

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
HARTFORD DIVISION**

_____	)	CASE No.	19-21619 (JJT)
IN RE:	)		
	)		
John Alan Sakon,	)	CHAPTER	11
Debtor.	)		
_____	)	RE: ECF Nos.	116, 119
John Alan Sakon,	)		
Movant	)		
V.	)		
	)		
A&F Main Street Associates, LLC	)		
Respondent.	)		
_____	)		

**ORDER DENYING DEBTOR’S MOTION TO  
ASSUME LEASE OF A&F MAIN STREET ASSOCIATES, LLC**

I. INTRODUCTION

The Debtor, John Alan Sakon (“the Debtor”), filed the present Motion to Assume Lease of A&F Main Street Associates, LLC (“A&F”) (ECF No. 116, the “Motion”), wherein he seeks to assume a ground lease (“the Lease”) of certain commercial property owned by A&F. In support of his Motion, the Debtor argues that the Lease is critical to his plan of reorganization and provides significant value to the bankruptcy estate. He has further represented, largely in conclusory fashion, that he has “provide[d] adequate assurance of future performance of the lease” (ECF No. 116, p. 7).

In its Objection to the Motion (ECF No. 119), A&F argues that, because the Lease was terminated prepetition under state law, there is no lease to assume, and alternatively, that the

Motion was untimely.<sup>1</sup> A hearing on the Motion was held on March 10, 2020 (ECF No. 147), at which time the Court took the matter under advisement.

For all intents and purposes, this issue mirrors the parties' arguments previously advanced in their respective papers and during the hearing before this Court (ECF No. 93) on the Debtor's Motion for Extension of Time to Accept or Reject Lease (ECF No. 85) and A&F's Objection thereto (ECF No. 88). That matter too was taken under advisement, and after a thorough review of the record, relevant legal authorities, uncontested facts, and the parties' papers, the Court found that, pursuant to Connecticut law, the Debtor's Lease terminated prepetition, and because there was no lease to then assume or reject, the Court denied the Debtor's Motion for Extension (ECF No. 129, "Order Denying Motion for Extension").

Consistent with its March 2, 2020 Order Denying Debtor's Motion for Extension, the Court finds that the Debtor's Lease terminated prepetition pursuant to Connecticut law and, because the Lease cannot be assumed under 11 U.S.C. § 365(c)(3), for the reasons herein, the Debtor's Motion must be DENIED.

## II. BACKGROUND

The facts and procedural history in this case are set forth in the Court's Order Denying Motion for Extension, and are hereby incorporated by reference as part of this Order. *See* ECF No. 129, Order Denying Debtor's Motion for Extension of Time to Assume or Reject Lease. In brief, the Debtor entered into a ground lease of certain commercial property now owned by A&F. The Debtor defaulted under the Lease by failing to timely pay rent, and pursuant to the terms of the Lease, A&F sent the Debtor a Notice of Default, a Notice of Termination of the Lease, and ultimately a Notice to Quit. When the Debtor neither vacated nor surrendered

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<sup>1</sup> The Court need not reach this issue in light of its reasoning herein.

possession of the Property, A&F commenced a summary process action in Superior Court to evict the Debtor and to obtain a judgment of possession.

In lieu of a trial in the summary process action, the Debtor and A&F entered into a Stipulation (ECF No. 59, Ex. H) whereby the Debtor agreed, *inter alia*, to pay A&F \$97,500.00 by November 30, 2019 so as to cause A&F to reinstate the Lease. The Debtor did not (and has yet to) make this payment, but subsequently commenced the instant bankruptcy case and has made no further payments under the Lease. At the time of this hearing, the Debtor again had no such resources to offer A&F and no credible prospective or enforceable loan commitments to fund his assumption efforts.

### III. DISCUSSION

Generally, 11 U.S.C. § 365 governs the assumption or rejection of unexpired leases. Under section 365(c)(3), the debtor in possession is precluded from assuming a lease if “such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief.” 11 U.S.C. § 365(c)(3). Under Connecticut law, it is well-settled that a notice to quit terminates a lease, and the service of such notice extinguishes a tenant’s rights under the lease. *Presidential Village, LLC v. Phillips*, 325 Conn. 394, 401–02 (2017); *see also In re Masterworks*, 94 B.R. 262, 267 (Bankr. D. Conn. 1988) (*citing Hous. Auth. Of Town of E. Hartford v. Hird*, 13 Conn. App. 150, 157 (1988)).

A&F argues that the Lease terminated prepetition upon the service of the Notice to Quit and therefore cannot be assumed under 11 U.S.C. § 365(c)(3). The Debtor’s principal contention is that the Stipulation entered into by the parties, which required the Debtor to pay A&F \$97,500.00 by a specified date in order to reinstate the Lease, somehow revived the Lease absent any payment by the Debtor. This Court has unequivocally determined that the Lease terminated

prepetition under Connecticut law, and with the Court's finding that there is simply no lease to assume, it must DENY the Debtor's Motion.

Even if this Court was to find that an unexpired lease still somehow existed for the Debtor to assume, the Debtor has not met, and cannot meet, his burden under section 365(b)(1) of providing cure, paying damages, or providing adequate assurance of future performance. He is bereft of the financial resources to do so. Section 365(b)(1) provides that when there has been a default in an unexpired lease, the debtor in possession may not assume the lease unless he (A) cures or provides adequate assurance that he will promptly cure the default, (B) compensates or provides adequate assurance that he will promptly compensate other parties to the lease for pecuniary losses, and (C) provides adequate assurance of future performance. 11 U.S.C. §§ 365(b)(1)(A)–(C). The Debtor's pleas and insistence that the Court and A&F just wait and see what materializes in 60 days from his heretofore failed fundraising is unavailing and unconvincing.

At the hearing on the instant Motion, after conventional financing efforts floundered, the Debtor newly proposed to remedy the current default within 60 days by raising \$ 97,500.00 with the help of family members allegedly willing to pay this amount, yet the Debtor was unable to provide any credible or detailed evidence to substantiate that claim. The Debtor also alleged he had a letter of intent for financing which would cure the default, yet he did not produce an unconditional commitment that would satisfy section 365's requirement that he cure, compensate, and provide adequate assurances to A&F. As a proffer of adequate assurance of future performance, the Debtor essentially alleged that his projects' prospects and value were sufficient, yet he failed to demonstrate that he had any tangible capitalization, enforceable financing, or cash flow that would support the adequate assurance of future performance to

which A&F is entitled. Accordingly, the Debtor cannot demonstrate, by a preponderance of the evidence, that he has the financial capability to make the payments necessary to cure the current arrearages or to provide adequate assurances of future performance. *See In re Matter of World Skating Center, Inc.*, 100 B.R. 147, 148–49 (Bankr. D. Conn. 1989) (“[a]dequate assurance requires a foundation that is nonspeculative and sufficiently substantive so as to assure the landlord that it will receive the amount of the default”) (citations omitted).

And while the Debtor has indicated innumerable delays and impediments that have precluded him from obtaining the financing necessary to assume this Lease, these impediments do not otherwise excuse the Debtor’s obligations under the Bankruptcy Code. He has likewise submitted no tenable legal authority that this Court, or any other court, can revive his terminated lease under the circumstances of this case. In the present case, even if there was an extant lease to assume, because the Debtor has not met his burden under section 365(b)(1), he is unable to satisfy the preconditions to do so.

#### IV. CONCLUSION

Based upon the foregoing, the Court again finds and adjudges that the Lease terminated prepetition. Even in the event there was an unexpired lease to assume, the Debtor has not met his burden under 11 U.S.C. § 365(b)(1). Accordingly, the Debtor’s Motion to Assume is hereby DENIED.

IT IS SO ORDERED at Hartford, Connecticut this 13th day of March 2020.

*James J. Tancredi*  
United States Bankruptcy Judge  
District of Connecticut