

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

IN RE:)	CASE No.	19-21619 (JJT)
)		
John Alan Sakon, Debtor.)	CHAPTER	11
)		
John Alan Sakon, Movant)	RE: ECF Nos.	85, 88
)		
V.)		
)		
A&F Main Street Associates, LLC, Respondent.)		
)		

**RULING DENYING DEBTOR’S MOTION FOR
EXTENSION OF TIME TO ACCEPT OR REJECT LEASE**

I. INTRODUCTION

Pending before the Court is the Motion for Extension of Time to Accept or Reject Lease (ECF No. 85, “the Motion”) filed by the debtor in possession, John Alan Sakon (“Debtor”). The Motion seeks, pursuant to 11 U.S.C. § 365(d)(4)(B)(i), to extend the time to assume or reject a ground lease (“the Lease”) of certain commercial property owned by A&F Main Street Associates, LLC (“A&F”). The Debtor claims that the Lease is integral to a successful reorganization and to his efforts to effectuate a full recovery for his other creditors.¹ A&F filed an Objection (ECF No. 88, “the Objection”) assailing the Debtor’s Motion on two grounds: (1) there is no lease to assume or reject because the Lease was terminated prepetition under state

¹ In the Motion, the Debtor values the equity in the Lease as a free-standing asset to be in excess of \$1,000,000.00 (ECF No. 85). In addition to the Lease, the Debtor’s Schedules (ECF No. 40) disclosed his interest in three additional parcels of land. At the Chapter 11 Case Management Conference (ECF No. 26), the Debtor indicated that as an assemblage, the Lease and three additional properties had a value of approximately \$11,000,000.00, and that the purpose of his Chapter 11 filing was to raise sufficient funds to build a road, subdivide the assemblage into eight separate lots, and then sell the individual lots. This development plan has been many years in the making.

law; and (2) the Debtor's Motion was untimely. A hearing on the Motion was held on February 5, 2020 (ECF No. 93), at which time the Court took the matter under advisement. For the reasons set forth below, the Debtor's Motion is DENIED.

II. BACKGROUND

On February 11, 1999, the Debtor entered into a ground lease with A&F's predecessor in title, Mary Randazzo (the "Landlord"), for a parcel of vacant commercial property comprising approximately 2.65 acres in Glastonbury, Connecticut ("the Property"). The Lease provided for, among other things, a basic annual rent payable in equal consecutive monthly installments. Pursuant to Section 19.01 of the Lease, nonpayment of rent constituted a default, and upon such default, the Landlord would provide written notice to the Debtor of the expiration and termination of the Lease allowing the Debtor fifteen days to cure. The Lease further stated that upon the expiration or termination of the Debtor's rights under the Lease, the Landlord could pursue any right and remedy it had, including repossessing the Property by summary process proceedings or ejectment.

The Landlord's interest in the Lease was subsequently assigned to A&F in December of 2011, and in October 2018, the Debtor defaulted under the Lease by failing to timely pay rent. Thereafter, on October 31, 2018, pursuant to the terms of the Lease, A&F mailed a Notice of Default, notifying Debtor that he was in breach of the Lease and allowing the Debtor fifteen days to cure. When the Debtor failed to timely cure the default, A&F sent a Notice of Termination of the Lease on November 19, 2018, indicating that the Lease would expire and terminate at the close of business on December 3, 2018. Having failed to cure the default or vacate the Property, the Debtor was served with a Notice to Quit Possession on December 19, 2018, whereby he was notified to surrender the Property on or before December 26, 2018. After the Debtor neither

vacated the Property nor surrendered possession pursuant to the Notice to Quit, A&F commenced a summary process action in Superior Court to evict the Debtor and obtain a judgment of possession.²

On August 14, 2019, the scheduled trial date in the summary process action, the Debtor and A&F entered into a stipulation (the “Stipulation”) whereby the Debtor agreed to pay A&F \$97,500.00 on or before November 30, 2019, and in exchange therefor, A&F would reinstate the Lease. Paragraph 3 of the Stipulation specifically provides that, “the ground lease shall be reinstated as of the date of payment in full.” In the event the Debtor failed to make payment in full by November 30, 2019, the Stipulation allowed for A&F to move for judgment of possession, whereby A&F would be entitled to an immediate execution. The Stipulation also contemplated the prospect of the Debtor’s filing for bankruptcy, providing that if such an event occurred the Stipulation would not be construed as a judgment of possession in favor of A&F. This prospect did not otherwise undo the force and effect of the Stipulation, including its acknowledged termination of the Lease and need for revival.

On September 19, 2019, one month after entering into the Stipulation, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (ECF No. 1).³ During the pendency of this case, the Debtor underwent an out-patient surgical procedure that subsequently resulted in serious medical complications. Based on his prescribed medical treatment and looming discovery and response deadlines, the Debtor sought a Temporary Stay of Proceedings (ECF No. 63), wherein he specifically addressed the need for additional time to prepare and

² At the hearing on the Motion, the parties raised no objection to the Court taking judicial notice of the docket in the state court summary process action, including any orders or judgments therein. *See A&F Main Street Associates, LLC v. John Sakon*, No. HFH-CV19-6011720-S (Conn. Super. Ct. filed Jan. 3, 2019).

³ The Debtor, an experienced and sophisticated real estate developer, is not formally represented by counsel in the instant proceedings. The Debtor has, however, conferred with legal counsel at various junctures when he deemed additional assistance appropriate.

respond to the discovery requests from the Town of Glastonbury (ECF No. 62) and A&F's Motion for Relief from Stay (ECF No. 59). Taking into consideration the Debtor's medical condition and the absence of any objections, the Court promptly granted a Temporary Stay of Proceedings (the "Stay") until January 15, 2020 (ECF. No. 64).

At a status conference on January 15, 2020 (ECF No. 78), the Debtor was directed to justify why the Stay should be further extended. While the Court underscored the serious implications of suspending the administration of a Chapter 11 case for any significant period of time, it ultimately deferred to the Debtor's contentions as to his medical condition and prescribed treatment plan, and extended the Stay to January 31, 2020. Notwithstanding the extension, the Debtor was directed to file monthly operating reports. The Court further informed the parties that the Stay did not preclude them from filing motions or advancing the proceedings. Critically, the Stay did not exonerate the Debtor from his obligations to otherwise comply with bankruptcy law or substantive deadlines.

On January 21, 2020, during the pendency of the Stay, the Debtor filed the instant Motion (ECF No. 85), wherein he sought additional time "to determine, in [his] plan of reorganization, to either assign the ground lease to a buyer, place a leasehold mortgage on the ground lease to finance the administration of the estate and bring the ground lease current, or to sell the ground lease back to the landlord." At the hearing on the Motion, the Court was presented with sufficient legal authority and uncontested facts to determine that the threshold question here is whether there is, in fact, a lease to assume or reject. Finding that the Lease terminated prepetition and was not subsequently reinstated pursuant to the terms and conditions of the Stipulation or otherwise, the Court need not reach the issue of whether the Motion was timely filed.

III. DISCUSSION

Whether a lease has terminated is a question of state law. *See In re Kong*, 162 B.R. 86, 91 (Bankr. E.D.N.Y. 1993). 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; *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)). “Once a lease has been terminated, the Bankruptcy Court does not have the power to revive it even through its equitable powers.” *In re Neville*, 118 B.R. 14, 18 (Bankr. E.D.N.Y. 1990) (citations omitted).

Here, Section 19.01 of the Lease provides that A&F could terminate the Lease upon nonpayment of rent after providing written notice of such default and allowing the Debtor fifteen days to cure. It is uncontested that upon the Debtor's default, A&F provided the Debtor the requisite notice and time to cure and after the Debtor failed to make any payments, A&F served the Debtor with a Notice of Default, a Notice of Termination, and ultimately a Notice to Quit stating that the Lease was terminated and requesting the Debtor to vacate the Property. Accordingly, the Court finds that the Lease was effectively terminated under state law upon the issuance of the Notice to Quit on December 19, 2018.

The question then becomes whether the Lease was somehow revived upon the parties entering into the Stipulation on August 14, 2019. The Stipulation ostensibly deals with two significant legal issues inherent in a summary process action: whether the Lease had been terminated (and any defenses thereto); and whether A&F is thereby entitled to a judgment of possession. The Debtor's Motion does not address the effect that the Stipulation had on the status of the Lease, nor does it provide any legal authority in support of the Debtor's position. At the hearing on the Motion the Debtor argued that the Lease was still in effect. In support of that

position, the Debtor instead has specifically focused on the language in paragraph 7 of the Stipulation, which states, “[n]otwithstanding the language above, if the defendant files for backrupcy [sic] in the Federal Court prior to December 2, 2019, then this agreement shall not be construed as a judgment of possession.” The Debtor contends that based on this language, paragraphs 1–6 of the Stipulation are of no force and effect in the event of bankruptcy.⁴ The Court finds this argument to be unpersuasive.

The express language of paragraph 7 indicates that, notwithstanding the language in paragraphs 1–6 (language dealing with the amount the Debtor is to pay in consideration of reviving the Lease and whether the parties will amend the Lease), if the Debtor files for bankruptcy, then A&F simply does not have a judgment of possession. In effect, the Stipulation contemplates that if the Debtor fails to pay the \$97,500.00 by November 30, 2019, that the parties would go back to state court and A&F would seek a judgment of possession.⁵ If the Debtor intended for paragraph 7 to render the Stipulation of no force and effect, by agreement he would have needed to include such a provision on the record in the state court and be bound—just as the other express provisions of the Stipulation were agreed upon. In the present case, however, the only matter agreed to under paragraph 7 is whether A&F receives a stipulated judgment of possession. More importantly, and relevant to the issue at hand, is that paragraph 7 unequivocally does *not* revive contractual rights that have been previously terminated. The Court cannot excuse the Debtor from the express language he signed off on in the Stipulation.⁶

⁴ The Debtor argued that the intent of the language in paragraph 7 of the Stipulation was to show that “we’re going to agree to what you’re owed and we’re going to agree to this, but we’re going to preserve my right to file bankruptcy as if that was not agreed to prior.” (Tr. 2/5 1:03:28-1:03:40).

⁵ Paragraph 6 of the Stipulation reads: “If the defendant fails to pay the said sums by November 30, 2019, the plaintiff [sic], may upon motion of plaintiff, move for judgment for possession in favor or [sic] plaintiff on or after Monday December 2, 2019 and judgment shall enter and immediate execution shall issue and the defendant waives any right to any stay of execution and hereby waives any rights of appeal.”

⁶ It is well established that courts ordinarily afford a special solicitude to *pro se* litigants. See *Estelle v. Gamble*, 429 U.S. 97 (1976); *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474–75 (2d Cir. 2006). The degree of solicitude,

Here, the Stipulation provided a period of time for the Debtor to make a payment in settlement of all claims held by A&F, and if the Debtor failed to do so, the Lease remained terminated. The Debtor's bankruptcy filing had no effect on this operation of law. Had the Debtor tendered the \$97,500.00 by November 30, 2019, and complied with the other provisions of the Stipulation, the amended ground lease would have been reinstated and the Debtor would have a continuing leasehold interest in the Property.

Whether the Court relies upon the express language in the Stipulation or upon the facts delineated by the parties—including the issuance of notice of default, the notice to quit, the commencement of a summary process action, the Debtor's acknowledgment that \$97,500.00 was still owed, and that the Debtor waived any defenses and counterclaims—there is compelling evidence before this Court to determine unequivocally that the Lease was effectively terminated prepetition and no longer in force or effect in this case. Because this Court is without the power to revive a terminated lease, the Debtor's Motion must be denied. *See In re Neville, supra*, 118 B.R. at 18.

IV. CONCLUSION

For the reasons set forth in this Ruling, the Court finds and adjudges that, pursuant to Connecticut law, the Debtor's Lease terminated prepetition upon the service of the Notice to Quit and, thus, cannot be assumed under 11 U.S.C. 365(c)(3). Furthermore, the existence of the Stipulation did not revive the Lease, nor did it provide the Debtor with a continued leasehold interest in the Property. At best, it preserved mere possessory rights until a judgment of

however, "is not identical with regard to all *pro se* litigants." *Tracy v. Freshwater*, 623 F.3d 90, 102 (2d Cir. 2010). "[T]he exact degree thereof will depend upon a variety of factors, including, but not necessarily limited to, the specific procedural context and relevant characteristics of the particular litigant." *Id.* Given that the Debtor is a sophisticated businessman and real estate developer by his own attribution, he is charged with the understanding of the plain meaning of the terms he agreed to in the Stipulation.

possession could enter. Accordingly, because there is no lease to assume or reject, the Debtor's Motion for Extension of Time is DENIED.

IT IS SO ORDERED at Hartford, Connecticut this 2nd day of March 2020.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut

