

Fall 2004

Foreword: Kratovil Symposium Issue of the John Marshall Law Review, 38 J. Marshall L. Rev. 1 (2004)

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Recommended Citation

Celeste M. Hammond, Foreword: Kratovil Symposium Issue of the John Marshall Law Review, 38 J. Marshall L. Rev. 1 (2004)

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FOREWORD: KRATOVIL SYMPOSIUM ISSUE OF THE JOHN MARSHALL LAW REVIEW

CELESTE M. HAMMOND*

The John Marshall Law Review has cooperated again with the Center for Real Estate Law at The John Marshall Law School in publishing significant scholarship in the area of real estate law and practice. This symposium issue focuses on “Real Estate in Bankruptcy: A Look Backwards for a Better View Forwards,” the title of the 2004 Kratovil Conference on Real Estate Law and Practice. This title acknowledges that as the United States Bankruptcy Code celebrates its 25th anniversary, it is also a time to reflect on the Code and its impact on commercial real estate.

The symposium articles were prepared originally by the keynote speakers for their Conference presentations and benefited from the responses of the Conference commenters. The published articles reflect the collaboration between scholars and practitioners that has been an important aspect of this Conference, now in its 10th year.

In light of this being the 25th anniversary of the Code, Professor Douglas Baird of the University of Chicago Law School considers the expectations for the Code in 1979 and evaluates the extent to which those expectations have been realized, or not, with respect to commercial real estate assets. Christopher Horvay of Gould & Ratner served as the commenter on *Remembering Pine Gate*.

Professor Mechele Dickerson of The College of William and Mary Law School provides an analysis of the impact of residential mortgage loan refinancings on asset development for homeowners, especially those targeted by predatory lenders. In *Bankruptcy and Mortgage Lending: The Homeowner Dilemma*, she argues that refinance loans should be treated differently from purchase money mortgages in bankruptcy. She proposes that refinance loans should be treated as unsecured debt. Professor Debra Stark of The John Marshall Law School offered comments on Professor Dickerson’s paper during the conference.

In *Precision in Statutory Drafting: The Qualitech Quagmire*

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and the Sad History of § 365(h) of the Bankruptcy Code, Professor Robert Zinman of St. John's University Law School addresses a serious issue involving the effect of the tenant's sale of a lease under § 363 for the purpose of avoiding the limitations built into § 365 as prerequisites to the assignment of lease. Professor Zinman's role in drafting § 363 and comments by Steve Hartmann of Freeborn & Peters explored the issue as it plays out in real life.

Professor Paul B. Lewis of The John Marshall Law School offers his ideas of how courts have dealt with the "open questions" left by the U.S. Supreme Court in its 1999 decision in *Bank of American National Trust and Savings Association v. 203 N. LaSalle Street Partnership* with respect to whether the new value exception survived the 1978 Code. Deborah Gutfeld of Piper Rudnick offered comments preliminary to the final article, 203 N. LaSalle *Five Years later: Answers to the Open Questions*.

Ronald Barliant of Goldberg Kohn Bell Black Rosenbloom & Moritz, Ltd. based his keynote address on the years he served as Bankruptcy Judge for the Northern District of Illinois. Conference commenters Faye Feinstein of Quarles & Brady LLP and Barry Chatz of Arnstein & Lehr explored the issues facing owners of real estate who attempt to use the Code's mechanisms for financing the operation of a business in Chapter 11. Barliant's partner Gerald F. Munitz authored the article here, *Treatment of Real Property Liens in Bankruptcy Cases*.

John C. "Jack" Murray, vice president and special counsel, and Paul L. Hammann, vice president and senior underwriting counsel, First American Title Insurance Company rely on their significant experience in the title insurance industry in their article, *Creditors' Rights Risk: A Title Insurer's Perspective* here. During the conference, Melanie Rovner Cohen of Quarles & Brady provided comments to Murray's keynote address on bankruptcy proofing devices.

Thanks to the law firms that provided financial support for the Conference as well as the commenters and keynotes (Gould & Ratner, Freeborn & Peters, Quarles and Brady LLP, Arnstein & Lehr, Piper Rudnick, Goldberg Kohn Bell Black Rosenbloom & Moritz, Ltd.), this symposium issue provides a unique look at the significant impact that the Bankruptcy Code has had on real estate. The Kratovil Conference was presented with additional support from Chicago Title and Trust Company, La Salle Bank, First American Title, The American Bankruptcy Institute, the International Association of Attorneys and Executives in Corporate Real Estate ("AECRE"), Schiff Hardin & Waite and The Enterprise Companies. The Center for Real Estate Law and The John Marshall Law School are most appreciative of the willingness of the real estate community to support the Kratovil Conferences thereby providing a venue for interaction between scholars and

practitioners that result in articles of real estate symposium issues.

