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**UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA**

ACCESSIBLE MRI OF EAST VALLEY, LLC, an Arizona Limited Liability Company,)	Chapter 7 Proceeding
)	Case No. 02-09954-CGC
Debtor.)	UNDER ADVISEMENT DECISION RE: BSSC's RENT CLAIM

The parties have submitted to the Court briefs on the issue of BSSC Enterprises Limited Partnership's ("BSSC") administrative rent claim. The parties have agreed no oral argument is necessary.

Debtor Accessible MRI of East Valley ("Accessible"/"Debtor") leased property in Tempe, Arizona from BSSC. In 2000, BSSC sued Accessible for unpaid rent and other charges. The state court entered a judgment ruling that the life of the lease was for five years at \$3,000 a year. No one disputes the entry or meaning of this judgment. Accessible filed for bankruptcy on June 27, 2002. Accessible paid rent to BSSC through June, 2002, and the lease expired by its terms on June 30, 2002

On December 20, 2002, pursuant to BSSC's motion for relief from stay, this Court granted BSSC stay relief and BSSC locked Accessible out of the property. An MRI owned by Accessible remained on the property until it was removed, after a Court-approved sale, on about November 28, 2003. The question before the Court is what amount of rent is BSSC due since July 1, 2002, till the removal of the MRI machine in November, 2003.

In reviewing all the pleadings, the Court concludes that the Trustee's analysis is on point. There are three time periods at issue here. First is the time period between expiration of the lease on June 30, 2002, while Accessible was a holdover tenant, and September 26, 2002 – the date upon which BSSC sought stay relief against Accessible. The second period ran from the date of BSSC's motion for stay relief till to the time Debtor was locked out of the premises on December 20, 2002. The third period ran from the date Accessible was locked out of the premises to when the MRI

1 machine was removed from the premises in November, 2003.

2 **1. June 30, 2002, - September 26, 2002**

3 Under Arizona law, when a lease is for a certain period of time under a written agreement,
4 once that time period expires the tenant is to surrender possession of the premises. Arizona Revised
5 Statutes (A.R.S.) section 33-341(D). No one disputes that Accessible failed to surrender the
6 premises once the lease expired on June 30, 2002, by its terms and, therefore, Accessible became
7 a holdover tenant on a month to month basis starting July 1, 2002. If the holdover is consensual,
8 Arizona law provides that the contract rate should apply during this time period. *In re Pima County*
9 *v. Testin*, 173 Ariz. 117, 119 (App. 1992); *Mosher v. Sabra*, 34 Ariz. 536, 273 P. 534 (1929). BSSC
10 does not challenge the Trustee's assertion that the holdover was consensual. Therefore, based on
11 the state court's ruling that the rental rate under the contract was \$3,000 a year, that rate should
12 apply to determine the amount of rent owed by Accessible between July 1, 2002, and the date of
13 BSSC's motion for stay relief on September 26, 2002 – the reasonable date upon which
14 Accessible's holdover became nonconsensual. Based on this, BSSC should be entitled to a rent
15 claim of \$750.00 for this period.

16 BSSC's general argument that the \$3,000 a year rent was a sweetheart deal and should not
17 be the rent amount used for this terms ignores the law. BSSC had an obligation to object to Debtor's
18 continued holdover on the property during this time if it objected to Accessible's continued
19 presence or the amount of the rent to be applied during this period under the law.

20 **2. September 27, 2002 - December 20, 2002**

21 Once BSSC sought stay relief, Debtor's holdover became non-consensual. At this point, as
22 explained by the Trustee, Debtor's rent obligation changed from the contractual terms to what is a
23 reasonable rental value for the property. Everyone agrees that this is a rate different than that under
24 the contract: As BSSC put it, the \$3,000 a year was a sweetheart deal. BSSC contends that
25 reasonable rent on the premises is \$25.00 a square foot as set forth by Colleen McPherson, a
26 commercial real estate leasing agent with CB Richard Ellis. The Trustee, however, contends the fair
27 rental value is \$21.00 a square foot according to Trammell Crow, the Trustee's Court-approved
28

1 leasing consultant.¹

2 While not seemingly materially different, the Court adopts the valuation of the Trustee's
3 consultant. Trammell Crow was expressly approved by the Court to value this property. In
4 reviewing the valuation prepared by BSSC's broker, the Court notes that Ms. McPherson priced the
5 property based on a total leasable space of 2,500 square feet as compared to the 1,500 square feet
6 Trammell Crow analyzed. This may or may not affect the price per square foot each quoted, but
7 Trammell Crow's square footage is more accurate, as the Court will explain below. Further,
8 Trammell Crow's analysis contained more detail about the medical office leasing market at the time
9 in question, and more specifically the economic atmosphere at the time overall in different parts of
10 the Phoenix metropolitan area. For these reasons, the Court accepts the Trustee's fair market
11 valuation of \$21 a square foot.

12 The question then becomes, how many square feet did Accessible occupy. According to
13 Trammell Crow, the entire property is approximately 5,000 square feet, but shared by Accessible,
14 Nelson Chiropractic, and Dr. Willard Hunter, with Accessible using only a total of 1,500 square feet.
15 The 1,500 square feet was further divided as follows. Approximately 750 square feet was used
16 solely by Accessible for its MRI room (500 square feet) and a storage room/technician's room (250
17 square feet). BSSC offers no real argument to the contrary, other than to say Ms. McPherson
18 concluded Accessible occupied 2,500 square feet. She provides no explanation for this conclusion
19 and one can only infer that this number came from BSSC or one of its agents at the time she viewed
20 the property. Another 750 square feet was apparently shared space among Accessible, Nelson
21 Chiropractic, and Dr. Hunter and included a reception area, billing area, break area and laundry
22 room. Again, BSSC does not dispute that this area was shared, it simply argues that the Trustee is
23 attempting to "segregate and isolate an orphan common area" to its benefit while BSSC is left with
24 an area it could not otherwise rent out while Accessible remained on the premises. This argument
25

26 ¹Counsel for Ralph Felder, Deepak Narang and Rakesh Pahwa ("the Remaining Members)
27 contends that a price of \$20 a square foot should be used, but provides no basis for this other than
28 simply suggesting "that a lower amount should be used, but something less than \$21.00, suggesting
\$20.00." The Court declines to adopt this figure.

1 rings hollow. Because the space was shared equally among the three tenants, Accessible should only
2 pay for its proportionate use of it. Therefore, its liability is limited to \$21.00 a square foot for 1/3
3 of 750 square feet in the common area. For the three
4 month period between BSSC's request for stay relief and its lockout of Debtor, BSSC is entitled
5 to \$5,250.00 in rent.

6 **3. December 20, 2002 - November, 2003**

7 Last, the Trustee contends that once Debtor was locked out of the space, Accessible was
8 no longer liable for the 750 square feet it shared with Nelson Chiropractic and Dr. Hunter or the
9 250 square feet of storage/technician space, as BSSC prohibited Accessible from using the space
10 and it in fact did not use the space. Instead, the Trustee contends that Accessible was liable only
11 for the 500 square feet of space the MRI machine continued to occupy during the lockout, as that
12 truly represents the only space Accessible continued to "use." Under that analysis, the Trustee
13 contends that Accessible would owe \$21.00 x 500 square feet x 11 months for a total of \$14,437.50.

14 BSSC obviously disagrees, arguing that with Accessible's continued occupation of the 500
15 square feet MRI room, it could not reasonably lease the remaining space. Therefore, Accessible
16 should pay \$25.00 a square foot for the total 2,500 square feet for the entire post-lockout period.

17 In turn, the Remaining Members argue that Accessible should only be responsible for paying
18 the reasonable costs of storing the MRI machine for the 11 month post-lockout period, as it contends
19 BSSC delayed the entire sale and removal of the MRI machine and should not profit from its actions.
20 Under the Remaining Members analysis, the total rent owed for this 11 month period would be
21 \$1,650 (\$150 x 11). The Court declines to adopt this reasoning.

22 The Court finds that Accessible is liable on the 500 square feet of space being occupied by
23 the MRI machine from January, 2003, through November, 2003, at \$21.00 a square foot for a total
24 of \$14,437.50.

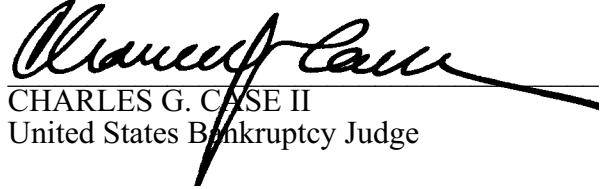
25 The total administrative rent claim, therefore, is \$20,437.50. This is further reduced,
26 however, by \$8,877.45 previously agreed to by the parties for a total administrative rent claim owing
27 to BSSC of \$11,560.05.

28 Counsel for the Trustee is to lodge a form of order consistent with the Court's decision for

1 signature.

2 So ordered.

3
4 DATED: April 11, 2006

5 
6 CHARLES G. CHASE II
United States Bankruptcy Judge

7 **COPY** of the foregoing served via facsimile
8 this 11th day of April 2006, to:

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