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JUDGE: M. A. Mahoney

PARTIES: Terrell Eugene Dorell, Lamar Interstate Park Venture

CHAPTER: 13

ATTORNEYS: J. M. Lane, N. J. Godbold

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KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

TERRELL EUGENE DORELL

Case No. 96-12974-MAM-13

Debtor.

**ORDER SUSTAINING OBJECTION OF DEBTOR TO CLAIM NO. 9
OF LAMAR INTERSTATE PARK VENTURE AND REDUCING CLAIM
TO \$605 AS GENERAL UNSECURED CLAIM**

Johnny M. Lane, Attorney for Debtor
Norman J. Godbold, owner of Lamar Interstate Park Venture, pro se

This case came before the Court on the objection of the Debtor, Terrell Dorell (“Debtor” or “Dorell”), to Claim No. 9 of Lamar Interstate Park Venture (“Lamar”). The Debtor alleged that he owed \$605 to Lamar. Lamar alleged that Dorell owed \$3,675. This 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 case is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is sustaining the objection of the Debtor to the claim and reducing it to \$605.

The Debtor and Lamar entered into a series of lease agreements from 1992 through November 1996. On or about January 12, 1996, Dorell and Lamar signed a lease agreement for the period December 1, 1995, through November 30, 1996. The rent for the space at 3345 Halls Mill Road, Mobile, AL, was \$705 per month.

In or around March 1996, Dorell and Joseph G. Betbeze, Jr., rental agent for Lamar, discussed a rent increase which was to occur. Dorell indicated he desired to move instead. The

evidence showed that Dorell and Betbeze agreed that if Dorell would vacate the premises by March 31, 1996, and pay one additional month's rent, the lease would be terminated. Dorell testified that he and Betbeze did not agree as to a date by which the additional rent would be due. Norman Godbold, the owner of Lamar, who was not a party to the conversation, believed that the agreement was that Dorell would pay the additional rent at the time he moved.

On May 9, 1996, Dorell paid only \$100 of the \$705 owed. Dorell filed bankruptcy on August 16, 1996. Lamar filed a claim for \$3,675 which represented five months of rent payments (through August 1996) and late charges. Lamar did not claim rent for September, October, or November 1996.

Lamar did relet Dorell's space at a date at least a few months after Dorell left.

LAW

The Alabama Statute of Frauds, Ala. Code 8-9-2, states:

In the following cases, every agreement is void unless such agreement or some note or memorandum thereof expressing the consideration is in writing and subscribed by the party to be charged therewith...:

- (1) Every agreement, which, by its terms, is not to be performed within one year from the making thereof;...
- (5) Every contract for the sale of lands... or of any interest therein, except leases for a term not longer than one year...

The Dorell/Lamar Interstate Park Venture lease was for a term "not longer than one year". Therefore, it did not have to be in writing nor did any amendments to it under Section 8-9-2(1) or (5). *Ideal Structures Corp. v. Levine Huntsville Dev. Corp.*, 251 F. Supp.3 (N.D.Ala. 1966), rev. on other grounds, 396 F.2d 917 (5th Cir. 1968). If the agreement at issue is viewed as an agreement to vacate by March 31, 1996, coupled with one month's rent, then it is also not required to be in writing pursuant to Section 8-9-2(1). That agreement is capable of being

performed in less than one year. *Hornady v. Plaza Realty Co.*, 437 So. 2d 591 (Ala. Civ. App. 1983).

The parties' agreement, according to the only testimony the Court heard from a participant in the conversation in which it was made, was that Dorell would vacate by March 31, 1996, and \$705 in additional rent would be paid at or by an unspecified date subsequent.

Therefore the Court finds and concludes that Dorell owes Lamar \$605, the remaining sum owed, as a prepetition unsecured debt.

THEREFORE IT IS ORDERED that the Debtor's objection to Claim No. 9 is SUSTAINED and the claim of Lamar Interstate Park Venture is reduced to \$605 and is to be treated as a general unsecured claim.

Dated: April 11, 1997

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE