So Ordered.

Dated: September 29, 2023

Rachel Blise

Rachel M. Blise
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

William James Reeves and
Alyssa Nichole Reeves,

Debtors.

Case No. 19-31949-rmb

Chapter 13

**DECISION AND ORDER DENYING MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

This case presents the question whether a chapter 13 debtor's post-confirmation breach of a lease assumed in a confirmed chapter 13 plan can give rise to an administrative expense claim for the damages resulting from the breach. The Court holds that the post-confirmation damages do not qualify as administrative expenses and therefore denies the creditor's application for allowance of an administrative expense claim.

## BACKGROUND

In July of 2019, debtors William and Nichole Reeves entered into a lease with CAB East LLC as serviced by Ford Motor Credit Company LLC ("Ford") for a 2019 Ford Escape (the "Lease"). The debtors filed a chapter 13 petition on December 30, 2019. The Court entered an order confirming the debtors' chapter 13 plan on March 9, 2020. The plan provides that the Lease is assumed, that the current installment payments will be disbursed to Ford by the debtors,

and that there was no pre-petition arrearage to be cured through the plan. ECF No. 7 at 4. The plan also provides that the property of the estate vested in the debtors upon confirmation. *Id.* at 5.

The Lease matured on November 26, 2022, and the debtors returned the vehicle to Ford on December 16, 2022. ECF No. 58-1 at 10. On January 12, 2023, the Court entered an order granting Ford relief from the automatic stay pursuant to 11 U.S.C. § 362(a), allowing it to dispose of the vehicle. ECF No. 56.

On April 7, 2023, Ford filed a motion for allowance of an administrative expense claim under 11 U.S.C. § 503. ECF No. 58. Ford's motion asserts that the debtors are in default of their obligations under the Lease, and that they owe the following amounts:

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|---|---|
| Excess Mileage Charges | $373.50 |
| Disposition Fee | $395.00 |
| Payments Owed | $400.00 |
| Total | $1,168.50 |

*Id.* at 2. Ford argues that these amounts are allowable as administrative expenses under 11 U.S.C. § 503(b)(1)(A) because "damages flowing from a post-petition breach [of an assumed lease] are . . . entitled to administrative claim status." ECF No. 58 at 2.

No party in interest objected to Ford's motion, but the Court set the matter for hearing. Counsel for Ford argued that vehicles are ubiquitous and necessary in American society, so the debtors' use of the vehicle necessarily benefitted the estate. Ford also submitted a supplemental letter brief after the hearing. ECF No. 64. The debtors' counsel stated that they did not object to Ford's motion because they would prefer to pay the amount due to Ford through their chapter 13 plan. The chapter 13 trustee took no position on the issue, but he acknowledged that any allowed administrative expense would be afforded priority and must be paid through the plan pursuant to 11 U.S.C. § 1322(a)(2).

For the reasons explained below, the Court concludes that the amounts due to Ford are not administrative expenses because the damages did not arise from a transaction with the estate.

**DISCUSSION**

The Bankruptcy Code treats executory contracts and unexpired leases differently from a debtor's other pre-petition obligations. Pursuant to § 365, "the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). This power to assume or reject executory contracts and leases is subject to several exceptions and conditions as set forth in the remainder of § 365. Those relevant conditions are discussed below.

In a chapter 13 case, "the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan." 11 U.S.C. § 365(d)(2). If the trustee does not assume or reject an executory contract or lease, it can be assumed in a chapter 13 plan at confirmation. Section 1322(b)(7) provides that a chapter 13 plan may, "subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section." 11 U.S.C. § 1322(b)(7). If the debtor is a lessee with respect to personal property and the lease is not assumed by the trustee or the plan, then "the lease is deemed rejected as of the conclusion of the hearing on confirmation." 11 U.S.C. § 365(p)(3).

If a lease is rejected, either affirmatively or by operation of § 365(p)(3), the rejection is deemed to be a breach of the contract and it relieves the bankruptcy estate and the debtor from all post-petition obligations that arise after rejection. 11 U.S.C. § 365(g). This is because the breach is deemed to have occurred immediately before the petition date. 11 U.S.C. § 365(g)(1). So if a lease is rejected by the trustee, rejected as part of a chapter 13 plan, or rejected by

operation of § 365(p)(3), then the breach will be treated as though it occurred pre-petition, and any resulting damages will be treated as pre-petition claims. *See* 11 U.S.C. § 502(g).

In some cases, a lease may be assumed but then later rejected. That rejection is also deemed to be a breach of the contract. If the rejection happens after the case is converted to another chapter, then the breach is deemed to occur before the conversion date. 11 U.S.C. §§ 365(g)(2)(B)(i). The effect is that the resulting damages are a pre-petition claim. 11 U.S.C. § 348(d). If the case is not converted to another chapter and a lease is rejected after having been previously assumed, then the breach is deemed to occur at the time of the rejection. 11 U.S.C. § 365(g)(2)(A). This means that the resulting damages are treated as a post-petition claim.

Ford argues that the debtors rejected the Lease when they failed to pay the final amounts due under the Lease. It is clear that the debtors breached the Lease (they do not argue otherwise), but it is not at all clear that the debtors "rejected" the Lease. Under § 365(g), the rejection of a lease constitutes a breach of the contract. So a rejection is a breach, but does it follow that a breach is a rejection? Not necessarily.

"Under § 365(a), rejection of an unexpired lease requires a motion (unless rejection occurs via a confirmed plan) and court approval, unless rejection is 'deemed' to occur under particular provisions of § 365." *In re White*, 370 B.R. 713, 720 (Bankr. E.D. Mich. 2007); *see also* Fed. R. Bankr. P. 6006(a). The lease was assumed via the debtors' chapter 13 plan, so there was no "deemed" rejection. Rejection under § 365(a) would therefore require a motion and court approval, which neither the debtors nor trustee ever sought.

Moreover, there are practical problems with treating the breach of an executory contract as a rejection. When debtors enter bankruptcy, they are often in breach of their obligations under their executory contracts. Those breaches often continue after the petition, and those post-

petition breaches need not be cured unless and until the contract is assumed under § 365 or pursuant to the terms of a confirmed plan. If every post-petition breach of an executory contract were treated as a rejection of the contract, then neither the debtor nor the trustee could assume any contract for which there has been a post-petition breach because the contract would have been rejected by the breach. That cannot be right. Nor is there support in the Bankruptcy Code to say that a pre-assumption breach of an executory contract is not a rejection but a post-assumption breach is a rejection. The Court therefore concludes that the Lease was not rejected under § 365. *See In re White*, 370 B.R. at 720 (Bankr. E.D. Mich. 2007) ("[A] mere *breach* is not a *rejection* under § 365.") (emphasis in original).

Even so, much of the case law addressing post-confirmation breach of leases assumed in chapter 13 cases treats breaches as rejections. *See, e.g.*, *In re Michalek*, 393 B.R. 642, 644 (Bankr. E.D. Wis. 2008) (post-assumption breach is "obviously" a rejection); *In re Baker*, No. 98-03364,1998 Bankr. LEXIS 1597, at *5 (Bankr. E.D.N.C. 1998) (discussing case law addressing the issue and deciding that a breach is a rejection).

Even assuming that the debtors' breach was a rejection of the Lease under § 365, all that does is orient us to the time that Ford's damages claim arose. If the debtors' breach of their obligations under the Lease is a rejection, then by operation of § 365(g)(2)(A), the debtors' rejection is effective at the time of breach. If the debtors' breach of their obligations under the Lease is not a rejection under § 365, then it is still a breach that occurred at the time of the breach. What's important is that the breach occurred post-petition, whether because § 365(g)(2) says that's when it occurred or because the debtors simply breached a contract after the petition date. Either way, the analysis is the same. As the court noted in *Michalek*, § 365(g) "only tells

us when the damages accrue, not how they are paid, if at all." 393 B.R. at 644. What the Court must decide is whether the damages are or can be administrative expenses.

"[A]dministrative expenses are generally those that are incurred ***by the estate*** after entry of the order for relief." Alan N. Resnick & Henry J. Sommer, 8 Collier on Bankruptcy ¶ 503.01 (16th ed. 2023) (emphasis added). Administrative expense claims must be specifically requested by a creditor and allowed by the court under 11 U.S.C. § 503(b). Administrative expenses allowed under § 503(b) are priority claims. 11 U.S.C. § 507(a)(2). Allowance of administrative expenses in a chapter 13 case has an important consequence. Section 1322(a)(2) provides that a chapter 13 plan "shall provide for the full payment . . . of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim." 11 U.S.C. § 1322(a)(2). This means that all administrative expenses allowed under § 503(b) must be paid in full through a debtor's chapter 13 plan. A large administrative expense can sometimes hamper a debtor's ability to complete her chapter 13 plan and receive a discharge if she cannot pay the claim in full within the 5 years allotted for completion of a plan. For that reason, administrative expenses should be closely scrutinized. *See In re SpecialtyChem Prod. Corp.*, 372 B.R. 434, 440 (E.D. Wis. 2007) ("[A]dministrative priority claims are to be strictly construed because the presumption in bankruptcy cases is that the debtor has limited resources that will be equally distributed to creditors.") (quotation omitted).

Ford argues that the damages due under the Lease are administrative expenses pursuant to § 503(b)(1)(A) because they are "actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). To qualify as an administrative expense under that section, an expense must both (1) arise from a transaction with the estate, and (2) benefit the estate in some demonstrable way. *In re Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984); *see also In re*

*Perry*, 369 B.R. 402, 403 (Bankr. E.D. Wis. 2007) ("For a claim to qualify under section 503(b) as a[n] administrative expense, it must arise from a postpetition transaction with the estate and include the actual, necessary costs and expenses of preserving the estate") (quotation omitted).[1] Here, the first requirement is not satisfied because Ford has not demonstrated that the damages arose from a transaction with the estate.

To determine whether there was a transaction with the estate that would render the estate liable for Ford's damages, the Court examines whether the Lease was assumed by the debtor or by the estate. Upon filing a chapter 13 petition, all of a debtor's property becomes property of the estate. *See* 11 U.S.C. § 541(a). A chapter 13 debtor remains in possession of estate property but has only limited powers of a trustee. *See* 11 U.S.C. §§ 1303, 1306(b). The trustee in a chapter 13 case is the representative of the estate. *See* 11 U.S.C. §§ 323(a), 1302. The trustee, not the debtor, has the power to assume or reject a lease before plan confirmation, but the trustee's power to assume ends with confirmation. 11 U.S.C. § 365(a), (d)(2). A chapter 13 debtor has certain rights and powers of a trustee, but the power to assume or reject a lease under § 365 is not one of them. *See* 11 U.S.C. § 1303.

The Lease was not assumed before confirmation, so it was not assumed by the trustee under § 365(a). Rather, it was assumed pursuant to 11 U.S.C. § 1322(b)(7) as part of the chapter 13 plan proposed by the debtor. The question becomes, if a lease is assumed in a plan, who is obligated on the lease – the debtor or the estate? Section 1322(b)(7) is written in the passive voice, and it doesn't say *who* may assume a lease via a chapter 13 plan. But § 365(d)(2) makes clear that the trustee's ability to assume a lease ends at confirmation. Only the debtor can

[1] *Jartran* refers to a "transaction with the debtor-in-possession" rather than a transaction with the estate. 732 F.2d at 587. A debtor-in-possession in a chapter 11 case has most of the powers of a trustee and acts on behalf of the estate. *See* 11 U.S.C. §§ 1107, 323(a). So, a transaction with the debtor-in-possession is a transaction with the estate.

propose a chapter 13 plan, *see* 11 U.S.C. § 1321, so only the debtor can propose to assume a lease in a chapter 13 plan under § 1322(b)(7). Therefore, assumption of a lease in a chapter 13 plan must obligate the debtor, not the estate, because the debtor does not act on behalf of the estate.[2]

The Court disagrees with those courts that have assumed that "the act of assumption obligates the bankruptcy estate." *In re Wells*, 378 B.R. 557, 561 (Bankr. S.D. Ohio 2007); *see also In re Pearson*, 90 B.R. 638, 642 (Bankr. D.N.J. 1988) ("[T]he assumption was an act of administration that created an obligation of the postpetition bankruptcy estate which is legally distinct from the obligations of the parties prior to the assumption."). A chapter 13 debtor does not act on behalf of her bankruptcy estate when she assumes a lease in their chapter 13 plan. *See Ford Co. v. Bankr. Estate of Parmenter (In re Parmenter)*, 527 F.3d 606, 610 (6th Cir. 2008) ("Because the debtor elected to assume the lease and pay it directly, Ford cannot now say that the estate was a latent guarantor of the lease."). The debtors, not the estate, assumed the Lease with Ford.

It was also the debtors, not the estate, who breached the Lease and caused Ford's damages. Upon confirmation of the debtors' plan, the property that was in the estate vested back in the debtors. ECF No. 7 at 5; *see also* 11 U.S.C. § 1327(b) ("Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor."). The property of the estate included both the Lease and the debtors' interest in the leased vehicle. Once the estate property passes back to a debtor at confirmation, "the debtor becomes personally responsible for the expenses of maintaining that property." *In re*

[2] It may be that a debtor can propose a plan that says the estate assumes the lease, rather than the debtor. The Court need not and does not decide that question, because the plan in this case did not so provide. To the contrary, the plan said that the debtors would make the lease payments directly.

*Steenes*, 918 F.3d 554, 556 (7th Cir.) (*Steenes I*), *on reh'g*, 942 F.3d 834 (7th Cir. 2019) (*Steenes II*).[3]

Ford does not address whether there was a transaction with the estate; it jumps right to the second *Jartran* requirement and argues that a debtor's use of a leased vehicle benefits the estate because it is necessary for the debtors' performance under the plan. Ford relies heavily on another case from this district, *In re Michalek*, 393 B.R. 642 (Bankr. E.D. Wis. 2008). In that case, as here, the debtors breached a vehicle lease with Ford that was assumed in their chapter 13 plan. *Id.* at 643. Ford argued there, as it does here, that the damages from the breach were administrative expenses under § 503(b)(1)(A). *Id.* The court held that there is no "support in the code for the proposition that a post-assumption breach automatically obligates the estate, or the plan, for damages from that breach." *Id.* at 644. Rather, "to obligate the estate, there must be benefit to the estate." *Id.* at 646. The court concluded that the debtors' use of the vehicle benefitted the estate because it was "reasonable and necessary for the debtors to perform" under the plan. *Id.*

This Court respectfully disagrees with the *Michalek* decision because the court did not analyze whether the lease assumption or later breach were transactions with the estate, as necessary for administrative expense status. *See id.* The court seems to have collapsed the

[3] *Steenes* involved a set of chapter 13 cases where the confirmed plans provided that estate property would remain in the estate after confirmation. 918 F.3d at 556. The City of Chicago assigns liability for infractions like speeding and parking violations to a vehicle's owner, not its driver. *Id.* With the debtors' vehicles still in the estates, the estates were the owners of the vehicles when the debtors incurred several fines. *Id.* The City of Chicago asked the bankruptcy court to order the vehicles returned to the debtors, so that the debtors would be responsible for the fines. In *Steenes I*, the Seventh Circuit agreed that there was no reason for keeping the vehicles in the estate and ordered ownership of the vehicles be restored to the debtors. *Id.* at 558.

On rehearing in *Steenes II*, the Seventh Circuit held that the fines incurred before the vehicles were returned to the debtors should be classified as administrative expenses under § 503(b). 942 F.3d at 839. This holding makes sense, because the fines would have arisen from transactions with the debtors' estate because the estates owned the vehicles at the time. The decision in *Steenes II* does not answer the question whether those fines would be given administrative expense priority if ownership of the vehicles were vested in the debtors rather than the estate at the time of the infractions.

*Jartran* requirements into one, concluding that a transaction is necessarily with the estate if it benefits the estate. *See id.* at 646 ("Almost anything that helps a chapter 13 debtor perform under a plan that makes payments to creditors is a benefit that gives rise to administrative claim status."). Dispensing with the requirement of a transaction with the estate would elevate all sorts of post-petition debts into administrative expense claims. Things like medical bills, utility bills, and house or vehicle repair bills would be eligible for administrative expense treatment because the health of the debtor and her residence and car are important for her performance under the plan, even though the estate had nothing to do with requesting or receiving the services.

Treating all those debts as administrative expenses under § 503(b) would also have the effect of negating a portion of § 1305, a disfavored result. *See Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992) ("courts should disfavor interpretations of statutes that render language superfluous"). Section 1305(a) provides that "[a] proof of claim may be filed by any entity that holds a claim against the debtor . . . that is a consumer debt that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan." 11 U.S.C. § 1305(a)(2). If all expenses that help a debtor perform under a plan are administrative expenses, then there would be no need for a provision regarding the filing and treatment of post-petition claims under § 1305(a)(2). Most administrative expenses are also post-petition claims under § 1305(a)(2), but only those post-petition claims that arise from a transaction with the estate, as opposed to the debtor, should qualify as administrative expenses.

Moreover, allowing administrative expense claims for lessors like Ford could have devastating consequences. Depending on the size of the rejection damages claim and how late in the plan term it is allowed, a debtor's plan might no longer be feasible because the administrative

expense claim would need to be paid through the plan and within the 5 years allowed for completion of chapter 13 plans. *See Michalek*, 393 B.R. at 647 (conceding that "[a]llowing an administrative claim of the magnitude Ford has filed might make the plan unfeasible"). Most debtors do not have much wiggle room in their budgets to increase their plan payments. A large administrative expense claim could doom a debtor's ability to complete her chapter 13 plan, and a debtor could lose her ability to obtain a discharge after years of payments.

Ford argues that the Court should follow a string of cases in which courts have granted administrative expense status to a post-assumption breach of a lease. *See* ECF No. 58 at 2-3. Most of the cases that Ford cites are either chapter 11 cases, or they rely on chapter 11 cases. *See id.* Nearly all of them can be traced back to two cases: *In re Multech Corp.*, 47 B.R. 747 (Bankr. N.D. Iowa 1985), and *Nostas Assocs. v. Costich (In re Klein Sleep Prods.)*, 78 F.3d 18 (2d. Cir. 1996).

In *Multech*, the debtor-in-possession assumed a lease for a manufacturing plant pursuant to § 365 shortly after the petition date. *Multech*, 47 B.R at 749. The debtor then rejected the lease not long after that, the lessor was granted relief from the automatic stay, and the debtor's case was eventually converted to chapter 7. *Id*. The bankruptcy court held that the lessor's claim for rejection damages was entitled to administrative expense priority because under § 365(g)(2), the lessor's damages were deemed to arise after the petition date:

> In contrast to the rejection of unassumed contract which arises from a transaction with the prebankruptcy Debtor, the rejection of an assumed contract arises directly from a transaction with the Debtor-in-Possession. Thus, it is the Debtor-in-Possession which has caused legally cognizable injuries and the claims arising from those actions are entitled to priority as an administrative expense.

*Id*. at 750-51. Importantly, the facts of *Multech* would satisfy the two requirements from the Seventh Circuit's *Jartran* standard. The debtor-in-possession was acting on behalf of the estate,

so the lease assumption and later rejection were transactions with the estate, and the lease benefitted the estate, or at least it was expected to benefit the estate at the time of assumption.

The facts were similar in *Klein Sleep*. There, the bankruptcy court approved a chapter 11 debtor-in-possession's assumption of a lease of retail space pursuant to § 365. 78 F.3d at 21. Within a few months, however, "the reorganization had failed so completely that liquidating the firm's assets would not cover even the administrative expenses of the estate." *Id.* A chapter 11 trustee was appointed, and the trustee rejected the lease. *Id.* The Second Circuit considered whether the lessor's entire rejection damages under the assumed lease should be granted administrative priority, or only the portion traceable to the period between assumption and rejection, during which the debtor-in-possession actually used the property. *Id.* The Second Circuit found that the bankruptcy court's approval of the lease assumption was *res judicata* on the question of the benefit to the estate. *Id.* at 25. Because assumption by the trustee under § 365(a) requires a showing that assumption is in the estate's best interest, the "decision to let Klein Sleep assume the unexpired lease . . . precluded a subsequent finding that assuming the lease did not benefit Klein Sleep." *Id.* Therefore, the entire rejection damages claim was an administrative expense. *Id.* As with *Multech*, the result would likely be the same under the *Jartran* standard because the lease assumption was a transaction with the debtor-in-possession on behalf of the estate.

Bankruptcy courts considering post-confirmation lease breach damages in chapter 13 have often relied on these cases to allow administrative expense claims for lessors like Ford. *See, e.g.*, *In re Boylan*, No. 12-82349, 2013 WL 4170469 at *2 (Bankr. Neb. Aug. 14, 2013); *In re Juvennelliano*, 464 B.R. 651, 653-54 (Bankr. D. Del. 2011); *Wells*, 378 B.R. at 563; *In re Enderle*, 352 B.R. 444, 447 (Banrk. E.D. Mich. 2006); *In re Smith*, 315 B.R. 77, 79-80 (Bankr.

W.D. Ark. 2004); *In re Masek*, 301 B.R. 336, 341-42 (Bankr. Neb. 2003); *In re Wright*, 256 B.R. 858, 860 (Bankr. W.D.N.C. 2001); *In re Hall*, 202 B.R. 929, 934-35 (Bankr. W.D. Tenn. 1996); *Pearson*, 90 B.R. at 640. Though these decisions carry the weight of the majority, the Court is not persuaded by their analyses.

In this Court's view, these cases fail to recognize a key difference between chapter 11 and chapter 13. Many of the *Multech*/*Klein Sleep* line of cases rely on the idea that the Bankruptcy Code "permits a ***debtor*** to assume or reject an executory contract" under § 365 and on behalf of the estate. *Juvennelliano*, 464 B.R. at 653 (emphasis added); *see also Boylan*, 2013 WL 4170469 at *2 ("§ 365(a) provides that, subject to court approval, a ***debtor*** may assume or reject an executory contract or lease") (emphasis added).[4] And indeed, in both *Multech* and *Klein Sleep* the debtor assumed the leases. But in those cases the debtor was acting in its capacity as debtor-in-possession on behalf of the estate and with most of the powers of a trustee, including the power to assume or reject an executory contract or unexpired lease. *See* 11 U.S.C. § 365(a) ("the trustee may or assume or reject an executory contract or unexpired lease"); 11 U.S.C. § 1107(a) (granting debtors-in-possession "all . . . powers . . . of a trustee").

The same is not true in a chapter 13 case. Chapter 13 debtors do not wield the trustee's power to assume executory contracts under § 365. *See* 11 U.S.C. § 1303. A chapter 13 debtor may assume a lease only because § 1322(b)(7) says she can assume the lease in a plan. By assuming the lease in a chapter 13 plan, the debtor does not make the estate responsible for the debtor's obligations under the contract. *See In re Cumbess*, 960 F.3d 1325, 1335 (11th Cir.

[4] *Boylan* recognizes, in a footnote, that § 365(a) actually grants this power to the trustee. 2013 WL 4170469 at *2 n.1. But it goes on to say that the § 363(l) power, which a chapter 13 debtor *does* have, "includes the right to lease property subject to the provisions of § 365." *Id.* Section 363(l) deals with the trustee's power to "sell, use, or lease" property *out of* the bankruptcy estate, notwithstanding an ipso facto clause in relevant contract. 11 U.S.C. § 363(l). It does not separately grant the trustee power to assume a lease *into* the estate.

2020) (rejecting the argument that "trustee" as used in § 365 should be read to include the debtor because "Congress appreciates the important distinction between the 'trustee' and the 'debtor'"); *Parmenter*, 527 F.3d at 610 ("Whereas a Chapter 11 debtor-in-possession acts on behalf of the estate when it assumes a lease and thus creates a legal obligation on the estate, a Chapter 13 debtor who assumes and pays for a lease outside the plan does not."); *In re Ruiz*, No. 09-38795, 2012 WL 5305741 at *3 (Bankr. S.D. Fla. Feb. 14, 2012) ("In a chapter 11 case a debtor in possession operates on behalf of the estate until confirmation, while in a chapter 13, the trustee represents the estate.").

There is another reason that the cases Ford cites aren't persuasive. Many of the cases allowing administrative expenses for post-assumption damage were decided before enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) in 2005. *See, e.g.*, *Masek*, 301 B.R. 336 (2003); *Wright*, 256 B.R. 858 (2001); *Hall*, 202 B.R. 929 (1996); *Pearson*, 90 B.R. 638 (1988). The BAPCPA amendments to the Bankruptcy Code added § 365(p). That section "clearly distinguishes between assumption by the trustee on behalf of the estate and assumption by the debtor." *Ruiz*, 2012 WL 5305741 at *3.

Individual chapter 13 debtors cannot assume their vehicle, cell phone and other leases under § 365(a), but these are often necessary accoutrement of daily life. Their route to assumption of these leases, and to keeping the leased property, is in a confirmed plan. *See* 11 U.S.C. § 1322(b)(7). Section 365(p) distinguishes between assumption by the trustee and assumption by the debtor in a confirmed plan. *Compare* 11 U.S.C. § 365(p)(1) (consequences of the trustee's failure to timely assume under § 365(d)) *with* 11 U.S.C. § 365(p)(3) (consequences

of the failure to assume in a confirmed plan). This distinction highlights that it is the debtor, not the trustee or estate, that assumes a lease when the assumption occurs in a confirmed plan.[5]

The Court acknowledges that, as Ford pointed out, there are several potentially "thorny" issues that remain unresolved. *See* ECF No. 64 at 2. The Court does not decide whether a lessor may have an administrative expense claim for the value of a debtor's use of leased property between the petition date and the rejection date while the property is property of the estate. *See In re Williamson*, No. 96-41777, 1997 WL 33474939, at *1 (Bankr. S.D. Ga. June 27, 1997) (noting that a lessor may be able to prove pre-confirmation damages for use of leased property). The Court does not decide whether a lessor would be entitled to an administrative expense claim if the plan provides that the chapter 13 trustee will make the lease payments, and the lease is later rejected. The Court does not decide how the amounts due to a lessor under a confirmed chapter 13 plan for cure of a pre-petition default are determined if the debtor assumes the lease and later rejects it. *See, e.g.*, *Fago v. Two Anco Drive Assocs.*, No. 14-6482, 2015 WL 5665623, at *4 (Bankr. D.N.J. 2015) (cure payments not elevated to administrative claim status when assumed lease is rejected after confirmation); *In re Masek*, 301 B.R. at 342 (plan provided for cure of pre-petition default). The Court does not decide whether regular lease payments or rejection damages are "payments under the plan" for purposes of § 1328(a). And the Court does not decide whether the damages owed to Ford under the Lease are dischargable. *See Wainer v. A.J. Equities, Ltd.*, 984 F.2d 679, 684-85 (5th Cir. 1993) ("[U]nder the Bankruptcy Code, a lease that *has been assumed* under a plan or pursuant to section 365 does not give rise to a claim. Absent a

[5] Section 365(p)(3) provides that if the trustee does not timely assume a lease, then an individual chapter 7 debtor may do so and "the liability under the lease will be assumed by the debtor and not by the estate." 11 U.S.C. § 365(p)(2)(B). The absence of such clear language for chapter 13 debtors does not mean that the liability for an assumed lease necessarily resides with the estate. *See Cumbess*, 960 F.3d at 1335 (§ 365(p)(3) "says nothing – one way or the other – about what happens in the event that the debtor *does* assume the lease in his plan") (emphasis in original).

claim, there can be no liability on a claim and, thus, no debt. Absent a [pre-petition] debt, there is nothing to be discharged pursuant to section 1141.") (internal citations omitted). None of these issues are raised by Ford's application, so the Court leaves their resolution for another day.

**CONCLUSION**

For the foregoing reasons,

IT IS HEREBY ORDERED that the Application for Administrative Expenses filed by Ford Motor Credit, LLC (ECF No. 58) is DENIED.

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