

DEBTOR/CREDITOR

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Landlord Returns Rent Payment

A bankruptcy court may reverse certain transactions of the debtor that disadvantaged creditors, such as transfers for which the debtor did not receive reasonably equivalent value. In so doing, the court is not bound to follow the characterization that the parties have given to a transfer.

In a recent example, a Michigan debtor entered into a warehouse lease which contained a \$100,000 purchase option at the conclusion of the nine-year term. The court found that the rental rate during the nine years included \$300,000 in excess of the market rental rate, which was additional payment for purchase of the warehouse. The court further determined that the debtor's chances of making all the payments and exercising the purchase option was so low as to be illusory. Because the debtor received no equivalent value in exchange for the portion of the \$300,000 overcharges actually paid, the landlord was required to return that premium to the bankruptcy trustee.

Word Investments, Inc. v. Bruinsma (In re TML, Inc.), 291 B.R. 400 (Bankr.W.D. Mich. 2003).

Tax Penalty Discharged

The federal bankruptcy statute provides a list of tax obligations which may not be discharged in a bankruptcy case. Included on this list are those taxes which were not assessed prior to the commencement of the bankruptcy case but are assessable after commencement of the case. This might include taxes relating to prior years for which returns were not filed or for which amendments to the return and reassessment of the tax is required.

Due to ambiguity in the language of the federal statute, courts are divided as to whether the penalties associated with a non-dischargeable tax are also non-dischargeable. Earlier this year, an Ohio bankruptcy court decided that the plain

meaning of the statute permitted the discharge of the penalties (and the interest on the penalties), even though the tax itself could not be discharged. The penalties were substantial, as they had been accruing since the 1992, 1993 and 1994 tax years.

Miller v. IRS (In re Miller), 300 B.R. 422 (Bankr. N.D. Ohio 2003).

Rent Claim Capped

A Chapter 11 debtor may reject a real property lease. In such a case, the landlord has a claim for the damages resulting from the breach of the lease. These include damages for future rent following surrender of the premises. However, the bankruptcy statute limits the landlord's claim for future rent to one year's rent under the lease.

Recently, a Maryland bankruptcy judge was asked to determine whether the one-year cap on the future rent claim was the first twelve months after surrender or the average annual rent for the remaining term of the lease. Because the rent increased each year, the average annual rent was greater than the first twelve month's rent.

Based on its view of the normal meaning of the words in the statute and on the language of the prior bankruptcy statute, the court decided that the cap is based on the twelve months immediately following surrender of the premises.

USinternetworking, Inc., 291 B.R. 378 (Bankr. D.Md. 2003).

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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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