

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 11 Case
	)	Number <u>88-11533</u>
GEORGIA SCALE COMPANY, INC.	)	
	)	
Debtor	)	
	)	
OCMULGEE FIELDS, INC.	)	FILED
	)	at 3 O'clock & 04 min. P.M.
Movant	)	Date: 12-20-89
	)	
vs.	)	
	)	
GEORGIA SCALE COMPANY, INC.	)	
	)	
Respondent	)	

**ORDER**

Movant, Ocmulgee Fields, Inc. brought this motion for payment of administrative expenses, contending that rental payments due movant for period of time before an unexpired lease was deemed rejected should be paid as an administrative expense. Debtor, Georgia Scale Company, Inc., objects to the allowance of the rental payments as an administrative expense. After careful consideration of the arguments of counsel and briefs filed by the parties, the court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

\_\_\_\_\_1. Debtor entered into a lease agreement with movant for

nonresidential real property located in Macon, Georgia. The lease was for a three (3) year term, beginning on June 1, 1988.

2. The debtor performed within the terms of the lease until December 1, 1988, when the debtor defaulted on the rental payments.

3. The debtor filed its petition in bankruptcy on December 1,

1988, and paid no rental expenses on the property after that date.

#### CONCLUSIONS OF LAW

Pursuant to 11 U.S.C. §365(d)(3), a debtor-in-possession is required to timely perform all the obligations of the debtor arising from or after the order for relief under an unexpired lease of nonresidential real property until such lease is assumed or rejected. A lease for nonresidential real property not assumed within sixty (60) days after the order for relief is deemed rejected as a matter of law. 11 U.S.C. §365(d)(4). A claim arising from the rejection of an unexpired lease that has not been assumed by the debtor-in-possession is determined as if such claim had arisen before the date of the filing of the petition. 11 U.S.C. §502(g).

The movant contends, however, that since the lease was never expressly rejected by the debtor-in-possession, but rather was deemed rejected as a matter of law, the rental payments due for the sixty (60) day period before the deemed rejection should be allowed

as an administrative expense in accordance with 11 U.S.C. §503. The movant draws a distinction between a lease deemed rejected as a matter of law and a lease expressly rejected by a formal motion filed by the debtor-in-possession. See, e.g., In re: D'Lites of America, 86 B.R. 299 (Bankr. N.D. Ga. 1988); In re: TDC Development Corp., 73 B.R. 135 (Bankr. N.D. Tex. 1987).

This court, however, finds no basis to distinguish a lease rejected as a matter of law from a lease rejected by a formal motion. The opinions cited above and relied on by the movant do not address §502(g) or whether a lease rejected by law can be distinguished from a lease rejected by motion. Absent such a distinction, the court finds the case of In re: Airlift International, 761 F.2d 1503 (11th Cir. 1985), controlling in this case. "[W]here the contract is not assumed prior to confirmation, the breach of the executory contract or unexpired lease is deemed to have occurred pre-petition, giving rise to a pre-petition claim under section 502(g), (footnote omitted) but not an administrative expense under section 503(b)." In re: Airlift International, supra at 1509.

Therefore, the movant is permitted to file an unsecured claim for the rental payments due before the rejection of the lease, but has no right to have the expense paid as an administrative claim. If the movant had desired to force an earlier rejection of the lease, movant could have filed a motion to require the debtor-

in-possession to either assume or reject the lease in accordance with 11 U.S.C. §365(d)(2). Absent such a motion, the debtor is permitted sixty (60) days in which to assume or reject the lease. If the lease is not assumed within that period, it is deemed rejected. The debtor remains liable for the rental expenses occurring before the rejection by law, and a claim for such expenses shall be allowed pursuant to 11 U.S.C. §502(g).

It is therefore ORDERED that the motion of movant Ocmulgee Fields, Inc., for the payment of administrative expenses is denied.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 20th day of December, 1989.