

Lobstermania!

3rd Annual YLC Lobster Bake an overwhelming success!

Warm and muggy air with overcast skies and the threat of damaging storms greeted nearly 200 guests for the Young Lawyer Committee's Lobster Bake presented by Flaster Greenberg on Saturday, September 8th at the TapRoom in Haddonfield. Even Mother Nature couldn't dampen the spirits of the crowd of Lobster enthusiasts who had a great time in support of the YLC's Scholarship Fund for disabled students attending the Larc School in Bellmawr. "The response was awesome" said YLC President Mike Dennin.

If you didn't attend this year's event, talk to someone who did and you'll probably want to be there next year!



Members of the planning committee and special guests (l-r) LARC School Trustee Surrogate Jones, Adam Gersh, Rachael Licausi, Mike Dennin, LARC School Executive Director Susan Weiner, Mike Madden, LARC School Trustee Jim Rhodes.



Jim & Michele Badolato, Bar Foundation President Linda Eynon



Doreen & Maury Cutler



Jenifer Fowler, Nona Ostrove, Chris Fowler



Robert Kelley, Joe Corroda, Rick Brown from Evesham Mortgage, an event sponsor.



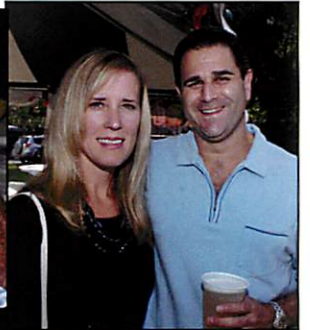
David Hasner & Steve Schmolli



Mike Dennin, CCBA President Brenda Eutsler, Mike Madden



Mike Pinsky & the "guests of honor"



Annette & Steve Kahn



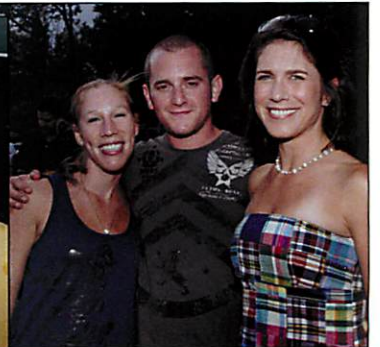
Partner in Progress Mary Abo, Lesley & Steve Mignogna, Jim Herman



Judge Fox & Lois Rakoski



CCBA Trustee John Kahn & Sam Asbell



Jenny Kasen, Dean Gelman, Crystal Gersh

BANKRUPTCY

Use of Rents in Bankruptcy

By Ellen M. McDowell



Most mortgages contain a clause whereby any rents derived from the property serving as the collateral are assigned to the mortgagee. The mortgage typically states that the borrower has permission to use the rents, but that permission is rescinded in the event of a default under the terms of the mortgage. This is known as an "absolute" assignment of rents.

In 1995, the Third Circuit Court of Appeals, in *In re Jason Realty, L.P.*, 59 F.3d 423, issued an opinion that effectively made single asset Chapter 11 cases in New Jersey impossible, because the court held that in this State, assignments of rent are indeed absolute such that upon default, rents are not property of the borrower, or by extension the bankruptcy estate, if the borrower files for protection under the Bankruptcy Code. Accordingly, any income derived from the property may not be used by the debtor to fund operations or a plan of reorganization without the consent of the mortgagee.

Recently, Judge Stern, writing for the Bankruptcy Court for the District of New Jersey in the context of a Chapter 13 case, opened the door just slightly for mortgagors who require the use of rents to confirm a plan.

The Debtor in *In re Brenda Parks*, Case No. 12-13045 (letter opinion dated August 16, 2012), owns a two family house. She lives in one unit and rents the other. Her bankruptcy schedules list the fair market

value of the house at \$180,000, a valuation which the mortgagee did not contest. As of the filing of the bankruptcy case, the amount owed on the mortgage was at least \$362,846. The Debtor's plan sought to "cram down" the mortgage loan to the value of the property under Section 506 of the Bankruptcy Code. While a cram down is usually not permissible under a Chapter 13 because of the provisions of Section 1322 (b)(2) ("a Chapter 13 plan may modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence"), in this case cram down was possible because the mortgagee had a lien not only on the debtor's principal residence but also on the rental unit, which was not the debtor's principal residence.

Because of the additional collateral, Judge Stern held that the anti-modification language of Section 1322(b)(2) did not apply, and the Debtor's plan to cram down the loan to the present value of the property, \$180,000, was acceptable. The court thus held that the Debtor would be permitted to pay \$180,000 plus interest over the five year length of the plan. This would require a plan payment of at least \$3,000 (\$180,000/60 months).

But in order to pay over \$3,000 each month toward her plan, the Debtor would need to use the income from the rental unit. Wouldn't Jason Realty prevent her from doing so? Not in Judge Stern's opinion. In an interesting analysis, the Court noted that if the rent payments were collected by the mortgagee instead of the Debtor, who would otherwise collect the rents and pay them over to the mortgagee under

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