The Transactional Lawyer

A Publication of the Commercial Law Center

GONZAGA UNIVERSITY SCHOOL OF LAW

Self-Executing Assignment of Rents Clauses

Kenneth D. Downey

Many lenders regularly include an assignment of rents clause in a deed of trust securing commercial real estate. While many of these clauses are drafted as a self-executing, absolute assignment of rents, many jurisdictions require the lender to enforce its interest to obtain ownership of the rents. The theory behind an absolute assignment is that it "passes title to the rents instead of granting a security interest and 'operates to transfer the right to rentals automatically upon the happening of a specified condition, such as default.' " *In re Millette*, **186 F.3d 638**, 643 (5th Cir. 1999) (quoting *Taylor v. Brennan*, **621 S.W.2d 592**, 594 (Tex. 1981)).

Although some courts have ruled that § 541(a)(6) of the Bankruptcy Code overrides an absolute assignment of rents, so that postpetition rents become property of the estate, *see, e.g., In re Amaravathi L.P.*, **416 B.R. 618**, 638 (Bankr. S.D. Tex. 2009), a majority of courts have ruled to the contrary and treat a self-executing absolute assignment of rents as preventing the postpetition rents from becoming an asset of the bankruptcy estate. *See, e.g., In re Madison Heights Grp., LLC*, **506 B.R. 734**, 740 (Bankr. E.D. Mich. 2014) (expressly rejecting *Amaravathi L.P.*); *In re Kingsport Ventures, L.P.*, **251 B.R. 841**, 847-48 (Bankr. E.D. Tenn. 2000); *In re Jason Realty, L.P.*, **59 F.3d 423**, 427 (3d Cir. 1995).

This article (i) identifies the jurisdictions in which an absolute assignment of rents clause is treated as self-executing and (ii) provides a few cautionary points on the drafting of the clause.

Contents

Jurisdictions Requiring Enforcement before Conveyance of Absolute Assignments

In a majority of jurisdictions, bankruptcy courts treat assignment of rents clauses as conveying an inchoate interest that becomes choate only when there is some enforcement of the assignment, such as by possession of the property, appointment of a receiver, or notice given to the tenants. *See, e.g., In re Cadwell's Corners P'ship*, **174 B.R. 744**, 752 (Bankr. N.D. Ill. 1994). Thus, in most jurisdictions an assignment of rents clause is not sufficient by itself to transfer title to the rents. Instead, only if the lender obtains a choate interest in the rents through enforcement of the assignment prepetition will the rents not become a part of the assignor's bankruptcy estate. *See, e.g., In re S. Pointe Assocs.*, **161 B.R. 224**, 226-28 (Bankr. E.D. Mo. 1993); *Sovereign Bank v. Schwab*, **414 F.3d 450**, 453 (3d Cir. 2005).

Some other jurisdictions regard an assignment of rents clause as conveying only a security interest in the rents, not title to the rents. *See e.g., In re Bethesda Air Rights L.P*, **117 B.R. 202**, 206 (Bankr. D. Md. 1990); *In re Cavros*, **262 B.R. 206**, 210 (Bankr. D. Conn. 2001).

Jurisdictions Treating Absolute Assignment of Rents Clauses as Self-Executing

Although most jurisdictions limit the effect of the clauses to an inchoate interest or a security interest, several jurisdictions treat absolute assignment of rents clauses as self-executing, vesting title of the rents in the secured party without the secured party engaging in any further enforcement action. Alabama, Colorado, Idaho, Iowa, Michigan, Nevada, New Jersey, Oklahoma, Tennessee, Texas, Virginia, and Vermont recognize self-executing absolute assignment of rents clauses. *See* State Law Survey on Assignment of Rents, beginning on page 7 of this newsletter. This is true even though in these jurisdictions the assignment is apparently limited to the amount of the debt. *See, e.g., In re Jason Realty, L.P.*, **59 F.3d at 426** (the language of the assignment indicating that once the debt was paid "this Assignment shall become and be void and of no effect"); *see also FDIC. v. Int'l Prop. Mgmt., Inc.*, **929 F.2d 1033**, 1037 (5th Cir. 1991) ("the

assignment contained in this Section 5.2 shall terminate upon the release of this Deed of Trust"); *In re Kingsport Ventures, L.P.*, **251 B.R. 841**, 844 (Bankr. E.D. Tenn. 2000) ("Upon payment in full of the Debt . . . this Assignment shall become and be void and of no effect").

Drafting Language for an Absolute Assignment of Rents

A state's substantive law is not dispositive on whether an assignment of rents clause is absolute. For an assignment of rents to be absolute, the assignment clause must also contain language indicating the parties' intention to create an absolute assignment. *See In re Jason Realty, L.P.*, **59 F.3d at 427** ("An assignment is absolute *if its language* demonstrates an intent to transfer immediately the assignor's rights and title to the rents.") (emphasis added). Thus, in jurisdictions that treat an absolute assignment of rents as absolute, the language of the clause controls whether it is an absolute assignment or merely the grant of a security interest. *See FDIC v. Int'l Prop. Mgmt., Inc.*, **929 F.2d at 1036**; *see also in re Lingham Rawlings, LLC*, **2010 WL 3490204**, at *2 (Bankr. E.D. Tenn. Sept. 1, 2010) (requiring the court to "closely examine the terms of the assignment as a whole").

If the assignment contains "[w]ords such as 'security' or 'pledge,'" courts will generally refuse to recognize the clause as a self-executing, absolute assignment. *See Int'l Prop. Mgmt.*, **929 F.2d at 1036**; *see also In re Millette*, **186 F.3d at 643**. Thus, to make an absolute assignment the language of the clause should specifically state that the conveyance is a "present, absolute and unconditional assignment and not an assignment for additional security only." *See In re Kingsport Ventures, L.P.*, **251 B.R. at 848**.

Kenneth Downey is a third-year student at Gonzaga University School of Law.

■ ■ ■

Drafting a Merger Clause for an Integrated Transaction

Stephen L. Sepinuck

Most written agreements drafted by transactional lawyers contain a merger clause stating, in some general way, that there are no terms of the agreement not included in the writing. The purpose of such a clause is to indicate that the writing is fully integrated and thus to invoke the full force of the parol evidence rule. In short, the principal purpose of a merger clause is to exclude not merely parol evidence of *contradictory* terms (which would be inadmissible even if the writing were only partially integrated) but also parol evidence of *supplemental* terms.

Unfortunately, courts sometimes regard a merger clause as relevant for a completely different purpose: to determine whether a written agreement is to be treated separately from other agreements executed at the same time by the same parties. As a result, a traditionally drafted merger clause can have some unintended and undesirable consequences.

For example, in *Schron v. Grunstein*, **917 N.Y.S.2d 820** (N.Y. Sup. Ct. 2011), the court ruled that a credit agreement and a stock purchase option agreement were to be regarded as separate agreements in part because of the existence of a merger clause in the option agreement. As a result, the lender's funding of the loan pursuant to the credit agreement was not a condition precedent to the lender's ability to enforce the option agreement.

More recently, the issue has come up in a variety of other contexts. For example, at least one court has considered whether a merger clause in an asset purchase agreement prevented the court from treating the agreement as an integral part of a larger transaction for the purposes of analyzing a fraudulent transfer claim. *See In re Clements Manufacturing Liquidation Co., LLC*, **2014 WL 5324095** (E.D. Mich. 2014). Several courts have treated a merger clause as relevant to whether a party in bankruptcy who, pursuant to Bankruptcy Code § 365, wants to assume only some of several simultaneously executed leases or executory contracts must cure the default under all of them. *See, e.g., In re Hawker Beechcraft, Inc.*, **2013 WL 2663193**

(Bankr. S.D.N.Y. 2013); *In re Wolflin Oil, LLC*, **318 B.R. 392** (Bankr. N.D. Tex. 2004).

This is not to say that a traditionally drafted merger clause will always lead to the conclusion that each of several contemporaneous written agreements must be treated as separate. In *Clements Manufacturing*, for example, the court ruled that, despite the merger clause, the asset purchase agreement was an integral part of a larger transaction, thus helping to insulate the asset purchase from avoidance as a fraudulent transfer. *See also Patterson v. University Ford, Inc.*, **758 S.E.2d 185** (N.C. Ct. App. 2014) (a retail installment contract for the purchase and sale of an automobile and a conditional delivery agreement were part of the same transaction and could be read together even though the retail installment contract contained a merger clause, and thus the unsatisfied financing condition in the conditional delivery agreement prevented the existence of a contract); **Cal. Civ. Code § 1642** ("Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together"). However, the mere fact that the issue has been raised and litigated is enough to suggest that transactional lawyers should be more careful. If a written agreement is truly part of a larger transaction, and if treating it separately might present a problem under fraudulent transfer law, Bankruptcy Code § 365, or some other legal rule, then the merger clause in each agreement should reference the other contemporaneous agreements. *See* Rick Thomas, *Cross-Defaulted Leases in Bankruptcy: Integrated or Severable Agreements?* **9 Pratt's J. Bankr. L. 484**, 501 (July/Aug. 2013) (recommending care in drafting a merger clause due to the § 365 issue). The following language should work:

Merger Clause

This Agreement and [list other agreements] collectively contain the complete and exclusive understanding of the parties with respect to their subject matter. There are no promises or representations of the parties not included in one or more of these documents.

For more information on drafting a merger clause, see Jennifer Niesen, Drafting a Bullet-Proof Merger Clause, **2 THE TRANSACTIONAL LAWYER 1** (Apr. 2012).

Stephen L. Sepinuck *is a professor and associate dean at Gonzaga University School of Law and director of the Commercial Law Center.*

■ ■ ■

Recent Cases

SECURED TRANSACTIONS

Scope Issues

Pain Control Institute, Inc. v. GEICO General Ins. Co.,
2014 WL 5474777 (Tex. Ct. App. 2014)
Even if the woman injured in an auto accident had a claim against the driver's insurer, so that she could grant a security interest in that claim to the medical provider that treated her, such a security interest would be excluded from the scope of Article 9 under § 9-109(d)(12).

In re Davis,
2014 WL 5306088 (Bankr. N.D. Ohio 2014)
Agreement by which debtor purported to grant 50% ownership in a laser to a lender until the $57,000 loan for the purchase price was paid off created a security interest. The lender therefore had a security interest in half the proceeds of the laser.

Attachment Issues

In re Eyerman,
517 B.R. 800 (Bankr. S.D. Ohio 2014)
Individuals who guaranteed the debts of two LLCs that they owned had not granted a security interest in their personal property to secure the debts because each security agreement identified the "borrower" as one of the LLCs and the guarantors signed only as a "member" of the LLCs, not in their individual capacities. Although a filed financing statement identified the guarantors as additional debtors, the financing statement lacked granting language and does not constitute a security agreement. Even if a promissory note and filed financing statement were together sufficient to indicate an intention by individual guarantors to grant a security interest, the documents' only description of the collateral as "certain business assets" would not be sufficient to reasonably identify what was covered.

Mount Spelman & Fingerman, P.C. v. GeoTag, Inc.,
2014 WL 4954632 (E.D. Tex. 2014)
Contingent fee agreement between a law firm and its client that granted the firm a lien on recoveries "for any amounts owing to us" and which also stated that "[f]ees are fully earned as of the date of execution of the settlement agreement between plaintiff and defendant," created a lien only on amounts due in settled cases, even if the client owed the firm for services in connection with other cases or as a result of the client's termination of the firm. Moreover, the lien on the receivable in connection with any single case is limited to the fee owing in connection with that case; it does not secure the client's obligations in connection with other cases.

In re Duckworth,
2014 WL 6602521 (7th Cir. 2014)
Although security agreement that misdescribed the secured obligation as a note executed on December 13, 2008, when the note was actually executed and dated December 15, 2008, could be reformed as between the debtor and the secured party, it was not effective to perfect the security interest against the debtor's bankruptcy trustee, who had the status of a judicial lien creditor and against whom parol evidence is inadmissible.

In re Webb,
2014 WL 5472568 (Bankr. E.D. Ark. 2014)
Although joint venture by husband and wife was not a partnership, merely an agreement about how they would conduct their farming business together, and thus not a legal entity, the security agreements signed by the husband on behalf of the venture were effective because the venture had more than possession of the collateral, it had sufficient rights in the collateral to grant a security interest.

Pain Control Institute, Inc. v. GEICO General Ins. Co.,
2014 WL 5474777 (Tex. Ct. App. 2014)
Because under Texas law a person injured in an auto accident has no direct claim against the driver's insurer, a woman so injured could not grant a security interest in her right to payment from the driver's insurer to the medical provider that treated her. Consequently, the insurer did not, after settling with the woman, violate the provider's rights by paying the woman directly despite having received instructions to pay the provider. No discussion of why the security interest could not attach to the right to payment under the settlement agreement.

Perfection Issues

In re Webb,
2014 WL 5472568 (Bankr. E.D. Ark. 2014)
Although joint venture by husband and wife was not a partnership, merely an agreement about how they would conduct their farming business together, and thus not a legal entity, the financing statements identifying the debtor as the venture were effective because the venture was an unregistered organization and describing such an organization by its name is not seriously misleading.

In re Sterling United, Inc.,
2014 WL 4966293 (Bankr. W.D.N.Y. 2014)
Because a filed financing statement is seriously misleading, and therefore ineffective, only if a reasonably diligent searcher would be misled, a financing statement that ambiguously describes the collateral as "all assets, including [x, y, and z] now owned or hereafter acquired and located at [a specified place]" is not ineffective even if the collateral is located elsewhere. Moreover, in this case there was a long succession of filed financing statements that set forth the debtor's name change, address change, and the change in the description of the collateral, so that no reasonably diligent searcher could have been misled.

In re Motors Liquidation Co.,
2014 WL 5305937 (Del. 2014)
A termination statement is authorized by the secured party if the secured party of record reviewed and knowingly approved the termination statement for filing, regardless of whether the secured party subjectively intended or understood the effect of the filing.

Enforcement Issues

Skaff v. Progress International, LLC,
2014 WL 5454825 (S.D.N.Y. 2014)
Secured party's collateral was not limited to deposit accounts, which were the only collateral described in the security agreement, but included the additional collateral described in the parties' merger agreement, which also granted a security interest. A receiver appointed by the court after the secured party obtained a default judgment would be authorized to take control of and preserve the debtor's assets and conduct an accounting – broader authority than what the security agreement provided – but would not be authorized to liquidate the assets and apply the proceeds to satisfy the judgment debt.

Moniuszko v. Karuntzos,
2014 WL 4657134 (Ill. Ct. App. 2014)
Because the parties' lease agreement expressly required the landlord to release its security interest in the tenant's equipment on a specified date unless, prior to that date, the tenant "was found to be in default of this Lease and failed to cure such default," and the landlord had not obtained by the specified date a court ruling that the tenant was in default, the landlord was required to release its security interest. It did not matter that the security agreement permitted the landlord to declare a default in its sole discretion because such language was conspicuously absent from the lease.

Liability Issues

Lake Treasure Holdings, Ltd. v. Foundry Hill GP LLC,
2014 WL 5192179 (Del. Ch. Ct. 2014)
Security interest in software that the debtor transferred to an entity controlled by a long-time friend of its owner in return for loan proceeds representing a fraction of what the owner thought the software was worth, followed by an amicable surrender of the software to the secured party, was an avoidable fraudulent transfer made with actual intent to hinder, delay or defraud the investors who were seeking to dissolve the debtor. Although a transfer is not avoidable against a person who took in good faith and for a reasonably equivalent value, the secured party did not act in good faith because it conspired with the owner to circumvent the owner's lack of authority to sell the software and because it did not give reasonably equivalent value.

First Hill Partners, LLC v. Bluecrest Cap. Mgmt. Ltd.,
2014 WL 4928987 (S.D.N.Y. 2014)
Advisor that the debtor hired to find a buyer of its assets and negotiate a sale in return for a monthly retainer, a success fee, and reimbursement of expenses, stated causes of action against the debtor's secured party for unjust enrichment and tortious interference with contract by alleging that, after the advisor located a buyer and negotiated a transaction, the secured party foreclosed and sold the assets to the identified buyer on substantially the same terms.

Anthony Marano Co. v. J & S Produce Corp.,
2014 WL 4922324 (N.D. Ill. 2014)
Summary judgment denied on whether the banks that received payment on their secured loans from the debtor's PACA trust funds were entitled to a bona fide purchaser defense because there were factual issues about whether the banks had notice that the debtor was in breach of its duties with respect to the PACA trust. The debtor was profitable through 2010 and occasionally maintained cash reserves far in excess of its accounts payable. However, it also had cash-flow problems and overdrew its deposit accounts. Moreover, although the debtor historically paid all but a few of its PACA creditors, it often paid them late. Although the bank that received $565,000 in payment on a line of credit re-advanced $582,000, that created no defense to disgorgement for violation of the PACA trust.

BANKRUPTCY

United States v. State Street Bank and Trust Co.,
2014 WL 5298031 (Bankr. D. Del. 2014)
When considering whether to re-characterize as equity some 1996 junior PIK notes issued pursuant to a confirmed plan of reorganization, the analysis must focus on the issuance of predecessor notes as part of a 1988 leveraged buyout. While the 1988 notes had characteristics of equity, including deferment of interest until maturity, subordination to almost all other debt, and contingent interest based on the increase in the debtor's fair market value, the notes are better viewed as debt because they were documented and treated as such and the parties reasonably projected that the debtor's revenues would increase and be sufficient to repay the notes. Although the recipients of 1996 junior PIK notes were also issued common stock and granted the right to elect a majority of the debtor's board, the notes are nevertheless better treated as debt because they were for a fixed term at a stated interest rate, were supported by the grant of a security interest, and a lender's participation on the board of a distressed company after its loan is in jeopardy does not support re-characterizing the investment as equity.

However, the claim of the junior PIK noteholders would be equitably subordinated due to the inequitable conduct in colluding with debtors' management to convert their subordinated unsecured debt – which at the time was valueless – into secured debt for the purpose of enabling the noteholders to gain an unfair advantage over the IRS by preventing collection of the capital gains tax that all parties knew would arise when the assets of the company were sold. Moreover, they did so in the context of a Chapter 11 plan process in which the IRS received no direct notice, merely clues scattered throughout a myriad of sections of the proposed plan, in a case in which the IRS was not even a claimant.

In re Conqueror Marine Logistics, LLC,
2014 WL 4926163 (W.D. La. 2014)
Administrative expense claimants lack standing to assert a derivative claim for surcharging collateral in a Chapter 7 case. Even if they had standing, there was no basis for surcharging the proceeds of the collateralized vessels because the claimants provided labor, supplies, and services to maintain the debtor's operations while the case was in Chapter 11 and while the ongoing operation of the vessels might have benefitted the estate as a whole, it did not primarily and directly benefit the creditors with a lien on the vessels, which is required to surcharge collateral.

In re Parker,
2014 WL 6545025 (Bankr. E.D.N.C. 2014)
Secured creditor was not entitled to prepetition or postpetition interest at the default rate because the default rate was an unenforceable penalty given that: (i) the base rate was 15% and the default rate was 25% plus a 4% late charge, making the differential more than what is normally permitted; (ii) the creditor withheld substantial fees from the loan to reimburse itself for costs it might incur, making the effective rates 29% and 39%, respectively; and (iii) the creditor was oversecured by real property.

In re Susanek,
2014 WL 4960885 (Bankr. W.D. Pa. 2014)
Oversecured creditor was entitled to recover for attorney's fees incurred preparing a notice of post-petition fees and expenses pursuant to Rule 3002.1 because the creditor's agreement with the debtor expressly provided for reimbursement of the creditor's reasonable attorney's fees and expenses "for bankruptcy proceedings."

In re Banks,
2014 WL 5320539 (M.D. Ga. 2014)
Car seller violated the automatic stay by repossessing the car that a Chapter 13 debtor bought post-confirmation. The car was property of the estate even without regard to the language in the plan providing that all property of the estate will remain property of the estate for the duration of the plan.

Follow the link below for prior issues of
The Transactional Lawyer

LENDING & CONTRACTING

In re MPM Silicones, LLC,
2014 WL 5168589 (Bankr. S.D.N.Y. 2014)
The first-lien lenders have no claim against the second-lien lenders under the intercreditor agreement for supporting the debtors' objection to the first-lien lenders' claim for a make-whole payment or for supporting the debtors' efforts to cram down a plan of reorganization because the intercreditor agreement prohibited the second-lien lenders from taking actions with respect to the shared collateral – not from exercising their rights or remedies as unsecured creditors – and unsecured creditors are entitled to provide such support. The first-lien lenders also had no claim against the second-lien lenders for receiving and retaining a $30 million payment under the Backstop Agreement despite a clause in the intercreditor agreement mandating that proceeds of the shared collateral be applied to the first-lien lenders' claims until they are paid in full in cash because such payment would not be on account of the second-lien lenders' secured claim but rather, on account of a separate, unsecured obligation undertaken by the debtors for backstopping exit financing for the debtors. Finally, the first-lien lenders had no claim against the second-lien lenders for receiving and retaining stock in the reorganized debtor because that stock is not proceeds of the shared collateral. The stock is proceeds of the second-lien lenders' liens and claims, but not the proceeds of the debtors' assets.

■ ■ ■

Edited By:

Stephen L. Sepinuck
Professor & Associate Dean for Administration
Director, Commercial Law Center
Gonzaga University School of Law

Scott J. Burnham
Frederick N. & Barbara T. Curley Professor
Gonzaga University School of Law

For questions or to submit content to *The Transactional Lawyer*, please contact Vicky Daniels at vdaniels@lawschool.gonzaga.edu

	State Treatment of Assignment of Rents			
	Absolute		Security Interest	Source
	Self-Executing	Enforcement Required		
Alabama	✓			*HomeCorp v. Secor Bank*, 659 So. 2d 15, 20 (Ala. 1994)
Alaska		✓		*Bevins v. Peoples Bank & Trust Co.*, 671 P.2d 875, 879 (Alaska 1983)
Arkansas		✓		*In re Scottsdale Med. Pavilion*, 159 B.R. 295, 301 (9th Cir. BAP 1993), *aff'd*, 52 F.3d 244 (9th Cir. 1995)
Arizona			✓	*Magnolia Petroleum Co. v. State Bldg. & Loan Ass'n*, 132 S.W.2d 837, 841 (Ark. 1939)
California		✓		*Fed. Nat'l Mortgage Assn. v. Bugna*, 57 Cal. App. 4th 529, 539 (1997); *see also In re Ventura-Louise Properties*, 490 F.2d 1141, 1144 (9th Cir. 1974); Cal. Civ. Code § 2938 (West 2008); *MDFC Loan Corp. v. Greenbrier Plaza Partners*, 21 Cal. App. 4th 1045, 1052 (1994)
Colorado	✓			*Great-W. Life Assur. Co. v. Raintree Inn*, 837 P.2d 267, 272 (Colo. Ct. App. 1992)
Connecticut			✓	*In re Cavros*, 262 B.R. 206, 210 (Bankr. D. Conn. 2001)
Delaware			✓	*In re Guardian Realty Grp., L.L.C.*, 205 B.R. 1, 4 (Bankr. D.D.C. 1997)
Florida		✓		*In re Aloma Square, Inc.*, 85 B.R. 623, 625 (Bankr. M.D. Fla. 1988), *aff'd*, 116 B.R. 827 (M.D. Fla. 1990); *see also* Fla. Stat. § 697.07 (2001)
Georgia			✓	*In re Augusta Ctr., LLC*, 491 B.R. 298, 303-04 (Bankr. S.D. Ga. 2013)
Hawaii	unknown			*Hawaii Nat. Bank v. Cook*, 58 P.3d 60, 68 (Haw. 2002),
Idaho	✓			*In re Gould*, 78 B.R. 590, 593 (D. ld. 1987) (applying Idaho law).
Illinois		✓		*Comerica Bank-Illinois v. Harris Bank Hinsdale*, 673 N.E.2d 380, 382 (Ill. 1996) ; *see also In re Cadwell's Corners P'ship*, 174 B.R. 744, 752 (Bankr. N.D. Ill. 1994)
Indiana	unknown			*O'Brien v. 1st Source Bank*, 868 N.E.2d 903, 907 (Ind. Ct. App. 2007)
Iowa	✓			*Presidential Realty Corp. v. Bridgewood Realty Investors*, 498 N.W.2d 694, 697 (Iowa 1993)
Kansas		✓		*In re Bryant Manor, LLC*, 422 B.R. 278, 286 (Bankr. D. Kan. 2010)

	State Treatment of Assignment of Rents			
	Absolute		Security Interest	Source
	Self-Executing	Enforcement Required		
Kentucky			✓	*In re Buttermilk Towne Ctr., LLC*, 442 B.R. 558, 564 (6th Cir. BAP 2010)
Louisiana	unknown			Mexic Bros. v. 108 Univ. Place P'ship, 488 So. 2d 1193, 1196 (La. Ct. App.), *writ denied*, 494 So. 2d 1174 (La. 1986)
Maine		✓		*In re Citicorp Park Associates*, 180 B.R. 15, 17 (Bankr. D. Me. 1995)
Maryland			✓	*In re Bethesda Air Rights Ltd. P'ship*, 117 B.R. 202, 206 (Bankr. D. Md. 1990)
Massachusetts		✓		*In re Boston Harbor Marina Co.*, 157 B.R. 726, 736 (Bankr. D. Mass. 1993)
Michigan	✓			*In re Madison Heights Grp., LLC*, 506 B.R. 728, 731 (Bankr. E.D. Mich. 2013)
Minnesota		✓		*Travelers Ins. Co. v. Westridge Mall Co.*, 994 F.2d 460, 462 (8th Cir. 1993)
Mississippi		✓		*In re Millette*, 186 F.3d 638, 643 (5th Cir. 1999)
Missouri		✓		*In re S. Pointe Assocs.*, 161 B.R. 224, 226 (Bankr. E.D. Mo. 1993)
Montana		✓		*In re Kurth Ranch*, 110 B.R. 501, 506 (Bankr. D. Mont. 1990)
Nebraska		✓		*Saline State Bank v. Mahloch*, 834 F.2d 690, 694 (8th Cir. 1987)
Nevada	✓			*In re Dacey*, 80 B.R. 206, 208 (D. Nev. 1987)
New Hampshire		✓		*In re Rancourt*, 123 B.R. 143, 148 (Bankr. D.N.H. 1991)
New Jersey	✓			*In re Jason Realty, L.P.*, 59 F.3d 423, 427 (3d Cir. 1995) (applying New Jersey law).
New Mexico	unknown			
New York			✓	*In re S. Side House, LLC*, 474 B.R. 391, 411 (Bankr. E.D.N.Y. 2012)
North Carolina		✓		*In re Raleigh/Spring Forest Apartments Associates*, 118 B.R. 42, 44-45 (Bankr. E.D.N.C. 1990)
North Dakota		✓		*In re Fluge*, 57 B.R. 451, 454 (Bankr. D.N.D. 1985)
Ohio		✓		*In re Miller*, 133 B.R. 882, 884 (Bankr. N.D. Ohio 1991); *see also In re Sam A. Tisci, Inc.*, 133 B.R. 857, 859 (N.D.

	State Treatment of Assignment of Rents			
	Absolute		Security Interest	Source
	Self-Executing	Enforcement Required		
				Ohio 1991)
Oklahoma	✓			*Teachers Ins. & Annuity Ass'n of Am. v. Oklahoma Tower Associates Ltd. P'ship*, 798 P.2d 618, 622 (Okla. 1990)
Oregon		✓		*Investors Syndicate v. Smith*, 105 F.2d 611, 620 (9th Cir. 1939)
Pennsylvania		✓		*Sovereign Bank v. Schwab*, 414 F.3d 450, 453 (3d Cir. 2005)
Rhode Island	unknown			
South Carolina	unknown			*Cox v. Enter. Bank*, 104 S.E. 693, 694 (S.C. 1920).
South Dakota		✓		*In re Ziegler*, 65 B.R. 285, 287 (Bankr. D.S.D. 1986)
Tennessee	✓			*In re Kingsport Ventures, L.P.*, 251 B.R. 841, 847-48 (Bankr. E.D. Tenn. 2000)
Texas	✓			*In re Allen*, 357 B.R. 103, 111 (Bankr. S.D. Tex. 2006); *but see In re Amaravathi Ltd. P'ship*, 416 B.R. 618 (Bankr. S.D. Tex. 2009)
Utah				*State Bank of Lehi v. Woolsey*, 565 P.2d 413, 416 (Utah 1977).
Vermont	✓			*In re Galvin*, 120 B.R. 767, 771 (Bankr. D. Vt. 1990)
Virginia	✓			*In re Hall Colttree Associates*, 146 B.R. 675, 678 (Bankr. E.D. Va. 1992)
Washington		✓		*In re Park at Dash Point L.P.*, 121 B.R. 850, 856 (Bankr. W.D. Wash. 1990) *aff'd*, 152 B.R. 300 (W.D. Wash. 1991) *aff'd sub nom. In re Park at Dash Point, L.P.*, 985 F.2d 1008 (9th Cir. 1993)
West Virginia	unknown			
Wisconsin		✓		*Matter of Century Inv. Fund VIII Ltd. P'ship*, 937 F.2d 371, 377 (7th Cir. 1991)
Wyoming		✓		*Landen v. Prod. Credit Ass'n of Midlands*, 737 P.2d 1325, 1331 (Wyo. 1987)