

NYC Landlord Could Lose Property After Apparent Mistake

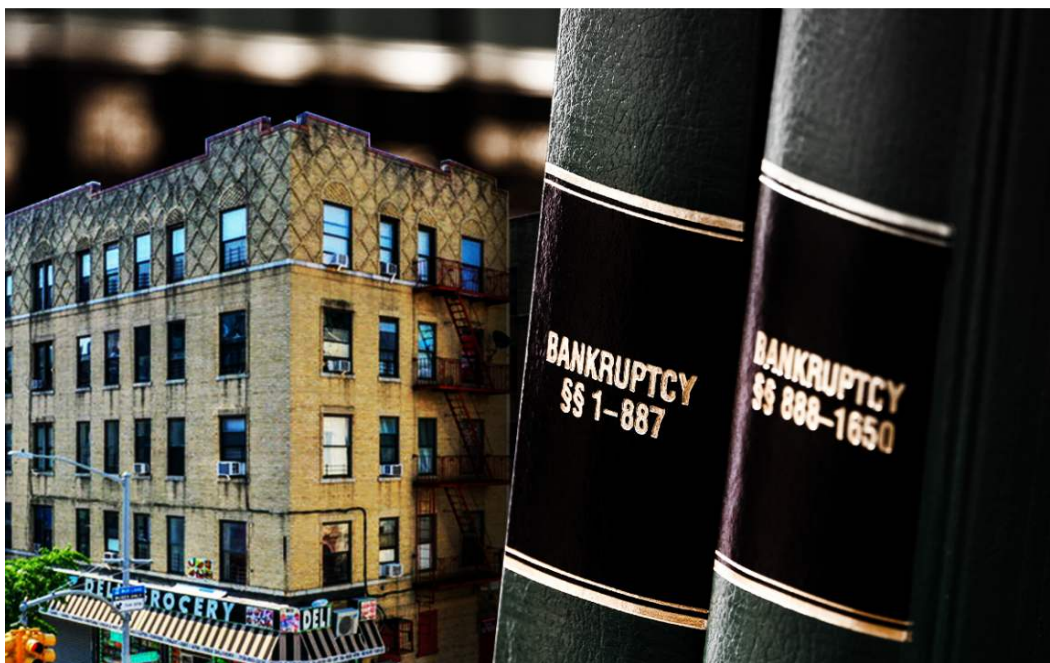
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New York

Bronx landlord could lose property after filing for wrong type of bankruptcy

Apartment building heads to auction after owners filed for Ch. 7 without a lawyer



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By

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An age-old adage posits that anyone who represents themselves in court has a fool for a client. A Bronx landlord couple is learning that lesson the hard way.

Had Alejandro and Rosa Quito retained an attorney before filing for bankruptcy in May, they may have been advised to pursue Chapter 11 instead of Chapter 7. Now, an upcoming auction could see the couple lose their property at 540 Concord Avenue in the Bronx's Mott Haven neighborhood.

It's unclear whether the Chapter 7 filing was a mistake.

"In a scenario like this, I've never seen a debtor file a Chapter 7, and they did this pro se," said Rosewood Realty Group's president of bankruptcy and restructuring Greg Corbin, who is marketing the bankruptcy sale. "Someone in their position almost universally seeks protection under a Chapter 11 filing."

While the word bankruptcy appears in both, Chapter 7 and Chapter 11 are not remotely similar.

Chapter 11 bankruptcy is a common protection sought by landlords facing foreclosures. Landlords file for bankruptcy through their corporate entities and can restructure their debt and delay pending foreclosures. It also gives borrowers more time to find an alternative source of financing.

Often, these cases end in front of Westchester County bankruptcy judge Robert Drain, who is known to be debtor-friendly.

The goal of Chapter 7, on the other hand, is liquidation. The court appoints a trustee who determines what to do with a debtor's assets. The trustee and the debtor's interests do not necessarily align. In some cases, the two are almost adversarial.

Such was the case with the Quitos. In August, trustee Howard Magaliff filed a motion to dismiss the Chapter 7 case. Magaliff said that he was unable to reach the debtors by phone or mail and they missed the deadline to file their financials, according to court documents.

That same month, lender Rapid Funding sued the Quitos and asked the judge to deny their bankruptcy petition. The lender claimed it was owed \$1.5 million, including interest, on a \$1.47 million judgment against the Quitos issued in Westchester County in 2017.

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After Rapid Funding sued, the trustee withdrew the motion to dismiss the Chapter 7 case and filed a motion seeking to manage the Quitos' business.

Magaliff alleged the Quitos failed to disclose all their assets, which included ownership in two companies, properties at 31 Brandon Road and 29 Brandon Road in Yonkers, NYC taxi medallions and a 2005 Porsche Cayenne. The trustee asked the judge for the ability to operate the Quitos' businesses until they could be sold to pay the creditor.

Judge Drain approved the motion on Sept. 7 and Magaliff hired MYC & Associates as property manager of the Quitos's Bronx property, which includes 32 residential units and 6 commercial units.

But the Quitos didn't give up easily.

MYC & Associates was unable to collect rents or manage the property because Alejandro Quito told tenants to not cooperate or pay rent to the trustee, according to Magaliff and an affidavit from the property manager. Magaliff further alleged that numerous tenants were withholding rent because essential repairs had not been completed.

The trustee said it planned to sell shares in a company that owned the Concord property in an auction on Dec. 21. By taking over the shares, the winning bidder would be able to take control of the property.

On Oct. 21, the debtors finally hired an attorney, Richard Feinsilver, more than five months after the Chapter 7 filing.

The move may have been too late. The trustee tapped Corbin and Rosewood Realty Group to market the debtors' shares in Mel Service Inc., the company that controls the Bronx property. Judge Drain approved the auction date in November. Materials from Rosewood Realty show that bidding could start at \$5.2 million.

When asked for comment, Feinsilver, the Quitos' attorney, referred TRD to the court docket. Alejandro Quito could not immediately be reached.

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