

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

IN RE:)	CASE No.	19-21619 (JJT)
)		
John Alan Sakon, Debtor.)	CHAPTER	11
)		
A&F Main Street Associates, LLC, Movant)	RE: ECF Nos.	55, 59, 115
V.)		
)		
John Alan Sakon, Respondent.)		
)		

**ORDER GRANTING A&F MAIN STREET
ASSOCIATES, LLC’S AMENDED MOTION FOR RELIEF FROM STAY**

A&F Main Street Associates, LLC (“A&F”) filed the present Amended Motion for Relief from Stay (ECF No. 59, the “Motion”), seeking relief as to certain commercial property located in Glastonbury, Connecticut (the “Property”) and leased to John Alan Sakon (the “Debtor”). Through the Motion, A&F seeks relief from the automatic stay so that A&F may pursue its eviction proceedings against the Debtor in state court to secure a judgment of possession. A&F contends that: (1) cause exists to lift the stay because the Debtor is unable to revive a previously terminated lease (the “Lease”), and (2) the Debtor has no equity in the Property and the Property is not necessary for reorganization.

The Debtor objected to the Motion (ECF No. 115, the “Debtor’s Objection”), asserting that the Lease is critical for an effective reorganization, and that, pursuant to the Stipulation (ECF No. 59, Ex. H) entered into by the parties, the Lease never terminated (ECF No. 115, p. 20). The Court held a hearing on the Motion and the Debtor’s Objection on March 10, 2020

(ECF No. 147). After a thorough review of the uncontested facts presented at the hearing and the relevant record of the case, including the Court's recent Order Denying Debtor's Motion for Extension of Time to Assume or Reject Lease (ECF No. 129, the "Court's Prior Order"), A&F's Motion for Relief from Stay is GRANTED.

The facts and procedural history in this case are set forth in the Court's Prior Order, 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 possession of the Property, A&F commenced a summary process action in Superior Court to evict the Debtor and obtain a judgment of possession.

In lieu of a trial in the summary process action, the Debtor and A&F entered into the Stipulation 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.

Upon these facts, the Court concluded that the Lease, and the Debtor's rights thereunder, terminated pursuant to Connecticut law upon the service of the Notice to Quit and was not subsequently revived by the existence of the Stipulation. *See* ECF No. 129. Accordingly, pursuant to the express provisions of 11 U.S.C. § 362(b)(10), the Lease is not subject to the automatic stay, and A&F may pursue its state court remedies.

Section 362(b)(10) provides, in relevant part, that the automatic stay does not apply to “a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease[.]” 11 U.S.C. § 362(b)(10). “Because the debtor has no interest in a validly terminated lease, the automatic stay does not preclude a lessor from taking possession of property leased to a debtor under a terminated nonresidential real property lease.” *In re Foote*, 277 B.R. 393, 396 (Bankr. E.D. Ark. 2002). This Court, having previously adjudged that the Lease terminated prepetition and was not subsequently revived, finds that A&F is permitted, pursuant to section 362(b)(10), to pursue its state court remedies and move to regain possession of the Property.

Even in the absence of section 362(b)(10), A&F has established, pursuant to section 362(d)(1), that cause exists to lift the automatic stay on the basis of the Debtor’s patent inability to assume a terminated lease under 11 U.S.C. § 365(c)(3). Section 362(d)(1) provides in relevant part that: “On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . (1) for cause, including the lack of adequate protection of an interest in property of such party in interest. . . .” 11 U.S.C. § 362(d)(1). Because “cause” is not explicitly defined in section 362(d)(1) nor in the legislative history, courts must consider the “facts of each request [to] determine whether relief is appropriate under the circumstances.” *In re Sonnox Industries, Inc.* 907 F.2d 1280, 1286 (2d Cir. 1990) (citation and internal quotations omitted). Critically, it is well-settled that cause for relief from the automatic stay exists where the debtor is unable to assume a lease pursuant to 11 U.S.C. § 365(a). *See In re Masterworks, Inc.*, 94 B.R. 262, 265 (Bankr. D. Conn. 1988); *In re M & R Apparel, Inc.*, 92 B.R. 565, 570 (Bankr. D. Conn. 1988); *see also In re Watts*, 2013 WL 5979814 (Bankr. N.D. Iowa 2013); *In re Huffman*, 171 B.R. 649, 654 (Bankr. W.D. Mo. 1994).

Because the Court previously found that the Lease was effectively terminated prepetition and no longer in force or effect in this case, *see* ECF No. 129, there is no lease to assume under 11 U.S.C. § 365(a). Further, the Debtor's lack of credible financial support for his reorganization would preclude him from providing any necessary cure, compensation, or adequate assurances due to A&F. Accordingly, this Court finds there is cause to lift the automatic stay. It is hereby:

ORDERED: A&F's Motion for Relief from Stay is hereby GRANTED; and it is further

ORDERED: The 14-day stay afforded by Fed. R. Bankr. P. 4001(a)(3) is hereby waived by the Court for cause, allowing A&F to immediately enforce and implement this Order.

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

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut

