

Tenth District Court of Appeals examines receiver's right to reject a 50-year old billboard lease.

BACKGROUND Basil Western LLC entered into a 50-year lease with Who Land, LLC. Basil Western, the lessee, then subleased the property for rental income. But Who Land went into receivership. In order to preserve Who Land's assets, the receiver asked the court to cancel its lease with Basil Western. The court trial agreed, finding "that the purported lease does not offer any benefit to the receivership and in fact may pose a liability." We filed an appeal on behalf of Basil Western. The Tenth District Court of Appeals reversed.

HOLDING At the outset, the Court of Appeals recognized the general principle that a receiver may reject a lease. The issue for the court was whether there were any limitations on the receiver's power to do so. The Court said yes; in fact, there were two.

The first limitation was that the receiver had to provide sufficient evidence for its claims that the lease did not benefit and/or harmed Who Land. Ohio law had never addressed the issue of whether evidence on these points was necessary, and if so, how much. In other words, were the receiver's own allegations enough? No. The Court of Appeals made clear that at a minimum, the receiver must give the court evidence to show why it wanted to cancel the lease.

More importantly, for the first time, Ohio adopted the rule that a receiver can only reject an executory lease as a matter of law. Before this decision, receivers had the power to reject any lease. Not any more. Accordingly, if one party has performed most of its obligations under a lease, a receiver cannot reject it. The reason is fairness. It would be unfair to let one party get most of the benefits from a lease, and then reject it before it has to perform its own obligations.

In sum, two new rules controlling real property leases under Ohio receivership law were created, Basil Western could keep its lease (and sublease), for the remaining 45 years of its term. Havens Limited and its affiliate real estate companies have served the title insurance and real estate industry for the past 25 years. A full copy of the decision Norris v. Dudley (Dec. 13, 2007), slip copy, 2007 WL 4340263 (10th Dist. Ct. App.) can be found on our web site. See Havenslimited.com "On Tract" or you can contact Jim Havens – Jhavens@havenslimited.com, 141 East Town Street, Suite 200, Columbus, Ohio 43215. Phone (614) 228-6888.