

## 21-1270 MOAC MALL HOLDINGS LLC V. TRANSFORM HOLDCO LLC

DECISION BELOW: 2021 WL 5986997

LOWER COURT CASE NUMBER: 20- 1846(L)

QUESTION PRESENTED:

In *Arbaugh v. Y & H Corp.*, this Court clarified that limitations on judicial relief should not be treated as jurisdictional absent a clear statement by Congress. At least six circuits have held that 11 U.S.C. 363(m) does not limit the appellate courts' jurisdiction to review unstayed bankruptcy court sale orders, but rather limits only the remedies available in such an appeal. By its plain terms, Section 363(m) presupposes a "reversal or modification on appeal" of a sale order, and specifies only that such reversal or modification "does not affect the validity of [the] sale" to a good faith purchaser, leaving the courts free to fashion other remedies without that effect.

In the present case, the Second Circuit held, to the contrary, that Section 363(m) deprived the appellate courts of jurisdiction over an appeal from a lease assignment order deemed "integral" to an already completed sale order, notwithstanding that: the sale order was not contingent on the assignment; the sale price was fixed without regard to whether the lease could be assigned; and respondent had expressly waived (in successfully opposing a stay) any argument that Section 363(m) would bar appellate review. A month later, the Fifth Circuit re-confirmed that it also treats Section 363(m) as jurisdiction-stripping.

The question presented is:

Whether Bankruptcy Code Section 363(m) limits the appellate courts' jurisdiction over any sale order or order deemed "integral" to a sale order, such that it is not subject to waiver, and even when a remedy could be fashioned that does not affect the validity of the sale.

CERT. GRANTED 6/27/2022