Rite Aid Bankruptcy Judge Issues Opinion on Important Post-Petition Landlord Lease Issues

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Categories:

Bankruptcy

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Overview

In a significant ruling for commercial landlords, dated November 3, 2025, the United States Bankruptcy Court for the District of New Jersey denied three motions filed by HVP2 LLC, the landlord of a rejected Rite Aid lease in Troy, New York (New Rite Aid, LLC, Case No. 25-14861 (MBK)). The motions sought administrative rent, adequate protection payments, late fees, attorney fees, and conversion of the case to Chapter 7. Judge Michael B. Kaplan found that the debtor had satisfied its obligations and properly surrendered the premises, denying all of the landlord's motions.

Key Takeaways for Landlords

- **Stub Rent Paid, But Timing Not Grounds for Late Fees:** The court confirmed that "stub rent" (rent due between the petition date and first post-petition payment) qualifies as an administrative expense but emphasized that the Bankruptcy Code does not require payment by a specific date; however, it must be addressed prior to plan confirmation. Relatedly, late fees for May 2025 "stub rent" were denied since the Code imposes no deadline and plan confirmation had not occurred.
- **Common Area Maintenance (CAM) Charges Dismissed as Untimely:** HVP2 raised CAM charges only in a supplemental filing, which the court refused to consider. Even if timely, the pleadings lacked sufficient support to justify payment.
- **Lease Surrender Deemed Proper:** Despite HVP2's claim that Rite Aid failed to turn over keys and alarm codes, the court found that the debtor complied with the Rejection Procedures Order, which permitted the debtor to notify the affected landlord in writing, with email being sufficient, that the keys and security codes, if any, are not available, but that the landlord may rekey the leased premises. The lease was

deemed surrendered as of July 31, 2025, nullifying claims for August rent and related late fees.

- **Attorney Fees Denied:** Although the lease contained a fee-shifting provision, the court held that HVP2 was not a “prevailing party” and failed to provide detailed invoices or demonstrate enforcement of a default. The court reiterated that challenging a debtor’s rights under the Bankruptcy Code does not entitle a landlord to fee reimbursement.

Practical Implications

This decision reinforces several important principles for landlords in New Jersey bankruptcy cases:

- Stub rent is an administrative claim, but timing of payment is unclear so long as it is addressed before plan confirmation.
- Timely and well-supported filings are essential – courts will not entertain new claims raised late or without documentation.
- Lease rejection procedures must be followed precisely, but landlords cannot demand more than what the court-approved process requires.
- Fee-shifting clauses in leases are enforceable only when landlords prevail in enforcing lease defaults, not when opposing the debtor’s pursuit of its rights under the Bankruptcy Code.

What Landlords Should Do

- Demand stub rent early in the case and be prepared to negotiate timing of the payment.
- Review lease terms and ensure any claims for rent, CAM, or fees are clearly supported and timely filed.
- Understand the scope of lease rejection procedures and avoid overreaching demands.
- Consult bankruptcy counsel early to preserve rights and avoid procedural pitfalls.

For questions about this decision or its impact on your lease portfolio, please contact your legal advisor.