Joe Baldiga quoted in MA Lawyers Weekly, “Tenant may withhold post-rejection rent from landlord/debtor”

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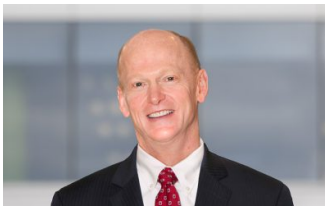
A commercial tenant that allegedly suffered business losses from a faulty roof but continued to occupy the property after the landlord filed for Chapter 11 bankruptcy and rejected the lease may recoup any such damages against rent still coming due under the lease, a U.S. Bankruptcy Court judge has decided.

The tenant, Middlesex Integrative Medicine, a cannabis company that operates an 80,000-square-foot marijuana “dispensary grow” facility on Leominster property owned by debtor-in-possession Mohawk Drive Corp., sought to evict MIM — which is currently in receivership — for non-payment of rent.

Meanwhile, MIM sued Mohawk Drive for failing to keep the roof in good repair, which allegedly resulted in water infiltration that destroyed its crop, causing damage far in excess of the approximately $200,000 in unpaid rent and late fees.

After Mohawk Drive filed for bankruptcy and rejected the lease, MIM argued that §365(h)(1)(A)(ii) of the U.S. Bankruptcy Code permits a tenant to offset, or recoup, alleged pre-petition, pre-rejection damages such as those it alleged here from post-rejection rent reserved under the lease. That section of the code allows a tenant to occupy the premises for the rest of a lease term after a debtor-lessor has rejected it.

Westborough bankruptcy lawyer **Joseph H. Baldiga** found it notable that Panos treated the debtor’s pre-petition obligation to maintain the roof and the tenant’s post-petition obligation to keep paying rent as arising from one transaction — the lease — since federal common law and Massachusetts law generally do not recognize equitable recoupment when the parties’ respective claims arise from separate transactions.



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“Normally, a bankruptcy petition date is a hard cutoff of pre-petition obligations and post-petition obligations,” **Baldiga** said. “But by finding those could be treated as one transaction, it really does come down to a matter of fairness. How can you saddle the tenant with post-petition rent but not take into account the damages caused by the landlord’s pre-petition failure to perform?”

To read the article in its entirety, visit https://masslawyersweekly.com/2024/12/27/tenant-may-withhold-post-rejection-rent-from-landlord-debtor/ (subscription required)

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