

*Tagged Opinion
For publication*



ORDERED in the Southern District of Florida on August 3, 2016.



Laurel M. Isicoff, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: CASE NO. 10-40019-BKC-LMI
MARIA GARCIA and DAVID GONZALEZ, Chapter 13
Debtors.

ORDER SUSTAINING OBJECTION TO LATE FILED CLAIM

This matter came before the Court on June 7, 2016, upon the Trustee's Objection to Claim #13.2 filed by VT Inc. as Trustee of World Omni LT (ECF #143)(the "Objection"). The Court has reviewed the Objection, the Trustee's Memorandum of Law¹, the Response² and

¹ Trustee's Memorandum of Law in Support of her Objection to Claim #13.2 (ECF #145).

² Creditor VT Inc., as Trustee of World Omni LT Response in Opposition to Trustee's Objection to Claim #13.2 (ECF #144); *Amended* Creditor VT Inc., as Trustee of World Omni LT Response in Opposition to Trustee's Objection to Claim #13.2 (ECF #149).

Supplemental Response³ filed by VT Inc. as Trustee of World Omni LT (“World Omni”), and has considered argument of counsel. For the reasons more fully outlined below, the Objection is sustained.

Facts

The Debtors, Maria Garcia and David Gonzalez (the “Debtors”) filed their Chapter 13 bankruptcy case on September 30, 2010. At the time of the filing the Debtors apparently leased two cars, the obligations for which leases were owed to World Omni – a Toyota Tundra and a Toyota Camry. The Debtors filed their 2nd Amended Chapter 13 Plan on January 18, 2011 (ECF #36). That plan stated the Debtors would remain current on the Toyota Tundra “outside the plan” and, further stated “Debtors reject the lease with Toyota Finance Southeast/World Omni for the 2010 Toyota Camry.” That Plan was confirmed on September 23, 2011 (ECF #96)(the “Confirmation Order”).⁴

On February 4, 2011 World Omni received a signed voluntary surrender form for the Toyota Camry, and, on February 8, 2011 World Omni “secured the vehicle”.⁵

The claims bar date was set as March 16, 2011. World Omni timely filed its Claim 13-1 on March 3, 2011. The claim was filed in the amount of \$23,113.31 as a secured claim, with an unsecured claim amount of \$1.00 and a notation “Creditor reserves the right to amend its claim to seek a deficiency balance, if any, in the event Creditor’s collateral is liquidated.”

On September 30, 2011, one week after the Debtors’ 2nd Amended Plan was confirmed, and eight months after World Omni had possession of the Toyota Camry, World Omni filed an Amended Claim (13-2) in the amount of \$6,978.57. Attached to the Amended Claim was a

³ Supplemental Response of Creditor VT Inc., as Trustee of World Omni LT, In Opposition to Trustee’s Objection to Claim #13.2 (ECF #151).

⁴ There is nothing in the record to explain the nine month delay between the time the plan was filed and when it was confirmed.

⁵ VT Inc. Notice of Filing (ECF #152).

deficiency letter addressed to the Debtors' bankruptcy counsel. At no time during the course of the Chapter 13 case did World Omni receive any payments on account of the original claim or the Amended Claim.

The Debtors completed their plan payments and received their discharges on January 5, 2016. In the process of closing up the case, the Chapter 13 Trustee discovered the Amended Claim and filed her Objection stating as the basis that "[t]he creditor filed a claim as a fully secured lease. The plan provided for payments outside of the plan and the creditor did not oppose the confirmation of a plan not paying it claim. After the bar date the creditor amended its claim without filing a motion to allow the amended claim. The plan is completed and the Trustee realized the claim was amended after the completion of the plan."

World Omni filed its response pointing out that the vehicle "being paid outside the plan" was not the vehicle to which the amended claim related, and, more importantly, the amended claim was filed within the time to file a claim for rejection damages and therefore the Objection should be overruled. The matter was set for oral argument, and as noted, the parties submitted supplemental briefing.

Analysis

A party to a rejected executory contract or unexpired lease is entitled to file a claim for damages arising from such rejection. 11 U.S.C. §502(g). The timing of the filing of a claim for rejection damages is not addressed in the Federal Rules of Bankruptcy Procedure; however, the timing is addressed in the Local Rules of the Bankruptcy Court for the Southern District of Florida (the "Local Rules" or "LR"). LR 3003-1(C) requires that, unless otherwise ordered, a claim for rejection damages must be filed on or before the LATEST OF the claims bar date, 30 days after the entry of the order on rejection or "30 days after the effective date of the rejection

of the contract or lease.” LR 6006-1(B) provides that, in a chapter 13 case, if an unexpired lease or executory contract is not assumed prior to confirmation or in a confirmed chapter 13 plan, the lease is “deemed rejected upon entry of the confirmation order.” Indeed, as required by the Local Rule, paragraph 5 of the Confirmation Order states that any unassumed contract or unexpired lease is deemed rejected “upon entry of this order.”⁶

The Trustee argues⁷ that World Omni needed to file a motion to amend its claim after the bar date, and having failed to do so, the Amended Claim should not be allowed. The Trustee is incorrect. The Local Rule makes clear that the holder of an unexpired lease has the right to file a rejection claim. Thus, even if World Omni had never filed a proof of claim at all, it would have had the right to file a claim for rejection damages. Consequently, even if, as the Trustee argues, a claim amendment after the bar date requires a motion and an order, an amended claim for rejection damages, if timely filed, does not require a court order.

The Trustee also argues that the rejection claim is not timely because World Omni knew in January of 2011, when the 2nd Amended Plan was filed, that the lease would be rejected. Therefore World Omni should have filed the rejection claim based on that notice, which rejection claim would have then been required to be filed prior to the bar date. Unfortunately for the Trustee, the Local Rules make the date of the Confirmation Order, NOT the date the confirmed plan is filed, the operative date for filing a rejection claim.

⁶ Actually World Omni was on notice of the intended rejection when the 1st Amended Plan (ECF #33) was filed a week earlier.

⁷ The Trustee raised many arguments, some of which were wrong (e.g., “payment outside the plan”, which referred to another vehicle), and others which the Court will not address, either because the Court finds they are not well founded or are not necessary to resolve due to the ruling in this case.

It is troubling to the Court that World Omni had possession of the vehicle before the bar date⁸ and yet the original proof of claim did not disclose that World Omni already had possession of the vehicle. However, this is not relevant for purposes of this decision. Although the Court finds that the date of possession is the date the rejection was effective,⁹ unfortunately, because the Local Rule provides that the deadline to file a rejection claim is the LATEST of the events described, the filing of the rejection claim was nonetheless timely.

Finally, the Trustee argues, the Amended Claim should be barred by laches. World Omni filed the rejection claim in September of 2011, but did nothing during a period of close to five years, even though it was not receiving any payments during the life of the plan¹⁰. During that time, the Trustee made all payments under the plan, and, if the Objection is not sustained, the Trustee will be required to recover payments from those creditors who received distributions during the life of the plan.¹¹

Laches is an equitable remedy created to protect a defendant from prejudice arising from unreasonable delay by a plaintiff, even if action is taken within a limitations period.¹² *See Kansas v. Colorado*, 514 U.S. 673, 688 (1995)(“Laches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” (quoting *Costello v. United States*, 365 U.S. 265, 282 (1961))). In this instance the

⁸ Indeed, although neither the Debtors nor World Omni sought stay relief to turnover possession to the vehicle, World Omni DID file a motion for relief from stay sometime in mid –July, 2011 in which motion World Omni acknowledged it had possession of the vehicle.

⁹ *Accord Carmichael v. Nissan Motor Acceptance Corp.*, 291 F. 3d 1278 (11th Cir.2002)(based on the clear provisions of the Consumer Leasing Act (15 U.S.C. §§1667-1667(f)), a car lease is terminated the day it is repossessed)

¹⁰ In the absence of a bankruptcy, World Omni would have had only one year from the date the vehicle was turned over to pursue any deficiency claim. 15 U.S.C. §1667d(c).

¹¹ The Trustee also argues she would have objected to the Amended Claim if she had known about it since the Amended Claim reflects that the vehicle was sold at a private sale rather than an auction and there is nothing in the Amended Claim to show that the amount for which the vehicle was sold was a fair price. Moreover, the Trustee argues, some of the charges would not be allowable (charges relating to the cost of sale, etc.).

¹² While there is an ongoing debate how much a laches argument can apply to legal rights, since World Omni has not addressed the Trustee’s laches argument at all, the Court has determined it is not necessary to consider whether and to what extent that debate would apply to this particular contested matter.

Trustee is arguing that World Omni's delay in seeking to enforce its rights as an unsecured creditor under the plan has created undue prejudice, not only to the Trustee, but also to all the other unsecured creditors.

The Court agrees. World Omni's failure to take any steps during five years when it did not receive any payments¹³ means that the Debtors have made all payments under their plan and received their discharge, making it impossible for the Trustee or the Debtors to seek modification of the plan to make up the missing payments. The Court is troubled about the lack of diligence by the Trustee and by Debtors' counsel in failing to check the claims register after confirmation knowing that (a) the plan included a rejected lease and (b) that the Confirmation Order and Local Rules provided for a thirty day window after confirmation to file a rejection claim. However, the Court finds that the lack of diligence by Debtors' counsel and by the Trustee do not override World Omni's complete failure to enforce its rights during a time period when a reasonable remedy for the oversight could have been fashioned.

CONCLUSION

The problems that this Court has addressed in this opinion could have been avoided. The Trustee and Debtors' counsel should have reviewed the claims register, and hopefully going forward, will review the claims register, after confirmation to confirm no rejection claims were filed. The Debtors should have taken action to compel an early rejection date once the vehicle was turned over so the Debtors could have quantified any rejection claim before confirmation. The creditor should have made inquiries regarding lack of plan payments no later than a few months after not receiving payment on account of its claim. However, weighing and balancing

¹³ World Omni's lack of diligence is also reflected in its unexplained delay in selling the vehicle until months after it had possession.

the lack of diligence within the frameworks of equity, the Court finds that the Objection should be sustained.

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Copies furnished to
Amy Carrington, Esq.
Angelo M. Castaldi, Esq.
Richard J. Adams, Esq.

Attorney Carrington shall serve a copy of this Order upon all parties in interest and file a certificate of service with the Clerk of Court.