

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

SERENA M. CURTIS

Case No. 02-13760-MAM-13

Debtor

**ORDER ALLOWING CLAIM NO. 9 OF SPRINGDALE STORES, INC.
AS AMENDED AS AN ADMINISTRATIVE CLAIM**

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John V. Lee, Attorney for Springdale Stores, Inc.

This case is before the Court on the motion of Springdale Stores, Inc., for allowance of its claim as an administrative claim. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. § 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is granting the motion of Springdale Stores to allow Claim No. 9 as amended in the amount of \$1180 as an administrative expense claim.

FACTS

Ms. Curtis filed her chapter 13 bankruptcy case on July 3, 2002. At that time she resided in Apartment 203 of the Cabana Apartments. The lease states that the lessor is Cabana Apartments, but apparently the actual name of the lessor is Springdale Stores, Inc. Her lease ended March 31, 2003. However, she defaulted in her rental payments and an unlawful detainer action was commenced in state court prior to the bankruptcy filing. Springdale obtained relief from the stay to complete the eviction after the bankruptcy filing and Ms. Curtis moved out on August 30, 2002. She therefore owed postpetition rent for July and August 2002.

Ms. Curtis' plan stated:

4. If applicable, the following executory contracts of the debtor(s) are rejected:

* * * * *

7. OTHER PROVISIONS:

* * * * *

b. THE LEASE ARREARAGE OWED TO CABANA APARTMENTS SHALL BE CURED WITHIN 60 DAYS OF CONFIRMATION.

The order of confirmation contained no provision about the rejection of any lease and the language regarding cure of the lease arrearage within 60 days was specifically incorporated.

Springdale Stores, Inc., filed Claim No. 9 alleging an unsecured debt owed of \$4679 for unpaid rents. Springdale amended the claim to seek only \$1180 for two months of postpetition rents for July and August 2002. The claim also reflects that Springdale asserts the claim is an unsecured priority claim.

LAW

Springdale asserts that its claim is an administrative claim under 11 U.S.C. § 503(b)(1)(A) which covers "actual necessary costs and expenses of preserving the estate." A lease is an "executory contract" under section 365 of the Bankruptcy Code and a lease claim must be scrutinized under both 11 U.S.C. § 365 and 503. An executory contract may be assumed or rejected by a debtor or a trustee in a bankruptcy case, or, if the debtor or trustee take no action, the lease will be deemed rejected. A lease may be assumed or rejected as part of a chapter 13 plan. *Matter of DiCamillo*, 206 B.R. 64 (Bankr. D.N.J. 1997); *In re Ford*, 159 B.R. 930 (Bankr. W.D. Wash. 1993).

Ms. Curtis used the form chapter 13 plan that debtors use in this district. It requires debtors to indicate which executory contracts they are rejecting. Any others are, by negative

implication, assumed. *DiCamillo* at 66; 11 U.S.C. § 1322(b)(7). Ms. Curtis also affirmatively stated in her plan that she would cure all lease arrearages within 60 days of confirmation.

Therefore, it is clear that Ms. Curtis assumed the Cabana lease at confirmation.

If an executory contract is assumed, the entire claim of the creditor becomes an administrative claim. The lease is, in effect, converted into a postpetition lease. *Phar-Mor, Inc. v. Strouss Bldg. Assoc.*, 204 B.R. 948, 951 (N.D. Ohio 1997). In this case, the claim for July and August 2000 rent is part of an assumed lease so that all of the claim is due as if it is a postpetition claim. *In re Leon's Casual's Company, Inc.*, 122 B.R. 768 (Bankr. S.D. Ala. 1990) (“When the debtor’s estate assumes an unexpired lease, it takes on all obligations and liabilities under the lease as if the bankruptcy petition had never been filed.”); *In re Bergt*, 241 B.R. 17 (Bankr. D. Alaska 1999) (citing to Professors Jay Westbrook and Michael Andrews).¹ “All future payments due under the remainder of the lease become administrative expenses with administrative priority.” *In re D.M. Kaye & Sons Transport, Inc.*, 259 B.R. 114 (Bankr. D. So.Car. 2001) (quoting *Interface Group-Nevada, Inc. v. Trans World Airlines, Inc. (In re Trans World Airlines)*, 145 F.3d 124, 136 (3rd Cir. 1998)); *In re Leon's Casual's Company, Inc.*, 122 B.R. 768 (Bankr. S.D. Ala. 1990). Since the claim results from an assumed lease, the creditor does not need to prove that the claim is an “actual, necessary cost[] . . . [or] expense[] of preserving the estate.” “Where a contract is assumed by a debtor-in-possession, damages which

¹ If the debtor had not assumed the lease, even though some of the claim arose postpetition, it would be a prepetition unsecured rejection claim unless the rent was entitled to administrative priority status. 11 U.S.C. § 365(g); *General American Transp. Corp. v. Martin (In re Mid Region Petroleum, Inc.)*, 1 F.3d 1130, 1132 (10th Cir. 1993) (“[T]here is no obligation for the trustee to pay post-petition rent when the leases are rejected, except unpaid-post-petition rent is given unsecured claim status, unless the post-petition rent claim is subject to favored administrative expenses status.”)

arise from a post-petition breach of that contract are ‘actual, necessary costs and expenses of preserving the estate.’” *Marriott Family Rest., Inc. v Lunan Family Rest. (In re Lunan Family Rest.)*, 194 B.R. 429, 450 (Bankr. N. D. Ill. 1996).

Therefore, the claim of Springdale Stores, Inc. for \$1180 of postpetition rents is an administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A). It is entitled to priority treatment as an 11 U.S.C. § 507(a)(1) claim.

IT IS ORDERED that the motion of Springdale Stores, Inc. for allowance of an administrative claim is GRANTED and Claim No. 9, as amended, is allowed in the amount of \$1180 as an 11 U.S.C. § 507(a)(1) priority claim.

Dated: February 28, 2003


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE