

PUBLICATIONS

Third Circuit: Pre-Bankruptcy Commercial Lease Termination Not Fraudulent Transfer

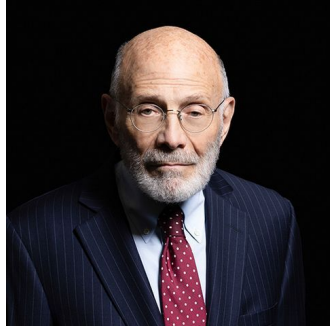
Commercial Leasing Law & Strategy

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In his recent article for *Commercial Leasing Law & Strategy* titled “Third Circuit: Pre-Bankruptcy Commercial Lease Termination Not Fraudulent Transfer,” Michael L. Cook discusses pre-bankruptcy commercial lease termination in cases *In re Pazzo Pazzo Inc.* and *In re Great Lakes Quick Lube L.P.*

Is an insolvent debtor’s pre-bankruptcy termination of a commercial lease a fraudulent transfer? The Third Circuit said no when it held that a lessor’s pre-bankruptcy termination of the debtors’ lease and purchase option “was not a transfer under Bankruptcy Code §548(a)(1)(B).” *In re Pazzo Pazzo Inc.*, 2022 WL 17690158 (3d Cir. Dec. 15, 2022). But the Seventh Circuit held that a Chapter 11 debtor’s pre-bankruptcy “surrender of [two] ... leases to [its landlord] could be regarded as a preferential [or fraudulent] transfer.” *In re Great Lakes Quick Lube L.P.*, 816 F.3d 482 (7th Cir. 2016). Reversing the bankruptcy court’s holding that “the terminations were [not] transfers, ... preferential or fraudulent,” the Seventh Circuit stressed that the debtor’s termination of its “interest in property — ... the leaseholds — which it parted with by transferring that interest to [the landlord],” fell within the broad definition of “transfer” in the Bankruptcy Code (Code). *Id.* at 485. A close reading of both *Pazzo* and *Great Lakes*, however, shows that the circuits are not split, and that the reasoning of both courts can be reconciled on their facts.

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