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JUDGE: M. A. Mahoney

PARTIES: Calvin Spencer, Jr., Felicia Macha Spencer, General Motors Acceptance Corporation

CHAPTER: 13

ATTORNEYS:

DATE: 8/2/96

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

CALVIN SPENCER, JR.
FELICIA MACHA SPENCER

Case No. 95-11977

Debtors.

ORDER

This matter is before the Court on the trustee's objection to claim no. 3 of General Motors Acceptance Corporation (GMAC). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). For the reasons indicated below, the trustee's objection is overruled and GMAC's claim is reduced and allowed for the amount of \$2,383.77 which represents all lease payments that became due prior to GMAC obtaining possession of its collateral. The claim is to be paid as an administrative expense.

FACTS

On August 20, 1993, Calvin Spencer leased a 1993 Pontiac Sunbird from GMAC. The four year lease called for monthly payments of \$214.83. Calvin Spencer and his wife, Felicia Macha Spencer, filed a chapter 13 petition on August 7, 1995. On January 9, 1996, the debtors filed an amended chapter 13 plan. The plan required the debtors to make monthly payments of \$826 to the trustee and proposed to pay unsecured creditors 100%. The plan also indicated that the debtors were to assume the unexpired lease with GMAC and that GMAC would receive monthly preference payments of \$214.83. The amended plan was confirmed on January 19, 1996.

GMAC filed a motion for relief from stay on April 19, 1996. GMAC alleged that the debtor had failed to maintain a sufficient amount of insurance on the automobile. The motion for relief from stay was granted on May 22, 1996. GMAC obtained possession of the automobile on June 4, 1996. In response to the motion for relief from stay being granted, the trustee filed an objection to GMAC's secured claim filed in the amount of \$5,391.39. The trustee indicates that his office has disbursed \$1,126.60 to GMAC, and he asks that the claim be reduced and allowed for the amount paid. GMAC argues that its claim should be reduced and allowed not only for the amount paid by the trustee, but also for lease payments that were due but not paid at the time GMAC obtained possession of the automobile.

LAW

Does a debtor's assumption of an unexpired lease convert the arrearage under the lease into an administrative expense that warrants a first priority in repayment under Sec 507(a)(1)?

In assigning priorities to claims arising from unexpired leases, the code distinguishes between leases that have been assumed and those that have not. Sec. 502(g) confers general unsecured status to claims arising from unassumed leases. Because there is no express provision for claims arising from assumed leases, it is reasonable to infer that such claims should be treated differently - as administrative claims.

Furthermore, Sec. 365(g)(1) fixes the date of rejection of an unassumed lease at the date of the filing of the petition, whereas Sec. 365(g)(2)(A) fixes the date of rejection of an assumed lease at the date of actual rejection. The difference in timing suggest different treatment be afforded claims arising from unassumed and assumed leases.

“A debtor may assume a lease under his Chapter 13 plan, as is his right under Sec. 1322(a)(7). At that time, the debtor assumes both the benefits and the burdens of the lease. The

assumption is an act of administration that creates an obligation of the postpetition bankruptcy estate which is legally distinct from the obligations of the parties prior to the assumption. Any breach of the assumed obligations, whether in the form of a default or a formal rejection of the lease thereby constitutes a breach by the postpetition debtor of postpetition obligations. A postpetition breach or rejection after a prior assumption is afforded priority as an administrative expense claim.” *In re Pearson*, 90 B.R. 638 (Bankr. New Jersey 1988). See also *In re Airlift Int'l, Inc.*, 761 F.2d 1503, 1509 n.5 (11th Cir. 1985) (stating in dicta that “the breach of an executory contract or unexpired lease assumed under Sec. 365 clearly results in an administrative expense claim”).

GMAC obtained possession of the automobile on June 4, 1996. Under the terms of the lease, the final monthly payment was due in July 1997. From June 4 to the expiration of the lease, the debtors would have owed a total amount of \$3,007.62 (\$214.83 monthly payment x 14 months). Subtracting from GMAC's secured claim (\$5,391.39) the amount the debtors would have owed if they had maintained possession of the automobile (\$3,007.62) leaves a remainder of \$2,383.77. The amount of \$2,383.77 represents all lease payments that became due prior to GMAC obtaining possession of the automobile.

Dated: August 2, 1996

MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE