UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	)	
	)	
Arrowood Mills of N.C., Inc.,	)	Case No. 99-52055C-11W
	)	
Debtor.	)	
	)	

ORDER

This case came before the court on July 13, 2000, for hearing upon Debtor's objection to claim no. 85 of Arrowood Investors Corporation in the amount of $287,662.50. Daniel C. Bruton appeared on behalf of the Debtor and Christine L. Myatt appeared on behalf of Arrowood Investors Corporation. Having considered the proof of claim, the Debtor's objection and the evidence offered at the hearing, and having heard the arguments of counsel for the parties, the court finds and concludes as follows:

1. On March 15, 2000, a proof of claim was filed in this case on behalf of Arrowood Investors Corporation ("Claimant") in the amount of $287,662.50.[1] The claim was filed as a general unsecured claim and has attached to it an itemization of the amounts included in that figure and a copy of a five-year lease dated September 16, 1998, by and between Claimant and the Debtor.

[1]This proof of claim replaced an earlier proof of claim in the amount of $312,811.64 that included post-petition rent that was paid by the Debtor after the original proof of claim was filed.

According to the itemization attached to the proof of claim, the claim includes rent of $17,662.50, which is based upon Claimant's computation under § 502(b)(6) of the Bankruptcy Code, and repairs of $270,000.00. No other documentation is attached to the proof of claim pertaining to or explaining the nature of the repairs referred to in the itemization.

2. The Debtor's objection was filed on May 11, 2000. The objection first asserts that the $270,000.00 figure for repairs contains a mathematical error. More significantly, however, the objection assets that under the terms of the lease, the Debtor is not liable for the cost of the repairs included in the claim. Additionally, the Debtor assets that to the extent the Debtor is liable for any repairs to the leased premises, the amount of any such liability is subject to the cap provided for under § 502(b)(6) of the Bankruptcy Code.

3. Claimant concedes that the rent figure in its amended proof of claim does contain a mathematical error and that the correct amount of its claim for repairs is $197,095.00. Claimant's rent calculation remains at $17,662.50, which means that the total claim being asserted by Claimant is $214,757.50.

4. The only evidence offered regarding the nature of the repairs involved in Claimant's claim were copies of the invoices

submitted by the entities performing the work. These invoices disclose that the work was performed after the Debtor vacated the premises and involved replacing the roof, installing a blower in the compressor room and installation of an air compressor in the building. There was no evidence regarding the condition of the building when the Debtor took possession in September of 1998, a little over a year before the Debtor surrendered the building to Claimant. Nor did the evidence show that the repairs were necessary because of a failure by the Debtor to perform ordinary maintenance on the building or because the Debtor abused or damaged the building and equipment.

5. Claimant's argument is that paragraph eight of the lease made the Debtor responsible for all repairs to the building and not just deferred maintenance. The terms of the lease, read as a whole, do not support this argument. Paragraph eight is entitled "Condition of Premises" and provides that the Debtor accepted the premises "in an 'As Is' condition as of the date hereof . . . ." Thereafter, paragraph eight states that "all repairs, modifications, interior and exterior, ordinary and extraordinary, and structural shall be borne by the Tenant at Tenant's own cost and expense . . . ." The lease provides for a term of five years and in paragraph seventeen obligated the Debtor to purchase the

property at the end of the lease term. In arriving at the meaning of the lease, it must be read as a whole and all portions thereof given effect. When paragraph eight is read in the context of the entire lease, it has the effect of requiring the Debtor to accept the premises in the condition which existed in September of 1998, and, if modifications or repairs were needed in order for the building to be satisfactory for Debtor's occupation and use of the building, to require the Debtor to pay for any such modifications or repairs which were required during the term of the lease. Since the Debtor was to purchase the premises at the end of the lease term, it seems clear that it was not contemplated under the lease that the Debtor would be obligated to the landlord to make repairs.

6. Based upon the terms of the lease, read as a whole, the court concludes that the Debtor is not obligated to pay for the $197,095.00 of repairs which are included in Claimant's proof of claim.

7. Moreover, even if the lease obligated the debtor to make repairs, such obligation would be capped or limited by § 502(b)(6) of the Bankruptcy Code. Under § 502(b)(6) "the claim of a lessor for damages resulting from the termination of a lease of real property" includes damages claimed as a result of a tenant's prepetition failure to perform covenants in a lease requiring the

tenant to maintain and repair the leased premises. See In re Sheridan, 184 B.R. 91 (9th Cir. BAP 1995); In re Mr. Gatti's, 162 B.R. 1004 (Bankr. W.D. Tex. 1994).

8. The Debtor's objection therefore should be sustained and the claim of Arrowood Investors Corporation reduced to a general unsecured claim in the amount of $17,662.50.

IT IS SO ORDERED.

This 21st day of July, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge