PUBLICATIONS

5th Circuit Affirms Secured Lender Surcharge

January 21, 2016

A secured lender had to "pay the [encumbered] property's maintenance expenses incurred while the [bankruptcy] trustee was trying to sell the property," held the U.S. Court of Appeals for the Fifth Circuit on Dec. 29, 2015. *In re Domistyle Inc.*, 2015 U.S. App. LEXIS 22787, at *1-2 (5th Cir. Dec. 29, 2015). Affirming the bankruptcy court's surcharging the lender's collateral, the Fifth Circuit acknowledged the "general rule … that administrative expenses cannot be satisfied out of collateral property 'but must be borne out of the unencumbered assets of the estate.'" *Id.* at *6, quoting 4 Collier, *Bankruptcy* ¶ 506.05, at 506-117 (16th ed. 2015). In this article, partner Michael L. Cook discusses the Fifth Circuit's decision, which confirms the practical difficulty that a trustee ordinarily has in surcharging a secured lender for the expense of preserving its collateral.

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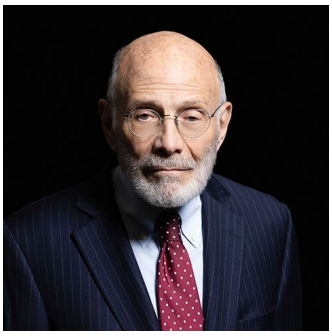

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