

MARKS & WEINBERG, P.C.

In re Wilmington Hospitality LLC 320 B.R. 73 (Bankr. E.D. Pa. 2005)

In this case, Lessee leased kitchen equipment from Lessor. Lessee made no payments and Lessor was granted relief from the automatic stay. For reasons which are unclear, the hotel where the equipment was located was transferred to Lessee's secured lender. That lender then had the option of either purchasing the equipment from Lessor or requesting that Lessor remove it. The secured lender divided to notify Lessor that it desired removal of the equipment, but when Lessor attempted, it was blocked.

Without going into much detail, the end result of this situation was that the equipment was sold for less than what Lessee owed Lessor. When Lessor sought to receive the deficiency from Lessee, Lessee countered that the leased equipment was not disposed of in a commercially reasonable manner and that Lessor failed to provide the required Article 9 notices of disposition.

The court assumed that Article 9 applied to the transaction (which would not be the case if the underlying lease were a true lease rather than a secured transaction) but held that, nevertheless, failure to provide such notice does not necessarily absolve Lessee from its obligations with respect to any deficiency. The holding õhammered homeö the point that the õrebuttable presumption ruleö (which was the law of New Jersey prior to enactment of Revised Article 9) was essentially codified in Revised Article 9 and remained



applicable. In essence, a failure to provide proper notices of disposition only creates a rebuttable presumption that the collateral was worth the value of the debt. The secured party then bears the burden of proving otherwise. The court then held that, in this case, Lessor had rebutted the presumption effectively. As such, the deficiency claim was allowed.

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