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Redeeming Repossession

Business Credit

February 2020

A lender repossesses the equipment of its business borrower after it defaults on its secured loan agreement. Because the borrower needs the equipment to run its business, it then files a Chapter 11 petition and promptly asks lender to return the equipment. The lender refuses because the equipment secures the defaulted loan. Depending on where the debtor sought bankruptcy relief (e.g., New York or New Jersey), the lender may be subject to sanctions for holding on to the equipment.

The debtor (or a bankruptcy trustee) will then ordinarily seek the prompt turnover of the repossessed equipment in court. The debtor will argue the equipment needs to continue operating because the debtor owns it. When the lender is secured, though, the court will have to provide lender with "adequate protection" (e.g., cash payments, additional collateral) before ordering the turnover of the equipment. That is the usual result. But what happens when the debtor also seeks sanctions for lender's initial refusal to turn over the equipment? In this article, of counsel Michael Cook analyzes the split among the courts in the interpretation of the turnover provision in the Bankruptcy Code.

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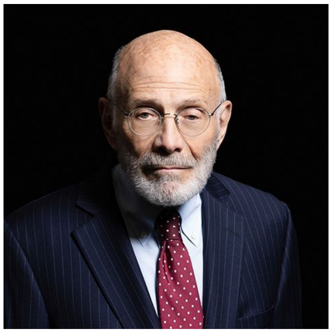

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