PUBLICATIONS

Fifth Circuit Ruling Gives Commercial Lessees Likely Protection in Bankruptcy Court Free and Clear Asset Sales

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A bankruptcy court gave "unnecessary and likely incorrect" reasoning to support its "excessively broad proposition that sales free and clear under [Bankruptcy Code ("Code")] Section 363 override, and essentially render nugatory, the critical lessee protections against a debtor-lessor under [Code] 365(h)," said the U.S. Court of Appeals for the Fifth Circuit on Feb. 16, 2022. In re Royal Bistro, LLC, 2022 WL 499938, *1-*2 (5th Cir. Feb. 16, 2022). The court still denied the lessees' "motion for a writ of mandamus" for a "stay pending appeal" from a bankruptcy court order authorizing the trustee's sale of "the debtor's real property...free and clear" of the lessees' interests. Id. at *1. In essence, though, the Fifth Circuit signaled that it would not approve in later cases a bankruptcy court asset sale of real property that summarily cuts off the rights of the debtor's lessees.

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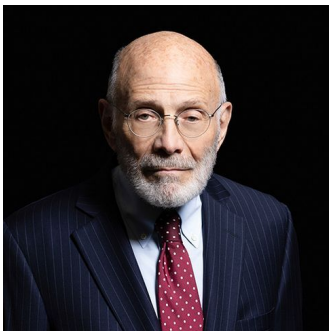

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