

U.S. COURTS

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

RE:) Chapter 7
) Case No. 98-02141
COMMUNITY HOME HEALTH, INC.)
) **OBJECTION TO MOTION TO REJECT**
) **EXECUTORY CONTRACTS**
 Debtor.)
)
)

The Hosac Company, Inc., landlord identified on page 3 of Schedule G, which is the landlord of the property located at 1109 W. Myrtle hereby objects to the Trustee's Motion to Reject Executory Contracts in the following particulars:

1. Trustee has remained in possession of the leased premises since the bankruptcy was filed on or about June 25, 1998. In particular, personal property is located on the premises.

2. The Landlord objects to the request to make the rejection retroactive to June 25, 1998. According to Ninth Circuit authority, the Estate must pay for all lease payments until the Trustee has rejected the lease and the Trustee has removed himself and the estate property from the premises.

3. The Ninth Circuit in In re: Pacific Atlantic Trading Co., 27 F.3d 401 (9th Cir 1994) stated

By requiring the trustee to timely pay the debtor's rent, Congress clearly placed the burden on the trustee to promptly and properly reject the lease if it had no intention of assuming it and, in the meantime, to continue to perform the debtor's obligations under the lease.

Id. at 405.

That Court also held that trustees are required to pay rent at the contract rate. Id. at 404.

The Ninth Circuit in Pacific-Atlantic, 27 F.3d at 401, in reviewing the legislative history of 11 U.S.C. 365(d)(3) quotes from Senator Hatch:

In this situation, the landlord is forced to provide current services -- the use of its property, utilities, security, and other services -- without current payment. No other creditor is put in the position...

The bill would lessen these problems by requiring the trustee to perform all the obligations of the debtor under a lease of nonresidential real property at the time required in the lease. This timely performance requirement will insure that debtor - tenants pay their rent, common area, and other charges on time pending the trustee's assumption or rejection of the lease.
Id. at 403-404.

(Quoting 130 Cong. Rec S8894-95, remarks of Senator Hatch (daily ed-June 29, 1986):

Here not only has the Trustee failed to vacate the premises but also no notice has been given by the Trustee until his filing. The Trustee is operating the business and using the facility by court order entered in this proceeding.

5. This court stated in In re: Desoky, 94 IBCR 189, 181 (Bankr. D. Idaho 1994)

that the Ninth Circuit's opinion in Pacific-Atlantic:

...implies that the filing a notice of rejection coupled with vacation of the premises is sufficient to end the trustee's duty to pay rent under Section 365(d)(3).

6. This Court also stated:

...the majority of courts have held the trustee remains obligated to make timely payments of rent until the lease is either rejected by operation of law or the court approves the rejection of the lease. In re: Desoky, 94 IBCR 179, 180 (Bankr. D. Idaho 1994). It also held that formal rejection of the lease is necessary to bring a halt to the trustee's duty to make timely payments under the lease.

Id. at 181

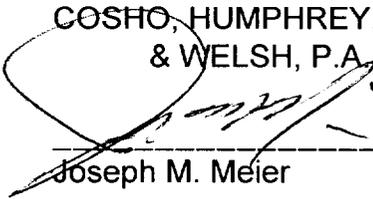
WHEREFORE, The Hosac Company, Inc. seeks an order of this Court as follows:

1. Overruling the Trustee's request to make the order rejecting the lease retroactive to June 25, 1998.

2. Ordering the Trustee to pay all contract rent due under the lease for the period of June 26, 1998 to the date of rejection and vacation of the premises.

DATED this 24th day of July, 1998.

COSHO, HUMPHREY, GREENER
& WELSH, P.A.



Joseph M. Meier

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on the 24 day of July, 1998, a true and correct copy of the foregoing was delivered as follows:

Community Home Health, Inc.
1109 W. Myrtle, Suite 120
Boise, ID 83702

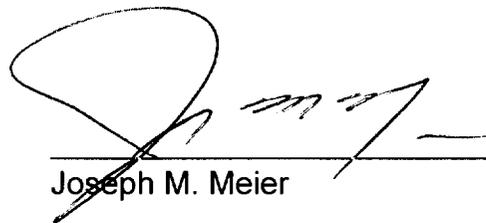
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