

PUBLICATIONS

Appellate Court Provides Practical Guide to Commercial Landlord's Bankruptcy Damage Claims

The Bankruptcy Strategist

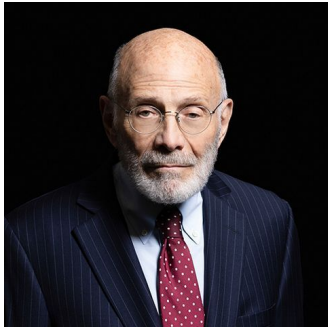
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In his latest article for *The Bankruptcy Strategist* titled, "Appellate Court Provides Practical Guide to Commercial Landlord's Bankruptcy Damage Claims," Schulte Roth & Zabel of counsel Michael L. Cook discusses the Southern District of New York's decision in *In re Cortlandt Liquidating LLC*.

The District Court affirmed a bankruptcy court's holding that the statutory cap on a landlord's damage claim [*i.e.*, Bankruptcy Code § 502(b)(6)] "applies to [its] claim against a [Chapter 11] *debtor-guarantor*." *In re Cortlandt Liquidating LLC*, 2024 WL 1301429, *3 (S.D.N.Y. Mar. 26, 2024) (emphasis added). Although the tenant-affiliate of the debtor-guarantor was not a Chapter 11 debtor, it had vacated the leased premises and delivered the keys to the lessor one month after its affiliates (including the guarantor) filed their Chapter 11 petitions. The court also held that the non-debtor tenant had "terminated" the lease "for purposes of" the statutory damages cap; the cap should also be calculated in accordance with the "time approach", not the "rent approach"; the proceeds of a letter of credit security deposit taken from the debtor-guarantor's "assets" had been properly applied to reduce the lessor's capped claim; and that "cleanup costs" related to the non-debtor tenant's premises were "subject to" the statutory damages cap. The court's decision, supported by a well-reasoned bankruptcy court decision, 648 B.R. 137 (Bankr. S.D.N.Y. 2023) (Wiles, B.J.), provides a helpful overview of the most recent law governing landlords' damage claims in bankruptcy cases.

Read more here.

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