

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
)  
LESLEE T. SCOTT, ) CASE NO. 10-20837 JPK  
) Chapter 7  
) Debtor. )  
\*\*\*\*\*  
STACIA L. YOON, )  
)  
) Plaintiff, )  
)  
) v. ) ADVERSARY NO. 10-2157  
)  
BILL JANECHYK, )  
)  
) Defendant. )

MEMORANDUM OF DECISION

This adversary proceeding was commenced by the plaintiff Stacia L. Yoon, as Trustee of the Chapter 7 estate of Leslee T. Scott (case number 10-20837) ["Trustee"], by complaint filed on October 28, 2010 against the defendant Bill Janeczyk ["Janeczyk"]. The complaint sought the recovery of a security deposit alleged to have been provided by the debtor Leslee T. Scott ["Scott"] to Janeczyk with respect to Scott's (and a co-lessee's) rental of real property from the defendant. Following proceedings which are not relevant to the determination made by this memorandum, a trial was held on October 20, 2011, at which the court orally announced its decision. Because of the relative novelty of the issues presented, the court deems it advisable to state its analysis of the issues involved in this adversary proceeding in a written decision.

The court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C. § 1334(b), 28 U.S.C. § 157(a) and (b), and N.D.Ind.L.R. 200.1. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(E).

The issue addressed generally in this case is the property interest of an individual in a

security deposit provided to a landlord in conjunction with a lease of real property, particularly in the context of a Chapter 7 bankruptcy case. The collateral issue which arises in this case is the extent of the Chapter 7 bankruptcy estate's interest in a security deposit in a circumstance in which neither the Chapter 7 Trustee nor the debtor assumes the lease in accordance with procedures provided by applicable bankruptcy law.

The lease commenced on March 1, 2010 with respect to property located at 7346 Hemlock, Gary, Indiana. There was no written lease. The parties stipulated that the amount of the security deposit at issue is \$900.00. The lease ended in April of 2011.

The Chapter 7 bankruptcy case of Leslee T. Scott was commenced by a voluntary petition filed by her on March 9, 2010. Evidence was presented at the trial that Janeczyk initiated case number 45D05-1004-SC-00138 in the Lake Superior Court, Small Claims Division, in Hammond, Indiana on April 20, 2010, and he subsequently obtained a Possession Order in that case in May of 2010. The Notice of Claim filed by Janeczyk to initiate that case sought \$1,800.00 for "non-payment of rent for single family home (at 7346 Hemlock Avenue, Gary, Indiana)". At the trial Janeczyk submitted evidence as to damage alleged by him to have been inflicted upon the property by Scott and her co-tenant, and amounts which he asserted he was required to spend to restore the property to a rentable condition. The court does not question that Janeczyk's evidence of damage to the leased premises established that there were monetary damages to the property arising from Scott's and her co-tenant's occupancy of it. The court also does not question that the evidence at trial established that there was a delinquency of rent owed by Scott and her co-tenant to Janeczyk. However, Janeczyk did not obtain relief from the automatic stay of 11 U.S.C. § 362(a) to initiate his action. Moreover, under the facts stated above, the small claims court action did not fall within the exceptions provided by 11 U.S.C. § 362(b)(22) or 11 U.S.C. § 362(b)(23). As a result, any action undertaken by Janeczyk in the small claims court action has no impact upon the issues

addressed in this adversary proceeding which concern interests in a security deposit provided under a lease entered into prior the filing of a Chapter 7 case.

The commencement of a bankruptcy case creates an estate; 11 U.S.C. § 541(a). This estate includes “all legal and equitable interests of the debtor in property as of the commencement of the case”; 11 U.S.C. § 541(a)(1). Included within the parameters of the foregoing is a debtor’s interest as a tenant under a lease of real property. Upon the filing of a Chapter 7 case, the debtor’s/tenant’s leasehold interest becomes property of the Chapter 7 estate, and the Trustee succeeds to the interests of the debtor. 11 U.S.C. § 365(d)(1) then provides a window period within which the Chapter 7 Trustee must decide whether or not to assume the lease for the benefit of the estate, as follows:

**(d) (1)** In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

If the Trustee fails to assume the lease within the 60-day period, the lease is then deemed rejected by operation of the foregoing statute. 11 U.S.C. § 365(g)(1) then states the effect of rejection as follows:

**(g)** Except as provided in subsections (h)(2) and (i)(2) of this section, 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 ...

Thus effected, the breach of the lease gives rise to the landlord’s remedies available for breach of a lease, including an action for unpaid rent and other damages which accrue following the date of the petition. However, damages and unpaid rent which accrue prior to the date of the

petition simply constitute pre-petition indebtedness giving rise to a claim for those damages by the landlord which may be asserted in the Chapter 7 case, as provided by 11 U.S.C. § 502(g)(1), subject to the limitation provided by 11 U.S.C. § 502(b)(6) <sup>1</sup>.

In this case, the Trustee did not act within 60 days to assume the lease, and thus the lease was deemed rejected, resulting in a breach of the lease as of the date of the petition. Scott did not act to assume the lease. The pre-petition lessee/lessor arrangement between Scott and Janeczyk was effectively terminated on the 61<sup>st</sup> day after the filing of the petition, and rights and interests in the \$900.00 security deposit at issue in this case followed whatever track security deposits follow when a lease of residential real estate is terminated under Indiana law. That track is defined by I.C. 32-31-3-1 *et seq.* The \$900.00 at issue in this case clearly constitutes a “security deposit” as defined by I.C. 32-31-3-9(a) and (b). Scott’s interests in the security deposit were defined by the breach of the lease deemed to have occurred immediately before the date of the filing of the petition, pursuant to 11 U.S.C. § 365(g)(1), and those interests constituted intangible personal property rights.<sup>2</sup>

The return of the security deposit/retention of the security deposit or a portion thereof by the landlord is governed by I.C. 32-31-3-12, which in pertinent part states:

**32-31-3-12 Return of deposits; deductions; liability**

Sec. 12. (a) Upon termination of a rental agreement, a landlord shall return to the tenant the security deposit minus any amount applied to:

- (1) the payment of accrued rent;

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<sup>1</sup> In order to avoid the consequences to the debtor/lessee with respect to rejection of the lease by the Trustee and consequent “breach” of the lease as of the date of the petition, 11 U.S.C. § 365(p)(2) provides a mechanism by which the debtor may assume the lease.

<sup>2</sup> Scott could have exempted a part of the security deposit pursuant to 11 U.S.C. § 522(b)(2), by utilizing the intangible personal property exemption provided by I.C. 34-55-10-2(c)(3). She did not; in fact, Schedule C utilizes all of the available intangible personal property exemption amount for other intangible property.

(2) the amount of damages that the landlord has suffered or will reasonably suffer by reason of the tenant's noncompliance with law or the rental agreement; and

(3) unpaid utility or sewer charges that the tenant is obligated to pay under the rental agreement;

all as itemized by the landlord with the amount due in a written notice that is delivered to the tenant not more than forty-five (45) days after termination of the rental agreement and delivery of possession. The landlord is not liable under this chapter until the tenant supplies the landlord in writing with a mailing address to which to deliver the notice and amount prescribed by this subsection. Unless otherwise agreed, a tenant is not entitled to apply a security deposit to rent.

In order to seek to assert what is essence a set-off by the landlord against the deposit, it is necessary for a landlord to follow the procedure provided by I.C. 32-31-3-14, which states the following:

**32-31-3-14 Notice of damages; refund of remaining deposit**

Sec. 14. Not more than forty-five (45) days after the termination of occupancy, a landlord shall mail to a tenant an itemized list of damages claimed for which the security deposit may be used under section 13 of this chapter. The list must set forth:

(1) the estimated cost of repair for each damaged item;  
and

(2) the amounts and lease on which the landlord intends to assess the tenant.

The landlord shall include with the list a check or money order for the difference between the damages claimed and the amount of the security deposit held by the landlord.

The evidence established that Janeczyk did not follow the I.C. 32-31-3-14 procedure, and thus the \$900.00 security deposit became subject to the requirement of return provided by I.C. 32-31-3-12. Because interests in the deposit were now defined by a lease which effectively terminated immediately before the date of the filing of the petition, the rights with respect to return of the security deposit belong to the Chapter 7 bankruptcy estate, and not to the debtor

individually. Consequently, the Trustee became entitled to the \$900.00 security deposit, and her complaint for turnover of that deposit by Janeczyk is sustained; *Cf., Matter of Wayco, Inc.*, 947 F.2d 1330 (7<sup>th</sup> Cir. 1991) [deciding that under Wisconsin law, a pre-petition security deposit belonged to the lessee of real property and did not constitute property of the debtor lessor's bankruptcy estate].

The court determines that the plaintiff Trustee shall have and recover judgment in the amount of \$900.00 from the defendant William J. Janeczyk.

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff Stacia L. Yoon, as Trustee of the Chapter 7 estate of Leslee T. Scott (case number 10-20837), shall have and recover judgment in the amount of \$900.00 from the defendant William J. Janeczyk, together with the costs of this action in the amount of \$250.00, resulting in judgment in the total amount of \$1150.00. The amount of the judgment shall bear interest at the federal judgment rate in effect on the date of entry of the judgment until the judgment amount has been paid in full.

Dated at Hammond, Indiana on February 24, 2012.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
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