisseat.com/index.php/blog/19863-golden-state-warriors-season-tickets-will-require-a-30-year-psl-agreement-at-chase-center> (last visited Feb. 6, 2020).

<sup>15</sup> Nick Lioudis, *Time Value of Money and the Dollar*, INVESTOEDIA, <https://www.investopedia.com/ask/answers/032715/why-does-time-value-money-tvm-assume-dollar-today-worth-more-dollar-tomorrow.asp> (last updated Apr. 18, 2018).

<sup>16</sup> *Id.*

<sup>17</sup> Tim Cato, *How much did each NBA owner pay to buy their teams?*, SB NATION (Sept. 5, 2017), <https://www.sbnation.com/nba/2017/9/5/16255168/nba-teams-sold-highest-record-price-all-30>.

for only \$68 million in 1995.<sup>18</sup> This ascension enjoyed throughout the league has commonly been attributed to a few factors. First, the introduction of streaming services such as Netflix, Hulu, and, Amazon Prime among others placed a heavy premium on cable providers' ability to broadcast "event" television.<sup>19</sup> Watching an NBA basketball game live became considered as within the bucket of "event" television.<sup>20</sup> For, it is an utterly different experience to watch a television show such as "Scandal" or "NCIS" subsequent to the original broadcast than it is to watch a replay of a National Basketball game. Broadcasters responded to consumers ascribing value in experiencing unscripted live events, such as sports games, as they happen in real-time.<sup>21</sup>

Second, the creation of social media platforms, most notably, Twitter, created a community where fans communicate with friends or even strangers in the conversation taking place online considering a live game they are watching.<sup>22</sup> Fans, journalists, and NBA players came to commonly refer to this medium as NBA Twitter.<sup>23</sup> Where fans "watch games together and comment on news, highlights, and roster moves."<sup>24</sup> This affected not only increased enthusiasm over the actual gameplay but also interest in team management and transactions in the offseason. The NBA capitalized on social media to a higher degree than any other American professional sports league.<sup>25</sup> "The NBA is the most-tweeted-about sports league in 2018, according to Twitter, with more than 100 million NBA-related tweets heading into the NBA finals."<sup>26</sup> This was no accident as other "leagues such as the NFL and Major League Baseball have gone after sites and social media users who have posted video without permission, the NBA took the opposite approach."<sup>27</sup> Adam Silver,

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<sup>18</sup> *Id.*

<sup>19</sup> Meg James, *The Rise of sports TV costs and why your cable bill keeps going up*, LOS ANGELES TIMES (Dec. 5, 2016), <https://www.latimes.com/business/hollywood/la-fi-ct-sports-channels-20161128-story.html>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Rick Maese, *NBA Twitter: A sports bar that doesn't close, where the stars pull up a seat next to you*, WASH. POST (May 31, 2018), <https://www.washingtonpost.com/news/sports/wp/2018/05/31/nba-twitter-a-sports-bar-that-doesnt-close-where-the-stars-pull-up-a-seat-next-to-you/>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

the NBA's commissioner, contrarily took the position that he "considers online videos to be a form of marketing. He likens them to 'snacks' that might whet fans' appetites for something bigger."<sup>28</sup>

Additionally, the players of the NBA, likely as a byproduct of growing up in the social media world, sought out to build themselves as being synonymous with a recognizable and positive brand.<sup>29</sup> Omar Raja, founder of the House Highlights Instagram account, commented that "what separates the NBA from the other leagues is the personalities, accessibility, and relatability. Even if NBA players have wildly different incomes and lifestyles than their fans, they live in the same online community."<sup>30</sup> Players such as LeBron James and Stephen Curry transcended basketball to become some of the biggest household celebrity names in the world. These stars transcended basketball even to use their platform to become a powerful voice in social justice issues. As one example, "Miami Heat star Dwyane Wade, who has 8 million followers, tweeted about the victims of the Parkland, Fla., school shooting in February, a post that received 538,000 likes and 155,000 retweets."<sup>31</sup>

Gone are the days of NBA players bringing firearms into the locker rooms.<sup>32</sup> It very well may be the case that the public relations staff of the NBA simply did their jobs well. In some respect it is of importance to the NBA's rise that it has mostly avoided the issues that recently plagued the image of the National Football League (NFL) stemming from players consistently engaging in domestic violence, kneeling during the national anthem, and the increasing evidence of the long-term effects from suffering numerous concussions.<sup>33</sup>

#### *B. Recent Success of the Golden State Warriors*

In 1975, the Warriors won their first championship as tenants of Oracle Arena.<sup>34</sup> In the following thirty years, however, the Warriors and

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Jianna West, *Gilbert Arenas Details 2009 Gun Showdown With Javaris Crittenton*, SPORTS ILLUSTRATED (Aug. 7, 2018), <https://www.si.com/nba/2018/08/07/gilbert-arenas-card-game-guns-details-javaris-crittenton-wizards>.

<sup>33</sup> PBS NEWS HOUR, *Tumultuous year for NFL marked by protests, injuries and a ratings drop* (Nov. 24, 2017), <https://www.pbs.org/newshour/show/tumultuous-year-for-nfl-marked-by-protests-injuries-and-a-ratings-drop>.

<sup>34</sup> Bruce Schoenfeld, *What Happened When Venture Capitalists Took Over the Golden State Warriors*, N.Y. TIMES (Mar. 30, 2016),

their fans saw little success as the franchise mostly fell into irrelevance; “This wasn’t just a bad team, but a team that seemed permanently stuck in a state of irrelevance.”<sup>35</sup> This irrelevance would quickly no longer be the case after the Golden State Warriors changed ownership in 2010, when Joe Lacob and Peter Guber purchased the Golden State Warriors for a reported \$450 million.<sup>36</sup> Which, at the time, was thought of as a price “wildly excessive by nearly everyone.”<sup>37</sup> Yet, in the Warriors “Lacob saw a start-up disguised as an underperforming business, a sports franchise that had been run autocratically – and therefore ineptly – as the industry evolved around it.”<sup>38</sup>

Whether Lacob and Gruber knew at the time is unclear, but they soon realized they had been dealt the equivalent of a pair of Aces. Just a year prior to their purchase, Warriors in the 2009 NBA draft selected a future superstar in Stephen Curry.<sup>39</sup> Curry became one of the best and most popular players in the history of the league.<sup>40</sup> Within the next three years, the Warriors would only add to their roster in drafting two more remarkable players in Klay Thompson and Draymond Green.<sup>41</sup> With these three superstars at the helm, in 2015, the Warriors won their first championship in exactly thirty years.<sup>42</sup> The franchise that was recently considered mostly irrelevant was now suddenly one of the preeminent franchises within the entire NBA.<sup>43</sup> The Warriors mystique soon rose to even greater heights when they made the addition of another superstar in Kevin Durant.<sup>44</sup> The Warriors have since won subsequent titles in 2017 and 2018.<sup>45</sup> As of the writing of this article, the Warriors are in first place in the Western Conference heading into the postseason and appear poised to win another

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<https://www.nytimes.com/2016/04/03/magazine/what-happened-when-venture-capitalists-took-over-the-golden-state-warriors.html>.

<sup>35</sup> *Id.*

<sup>36</sup> Cato, *supra* note 17.

<sup>37</sup> Schoenfeld, *supra* note 34.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Jason Parham, *The Warriors and the Myth of the Silicon Valley-Driven Team*, WIRED (Jan. 13, 2020), <https://www.wired.com/story/warriors-silicon-valley/>.

<sup>44</sup> *Id.*

<sup>45</sup> Schoenfeld, *supra* note 34.

title in the 2019 season.<sup>46</sup> Today, Forbes estimates the value of the Golden State Warriors franchise at 4.3 billion.<sup>47</sup>

Consequently, ticket prices for a seat at a Warriors home game skyrocketed since 2014-15. For season ticket holders during the 2014-15 season, the price range for a single ticket was \$18 and \$450.<sup>48</sup> For the 2017-18 season, these prices rose to \$40 and \$715.<sup>49</sup> As for the secondary market (fans purchasing tickets on the likes of sellers such as stubhub.com instead of directly from the team), the average listing price for the 2014-2015 season was \$122.<sup>50</sup> Thus far, in the 2018-19 season, the median listing price on one of these indexes is \$463.<sup>51</sup> These prices are based upon the Oracle Arena having nearly 20,000 seats.<sup>52</sup> The Chase Center will provide less supply for the demand by having a total of 18,000 seats.<sup>53</sup> Basic economics suggests that the price of entry for a Warriors' home game at their new arena will only grow. However, this is subject to change. The Warriors' current success in terms of selling season and single-game tickets at the moment "doesn't mean that someone else will want them ten years from now."<sup>54</sup>

### C. History of PSL Use by Sports Franchises

The origins of sports franchises employing the financing mechanism of the PSL arises from the late 1980's, when Max Muhleman and George Shinn set out to bring an NBA expansion team to Charlotte,

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<sup>46</sup>*NBA Standings 2019-20*, ESPN (last visited Apr. 7, 2019), <http://www.espn.com/nba/standings>.

<sup>47</sup>*The Business of Basketball*, FORBES, (last visited Feb. 17, 2020), <https://www.forbes.com/nba-valuations/list/#tab:overall>.

<sup>48</sup>Darren Rovell, *Warriors Raising Ticket Prices Again*, ESPN (Feb. 7, 2017), [https://www.espn.com/nba/story/\\_/id/18636756/golden-state-warriors-raising-ticket-prices-again](https://www.espn.com/nba/story/_/id/18636756/golden-state-warriors-raising-ticket-prices-again).

<sup>49</sup>*Id.*

<sup>50</sup>*Prices For Warriors Tickets On Secondary Market Remain Steady Following Back-to-Back Championships*, TICKETIQ BLOG (Sept. 27, 2018), <https://blog.ticketiq.com/blog/2018-19-golden-state-warriors-tickets-prices-schedule>.

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

<sup>53</sup>Al Saracevic, *Warriors Reveal Long-Term Chase Center Season-Ticket Plan*, S.F. CHRON. (July, 19 2017), <https://www.sfchronicle.com/sports/article/Warriors-new-offer-Season-tickets-for-30-years-11300137.php>.

<sup>54</sup>*Golden State Warriors Season Tickets Will Require A 30 Year PSL Agreement At Chase Center*, FROMTHISSEAT.COM, (last visited Feb. 17, 2020), <http://www.fromthisseat.com/index.php/blog/19863-golden-state-warriors-season-tickets-will-require-a-30-year-psl-agreement-at-chase-center>.



North Carolina.<sup>55</sup> The original idea of Muhleman and Shinn was that “future fans would put down a non-refundable deposit of about 10% of what the cost of the season tickets would be to get on a season ticket waiting list.”<sup>56</sup> Charlotte eventually brought an NBA expansion franchise partially due to the help of this unique financing scheme.<sup>57</sup> Muhleman then decided to give those fans “ownership of their seat as a gift to make them feel more part of the team, and he called these gifts Charter Seat Rights.”<sup>58</sup> Importantly, “fans were also allowed to assign their rights to anyone if they chose not to renew their season tickets.”<sup>59</sup> Of note, “Muhleman never himself considered that Charter Seat Rights could be used as a financing tool, or that fans could sell them for a profit, until he saw an ad in a local newspaper.”<sup>60</sup>

From this initial success in implementing a PSL financing scheme by a sports franchise, Muhleman would use a similar scheme four years later when he partnered with Jerry Richardson to bring an National Football League (“NFL”) franchise to Charlotte.<sup>61</sup> Since then, numerous NFL teams followed suit and employed PSL’s in financing not only expansion franchises, but also for construction of new stadiums for existing franchises.<sup>62</sup> Outside of the NFL, though, PSLs have not been in wide use. The notable exceptions being the owners of the Toronto franchises using them for the NBA Raptors and NHL Maple Leaf.<sup>63</sup> Some speculated that the PSL saw wider use in the NFL because “purchasing season tickets is not as big of an obligation. NFL season ticket packages are limited to only 8 regular season home games each season.”<sup>64</sup> As applied to the NBA, “For a 41 home game basketball season, a personal seat license is a much larger obligation which is why the Golden State Warriors are the first team to experiment with this system.”<sup>65</sup> The success that the Warriors enjoyed,

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<sup>55</sup> Greenberg & Galloway, *supra* note 3.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Rick Welts, *Golden State Warriors Season Tickets Will Require A 30 Year PSL Agreement At Chase Center*, <http://www.fromthisseat.com/index.php/blog/19863-golden-state-warriors-season-tickets-will-require-a-30-year-psl-agreement-at-chase-center>.

<sup>65</sup> *Id.*

however, will likely result in PSLs becoming more prevalent in the financing operations of NBA teams.

#### D. *Current Demographics of the Bay Area*

One of the consequences of the Warriors' massive success in the 2010s has been the many Bay Area residents jumping onto the "bandwagon" into newly fashioned Warriors fandom. What it means to be a Bay Area resident in terms of demographics—and subsequently for many a Warriors "fan"—is much different in the post-2010s than what it had been when the Warriors first entered Oracle Arena in 1975.<sup>66</sup> Prior to the dotcom boom of the early 2000s, the Bay Area was viewed simply as the compilation of neighborhoods surrounding San Francisco. Back then, San Francisco was just "a small city of around 825,000 poised on the tip of a peninsular on America's western edge that sprang up during the 1840s gold rush."<sup>67</sup> Within the past two decades, though, the Bay Area underwent dramatic change. Millennial entrepreneurs flooded the area as a consequence of massive increase in the availability of venture capital funding throughout the area.<sup>68</sup> Resultingly, "San Francisco has become the hype- and capital-fuelled [sic] epicentre [sic] of America's technology industry, which has traditionally centred [sic] on the string of suburban cities known as Silicon Valley."<sup>69</sup> To the longstanding inhabitants of San Francisco that have been there for generations, this drastic change to the demographics of the community has "led to a city that some of its residents find unrecognizable."<sup>70</sup> These new "people moving in are more likely to have higher levels of formal education, and they tend to be younger, white and Asian . . . The result is a city that is younger, more educated, [and] richer [by the year.]"<sup>71</sup>

Another prevalent feature of the new Bay Area is the amount of well-funded startup companies in the area. These startup companies play

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<sup>66</sup> Michelle Robertson, *New Census Data: San Francisco Getting Richer, More Crowded*, SF GATE (Dec. 28, 2018), <https://www.sfgate.com/expensive-san-francisco/article/median-income-sf-demographics-rent-price-census-13491703.php>.

<sup>67</sup> Zoe Corbyn, *Is San Francisco Losing Its Soul?*, THE GUARDIAN (Feb. 23, 2014), <https://www.theguardian.com/world/2014/feb/23/is-san-francisco-losing-its-soul>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Dan Kopf, *Quantifying the Changing Face of San Francisco*, PRICEONOMICS (May 5, 2016), <https://priceonomics.com/quantifying-the-changing-face-of-san-francisco/>.

<sup>71</sup> *Id.*

a key role in the purchasing of Warriors' tickets.<sup>72</sup> The abundance of these companies combined with the limited nature of available seating for a Warriors home game made Warriors tickets the hottest commodity in town.<sup>73</sup> Many of these startups are "software as a service" (SAAS) companies whose business models are reliant upon large scale companies contracting for use of their services.<sup>74</sup> In turn, these companies have to cater to the interests of executives at these corporations in order for them to engage with their companies' offering. For the most part, it is more attractive to these executives to receive an offer to attend a Warriors' game than it is to attend that of the San Francisco Giants. The baseball season contains many more home games, and the cost of entry is significantly less expensive.<sup>75</sup> The same is true upon consideration of the San Francisco 49ers. The 49ers have considerably less mystique than that of the Warriors and much higher low-cost ticket availability. The Bay Area also offers numerous high-quality restaurant options; making a dinner at one of them less interesting. These startups in large part are competing with one another. If one of your competitors is offering Warriors' tickets, your hand is essentially forced. The necessity for Bay Area startups in purchasing Warriors' tickets in order to entertain potential clients plays a significant role in the desire for these Warriors' tickets with the opening of the brand-new Chase Center.

*E. Part 5: Prevalence of American Bankruptcy*

In the absence of the occurrence of an unforeseen event such as the recession of the late 2000s, only a minority of membership purchasers will eventually enter bankruptcy during the pendency of the agreement. In 2017, 0.235%, (772,594), of the American population filed for bankruptcy.<sup>76</sup> However, 0.235% taken year over year for a thirty-year period, suddenly becomes a much more prevalent issue. Moreover, in the

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<sup>72</sup> Schoenfeld, *supra* note 4.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *New York Giants Tickets*, SEATGEEK (last visited Feb. 18 2020), <https://seatgeek.com/new-york-giants-tickets>; *see also Golden State Warriors Tickets*, SEATGEEK (last visited Feb. 18 2020), <https://seatgeek.com/golden-state-warriors-tickets>.

<sup>76</sup> *June 2017 Bankruptcy Filings Down 2.8 Percent*, U.S. COURTS (July 21, 2017), <https://www.uscourts.gov/news/2017/07/21/june-2017-bankruptcy-filings-down-28-percent>.

post-recession period of 2011, this number was double than what occurred in 2017 with 1,417,236 bankruptcies.<sup>77</sup>

It is impossible to know how analogous the Warriors' membership purchasers are in terms of likelihood of bankruptcy compared to the American public as a whole. Logically, citizens of the Bay Area who can afford these tickets seemingly have a significantly larger net worth than the typical American and thus a further distance from bankruptcy.<sup>78</sup> Yet, most of these purchasers are likely part of the "new-money" community that made their fortunes off of companies that for now are seen as innovative but are not certain to be viewed in the same light in the future. These individuals also likely possess a lack of experience in maintaining such affluence.<sup>79</sup> It may seem on the surface that due to the wealth in the Bay Area region that bankruptcy statistics would be lesser than the averages within the United States as a whole. However, the validity of this assumption seems unclear in light of these unique characteristics that are tied to the wealth accumulated in the Bay Area.

The identity of these purchasers is unknown as they have not been made public. Yet, it is safe to assume that in addition to individual purchasers that a significant portion of purchasers is the technology-based startup companies themselves. The volatility in solvency becomes further magnified when considering the companies themselves. 25,227 businesses went bankrupt in America in 2017.<sup>80</sup> A corporation signing onto a thirty-year agreement assumes that in thirty years that corporation will still be in existence. By nature, this is a gamble. Some of these member corporations will go bankrupt and have an effect on the Warriors' plans. Factors such as the possibility of another company producing a product that leaves theirs obsolete or failing to live up to ideological promises are a common occurrence in the Silicon Valley. The recent outing of the fraud behind one of the most discussed Silicon Valley companies in Theranos perhaps is the

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<sup>77</sup> *Just the Facts: Consumer Bankruptcy Filings, 2006 -2017*, U.S. COURTS (Mar. 7, 2018), <https://www.uscourts.gov/news/2018/03/07/just-facts-consumer-bankruptcy-filings-2006-2017>.

<sup>78</sup> Leanna Garfield, *Striking maps reveal the huge wealth gap between San Francisco and the rest of the country*, BUSINESS INSIDER (May 25, 2018), <https://www.businessinsider.com/weath-maps-cities-san-francisco-bay-area-2018-3>.

<sup>79</sup> Alejandra Reyes-Velarde, *Here's why San Francisco isn't the best place to work for a startup*, BIZJOURNALS (Aug. 14, 2017), <https://www.bizjournals.com/sanfrancisco/news/2017/08/09/sf-cost-of-living-dissuades-startup-owners.html>.

<sup>80</sup> *June 2017 Bankruptcy Filings Down 2.8 Percent*, *supra* note 76.

best example of this latter scenario.<sup>81</sup> Resultingly from the Theranos scandal having such public significance, the “fake it until you make it” mentality of Silicon Valley startups is subject to more scrutiny now than ever before.

## II. PRECEDENT

In 1924, Chief Justice Taft delivered a landmark Supreme Court bankruptcy decision in *Board of Trade of City of Chicago v. Johnson*.<sup>82</sup> The facts of the case were that one of the members of the Chicago Board of Trade and the corporation—he was President of both—filed for bankruptcy.<sup>83</sup> Under the rules of the Board, a member was subject to the same obligations and discipline as was their corporation.<sup>84</sup> The rules of the Board membership provided that for the purpose of securing payment on obligations, any member of the Board could “prevent the transfer of the membership of the debtor member by filing objection to such transfer with the Directors.”<sup>85</sup> The bankrupt’s now defunct company was “indebted to thirty or more members of the Exchange on its contracts in an aggregate amount of more than \$60,000.”<sup>86</sup> Due to the bankrupt’s failure to make good on his company’s defaulted contracts, other board members that were creditors of the company filed an objection to the transfer.<sup>87</sup> These member creditors ultimately petitioned to the Supreme Court that the bankruptcy trustee’s ability to sell the seat as an asset of the estate was conditioned on the prior payment of the \$60,000 owed to them.<sup>88</sup> As of the bankruptcy filing, the free and clear membership seat was valued at \$10,500.<sup>89</sup>

Upon a filing for bankruptcy, all non-exempt property of the bankrupt becomes property of the estate, which consists of the collective creditors of the now bankrupt.<sup>90</sup> The Court first held that “[t]he

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<sup>81</sup> Tony Echols, *Three Tough Leadership Lessons We Learned From The Theranos Scandal*, FORBES (Apr. 17, 2019), <https://www.forbes.com/sites/forbescoachescouncil/2019/04/17/three-tough-leadership-lessons-we-learned-from-the-theranos-scandal/#24ff83c74cc2>.

<sup>82</sup> *Bd. of Trade v. Johnson*, 264 U.S. 1 (1924).

<sup>83</sup> *Id.* at 7.

<sup>84</sup> *Id.* at 8.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 7.

<sup>87</sup> *Id.* at 8.

<sup>88</sup> *Id.* at 1–2.

<sup>89</sup> *Id.* at 8.

<sup>90</sup> *Id.* at 12–13.

membership is property, in a way attached to the person of the bankrupt and disposable only by his will. It follows him, therefore, into the bankruptcy court . . . ”<sup>91</sup> Thus, “[b]y operation of the bankrupt law, the membership passes, subject to the rules of the exchange, to the trustee, for his disposition of it. The trustee does not become a member, but he does come into control of the bankrupt’s right to dispose of the membership . . . ”<sup>92</sup> The Court ultimately held for these petitioners as it proclaimed that the rights the trustee obtained in the seat were of the same nature as was held by the bankrupt; “[h]e can transfer or sell it, subject to a right of his creditors to prevent his transfer or sale till he settles with them, a right in some respects similar to the typical lien of the common law . . . ”<sup>93</sup> The Court further stated,

The preference of the member creditors is not created after bankruptcy. The lien, if it can be called such, is inherent in the property in its creation, and can be asserted at any time before actual transfer. Indeed, the danger of bankruptcy of the member is perhaps the chief reason, and a legitimate one, for creating the lien.<sup>94</sup>

For the Warrior’s PSL, the importance of this holding is that the trustee would gain no superior rights as had the debtor in terms of the contract, which now became property of the estate.<sup>95</sup> Under this holding, a contract for membership to a board of trade and membership to a program allowing purchase of season tickets are of the same validity in being considered as an asset.<sup>96</sup> The contractual conditions that the asset is subject to though continue to hold as the right to it passes to the bankruptcy trustee.<sup>97</sup>

In 1996, the Ninth Circuit in *In re Harrell* then considered whether a now bankrupt’s season ticket agreement that contained the opportunity to renew season tickets for the Phoenix Suns in following seasons was a property right that passed to the estate as a consequence of the bankruptcy filing.<sup>98</sup> The Ninth Circuit held that “the opportunity to renew season tickets is not a property right under Arizona law.”<sup>99</sup> Thus, the Ninth Circuit

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<sup>91</sup> *Id.* at 12.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 11.

<sup>94</sup> *Id.* at 15.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 13.

<sup>97</sup> *Id.* at 11.

<sup>98</sup> *In re Harrell*, 73 F.3d at 218.

<sup>99</sup> *Id.* at 219.

found the season ticket agreement to be of inconsequential value to the estate.<sup>100</sup> As such, it once more became the property of the bankrupt.<sup>101</sup> The court found of particular relevance that the Suns made “it clear in written notices sent to season ticket holders each year that the ‘opportunity [to renew season tickets] is a privilege granted by the SUNS and *may be withdrawn* in the SUNS’ discretion.”<sup>102</sup> It additionally took into account that the season ticket agreement stated that “while the SUNS will exercise reasonable efforts to maintain renewal privileges, season ticket holders *are not guaranteed this opportunity*.”<sup>103</sup> Moreover, the court considered that “even if the high probability of renewal of season tickets does add to the salable value of a season ticket account, ‘the addition would represent a speculation on chance, not a legal right.’”<sup>104</sup>

In light of the Supreme Court’s ruling in *Board of Trade of City of Chicago v. Johnson*, the Ninth Circuit’s holding in 1996 in *In Re Harrell* seems to have been made in error. Here, the Ninth Circuit committed two distinct flaws in error. First, it seemingly ignored the holding of *Board of Trade of City of Chicago v. Johnson* as well as another Supreme Court holding in the case of *Butner v. United States*.<sup>105</sup> In these cases, the Supreme Court defined the interrelationship between federal bankruptcy law and state law.<sup>106</sup> The Supreme Court established that what comprises the property of the estate is first decided by federal bankruptcy law.<sup>107</sup> Eleven U.S.C. § 541(a)(1) of the Bankruptcy Code further codifies this notion as it provides that on the instance of a bankruptcy filing that a creditors’ estate is automatically created.<sup>108</sup> This estate is comprised of “all legal or equitable interests of the debtor in property as of the commencement of the case.”<sup>109</sup> State law then, as a subsequent matter, addresses the concern of defining the attributes of the property interest in

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<sup>100</sup> *Id.* at 220.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 219.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 220.

<sup>105</sup> *Butner v. United States*, 440 U.S. 48 (1979).

<sup>106</sup> *Id.* (holding that state law, not federal equity law, resolved issues around securities for property interest in rents and profits); *see also Bd. of Trade*, 264 U.S. 1, (holding that state law controls in federal bankruptcy court for property rights).

<sup>107</sup> *Bd. of Trade*, 264 U.S. at 15.

<sup>108</sup> *In re Harrell*, 73 F.3d at 218.

<sup>109</sup> § 541(a)(1).

question.<sup>110</sup> The Supreme Court recognized this procedure in *Butner v. United States* where it stated that the second step is defining the “property interests . . . created and defined by state law.”<sup>111</sup> Moreover, the Ninth Circuit also erred in its analysis of the state law attributes the season ticket agreement entailed. Despite all of these considerations, the Ninth Circuit has not indicated that it believes *In Re Harrell* to be of non-binding precedent.

In regard to the first error made by the Ninth Circuit, a season ticket plan is essentially a membership. By purchasing a season ticket plan offered by a team, a buyer in effect becomes a member of the team’s season ticket program. In *Board of Trade of City of Chicago v. Johnson*, the Supreme Court stated that a “membership is property.”<sup>112</sup> Thus, in *In Re Harrell*, the season tickets should have automatically passed to the trustee upon the debtor’s filing for bankruptcy.<sup>113</sup> At that moment, the trustee, on behalf of the estate, should have become the rightful owner of the season ticket agreement. The trustee resultingly should have gained the opportunity to decide whether it had value as an asset of the estate. The Suns, or alternatively the debtor, should have then been obligated to file a motion to the court if he or she desired the tickets be deemed of inconsequential value. Importantly, either of these parties (and importantly not the trustee) would hold the burden of *proving* that the agreement was of inconsequential value to the estate.<sup>114</sup>

As to the latter error, because contract interpretation is a matter of state law and the Phoenix Suns are located in Arizona, the Ninth Circuit correctly applied Arizona law.<sup>115</sup> Yet, the Ninth Circuit misunderstood the underlying nature of season ticket agreements with sports teams. The Ninth Circuit mistakenly relied on the holding of a distinguishable Arizona Court of Appeals case, where the contracting conditions fastened to the agreement were entirely distinguishable from what was under consideration in *In Re Harrell*.<sup>116</sup> In that case, the court did not recognize the expectation of a lease renewal as an asset because “the underlying land [had been] taken [by condemnation] by the state.”<sup>117</sup> As a reminder, the

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<sup>110</sup> *Butner*, 440 U.S. 48 (1979).

<sup>111</sup> *Id.* at 55.

<sup>112</sup> *Bd. of Trade*, 264 U.S. at 12.

<sup>113</sup> *In re Harrell*, 73 F.3d at 220. (holding that Trustee could not sell the season ticket renewal upon the debtor’s bankruptcy).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 219.

<sup>116</sup> *State ex rel. Miller v. Gannett Outdoor Co.*, P.2d 221 (Ariz. Ct. App. 1990).

<sup>117</sup> *Id.* at 222.



pertinent issue is whether a trustee can recoup value from selling the asset. The Ninth Circuit failed to realize that there is a clear distinction between a season ticket agreement with a sports team and a lease for land that *has already been condemned* by the state. The Ninth Circuit should not have found these two circumstances synonymous. Furthermore, all of the additional cases cited by the Ninth Circuit focus on landlord-tenant relationships, in which the landlords have revocable powers.<sup>118</sup> The legal rights and duties ascribed to landlord-tenant relationships are entirely different from season ticket purchasers and sports team relationships.

The trustee would likely see value in the agreement for the right to specific seats during a Phoenix Suns home game. This is a different scenario than the potential value to be gained from condemned land. The ultimate buyer of the ticket, however, would have to be made aware of the risk that the Suns might not renew. But, it is likely that the market would provide such a buyer with other options that would make it worth the risk that the Suns might, for some reason, not honor the renewal. The court found that the trustee was never able to find such a buyer.<sup>119</sup> It is unclear if the Suns maintained any sort of waitlist for these tickets. Yet, in the current case of the Warriors, it is public information that there is currently a 43,000 person-long waitlist for the Warriors' membership.<sup>120</sup> Thus, there certainly would be value in having priority consideration over the rest of the waitlist.

Lastly, it should be noted that despite the factual similarities arising from the Sixth Circuit's holding in *Reiser v. Dayton Country Club (In Re Magness)*, the case would not apply as persuasive authority here.<sup>121</sup> The Sixth Circuit in *In Re Magness* considered whether a trustee could sell a golf club membership that was conditioned on a non-assignability clause.<sup>122</sup> If the condition could have been removed, the asset would have had considerable value to the estate due to the club's long waitlist.<sup>123</sup> The analysis in the case, though, was based on the court's classification of the agreement as an executory contract.<sup>124</sup> The court found that "the contracts

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<sup>118</sup> *In re Harrell*, 73 F.3d at 220.

<sup>119</sup> *Id.*

<sup>120</sup> *Warriors Have 43,000 Season-Ticket Holders On Wait List For New Arena*, SPORTS BUSINESS DAILY (Mar. 2, 2018), <https://www.sportsbusinessdaily.com/Daily/Issues/2018/03/02/Franchises/Warriors.aspx>.

<sup>121</sup> *In re Magness*, 972 F. 2d 689 (6th Cir. 1992).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

creating the complex relationships among the parties and others are not in any way commercial. They create personal relationships among individuals who play golf, who are waiting to play golf, who eat together, swim and play together. They are personal contracts.”<sup>125</sup> The Sixth Circuit, thus, essentially categorized the contracts as personal service agreements that the club renews to its members who paid their fee.<sup>126</sup> Consequently, the agreement was classified as an executory contract because both parties still had ongoing material obligations.<sup>127</sup>

The Warriors’ only ongoing obligation in their PSL agreement is to pay a refund thirty years in the future.<sup>128</sup> The team does not provide a service beyond allowing a person the *ability* to purchase season tickets.<sup>129</sup> The PSL itself does not commit the Warriors to any further obligation.<sup>130</sup> The purchaser, in addition, still has to affirmatively buy season tickets that would be subject to a separate agreement.<sup>131</sup> Even if the actual season ticket agreement was included in the initial PSL, a court would be unlikely to classify allowing entry to a sporting event as an ongoing obligation that is akin to a personal service agreement. Moreover, the purchaser is not obligated to purchase the tickets every year, but is simply given the opportunity to do so if they so choose.<sup>132</sup> Based on these facts, it is unlikely that a court would classify the Warriors PSL as an ongoing executory contract.

### III. ANALYSIS

As a California-based sports franchise, the Golden State Warriors fall within the scope of the Ninth Circuit. Yet, even if the Ninth Circuit were to maintain that its holding in *In Re Harrell* was sound, in spite of *Chicago Board of Trade & Butner*, the circumstances of the Warriors’ offering is distinguishable from those considered in *In Re Harrell*. Under the Warriors’ membership plan, “Members will receive the right to buy a specific season ticket location for *each year* of the membership term. Memberships will be available on a per seat basis.”<sup>133</sup> In contrast to the

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<sup>125</sup> *Id.* at 696.

<sup>126</sup> *Id.* at 696.

<sup>127</sup> *Id.* at 695.

<sup>128</sup> *Chase Center Membership Program FAQ*, NBA, <https://www.nba.com/element/media/2.0/teamsites/warriors/pdf/chase-center-membership-faqs.pdf> (last visited Feb. 7, 2020).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

facts considered in *In Re Harrell*, the Warriors' agreement suggests that the right to purchase season tickets for the seasons that would follow a bankruptcy filing is *guaranteed*.<sup>134</sup> Furthermore, the fact that the Warriors currently have 43,000 people on their waitlist evidences that there would be significant and identifiable value stemming from the possibility of jumping this line.<sup>135</sup> It is a fair assumption that the Golden State Warriors' legal team confirmed that the conditions in their PSL are valid under California contract law. Since the right for a PSL purchaser to be given the option to purchase Warriors season tickets is *guaranteed* for every season, it is unlikely that a court within the Ninth Circuit would find this property interest to have no value under California property law.<sup>136</sup>

The Warriors' PSL offering also does not contain a firm non-transferability clause that could lead to a court bound by the Ninth Circuit to find that the PSL contains no value for the estate.<sup>137</sup> *Chicago Board of Trade* once more requires that the trustee gain no additional rights than those the debtor possessed under the original agreement.<sup>138</sup> If the debtor was unable to transfer the seat, neither could the trustee. In this scenario, the Warriors would be under no obligation to honor its PSL obligations as to the eventual purchaser from the trustee's sale. The PSL is thus worthless if it becomes owned by anyone but the initial purchaser. The trustee would have no other option than to find this type of PSL to be of inconsequential value to the estate. As a result, the PSL once again returns to the possession of the now bankrupt debtor. This scenario places the Warriors in a non-ideal position. Seemingly, each subsequent year, the Warriors would be at the mercy of having to wait and see whether the bankrupt debtor can find the solvency to pay for the next season before being able to find a replacement customer to recoup value. Importantly, the purchaser who is now bankrupt already fulfilled their obligations under the PSL by paying the initial fee. Accordingly, the bankruptcy purchase faces no risk of absolving the agreement by default.

On the other hand, if the Warriors had no conditions on their transferability clause, then the trustee could seemingly sell the "membership" to any individual who offered the most value for the benefit

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<sup>134</sup> *Id.*

<sup>135</sup> *Warriors Have 43,000 Season-Ticket Holders On Wait List For New Arena*, *supra* note 120.

<sup>136</sup> *Chase Center Membership Program FAQ*, *supra* note 128.

<sup>137</sup> *Id.*

<sup>138</sup> *Bd. of Trade v. Johnson*, 264 U.S. 1.

of the estate. This arguably harms the Warriors in three main ways. First, this does a disservice to their long waitlist, which results in a wave of negative publicity. Second, the estate—*not the Warriors*—would be in the position to recoup all of the available proceeds that could be acquired on the market for the membership sale. Lastly, arena security came into more focus than ever before as a result of a series of unfortunate recent incidents. Of particular note is the recent suicide bombing that occurred at an Ariana Grande concert at the Manchester Arena in 2017, which resulted in the deaths of twenty-two concert goers.<sup>139</sup> To ensure the safety of all game attendees, it is in the best interest of the Warriors to know and control who can enter their arena. This concern is further heightened when certain individuals are in attendance for *every* Warriors home game. Currently, the prevalence of secondary market sales for single game tickets on sites such as *Stubhub*<sup>140</sup> or *SeatGeek*<sup>141</sup> made knowing everyone who is in the building for a game difficult. However, being able to do so is an aspirational goal for sports teams in the future and must be considered in light of the Warriors' PSL containing a thirty-year lifespan.

The Warriors avoided these issues by instead including the provision that they “will control all transfers, or sales of memberships, on their own marketplace” in their PSL agreements.<sup>142</sup> Following Supreme Court precedent<sup>143</sup> and the bankruptcy code,<sup>144</sup> this provision will continue to attach to the Warriors' “membership” in the case it were to become an asset of a bankruptcy estate. The importance of this is that it avoids all of the undesirable issues outlined above as the effect of this provision is that the PSL provides some value as to not be found inconsequential to the estate. Thus, the PSL would not remain subject to the now bankrupt individual. The PSL further provides that, in addition to the sale having to place on the marketplace controlled by the Warriors, “Members will have

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<sup>139</sup> Eoghan Macquire, Alexander Smith, Jason Cumming & Alex Johnson, *Manchester Arena Suicide Bombing: 22 Die at Ariana Grande Concert*, NBC NEWS (May 22, 2017), <https://www.nbcnews.com/news/world/deaths-injuries-confirmed-after-explosions-heard-u-k-concert-featuring-n763286>.

<sup>140</sup> *Golden State Warriors Tickets*, STUBHUB (last visited Feb. 18, 2018), <https://www.stubhub.com/golden-state-warriors-tickets/performer/136/>.

<sup>141</sup> SEATGEEK (last visited Feb. 18 2020), <https://seatgeek.com/>.

<sup>142</sup> Al Saracevic, *Warriors Reveal Long-Term Chase Center Season-Ticket Plan*, S.F. CHRON. (July, 19, 2017), <https://www.sfchronicle.com/sports/article/Warriors-new-offer-Season-tickets-for-30-years-11300137.php>.

<sup>143</sup> *Bd. of Trade*, 264 U.S. 1.

<sup>144</sup> 11 U.S.C. § 541(a)(1) (2014).

the opportunity to sell their membership to a third party, for an amount not to exceed their initial investment.”<sup>145</sup>

Importantly, though, there is no limitation to what price the Warriors could receive from this sale. The market dictates this. A waitlist of 43,000 suggests that the current price would largely exceed the initial. By contract, all value above the initial price is for the sole enjoyment of the Warriors organization. They ensured that as each individual or corporation, startup or otherwise, enters into bankruptcy liquidation their membership no longer applies to an insolvent, will be sold to a person of their choice and at a value that they receive the greatest benefit. The occurrence of the number of purchaser bankruptcy filings will not be insignificant over a thirty-year lifespan.

The Warriors, in effect, presented an opportunity for subsequent NBA teams to now deploy their own future PSL offerings. However, the amount of leverage each team may have in contracting favorable terms differs based on the surrounding circumstances. As addressed in the background portion of this paper, the Warriors enjoy a number of favorable factors that place them in a position of significant leverage in the contracting process. The Warriors were in a position that allowed them to contract for complete control over the sale or transfer of one of these memberships from the outset of the agreement. Once more, the waitlist contains 43,000 potential purchasers. For the Warriors, these provisions are not triggered on the occurrence of any event. They come into effect as soon as the PSL is enforceable onto the parties.

Future small-market teams implementing a PSL likely will be unable to enjoy the advantages the Bay Area provides. There are not many locations that contain such wealth and scale of well-financed corporations nearby. These teams likely would find themselves unsuccessful in implementing such strenuous provisions onto their purchasers. It may also be of importance as to what the PSL is funding. For example, there may be significant excitement in the community that results in increased demand for an expansion team that proposes to enter a smaller market for the first time, as evidenced by the events in Charlotte.<sup>146</sup> The effect of this may be that the organization has comparable leverage to the Warriors in order implement similar terms in a licensing agreement that guarantees a seat for a number of years. In most instances that a PSL will be implemented though organizations will consider an *already existing* team in a market

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<sup>145</sup> *Chase Center Membership Program FAQ*, *supra* note 128.

<sup>146</sup> Greenberg & Galloway, *supra* note 3.

proposing a PSL for the purpose of helping fund construction of a new arena. In a small market, the leverage equation would likely shift in the opposite direction.

The Warriors left their previous home of the less affluent Oakland to move across the bay in large part because the demographics of their new location in San Francisco allowed them to price their PSL to a level at which they could rely on private financing.<sup>147</sup> Resultingly, they were for the most part able to avoid the outcry that often occurs when a team only pays a small portion for the construction of a new stadium while leaving taxpayers to foot the majority of the bill. The Warriors' ability to charge such a high price in their PSL is in addition to these subsequent conditions they included in the agreement that are the subject of this article.<sup>148</sup> This additional context speaks to the magnitude of the leverage that the Warriors enjoy.

To almost every other NBA team, the idea of making fans pay a substantial fee for the right to be able to buy tickets is substantially outside the scope of reason. Their PSL offerings almost assuredly need to account for the actual tickets before the subsequent conditions of the agreement are even considered. For many NBA cities, the different options such as season tickets to the cities other sports teams are comparable in terms of value to what the NBA team offers. Unlike the Warriors, such a need for these tickets for some individuals and corporations simply does not exist in other cities. Most purchasers, especially corporations, will also likely retain an attorney to go over the agreement before paying what would be a large sum to them. Some level of negotiation and red-lining will likely take place between these potential purchasers and the team. The Warriors seemingly did not have to face this. The likelihood of the NBA team being able to hold onto these provisions is not very high. However, these teams should take note from the Warriors and implement these provisions with a trigger that bears no consequence onto the purchaser but would for the team.

In sum, a classification can be made as to three levels for leverage future sports teams have for what terms and conditions they place on a successful PSL offering. The first and highest level is for teams that enjoy conditions similar to the Warriors. The next level is for teams that enjoy similar leverage to the Warriors due to the specific circumstances

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<sup>147</sup> Patrick Murray, *Just How Lucrative Will the Chase Center Be for the Warriors?*, FORBES (Sept. 9, 2018, 2:00 PM), <https://www.forbes.com/sites/patrickmurray/2018/09/09/just-how-lucrative-will-the-chase-center-be-for-the-warriors/#53b634102b29>.

<sup>148</sup> *Id.*

surrounding the PSL offering. The most likely scenario here would be an expansion team entering a new market. The third and most prevalent level concerns teams that are in a position of having considerably less leverage than the Warriors had for their PSL offering.

#### IV. RECOMMENDATION FOR FUTURE NBA FRANCHISES

##### IMPLEMENTING A PSL FINANCING

The lesson is clear for teams that find themselves in the position of being in the first or second level in terms of the leverage they have for their PSL offering. These teams should mirror their offerings by the closest proximity possible to those of the provisions discussed in this article implemented in the Warriors offering. The best possible scenario for all teams is for these provisions to be given full effect from the outset of their relationship with the PSL purchaser coming into existence. For the majority of teams, however, the trigger that should be added onto these provisions in future PSLs is as follows. Importantly, the result for these teams would be avoiding the undesirable circumstance of the Phoenix Suns arising from *In re Harrel*.<sup>149</sup>

As to what this specific trigger could be, § 541(c) of the bankruptcy code bears large significance.<sup>150</sup> This provision of the bankruptcy code makes any contractual provision unenforceable upon a bankruptcy filing that is:

[C]onditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that affects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.<sup>151</sup>

The added trigger thus must fall outside of the scope of conditions 541(c) and deemed as ineffective upon a bankruptcy filing and result in being stripped as applying to the from PSL. At the same time, however, the

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<sup>149</sup> *In re Harrell*, 73 F.3d at 218.

<sup>150</sup> 11 U.S.C. § 541(c).

<sup>151</sup> §541(c)(1)(B).

trigger should also take into account how purchasers and their attorneys would react when presented with a sales pitch.

Upon consideration of all the various aspects, future teams in this latter category should implement the following trigger onto the new provisions introduced in the Warriors PSL: *“purchaser’s creditors have gained legal entitlement by a judicial proceeding to sell the seat license subject to this agreement.”*

As to the 541(c) issue, this provision is outside of its scope because it is a trigger that occurs often outside of bankruptcy and insolvency. Notably, it would trigger in the event of a non-bankruptcy foreclosure sale over the PSL. Secured transactions undergo such sales in significant frequency and often do not concern an insolvent party. In fact, it would occur probably more often here than it would in bankruptcy. Thus, 541(c) should not be of issue.

Also, purchasers should have no issue with this trigger as the occurrence of said trigger taking place—the purchaser likely already lost their rights to the PSL anyway. The purchaser who defaulted with the PSL as collateral likely would be unable to redeem and prevent a foreclosure sale. Season tickets to a sports team are also likely not of much concern in the face of bankruptcy for the filer. Thus, teams should not face any roadblocks in implementing this suggestion in their future PSL offerings. It is always best to be safe than sorry as evidenced by the crippling recession of the late 2000s. Teams should take advantage of the growing interest in the NBA in their financing schemes to the level they can. Including this provision in a future PSL can only serve as a benefit to a team. Bankruptcy courts are courts of equity; higher courts are often not as experienced in bankruptcy law and may be subject to manipulation by the parties. NBA teams should protect themselves by specifically contracting for these outcomes in the event of a future purchaser’s bankruptcy liquidation.

In conclusion, future NBA teams should follow the Warriors’ lead and implement marketplace and sales restrictions to the extent their leverage over purchasers allows in future PSL offerings. At the very least, every team should implement these provisions with the proposed trigger above to address concerns arising from a future purchaser’s filing for bankruptcy liquidation.



