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5th Circuit Affirms Secured Lender Surcharge

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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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