

**PUBLICATIONS**

## Key Win Likely for Commercial Shopping Center Lessor in Second Circuit

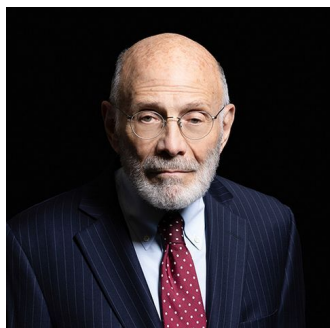
**December 2023**

In his latest article for *The Bankruptcy Strategist*, titled “Key Win Likely for Commercial Shopping Center Lessor in Second Circuit,” Schulte Roth & Zabel of counsel Michael L. Cook discusses the aftermath of the US Supreme Court’s earlier rejection of the Second Circuit’s jurisdictional holding in *In re Sears Holding Corp.*

The US Court of Appeals for the Second Circuit, on remand from the Supreme Court, further remanded to the district court the key issue of whether the Chapter 11 debtor gave “adequate assurance of future performance of” a commercial real property shopping center lease “as required by [Bankruptcy Code] §365(b)(3)(A),” after the debtor’s assignment of its lease to Transform Holdco LLC (T). *In re Sears Holding Corp.*, 2023 WL 7294833 (2d Cir. Nov. 6, 2023). MOAC Mall Holdings LLC (M), the shopping center lessor, had objected to the lease assignment because the assignee had not met the Code’s financial condition requirement; lost in the bankruptcy court; initially prevailed in the district court on appeal; but lost again in that court and in the Court of Appeals on jurisdictional grounds. The Supreme Court, however, rejected the Second Circuit’s jurisdictional holding and remanded for a review of the merits of M’s appeal. *MOAC Holdings LLC v. Transform Holdco LLC*, 143 S. Ct. 927, 933 (2023) (“...§363(m) is not a jurisdictional provision.”). Based on the Second Circuit’s analysis, M will likely prevail in the lower court, giving commercial lessors increased leverage in reorganization cases.

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## Related People



**Michael  
Cook**

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## Attachments

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