

When a “Time of the Essence” Closing Date Keeps Rolling Like a Stone for 60 Days

“The recent decision of the Bankruptcy Court for the Southern District of New York in *In re AAGS Holdings LLC*, Case No. 19-13029 (SMB) (Bankr. D. Del. Nov. 12, 2019), underscores the ability of debtors – and specifically, for purposes of this client alert, parties to real property purchase contracts – to take advantage of the Bankruptcy Code’s 60-day tolling period to get more time to close on a purchase despite a “time of the essence” (TOE) closing deadline. The SDNY Bankruptcy Court ... held that a debtor’s bankruptcy petition is not filed in bad faith when the petition is filed in order to obtain a statutory 60-day extension of a TOE closing deadline. The decision underscores the need for sellers to consider the effect of this automatic bankruptcy extension when negotiating with buyers over the terms of a consensual closing extension (e.g., fees and increased deposits) even if the contract does not have a financing contingency.” warn Adam C. Rogoff, Daniel Ross Berman and Caroline Gange in Kramer Levin’s *Perspectives*.

“The court found that the term “Closing Date” as defined in the PSA was, in fact, ambiguous.”

Read the article.