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In a Landlord Bankruptcy Sale, What Happens to the Lease?

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The U.S. Court of Appeals for the Third Circuit held on Nov. 30, 2018 that “Section 365(h) of the Bankruptcy Code and the doctrine of equitable recoupment entitled [a commercial tenant] to continue paying [reduced] rent ... even after its landlord filed for bankruptcy and rejected the [l]ease,” in *In re Revel AC Inc.* Affirming the lower courts, the Third Circuit explained that “[n]othing in the agreements or court orders governing [a third party’s] purchase of the [debtor’s] casino in bankruptcy changes this result.” In this article, of counsel Michael Cook discusses the *Revel* decision and the effect of a landlord debtor’s bankruptcy upon tenants.

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