

DOW

20.11

Close:
12,871.75**S&P 500**

1.47

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1,396.37**THE MARKETS****NASDAQ**

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2,424.40

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THE RECORD B-3

ASK A LAWYER**Landlord has some options in Chapter 11**

Q. My commercial tenant filed a Chapter 11 bankruptcy petition and owes pre-petition and post-petition rent. What are my rights?

The filing of a bankruptcy petition invokes an "automatic stay" of actions to collect a claim against the debtor/tenant, and prohibits a landlord from commencing or continuing eviction and/or collection proceedings without first obtaining a bankruptcy court order vacating the automatic stay.

A landlord must demonstrate "cause" for vacating the automatic stay. Bankruptcy courts determine whether "cause" exists on a case-by-case basis, considering both pre-petition and post-petition conduct. For example, bankruptcy courts have found "cause" where the debtor/tenant filed its bankruptcy petition in bad faith; where the debtor/tenant failed to properly ensure and maintain the leased premises, thereby diminishing the value of the landlord's collateral; and where a specialized tribunal is better equipped to adjudicate stayed litigation.

If the bankruptcy court denies the landlord's motion to vacate the automatic stay, the landlord may have other remedies. The debtor/tenant must obtain bankruptcy court approval to either assume or reject the lease. In order to assume the lease, all amounts owed to the landlord must be paid and the debtor/tenant also must convince the court of its ability to meet its continuing obligations under the lease. A commercial tenant has only 210 days from the bankruptcy filing within which to assume the lease, unless it obtains the landlord's written consent to

an extension of the deadline.

If the debtor/tenant rejects the lease, the rejection constitutes a pre-petition breach. In such a case, the landlord can seek rejection damages, which is a general unsecured claim, limited to the greater of one year's rent, or 15 percent (not to exceed three years) of the remaining term of the lease. The landlord has a separate general unsecured claim for any actual rent arrears as of the petition date. Further, a landlord may be entitled to an administrative claim for the contractual rent incurred from the filing of the Chapter 11 case through the rejection date.

To protect its rights, a landlord should consider retaining counsel to file a proof of claim against the debtor/tenant's bankruptcy estate for all pre-petition amounts owed and, to the extent post-petition rent is not paid, seek appropriate recourse from the bankruptcy court. Depending on the language of the lease, the landlord may be able to recover attorney's fees in connection with its efforts to enforce its rights post-petition.

Ilissa Churgin Hook is an attorney in the bankruptcy and corporate restructuring department of Cole, Schotz, Meisel, Forman & Leonard P.A., the largest law firm in Bergen County. She can be reached at ihook@coleschotz.com. This is not intended to be legal advice, which can be given only after the attorney understands the facts of a particular matter and the goals of a client.

Do you have a business question for a lawyer? Send it to business-news@northjersey.com.