

874 F.3d 787, *, 2017 U.S. App. LEXIS 20596, **;
Bankr. L. Rep. (CCH) P83,176; 64 Bankr. Ct. Dec. 216

Bankruptcy Law > Practice & Proceedings > Appeals > Standards of Review > Clear Error Review

[HN1] The United States Court of Appeals for the Second Circuit exercises plenary review over a district court's affirmance of a bankruptcy court's decisions, reviewing de novo the bankruptcy court's conclusions of law, and reviewing its findings of facts for clear error.

Contracts Law > Contract Interpretation > Intent

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem

[HN2] Under New York law, a fundamental objective of contract interpretation is to give effect to the expressed intention of the parties. The initial inquiry is whether contractual language, without reference to sources outside the text of the contract, is ambiguous. Contract language is ambiguous if it is capable of more than one meaning.

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem

[HN3] In assessing ambiguity, courts consider the entire contract to safeguard against adopting an interpretation that would render any individual provision superfluous.

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem

[HN4] Where varying interpretations render contractual language superfluous, a court is not obligated to arbitrarily select one as opposed to another.

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem

Contracts Law > Contract Interpretation > Intent

Contracts Law > Contract Interpretation > Parol Evidence > Course of Dealing

Contracts Law > Contract Interpretation > Parol Evidence > Custom & Usage

[HN5] Where a contract term is ambiguous, the United States Court of Appeals for the Second Circuit looks to extrinsic evidence to determine the intention of the parties. That evidence can include the parties' apparent intention, what would be commercially reasonable, and the parties' interpretation of the contract in practice, prior to litigation.

Bankruptcy Law > Reorganizations > Plans > Confirmation > Cramdowns

Bankruptcy Law > Reorganizations > Plans > Confirmation > Prerequisites > Fairness

[HN6] The Bankruptcy Code permits debtors to make deferred cash payments to secured creditors (i.e., to "cram down"). 11 U.S.C.S. § 1129(b)(2)(A)(i)(II). However, those payments must ultimately amount to the full value of the secured creditors' claims. 11 U.S.C.S. § 1129(b)(2)(A)(i)(II). To ensure that a creditor receives the full present value of its secured claim, deferred payments must carry an appropriate rate of interest.

Bankruptcy Law > Cramdowns

Bankruptcy Law > Reorganizations > Plans > Confirmation > Cramdowns

[HN7] The "formula" approach endorsed by a plurality of United States Supreme Court Justices in *Till v. SCS Credit Corp.* for determining an appropriate rate of interest when a creditor's claim is crammed down instructs bankruptcy courts to begin with a largely risk-free interest rate, specifically, the national prime rate which reflects the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial

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