

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA

COPY

IN RE:

Four Seasons Apparel Company,

Debtor.

Case no. 00-10278

ORDER DENYING APPLICATION FOR A CHAPTER 7 ADMINISTRATIVE  
EXPENSE CLAIM

THIS MATTER came on for hearing before the undersigned bankruptcy judge on August 24, 2000, on the Amended Request for Payment of Administrative Expense Claim filed by Harris Brown Management. Appearing before the court were Christine L. Myatt, attorney for Four Seasons Apparel Company ("Debtor"), H. Arthur Bolick, II, attorney for Harris Brown Management ("Creditor"), and Gerald S. Schafer, Chapter 7 Trustee. After hearing the arguments of counsel and reviewing the file, the Court makes the following:

FINDINGS OF FACT

1. Debtor and Creditor entered a lease on January 1, 1995, for office space located at 4602 Dundas Drive, Suite 100, Greensboro, North Carolina. Under the terms of the lease, the Debtor was to pay monthly rent of \$3,781.44 for five (5) years. The lease term was to expire on December 31, 2000.
2. The Order for Relief was entered in the Debtor's bankruptcy case on February 7, 2000 and the Debtor operated its business and managed its property as a debtor-in-possession under Chapter 11 of the Bankruptcy Code. The case was converted to a Chapter 7 case on July 21, 2000.
3. On May 23, 2000, the Debtor filed a Motion for Authority to Reject Lease with Harris Brown Management which was not opposed by the Creditor. The order granting the Debtor's motion was entered on June 9, 2000, and authorized the Debtor to reject the lease effective June 30, 2000.
4. The Debtor did not vacate the leased property until August 23, 2000.
5. The Chapter 7 Trustee was not aware of the Debtor's continued and unauthorized occupation of the rental property.
6. The Debtor failed to pay rent for June or July 2000 as required by the lease. The amount due is \$7,562.88.

7. An Order Allowing Payment of Administrative Expense Claim was entered on September 1, 2000 allowing Harris Brown a Chapter 11 Administrative Expense Claim in the amount of \$7,562.88 for rent due from the Debtor in June and July 2000.
8. The Debtor has also failed to pay rent for August 2000.

### DISCUSSION

The Order Authorizing Four Seasons Apparel Company to Reject Lease with Harris Brown Management, entered on June 9, 2000, authorized the Debtor to reject the lease effective June 30, 2000. It is undisputed that the Debtor continued occupying the premises until August 23, 2000. In the Creditor's Request for Payment of Administrative Expense Claim, filed July 28, 2000, the Creditor requests payment in the amount of \$3,781.44 for each month the Debtor continued to occupy the Property. An Order entered September 1, 2000, allowed the Creditor a Chapter 11 Administrative expenses in the amount of \$7,562.88 for rent due for June and July 2000. However, since this case was converted to a Chapter 7 on July 21, 2000, the Creditor's request for rent for the month of August 2000 in the amount of \$3,781.44 must be considered as a request for a Chapter 7 administrative expense claim.

Generally, when an unexpired pre-petition lease is rejected, claims resulting from the rejection are deemed to be pre-petition claims. 11 U.S.C. § 502(g). The lessor will have a general unsecured claim for future rents for the term of the lease. Thus, in this case, since the lease was never assumed and was rejected during the Chapter 11 case, the Creditor is entitled to a general unsecured claim for future rents through the expiration of the lease, December 31, 2000.

Pursuant to 11 U.S.C. § 503, the lessor under an unexpired pre-petition lease may also be allowed a Chapter 11 administrative expense claim for unpaid rent prior to the rejection. In this case, the court allowed the Creditor a Chapter 11 administrative expense claim for unpaid pre-rejection rent for the month of June, and, since the Debtor failed to vacate the premises by June 30, 2000 as required, the court allowed a Chapter 11 administrative expense claim for the unpaid July rent as well. However, the Creditor is not entitled to a Chapter 7 administrative expense claim for unpaid rent after July 21, 2000, when the case was converted to a Chapter 7.

Pursuant to § 503(b)(1)(A), claims for "the actual, necessary costs and expenses of preserving the estate" are allowable as administrative expenses. 11 U.S.C. § 503(b)(1)(A). Claims for administrative expenses must be construed narrowly "in order to maximize the value of the estate for the benefit of the other creditors." In re Atlantic Container Corp., 133 B.R. 980, 992 (Bankr. N.D. Ill. 1991). In general, for a debt to qualify as an administrative expense as an actual and necessary cost of preserving the estate, two requirements must be satisfied: (1) the debt must have arisen from a transaction with the estate and (2) the debt must have benefitted the estate in some demonstrable way. See, 5 Collier on Bankruptcy ¶ 503.06[3][a] (15<sup>th</sup> ed. 2000). In this case, the debt at issue, rent for the month of August, did not arise from a "transaction" between the Chapter 7 Trustee and the Creditor. Furthermore, the Chapter 7 estate did not

benefit from the Debtor's continued occupancy of the leased premises after the rejection of the lease. See, Memphis-Shelby County Airport Authority v. Braniff Airways, Inc., (In the Matter of Braniff Airways, Inc.), 783 F.2d 1283, 1286 ("[I]f there is no benefit to the estate, the breach of an executory contract or lease does not give rise to a claim for administrative expense, but only an unsecured breach of contract claim under section 502(g).") (citing In re Airlift International, Inc., 761 F.2d 1503, 1509 (11th Cir.1985)).

### CONCLUSION

The court finds that the unpaid rent for the month of August 2000 in the amount of \$3,781.44 is not an actual and necessary cost and expense of preserving the Chapter 7 estate. The debt did not arise from a transaction between the Debtor and the Chapter 7 estate, and the estate has not benefitted from the Debtor's unauthorized occupation of the rental property in a demonstrable way.

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that the Creditor shall not be allowed a Chapter 7 administrative expense claim in the amount of \$3,781.44 for rent due from the Debtor for August 2000.

This the 15 day of September, 2000.

**CATHARINE R. CARRUTHERS**

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Catharine R. Carruthers  
United States Bankruptcy Judge