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Treble Damages Not Discharged

A New Jersey landlord was subject to treble damages for rent overcharges. He filed a bankruptcy petition seeking to discharge the obligation. Tenants objected to discharge of those debts, claiming they arose from payments obtained by actual fraud.

The bankruptcy statute excepts from discharge “any debt ... to the extent obtained by ... false pretenses, a false representation, or actual fraud.” The landlord argued that only the amount of the actual rent overcharge could not be discharged in bankruptcy. The Supreme Court disagreed, holding that the entire treble damage award would not be discharged.

The Court’s ruling would likely apply to treble damages in anti-trust or RICO cases as well.

Cohen v. De La Cruz, 66 U.S.L.W. 4209 (U.S. March 24, 1998).

Late Payment Is Ordinary

Under the federal bankruptcy statute, payments which a debtor makes to creditors within 90 days prior to the filing of a bankruptcy petition may be recovered as preferential. An exception to recoverability occurs if the payment was made in the ordinary course of business. A federal appeals court decided last year that a creditor’s extension of time for payment could help bring late payments within the ordinary course of business.

The creditor originally required payment within 30 days. Because the debtor always paid late, the creditor lengthened the payment terms to 60 days. Payments continued to be late, but not as late. The appeals court determined that this pattern of late payment was the ordinary course of business between the parties and, therefore, late payments could not be recovered.

Brown v. Shell Canada Ltd. (In re Tennessee Chemical Co.), 112 F.3d 234 (6th Cir. 1997).

Post-Bankruptcy Rent Reduced

Two months prior to filing its bankruptcy petition, an Arkansas debtor ceased operating its restaurant, but left its equipment on the premises. After filing the bankruptcy petition, because the debtor took no action to assume its lease within the first 60 days, the lease was rejected automatically by operation of law. However, the debtor continued to store its equipment on the premises for several more months until the landlord found another tenant. The landlord then claimed the unpaid rent for the entire post-bankruptcy period as an administrative expense of the bankruptcy case.

The bankruptcy court awarded the full amount of the rent during the initial 60-day period. However, the court reasoned that once the lease was rejected by operation of law, the landlord could not recover the full rent, but only the benefit to the debtor’s estate -- in this case, the cost of storing the equipment.

In re International Ventures, Inc., 215 B.R. 726 (Bankr. E.D. Ark. 1997).



This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation.

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