In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of: GOLDEN ISLES PETROLEUM, INC. *Debtor*	)	Chapter 11 Case Number 91-42239
UNITED STATES OF AMERICA On Behalf of Its Agency the SMALL BUSINESS ADMINISTRATION *Movant*	)	FILED at 11 O'clock & 40 min A M Date 6-10-93 MARY C. BECTON, CLERK United States Bankruptcy Court Savannah, Georgia
v. GOLDEN ISLES PETROLEUM, INC. *Respondent*	)	

MEMORANDUM AND ORDER

The United States of American acting by and through the Small Business Administration filed a Motion for Relief from Stay in the above case which

was heard on April 14, 1993. The property which is in issue is identified by the parties as the "Bee Rite" property and is generally described in Plat Book F, Folio 48, in the Office of the Clerk of the Superior Court of Bryan County, Georgia. The subject property contains the headquarters of the Debtor, together with a gas station, a convenience store, and a Subway sandwich shop. The property was titled in the Debtor at one time subject to a debt of Bee Rite, Inc., to the Small Business Administration in the principal amount of $555,000.00. Through previous transactions Bee Rite, Inc., conveyed the property to a Mr. Bowen who in turn sold it to the Debtor. Bowen remained liable to the Small Business Administration and the Debtor executed a "wrap" mortgage in favor of Bowen.

In 1988 Debtor sold the property to Dan Minton and has never reacquired title to the property. However, in that transaction the Debtor retained a lease back of the premises in exchange for an agreed upon rent of $10,000.00 per month. Minton subsequently sold the property to an entity known as Sun Star. Sun Star is jointly owned by Laura Puccini, the wife of the Debtor's principal owner and by Debra Bowen. At that time the rental obligation of Golden Isles was reduced to $7,500.00 per month and has subsequently been reduced a second time to $6,000.00 per month. It is uncontradicted that the Small Business Administration is the holder

AO 72A
(Rev. 8/82)

of a first deed to secure debt on the property. Debtor estimates the fair market value of this property at $710,000.00. The total principal and accrued interest owed to the Small Business Administration as of the date of the hearing was $597,410.52 and per diem interest accrues at a rate of $142.84. The Small Business Administration ("SBA") contends that on a forced sale basis the property would likely bring $490,000.00, but does not seriously contest that the fair market value under different marketing conditions would approach $700,000.00. Regardless of the precise value of the property it is clear that there are numerous junior liens which consume more than any potential equity the property might yield above the SBA indebtedness.

There has been no payment of the monthly debt service obligation of $7,103.99 since May of 1991. The account debtor of the Small Business Administration, Mr. Bowen, apparently has not received money from Debtor's lessor, Sun Star, despite the fact that the Debtor has made rental payments to Sun Star due to the fact that Sun Star alleges it has advanced some $165,000.00 in behalf of Mr. Bowen and began to set off its monthly obligations to Bowen against that indebtedness. Debtor's principal, Mr. Puccini, stated that Mr. Bowen would now begin receiving the $6,000.00 monthly that Debtor pays Sun Star for rent and with those monies Mr. Bowen will be able to fund future obligations to the SBA. The Debtor

AO 72A
(Rev. 8/82)

asserts that this property is essential to its reorganization because its office is located there and it generates approximately $5,000.00 per month in net revenue after payment of all expenses including rent.

Under 11 U.S.C. Section 362 it is clear that even a possessory interest of a debtor in property is protected. In re Atlantic Business and Community Corp., 901 F.2d 325 (3rd Cir. 1990); In re 48th Street Steakhouse, Inc., 835 F.2d 427 (2nd Cir. 1987). In 48th Street Steakhouse the argument was made that a non-debtor would be the incidental beneficiary of a holding extending protection of the automatic stay to a debtor whose only interest in property was as a lessee. The Second Circuit Court of Appeals held

> [T]his result is permissible where a non-debtor's interest in property is intertwined as in the present case with that of a bankrupt debtor. If action taken against the non-bankrupt party would inevitably have an adverse impact on property of the bankrupt estate, then such action should be barred by the automatic stay.

Id. at 431. That decision, however, only addressed the question of whether the landlord's attempt to terminate the prime lease was void as violating the automatic

AO 72A
(Rev. 8/82)

stay. It did not attempt to set forth the criteria for lifting the automatic stay in such a situation or by inference in a case such as this one where debtor has no contractual obligation to the moving creditor, but would suffer economic loss if foreclosure of the deed to secure debt resulted in debtor's displacement from the premises.

11 U.S.C. Section 362 provides that relief from stay should be granted for cause or if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. I find that the Debtor as a mere lessee has no equity in this property, but because the net profit from the Debtor's operations on this site amounts to approximately $5,000.00 per month, that income stream is necessary to any prospect of a reorganization of this debtor. Accordingly, relief from stay cannot be granted under Section 362(d)(2). However, the question remains whether cause exists for granting relief from stay. In this case the moving creditor has not received a payment in approximately two years and interest continues to accrue on this indebtedness at a rate of $142.84 per day. While the testimony was not entirely clear on this point, the apparent reason for the default of Mr. Bowen, the obligor on the note to pay the SBA, arises from the fact that the Debtor or Sun Star, a corporation owned by the spouse of the Debtor's principal, elected to exercise an alleged right of set off of advances it had made to Mr. Bowen against its future rent

AO 72A
(Rev. 8/82)

obligations. The inference to be gleaned from the evidence is that Mr. Bowen was thereafter unable to timely make payments to the Small Business Administration.

It is clear that a creditor should be granted relief from stay where the creditor has not been paid for an inordinate length of time. In re Sun Valley Ranches, Inc., 823 F.2d 1373, 1376 (9th Cir. 1987). In re Senior Care Properties, Inc., 137 B.R. 527, 529-30 (Bankr. N.D.Fla. 1992). In re Novak, 121 B.R. 18, 19 (Bankr. W.D.Mo. 1990). In re Keays, 36 B.R. 1016, 1017 (Bankr. E.D.Penn. 1984). In re Frascatore, 33 B.R. 687 (Bankr. E.D.Penn. 1983). An unreasonably long delay in payment to a creditor is prejudicial and a sufficient basis to grant relief from stay for cause. Senior Care Properties, 137 B.R. at 530. Relief may be granted upon a showing of a lengthy delay in payment although the creditor is otherwise adequately protected. Novak, 121 B.R. at 19.

In Sun Valley Ranches, supra, the court granted relief from stay under Section 362(d)(1) where the creditor had not been paid in four years and the value of the property was declining. 823 F.2d at 1376. Similarly in Keays, supra, the court granted relief for cause based on "debtor's unexplained failure to make five consecutive mortgage payments . . . " 36 B.R. at 1017. Here, the Small Business

AO 72A
(Rev. 8/82)

Administration has clearly been prejudiced by the delay in payment. Although Debtor's representatives explained that it paid or offset its obligations with Bowen, Debtor has not explained why it never took any action to protect its own interest in the lease by ensuring that the ultimate obligee, SBA, was satisfied and not prejudiced by Bowen's failure to pay.

The relationship between the SBA and the Debtor is similar to the tenancy at will discussed in Matter of Schewe, 94 B.R. 938 (Bankr. W.D.Mich. 1989). In Schewe, the lessor, without notice of the bankruptcy, filed a post-petition state court action to recover possession of the leased premises from the debtors. Debtors brought an adversary proceeding to prevent the lessor from obtaining possession and to obtain an award of damages for the lessor's stay violation. The lessor filed a motion for relief from stay. The court concluded that the lessor's desire to terminate the tenancy at will under state law constituted cause to grant relief from stay. The court noted that outside of bankruptcy under applicable state property laws, the lessor would be entitled to the premises with one month's notice. Id. at 950. Further, the court refused to use its equitable powers to create new property rights that would allow debtors to maintain possession. Here, Debtor does not have a lessee/lessor relationship or any contractual rights to assert against the SBA. Inasmuch as the

AO 72A
(Rev. 8/82)

Debtor has no direct obligation to the Small Business Administration which it seeks to restructure in this Chapter 11 proceeding and since the reason for the two year default stems at least in part from the intentional act of the Debtor or an affiliate company in withholding ongoing rental payments from its landlord resulting in economic harm to the Small Business Administration, I conclude that cause exists for granting relief from stay.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY THE ORDER OF THIS COURT that the Motion for Relief from Stay filed by the Small Business Administration is granted.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 9th day of June, 1993.

AO 72A
(Rev. 8/82)