IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re:	)	Chapter 11
	)	
BASHAS' INC., ■	)	Nos. 2:09-bk-16050-JMM
BASHAS' LEASECO INC., ☐	)	2:09-bk-16051-JMM
SPORTSMAN'S, LLC, ☐	)	2:09-bk-16052-JMM
	)	(Jointly Administered)
Debtors.	)	
	)	
This filing Applies to:	)	**MEMORANDUM DECISION (Re: Passco**
☐ ALL DEBTORS	)	
■ SPECIFIED DEBTORS	)	**"Stub Rent" Issue (DN 552))**
	)	

On October 8, 2009, this court considered the motion of Passco Companies, LLC, for immediate payment of the post-petition, unpaid "stub rent" from July 12 - 31, 2009. Passco asserts that its claim for this short period is approximately $37,040.48.

Passco relies on 11 U.S.C. § 365(d)(3) which provides that a debtor shall "timely perform" all obligations of the debtor arising "from and after the order for relief under any unexpired lease of nonresidential real property."

Here, the parties agree that Bashas' has, indeed, timely performed and paid its August, September and October rent payments. The lease itself makes the first calendar day of each month the day the rent is due. Ronald Roeske Declaration at ¶ 4.

Thus, reading the statute and the lease contract together, the court can only conclude that Bashas' has timely performed all obligations under the lease "arising from and after" the petition

1 date, July 12, 2009. While it is true that Bashas' did not pay the rent due on July 1, nevertheless,

2 after July 12 the next legally due payment did not occur until August 1, which Bashas' has paid. Nor

3 was there any contractual obligation to pay on July 12.

4   Thus, the court finds that Bashas' is in compliance with § 365(d)(3), as to this landlord.

5 Passco may not utilize § 365(d)(3) to collect this obligation now.

6   Other courts have likewise interpreted 11 U.S.C. § 365(d)(3) in this manner. The

7 statute is written in a manner that is prospective in nature, not retrospective. *See, generally*,

8 2 NORTON BANKR. LAW AND PRACTICE, § 46:42 (3rd ed. 2009). Here, Bashas' missed paying the

9 July rent, which was required to be paid in advance on July 1. Thus, when Bashas' filed its

10 Chapter 11 petition on July 12, that payment, which arose pre-petition, was delinquent. But the

11 August 1 payment arose post-petition, and was paid. Thus, Bashas' complied with § 365(d)(3) from

12 and after the filing date. At this time, then, until it makes an election to assume or reject the Passco

13 lease for this store, at which time it must cure defaults if it elects to assume, Bashas' need not pay

14 the rent for July.

15   Similarly, there is no need to immediately pay the stub period payment as an

16 administrative expense under § 503. That decision can await further developments in the case. It

17 is unnecessary, and potentially harmful to the efficient administration of the case, at this early stage

18 of the proceedings, to begin to order piecemeal payment of each of the administrative expenses of

19 the estate.

20   The motion of Passco, for immediate payment of the July 12 - 31, 2009 "stub rent,"

21 either on a § 365(d)(3) timeliness basis or a § 503 administrative basis, will be denied.

22

23   DATED AND SIGNED ABOVE.

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