

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

HOTEL SYRACUSE, INC.

CASE NO. 90-02921

Debtor

Chapter 11

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

DECISION AND ORDER

Fleet Credit Corporation ("Fleet") filed a motion with this Court pursuant to §365(a) of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code") seeking an order approving a Stipulation of Settlement ("Stipulation") which authorizes the Debtor to assume a Lease between Fleet and the Debtor pertaining to miscellaneous furniture utilized by the Debtor in the operation of its hotel facility in Syracuse, New York.

Fleet's motion came on for a hearing before this Court on July 16, 1991 at Syracuse, New York with Fleet and the Debtor appearing in support of the motion. The motion was opposed by creditors Manufacturers Hanover Trust Company ("MHT"), City of Syracuse, Syracuse Industrial Development Agency and the Syracuse Economic Development Corporation (collectively "Syracuse").

The Court has jurisdiction of this contested matter pursuant to 28 U.S.C. §1334(b), §157(a), (b)(1) and (b)(2)(A) and (O).

Subsequent to its filing of Chapter 11 and on or about May 1991, Debtor entered into a Stipulation with Fleet wherein it agreed to bring the Lease payments current, assume the Lease and maintain current payments of \$6,136.23 per month. The Stipulation was to be subject to the approval of this Court and it appears that the instant motion seeks that approval.

Debtor contends that the furniture is essential to its continued operation of the hotel facility and that its decision to assume is based upon its "sound business judgment", citing In re Lionel Corp., 29 B.R. 694 (Bankr. S.D.N.Y. 1983); In re LaFayette Radio Elec. Corp., 12 B.R. 302 (Bankr. E.D.N.Y. 1981); In re National Sugar Refining Co., 26 B.R. 765 (Bankr. S.D.N.Y. 1983).

(Debtor's Reply to MHT's Objection dated July 12, 1991).

MHT objects to the Stipulation upon the ground that the Debtor has defaulted on a so-called "Global Stipulation" which required monthly payments to MHT and Syracuse and which was approved by Order of this Court on May 2, 1991. MHT suggests that Debtor's continued default on the "Global Stipulation" suggests an inability to reorganize which then makes the furniture Lease superfluous, yet obligates the Debtor to a binding administrative expense pursuant to Code §503(a), and entitled to priority pursuant to Code §507(a)(1). MHT contends that the latter result is intended to protect the Debtor's principal, one Joseph M. Murphy, who personally guaranteed the Lease to Fleet.

Syracuse opposes the Stipulation upon essentially the same grounds, and additionally suggests that the Lease may not be a true lease, but rather a financing agreement to which Code §365 does not apply. Syracuse offers no factual basis to support its financing agreement argument and did not appear to pursue that ground at oral argument.

While this Court is not prepared to concede, as Debtor contends, that it is obliged to approve a lease assumption pursuant to Code §365(a) upon a finding that such an assumption is an exercise of the Debtor's sound business judgment, it does conclude under the facts herein that assumption is warranted.

While the objections asserted by MHT and Syracuse are cause for the Court's concern, the Court must conclude that assumption of the Lease is essential to the Debtor's continued operation of its hotel facility. If the Lease assumption is not approved by this Court, the consequences to the Debtor will be very detrimental since Debtor contends, without dispute, that it "cannot operate without the furniture and equipment which is the subject of the Lease." (Debtor's Reply to MHT's Objection dated July 12, 1991, para. 8).

At oral argument, it was suggested that the Debtor should reject the Lease and seek some type of month to month arrangement with Fleet, which would avoid elevating the future rental payments under the Lease to an administrative priority status. Fleet is apparently opposed to any such temporary arrangement and is similarly opposed to allowing the Debtor to avoid assumption until confirmation of its plan or reorganization.

The Court is unaware of any basis upon which it can compel Fleet to re-write the existing Lease or force it to allow Debtor's continued use of the furniture pursuant to some temporary arrangement.

Based upon the foregoing, the Court will approve the "Stipulation and Order" attached to Fleet's moving papers as Exhibit B. The Court, however, requires that the original fully executed Stipulation and Order be filed with the Court in accordance with this decision.

IT IS SO ORDERED.

Dated at Utica, New York

this day of July, 1991

STEPHEN D. GERLING
U.S. Bankruptcy Judge