

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

IN RE:) CHAPTER 13
) CASE NO. 96-20715
BETTY LEE BROWN,)
)
)
DEBTOR)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For the Debtor: William S. Orange, III
1419 Newcastle Street
Brunswick, Georgia 31520

Chapter 13 Trustee: Sylvia Ford Brown
Post Office Box 10556
Savannah, Georgia 31412

For Norman A. Thompson: Maxine H. Wraggs
P. O. Box 426
Brunswick, GA 31520

MEMORANDUM OPINION

This matter comes before the Court on Objection to Claim by Sylvia Ford Brown ("Trustee"). Trustee objects to claim number 22 on the grounds that it is not entitled to priority treatment under 11 U.S.C. § 507(a)(1) as an administrative expense. Instead, Trustee contends that the claim should be treated as a general unsecured claim.

This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(B). After considering the pleadings, evidence presented and applicable authorities, the Court enters the following findings of fact and conclusions of law in compliance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

This Chapter 13 case was filed on July 1, 1996 by Betty Lee Brown ("Debtor"). Debtor was renting an apartment when the petition was filed. At that time, she owed a pre-petition debt to Norman A. Thompson ("Landlord"). She vacated the apartment after she filed, leaving a post-petition debt owing to Landlord as well. On October 24, 1996, Landlord filed a Proof of Claim listing rent and gas utility debts as the basis for the Claim. The total amount of the claim was \$1,471.32. The post-petition portion of this debt is \$850.00. The remaining \$621.32 is a pre-petition debt. The Chapter 13 Plan proposes to pay a ten percent dividend to unsecured creditors.

At the hearing regarding Trustee's Objection to Claim,

this Court ruled that the pre-petition debt could only be allowed as a general unsecured claim. The question of whether the post-petition portion of the Claim will be entitled to administrative expense status was taken under advisement. This memorandum opinion resolves that remaining issue.

Conclusions of Law

In a Chapter 13 case, the trustee may assume or reject an unexpired lease of residential property any time prior to confirmation of the plan. 11 U.S.C. § 365(d)(2). If the lease is rejected, the claim arising therefrom is to be treated as if it arose pre-petition as long as such lease was not first assumed. 11 U.S.C. §§ 365(g)(1) & 502(g).¹ In such a case, the claim is treated as a general unsecured claim.

See Lawrence P. King, Collier on Bankruptcy ¶ 365.08 at 365-64

¹ Section 365(g)(1) states the following:

(g) Except as provided . . ., the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease--
 (1) if such contract or lease has not been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title, immediately before the date of the filing of the petition; or

Section 502(g) states the following:

A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(1996). If, however, the lease was first assumed and then rejected, the resulting claim may qualify as an administrative expense. See, e.g., In re Norwegian Health Spa, Inc., 79 B.R. 507, 509 (Bankr. N.D. Ga. 1987) (discussing 11 U.S.C. § 365(g)(2))² (where assuming an unexpired lease is intended to benefit the estate, a breach of the obligation to cure is deemed an administrative expense).

Here the unexpired lease was not assumed by any affirmative act of Debtor or by the provisions of Debtor's plan. Further, Debtor evidenced her intention to reject the lease by vacating the premises post-petition. Therefore, Landlord's claim for post-petition rent is deemed to have arisen pre-petition and is to be treated as a general unsecured claim.

An order in accordance with this opinion will be entered on this date.

DATED this ___ day of January, 1997.

² In relevant part, Section 365(g)(2) states the following:

(g) Except as provided . . ., the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease--

(2) if such contract or lease has been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title--

(A) if before such rejection the case has not been converted under section 1112, 1208, or 1307 of this title, at the time of rejection . . .

. . .

JAMES D. WALKER, JR.
Judge, United States Bankruptcy Court

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

William S. Orange, III
1419 Newcastle Street
Brunswick, GA 31520

Sylvia Ford Brown
Chapter 13 Trustee
P. O. Box 10556
Savannah, GA 31412

Maxine H. Wraggs
P. O. Box 426
Brunswick, GA 31520

This _____ day of January, 1997.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
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IN RE:) CHAPTER 13
) CASE NO. 96-20715
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DEBTOR)

ORDER

In accordance with the memorandum opinion entered on this date, it is hereby

ORDERED that Trustee's Objection to Claim is sustained; claim number 22 is to be treated as a general unsecured claim.

SO ORDERED, this _____ of January, 1997.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

William S. Orange, III
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This _____ day of January, 1997.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court