

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE

Daniel R. Beaird fdba,
Corky's BBQ & Ribs,

Case No. 02-11484

Debtor.

Chapter 11

MEMORANDUM OPINION AND ORDER RE
MOTION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE RENT FILED BY
FORCUM-LANNOM, INC.

The Court conducted a hearing on Forcum-Lannom's Motion for Allowance and Payment of Administrative Rent on November 20, 2002. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

In November 1999, Forcum-Lannom, as landlord, and Daniel R. Beaird, ("Debtor"), as tenant, entered into a five-year lease of non-residential real property in which the debtor conducted business as Corky's BBQ. The monthly rental payment on the property was \$5,500.00. The debtor filed for chapter 11 bankruptcy relief on March 29, 2002. On that same day, the debtor filed a motion to assume the lease agreement with Forcum-Lannom.

At the May 15, 2002, hearing on the debtor's motion to assume the lease, counsel for the debtor announced that the debtor no longer desired to assume the lease. The debtor surrendered the leased premises to Forcum-Lannom on May 31, 2002.

The debtor had not made the post-petition monthly rent payments of \$5,500.00 which were due on April 1, 2002, and May 1, 2002, prior to surrendering the premises. As a result, Forcum-Lannom filed a motion for allowance and immediate payment of the delinquent rent as an administrative expense. The debtor objected to the motion.

II. CONCLUSIONS OF LAW

Unpaid rents which accrue post-petition until a lease is deemed rejected pursuant to § 365(d)(1) are entitled to administrative expense priority. *In re Palace Quality Servs. Industries, Inc.*, 283 B.R.

868, 905 (Bankr. E.D. Mich. 2002); *In re Koenig Sporting Goods, Inc.*, 221 B.R. 737, 740 (Bankr. N.D. Ohio 1998). The lessor's administrative expense claim is equal to the "ordinary monthly rent payments which become due during the postpetition prerejection period." *Koenig*, 221 B.R. at 740-41; *Palace Quality*, 283 B.R. 898. Whether or not a lessor is entitled to payment of his administrative claim immediately is to be decided on a case-by-case basis. *Palace Quality*, 284 B.R. 889, n. 21. "Relevant factors could include the ability of the estate to ultimately pay the administrative claim, the lessor's need for immediate payment, and the potential value of the lease to the estate if the trustee ultimately were to assume it." *Id.*

In the case at bar, the debtor stated to the Court on May 15, 2002, that he no did not wish to assume the lease with Forcum Lannom. The debtor surrendered the leased premises to Forcum Lannom on May 31, 2002. The Court hereby finds that the lease was rejected on the latter date. As a result, Forcum Lannom is clearly entitled to an administrative claim in the amount of \$11,000.00 for post-petition, pre-rejection rent for the months of April and May 2002. Neither Forcum Lannom nor the debtor introduced any proof to the Court regarding the issue of immediate payment of the administrative claim. As a result, the Court will deny that part of Forcum Lannom's motion.

III. ORDER

It is therefore **ORDERED** that Forcum-Lannom's Motion for Allowance and Payment of Administrative Rent is **GRANTED IN PART AND DENIED IN PART** as follows:

1. Forcum-Lannom's Motion for Allowance of Administrative Rent is **GRANTED** in the amount of \$11,000.00 for post-petition rents for the months of April and May 2002.
2. Forcum-Lannom's Motion for Immediate Payment of Administrative Rent is **DENIED**.

It is so ordered.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: December 30, 2002