Shopping for Solutions During a Pandemic: Retail Bankruptcy in the COVID-19 Era

39th Annual Jay L. Westbrook Bankruptcy Conference November 5–6, 2020

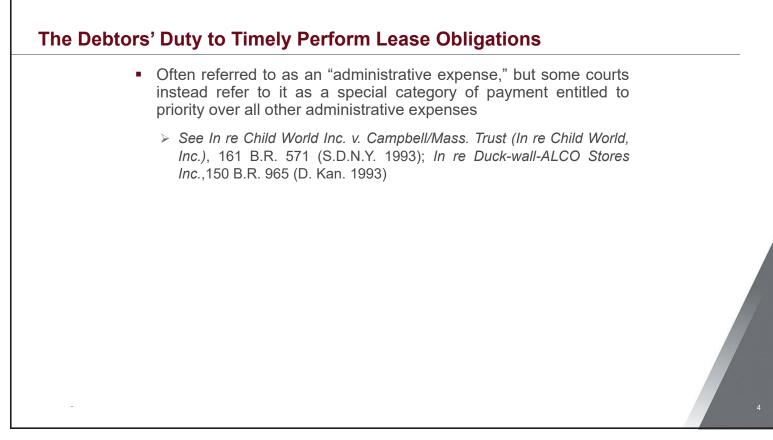
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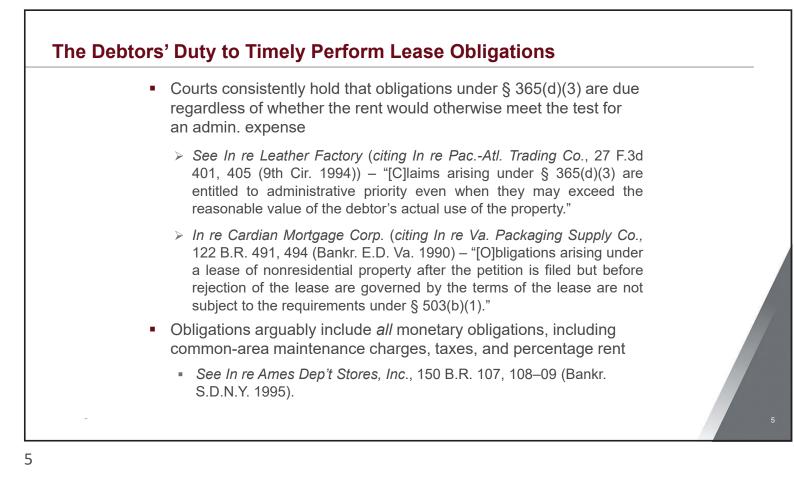
RoadMap

- The Debtors' Duty to Timely Perform Lease Obligations
- Section 365(d)(3) Pre-COVID
- _ Section 365(d)(3) During COVID
- The Debtors' Duty to Timely Assume/Reject
- Pre-COVID Challenges with § 365(d)(4)
- COVID Challenges with § 365(d)(4)
- What's Next?



| • | Prior to 1984: landlords had no explicit protection for rent payments and instead were left to assert administrative expense claims under § 503(b)(1) or obtain relief from the stay to evict |
|---|---|
| • | After 1984: The trustee shall timely perform all the obligations of the debtor, except those specified in § 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding § 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title. |
| | 11 U.S.C. § 365(d)(3). |
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Section 365(d)(3) Pre-COVID

- § 365(d)(3) provides that "[t]he court may extend, for cause, the time for performance of [nonresidential real property lease obligations] that arises within 60 days after the order for relief, but the time for performance shall not be extended beyond such 60day period."
- The legislative history provides that, "[t]he 60-day grace period is indented to give the trustee time to determine what lease obligations the debtor has and to locate the cash to make the required payments in exceptionally large or complicated cases."
 - In re Mr. Gatti's, Inc., 164 B.R. 929 (Bankr. W.D. Tex. 1994) (internal citation omitted).

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