

**Dated: July 01, 2021**  
**The following is ORDERED:**



*Jennie D. Latta*

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**Jennie D. Latta**  
**UNITED STATES BANKRUPTCY JUDGE**

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re  
JUSTIN EZELL CRADDOCK, SR.,  
Debtor.

Case No. 21-21683-L  
Chapter 13

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AMENDED AND RESTATED ORDER DENYING MOTION TO  
ASSUME OR REJECT LEASE BETWEEN DEBTOR AND CRESTCORE REALTY

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The *Motion to Assume Lease or in the Alternative Reject Lease as to Crestcore Realty* (ECF. No. 10) and *Debtor's Response to Motion to Assume Lease or in the Alternative Reject Lease Filed by Crestcore Realty* (ECF No. 20) came before the court for hearing on June 24, 2021. After hearing arguments of counsel, the court orally ruled that the motion should be denied and later entered a simple order indicating that the motion would be denied for lack of good cause shown (ECF No. 24). Counsel have jointly asked the court to expound upon in writing the reasons for denial of the motion. The court thus offers this *Amended and Restated Order* giving the reasons for denial of the motion as stated in the prior oral ruling.

The Debtor commenced this case by filing a voluntary petition under Chapter 13 of the Bankruptcy Code on May 19, 2021. ECF No. 1. On that same day, the Debtor filed a proposed Chapter 13 Plan which proposes to assume the lease with Crestcore Realty and pay all arrears through May 31, 2021, consisting of \$2,085.00 together with interest at 5.25% by paying equal monthly installments of \$40.00 over a period of 60 months. ECF No. 2.

A hearing on confirmation of the Debtor's proposed plan is scheduled for July 29, 2021. ECF No. 7.

Despite the Debtor's clearly stated intention to assume the lease with Crestcore Realty as a permissive plan provision, Crestcore Realty filed its *Motion to Assume Lease* on May 21, 2021. The *Motion to Assume* states, in its entirety, the following:

COMES NOW Crestcore Realty ("Crestcore") and in support of its Motion to Assume Lease or In the Alternative Reject Lease would state unto the Court as follows:

The Debtor signed a Lease for the premises at 3731 New Covington Pike, Memphis, Tn. The Debtor is in arrears pre-petition and is not paying post-petition rent. Crestcore is not adequately protected.

WHEREFORE, PREMISES CONSIDERED, Crestcore requests an expedited hearing be set and that the Debtor be required to either assume the Lease and continue to make timely monthly payments directly to Crestcore and that Crestcore be allowed a Class One Unsecured Claim for the arrearage amount or reject the Lease and allow Crestcore to recover its leased premises.

The *Motion to Assume* was originally scheduled for the Chapter 13 Trustee's docket on June 10, 2021, but was continued to the court's hearing docket on June 24, 2021, at 10:00 a.m. ECF No. 15 and docket entry date June 11, 2021.

The Debtor filed a written response on June 23, 2021, which states that the *Motion to Assume* was unnecessary because the Debtor's proposed plan provides for assumption of the lease as a permissive plan provision under section 1322(b)(7), and that Crestcore Realty's allegation that

the Debtor is not paying post-petition rent is false because no post-petition rent was due when the *Motion to Assume* was filed. The Debtor attached copies of two money orders that he used to pay June rent as well as a copy of the email confirmation of payment he received from Crestcore Realty. ECF No. 20.

The Debtor is correct that 11 U.S.C. section 1322(b)(7) permits a Chapter 13 plan, “subject to section 365 of [title 11], [to] provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section.” The Debtor is thus also correct that the *Motion to Assume* was unnecessary. The Debtor is further correct that no post-petition rent was due when Crestcore Realty’s *Motion to Assume* was filed. For all of these reasons, the *Motion to Assume* was denied.

At the hearing, the court explained that pursuant to 11 U.S.C. section 365(a), “the trustee, subject to the court’s approval, may assume or reject an executory contract or unexpired lease of the debtor.” In a Chapter 13 case, section 1322(b)(7) places the power to assume or reject an executory contract or unexpired lease with the debtor, who is the person who must file a plan containing the provisions set forth in section 1321. *See* 11 U.S.C. § 1321 (“The debtor shall file a plan.”)

Section 365(d)(2) is concerned with the assumption or rejection of unexpired leases of residential real property and of personal property in Chapters 9, 11, 12, and 13. It permits the trustee to assume or reject an unexpired lease of residential real property “at any time before confirmation of a plan.” It further provides that a party to such lease may request that the court order the trustee “to determine within a specified period of time whether to assume or reject” such lease. 11 U.S.C. § 365(d)(2). The references to trustee in this section must be read as references

to the debtor in a Chapter 13 case, because it is the debtor who is the party that may assume or reject an unexpired lease of residential real property in a Chapter 13.

As the court explained at the hearing, the *Motion to Assume* is improper insofar as it asks that the court do more than simply set a date prior to confirmation for the Debtor to determine whether to assume or reject the lease with Crestcore Realty. In appropriate circumstances, I routinely enter orders setting a date by which a debtor must file a motion to assume or reject an unexpired lease, failing which the lease will be deemed rejected. In this case, I found that it was not appropriate to enter that type of order because the Debtor has already expressed his intention to assume the lease with Crestcore Property as a permissive plan provision. The Debtor provided proof that the June rent has been paid and has provided for curing the arrearage accumulated prior to June through his plan. There is nothing more that the court can reasonably ask the Debtor to do at this point in time. I did inform counsel for Crestcore Realty that if his client is unhappy with its proposed treatment under the Debtor's plan, he should consider filing an objection to confirmation.

For all the foregoing reasons, the *Motion to Assume* is DENIED.

cc: Debtor  
Attorney for Debtor  
Creditor Crestcore Realty  
Attorney for Crestcore Realty  
Chapter 13 Trustee