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IT IS SO ORDERED.

Dated: September 11, 2024



Mina Nami Khorrami
Mina Nami Khorrami
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: :

MICHAEL ANTHONY CROSDALE, :
JR., :

Debtor. : Case No. 24-52642
: Chapter 13
: Judge Nami Khorrami
:

ORDER CONDITIONALLY DENYING MOTION OF CREDITOR, OLENTANGY COMMONS OWNER, LLC., FOR RELIEF FROM THE AUTOMATIC STAY FOR THE LEASED REAL PROPERTY KNOWN AS 4859 BIRMINGHAM COURT, COLUMBUS, OH 43214 (DOC. 13)

Before the Court is the *Motion Of Creditor, Olentangy Commons Owner, LLC., For Relief From The Automatic Stay For The Real Property Known As 4859 Birmingham Court, Columbus, Oh 43214* (Doc. #13) (the “Motion”) filed by Olentangy Commons Owner, LLC. (“Movant”), and

the Debtor's *Objection* to the Motion (Doc. #16). Movant seeks to modify the automatic stay to proceed with an eviction to recover possession of the leased property located at 4859 Birmingham Court, Columbus, Ohio 43214 (the "Property") due to the Debtor's alleged breach of the lease (the "Lease") of the Property.

A hearing was held on September 10, 2024, at which time Philip Gerth appeared on behalf of the Debtor, and Dimitri Hatzifotinos appeared on behalf of the Movant. The Debtor testified on his own behalf. Ashley Gullett testified on behalf of Movant. The Movant's Exhibits A, B, and C were admitted into evidence following Ms. Gullett's testimony based on the Debtor's lack of objection.¹ The testimony presented by Movant established that it has not received the rental payments of \$1,795 per month for July (due prepetition), August (due postpetition), and September (due postpetition) that are due under the Lease.

The testimony presented by the Debtor established that he attempted to pay rent for July and August but that those payments had been refused by Movant, and that he did not attempt to tender rent for September because it would have been futile. The Debtor also testified that he intends to assume the Lease and cure any defaults through his chapter 13 plan, and that he would be able to tender the three past due rental payments to the Trustee by September 30, 2024. Finally, the Debtor testified that his becoming homeless will negatively affect his ability to carry out his chapter 13 plan. Following the hearing, the Debtor filed an Amended Plan (Doc. #25) providing for the assumption of the Lease.

The Bankruptcy Code provides that the Court may lift the automatic stay for "cause, including a lack of adequate protection." 11 U.S.C. § 362(d)(1). The Code does not define

¹ Exhibit C was not disclosed on Movant's Exhibit List and Movant had only one copy of the exhibit at the hearing. The Court reminds counsel that exhibits must be timely disclosed on an exhibit list, and that sufficient copies for the Court, its law clerk, opposing counsel, and the witness must be brought to the hearing. If these requirements are not complied with, exhibits may be excluded by the Court even in the absence of an objection from opposing counsel.

“cause,” and therefore “courts must determine whether discretionary relief is appropriate on a case by case basis.” *Laguna Assocs. L.P. v Aetna Cas. & Sur. Co. (In re Laguna Assos. L.P.)*, 30 F.3d 734, 737 (6th Cir. 1994). “[C]ause is a broad and flexible concept which permits a bankruptcy court, as a court of equity, to respond to inherently fact-sensitive situations,” and it allows the Court to weigh all competing interests and policies underlying the Bankruptcy Code on a case-by-case basis to reach a just result. *Tan v. Pees (In re Boddie)*, 576 B.R. 580, 585 (S.D. Ohio 2017) (citations omitted).

A chapter 13 debtor has the right under 11 U.S.C. § 1322(b)(7) to assume an executory contract in his or her chapter 13 plan. Further, 11 U.S.C. § 1322(b)(3) permits a chapter 13 plan to provide for the cure of any default. The Debtor testified at the hearing that he intends to assume the Lease and to provide for the cure of any defaults on the Lease by paying the Lease arrearage through his chapter 13 plan. In this case, Movant is entitled to adequate protection of its interests, and indeed the lack of adequate protection payments would constitute cause for relief from stay under 11 U.S.C. § 362(d).

Based upon the foregoing, and considering all the facts and circumstances of this case, and in the sound exercise of the Court’s discretion, **IT IS ORDERED** that:

1. The Debtor shall provide Movant with adequate protection as set forth below.
2. Debtor shall tender the monthly lease payment of \$1,795 set forth in Paragraph 6 of the Lease for the months of July, August, and September 2024 to the Chapter 13 Trustee **no later than September 30, 2024.**
3. If the Debtor fails to comply with the provisions of paragraph 2 of this Order, Movant may file a notice of default with the Court, and if no objection is filed by Debtor within 10 days of the filing of the notice of default, Movant may upload an order granting

relief from stay without any further notice or hearing. If an objection is filed, the Court will schedule a prompt hearing on the objection.

4. Any issues regarding cure amounts due to Movant will be addressed as part of the plan confirmation process and/or the claims objection process.
5. Except as provided herein, the Motion is denied.

IT IS SO ORDERED.

Service List:
Default List