SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: November 16, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

JERRY C. BELL AND TERESA A. BELL, **CASE NO. 16-02162-NPO**

DEBTORS. **CHAPTER 13**

ORDER (1) OVERRULING OBJECTION TO SECURED CLAIM AND (2) SUSTAINING OBJECTION TO CONFIRMATION OF PLAN

This matter came before the Court for hearing on October 3, 2016 (the "Hearing"), on the Objection to Secured Claim (the "Claim Objection") (Dkt. 17) filed by the debtors, Jerry C. Bell ("Jerry Bell") and Teresa A. Bell (collectively, the "Debtors"); the Response to Debtors' Objection to Secured Claim (the "Response") (Dkt. 35) filed by Oak Hill Rentals, LLC ("Oak Hill"); and the Objection to Confirmation of Plan (the "Plan Objection") (Dkt. 36) filed by Oak Hill in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Edmund J. Phillips ("Phillips") represented the Debtors, Nicholas D. Garrard ("Garrard") represented Oak Hill, and Samuel J. Duncan appeared on behalf of J.C. Bell, the standing chapter 13 panel trustee. After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B). Notice was proper under the circumstances.

Facts

1. The Debtors filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code on July 6, 2016 (the "Petition") (Dkt. 1).

2. The Debtors filed the Chapter 13 Plan (the "Plan") (Dkt. 2) contemporaneously with the Petition. In the Plan, the Debtors listed Oak Hill as a secured creditor. According to the Plan, Oak Hill's claim was secured by a "barn/shed," and the Debtors proposed to pay the amount owed of $3,399.45 plus 5.00% interest. (Plan at 2).

3. Oak Hill filed a proof of claim on August 5, 2016 (the "POC") (Bankr. Cl. No. 7-1). In the POC, Oak Hill provided that it had an unsecured claim of $3,293.19, the basis of which was a "Lease." (POC at 2). The POC further indicated that the amount necessary to cure any default on the lease as of the Petition date was $556.11. (*Id.*).

4. Attached to the POC was the Rental Purchase Agreement and Disclosures (the "Rental Agreement") (POC at 4). The Rental Agreement indicated that Jerry Bell leased a "Portable Storage Building" (the "Portable Building") from Oak Hill. (Rental Agreement at 1). He obtained the Portable Building "New-Order Sale" on March 2, 2015, for $2,770.00 plus tax. (*Id.*). According to the Rental Agreement, the lease term was one (1) month, which was renewable "for consecutive terms of 1 month" if Jerry Bell made "a rental renewal payment in advance for each additional month." (*Id.*). Jerry Bell's monthly rental payment was $137.22. (*Id.*). The Rental Agreement contained a "rent-to-own" option that allowed Jerry Bell to renew

the Rental Agreement for thirty-six (36) consecutive months "by making the rental payments on time." (*Id.*). The Rental Agreement provided that "[r]enter does not own the rented property. Renter will not acquire any ownership rights in the rented property until renter has paid the number of payments indicated herein, or exercised the early purchase option and paid all other charges due." (*Id.*). The "early purchase option" allowed Jerry Bell to purchase the Portable Building "at any time by making the payment of any unpaid rental payments due plus 60% of the remaining Total Cost calculated at the time plus sales tax and any other applicable fees." (*Id.*). Pursuant to the "termination" clause contained in the Rental Agreement, Jerry Bell could terminate the Rental Agreement "without penalty at any time by voluntarily surrendering the rented property to Lessor." (the "Termination Clause") (*Id.*). If he chose to exercise this option, Jerry Bell would owe Oak Hill for any past-due rental payments. (*Id.*). The Rental Agreement also contained a "bankruptcy notifications" clause that provided that if Jerry Bell filed for bankruptcy, he would "be required to either assume or reject" the Rental Agreement as an "unexpired lease/executory contract." (*Id.* at 3).

5. The Debtors filed the Claim Objection on July 13, 2016, describing the Portable Building as a "barn/shed." (Claim Obj. at 1). The Debtors proposed to pay the $3,399.45 owed, plus 5.00% interest over the life of the Plan. (*Id.*).

6. Oak Hill filed the Response on August 10, 2016, arguing that the Debtors improperly described the parties' agreement "as a non-mortgage secured claim." (Resp. at 1). "Instead, the agreement between the parties is properly identified as an unexpired lease, and thus the Debtors must assume or reject the lease in its entirety." (*Id.*). According to Oak Hill, Jerry Bell is in default because he has "failed to make proper payments on [the Rental Agreement], and currently owe[s] for three past due rent payments, plus late charges and fees, in addition to

the ongoing future lease payments should [Jerry Bell] desire to assume the lease." (*Id.*). Instead of receiving payments owed over the life of the Plan, Oak Hill demanded that Jerry Bell "assume or reject the unexpired lease in its entirety as required by [] the applicable law discussed herein." (*Id.*).

In the Response, Oak Hill asserted that the Rental Agreement did not create a security interest pursuant to MISS. CODE ANN. § 75-1-203 because "lessee had the option to terminate the lease at any time." (*Id.*). Oak Hill contended that the Rental Agreement should be classified and treated as an unexpired lease subject to 11 U.S.C. § 365 under the Mississippi Rental-Purchase Agreement Act (the "MRPAA"), MISS. CODE ANN. §§ 75-24-151 to -175, "since execution of such agreement did not transfer ownership of said property and no secured interest was created at the time the contract was entered into by the parties." (*Id.* at 1-2). Because a debtor is required to assume a lease in its entirety, Jerry Bell "cannot assume a lease without paying the lessor the full monthly payment amount, and thus [Oak Hill] is not to be treated as all other unsecured creditors or secured creditors, as [Oak Hill] is to be paid its full contractual amount per the terms of the lease . . . ." (*Id.* at 2). Oak Hill also argued that the Debtors' proposed attempt to cure the arrearage through the Plan "is insufficient and does not provide adequate assurance of future performance." (*Id.*).

7. On August 10, 2016, Oak Hill filed the Plan Objection, requesting that the Court deny confirmation of the Plan. Pursuant to the Rental Agreement, Oak Hill argued that Jerry Bell is more than three (3) months past due on rental payments. (Plan Obj. at 1). The Rental Agreement gave rise to an unexpired lease pursuant to 11 U.S.C. § 365, and "[e]xecution of such agreement did not transfer ownership of said property and no security interest was created at the time the lease was entered into by the parties." (*Id.*). Oak Hill cited *Stern v. Marshall* for the

proposition that "property interests are created and defined by state law and unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." 564 U.S. at 462, 495 (2011) (quotations omitted); (Plan Obj. at 1-2). Oak Hill argued that pursuant to Fifth Circuit Court of Appeals precedent, "[w]hether a consignment or lease constitutes a security interest under the Bankruptcy Code will depend upon whether it constitutes a security interest under applicable State or local law." (*Id.* at 2) (quoting *In re Ecco Drilling Co., Ltd.,* 390 B.R. 221, 226 (Bankr. E.D. Tex. 2008) (citations omitted)). Relying on these principles, Oak Hill argued that under MISS. CODE ANN. § 75-1-203, no security interest was created by the Rental Agreement. (*Id.*). Additionally, Oak Hill argued that pursuant to the governing precedent, an executory contract must be assumed or rejected in its entirety. (*Id.*). "[L]ease agreements of the type entered into between [Oak Hill] and [Jerry Bell] in this case are further identified by the [MRPAA] codified at MISS. CODE ANN. § 75-24-151 through § 75-24-175." (*Id.*).

In the Plan Objection, Oak Hill argued that based on the plain language of the Mississippi statutes, "in order for a Court to determine that a lease is a disguised security interest, the lease/security agreement must not be subject to termination by the lessee." (*Id.* at 3). According to Oak Hill, the Rental Agreement constitutes a true lease because it is subject to termination by Jerry Bell. (*Id.*). "Since the lease is not properly identified by the plan," Oak Hill requested that the Court deny Plan confirmation "or would alternatively ask the Court to find that the lease is hereby rejected." (*Id.*). Oak Hill also objected to confirmation of the Plan: (1) to the extent that the Plan seeks to pay it "an amount less than that which is owed according to the lease"; (2) because the lease is currently in default and the Plan's proposal to cure the arrearage is

insufficient and does not provide adequate assurance of future performance; and (3) pursuant to 11 U.S.C. § 365(d)(3), "all obligations under the lease must be performed while deciding whether to assume or reject." (*Id.*).

8. At the Hearing, Phillips explained that Jerry Bell originally purchased the Portable Building from H&M Auto Sales located in Newton, Mississippi (the "H&M Contract") (Dkt. 63 Ex. A at 1). Oak Hill financed the purchase, which is evidenced by the Rental Agreement. Phillips stated that the Rental Agreement evidences a "sort of" lease because it requires payments that are the term of the lease with the option to renew each month. The Rental Agreement referred to this arrangement as a "rent-to-own" contract, which Phillips argued is only applicable to consumer goods and does not apply to agricultural items. Phillips contended that the Rental Agreement was not a lease because it required monthly payments, with no real option to terminate.

9. Garrard stated that Jerry Bell entered into a contract with Oak Hill, which is evidenced by the Rental Agreement. According to Garrard, the Termination Clause contained in the Rental Agreement evidences the fact that the Rental Agreement did not create a security interest, but a lease. According to Garrard, if Jerry Bell made monthly payments for thirty-six (36) months pursuant to the terms of the Rental Agreement, title would be transferred to him with no additional payment required. Garrard contended that Jerry Bell has made no payments since April, thereby terminating the Rental Agreement. Thus, according to Garrard, Jerry Bell is in default.

10. Because there was a discrepancy at the Hearing regarding whether the Portable Building was a "barn," the Court granted the parties fourteen (14) days in which to submit supplemental authority to support their respective positions.

11. On October 13, 2016, the Debtors filed the Motion (the "Motion to Admit") (Dkt. 55), requesting that the Court enter into evidence the following: (1) the H&M Contract (Mot. to Admit at 2); (2) the Affidavit of Debtor (the "Debtor Affidavit") (Mot. to Admit at 3-4); and (3) the Rental Agreement (Mot. to Admit at 5-9).

Oak Hill filed the Response to Debtors' Motion for Production of Evidence (the "Response to Motion to Admit") (Dkt. 65) on November 4, 2016, providing that it did not object to the admission of the H&M Contract or the Rental Agreement into evidence. (Resp. to Mot. to Admit at 1). Oak Hill, however, object to the admission of the Debtor Affidavit into evidence, arguing that it "misidentifies the agreement between the parties, in an attempt to change the plain meaning of the lease-to-own agreement." (*Id.*). According to Oak Hill, the Rental Agreement, signed by the parties, constitutes the entire agreement between Oak Hill and Jerry Bell, and that agreement "cannot be changed except in writing signed by both parties." (*Id.* at 1-2). Citing this Court's holding in *In Premier Entertainment Biloxi, LLC,* 445 B.R. 582, 626 (Bankr. S.D. Miss. 2010), Oak Hill contended that "language of the agreement itself" is the best starting point in analyzing the Rental Agreement. (*Id.* at 2). Accordingly, the Court should look to the "four corners" of the Rental Agreement to determine how it should be interpreted. (*Id.*). According to Oak Hill, the Rental Agreement "is clear and unambiguous, and, as such, the self-serving affidavit of [Jerry Bell] is improper and should not be considered by the Court." (*Id.*). Oak Hill also contended that the Debtor Affidavit should be excluded from consideration because it is not a financing agreement and it was untimely filed. (*Id.* at 2-3).

The Court held a hearing on the Motion to Admit and the Response to the Motion to Admit on November 14, 2016 (the "November Hearing"). At the November Hearing, Phillips conceded that the Debtor Affidavit should not be admitted into evidence. Therefore, the Court

admitted the Rental Agreement and the H&M Contract into evidence and excluded the Debtor Affidavit. An order will be entered consistent with the Court's bench ruling at the November Hearing.

12. Oak Hill filed the Memorandum Brief in Support of Oak Hill Rentals, LLC's Objection to Confirmation (the "Oak Hill Brief") (Dkt. 62) on October 17, 2016. In the Oak Hill Brief, Oak Hill reiterated its argument that the Rental Agreement is a true lease governed by 11 U.S.C. § 365 and since Jerry Bell did not renew the lease as required by its terms, it "is now terminated and cannot be assumed in the [Debtors'] plan." (Oak Hill Br. at 2). According to Oak Hill, whether the Rental Agreement created a security interest is governed by state law, and the Debtors bear "the burden of proving that the agreement is something other than what it purports to be," which is a true lease. (*Id.*). Oak Hill argued that under both the MRPAA and MISS. CODE ANN. § 75-1-203, the Rental Agreement created a true lease. (*Id.*). Specifically, the MRPAA provides that rental purchase agreements "are not governed by laws relating to security interests . . . ." (*Id.* at 5). Citing this Court's decision in *In re Johnston,* Oak Hill noted that the Court considered "a very nearly identical lease" and similar arguments, and concluded that this type of agreement is to be treated pursuant to 11 U.S.C. § 365. (*Id.* at 3).[1] Based on the Court's decision in *In re Johnston,* Oak Hill argued that the Rental Agreement falls under the MRPAA's definition of a rental purchase agreement, and cannot be considered a security interest. (*Id.* at 4). Oak Hill pointed out that the Debtors offered no proof to support their contention that the Portable Building was used for agricultural purposes, meaning that 11 U.S.C. § 365 would not apply. (*Id.*). Whether the Debtors use the Portable Building for agricultural purposes or not does not change the nature of the Rental Agreement, according to Oak Hill. (*Id.*). Oak Hill contended

[1] A detailed discussion of *In re Johnston,* No. 10-04143-NPO, 2011 WL 9378995 (Bankr. S.D. Miss. Feb. 18, 2011) is contained herein.

that at the time the parties executed the Rental Agreement, there was no mention of the fact that Jerry Bell intended to use the Portable Building for agricultural purposes, and Jerry Bell cannot say after the fact that it is used for agricultural purposes without an addendum to the Rental Agreement. (*Id.*). According to Oak Hill, the Rental Agreement contained a clause stating that the terms of the Rental Agreement cannot be changed except in a writing signed by both parties. (*Id.*) (Rental Agreement at 3).

Oak Hill also argued in the Oak Hill Brief that even if the Court were to find that the MRPAA does not apply to the Rental Agreement, "the agreement must still be considered a true lease, based on the Lessee's option to terminate." (Ok Hill Br. at 5). Citing MISS. CODE ANN. §§ 75-1-201 and 75-1-203, Oak Hill argued that the Rental Agreement does not meet the specifications for the creation of a security interest. (*Id.*). Based on the plain language of those provisions, "in order for a Court to determine that a lease is a disguised security interest, the lease/security agreement must not be subject to termination by the lessee." (*Id.* at 6). According to Oak Hill, Jerry Bell "had the option to terminate the agreement at any time, and had no obligation to make renewal payments for 36 months." (*Id.*). Oak Hill further argued that because Jerry Bell had the option to terminate the Rental Agreement at any time, subparts (1)-(4) of MISS. CODE ANN. § 75-1-203 are inapplicable, and the Court should not consider factors such as whether Jerry Bell would have to pay an additional amount to purchase the Portable Building at the end of the Rental Agreement. (*Id.*).

13. The Debtors filed the Memorandum of Law in Support of Debtors' Objection to Secured Claim and in Response to Oak Hill's Objection to Confirmation (the "Debtors' Brief") (Dkt. 63) on October 17, 2016. The Debtors noted that the Rental Agreement "provides for thirty-six one month renewable terms," at the end of which the Portable Building becomes

owned by Jerry Bell without further payment. (Debtors' Br. at 2). Based on this fact, "[t]he term of the 'lease' is only one month and the payments are monthly installments. Thus, the 'lease' expires at the end of each month and thus a provision in the document that the renter may terminate at any time is meaningless." (*Id.*). The Debtors also argued that even if the MRPAA does apply, MISS. CODE ANN. § 75-24-175 requires "[s]ignature of provisions of agreements by lessees." (*Id.*). "Each provision of a contract under Sections 75-24-151 through 75-24-175 shall contain a provision to be signed or initialed by the lessee." (*Id.*at 3). Because the Rental Agreement does not comply with this requirement, "this act does not govern this instrument," according to the Debtors. (*Id.*).

Discussion

The Debtors proposed to pay the amount owed for the Portable Building in the Plan, while Oak Hill argued that the Debtors are required to assume or reject the lease created by the Rental Agreement in its entirety. The resolution of the Plan Objection hinges on whether the Rental Agreement is properly classified as a true lease or a security agreement. If it is a true lease, 11 U.S.C. § 365 will apply. If the Rental Agreement created a security interest, however, 11 U.S.C. § 365 will not apply. Accordingly, the Court must first determine whether the Rental Agreement constitutes a true lease before determining the proper disposition of the Claim Objection and the Plan Objection.

Section 365 of the Bankruptcy Code applies to "unexpired leases," meaning that a lease must be a true lease, and not a financing disguised as a lease, in order for 11 U.S.C. § 365 to apply. 3 COLLIER ON BANKRUPTCY ¶ 365.02[3] (16th ed. 2016). In determining whether a particular transaction is a "true" lease or a disguised security agreement, the Court will look to state law. *Butner v. United States,* 440 U.S. 48, 55 (1979) (holding that property interest in

bankruptcy cases are created and defined by state law). Further "[u]nless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Stern*¸ 564 U.S. at 495. In the Bankruptcy Case, the Rental Agreement contained a clause stating that Mississippi law "shall govern this contract in all respects." (Rental Agreement at 3). Because the parties agreed that Mississippi law applies, and Mississippi has significant contacts to the transaction, the Court finds that Mississippi law controls.

I. Classification of Rental Agreement

The Rental Agreement is a "rent-to-own" contract, a type of contract "that has provoked fierce debate in the bankruptcy courts about how best to classify them because of their hybrid nature." *In re Johnston,* 2011 WL 9378995, at *3. Oak Hill argued that both the MRPAA and § 75-1-203 of the Mississippi Code provide that the Rental Agreement is a true lease and that no security interest was created.

A. MRPAA

"In order to resolve thorny questions about the applicability of consumer credit and usury laws to rent-to-own contracts, Mississippi, like most other states, enacted the [MRPAA] . . . for the purpose of treating such contracts as a distinct category of personal property leases." *Id.* The MRPAA defines a "rental-purchase agreement" as:

> an agreement for the use of personal property by a natural person primarily for personal, family or household purposes, for an initial period of four (4) months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue renting or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

MISS. CODE ANN. § 75-24-153(f). Rental agreements that fall within this definition are not governed by the laws relating to security interests. MISS. CODE ANN. § 75-24-155(1)(c).

In *In re Johnston,* a factually similar case, this Court considered the applicability of the MRPAA to a "rent-to-own" agreement for a portable storage building similar to the Portable Building. In *In re Johnston,* the debtor entered into a rental contract with Graceland Rentals, LLC in which she purportedly leased a portable storage building. *In re Johnston,* 2011 WL 9378995, at *1. The portable storage building was described "as a 10 x 12 Lofted Barn" that the debtor utilized to store personal belongings. *Id.* The rental contract required the debtor to pay rent in the amount of $125.55 per month. *Id.* The contract was for one month only, and she had the option to renew the term automatically for additional consecutive months by making the monthly payments. *Id.* Like Jerry Bell, she could terminate the rental contract without penalty at any time by ceasing payments and surrendering the portable shed. *Id.* The debtor would own the portable shed without paying an additional purchase price by making thirty-six (36) monthly payments. *Id.* The debtor was one (1) month behind her rental payments when she filed for chapter 13 bankruptcy. *Id.* In her chapter 13 plan, she proposed to treat the creditor as secured, with the collateral being the portable barn. *Id.,* at *2. Like the Debtors in the Bankruptcy Case, the debtor in *In re Johnston* proposed to pay the creditor the value of the portable shed. *Id.* Similarly to Oak Hill, the creditor in *In re Johnston* argued that the rental contract created a true lease that was subject to complete assumption or rejection under 11 U.S.C. § 365. *Id.*

After concluding that Mississippi law controlled the proper classification of the rental agreement, the Court considered the applicability of the MRPA, concluding that the agreement

> fell squarely within this statutory definition: It is a contract for the use of personal property; it was entered into by [the debtor], who is an individual; it involves the lease of property being used for household purposes; it has an initial lease period of one month, it is automatically renewable upon payment in advance of each month's rent; it allows an opportunity for [the debtor] to become the owner of the property after three years but does not obligate her to renew the contract for any length of time beyond one month; and it grants [the debtor] the right to terminate the agreement without penalty.

Id., at *3. The Court also noted that the MRPAA specifically excludes rental-purchase agreements from the definition of "security interest" under MISS. CODE ANN. § 75-1-201. "Thus, because the Rental Contract meets all the criteria for a rental-purchase agreement and because such agreements are excluded by law . . . , the Court rejects [the debtor's] contention that it constitutes a disguised security agreement under the definition set forth in that statute." *Id.*, at *4. Regardless of whether the rental contract in *In re Johnston* was a true lease or an executory lease, it "qualifies under the Bankruptcy Code for treatment pursuant to [11 U.S.C.] § 365, with all of its attendant rights and requirements for assumption or rejection." *Id.*

In the Bankruptcy Case, it is clear that the Rental Agreement was entered into by Jerry Bell, an individual; that it had an initial lease period of one month; that it is automatically renewable upon payment in advance of each month's rent; that it allowed the opportunity for Jerry Bell to become owner of the Portable Building after three years, but did not obligate him to renew for any length of time beyond one month; and that it granted Jerry Bell the right to terminate at any time without penalty. The only issues that remain regarding whether the Rental Agreement meets the definition of a rental-purchase agreement, then, is whether it was a contract for the use of personal property and whether it was property being used for household purposes. In *In re Johnston,* the Court concluded that the portable barn, which is very similar to the description of the Portable Building, was personal property. The Court, therefore, concludes that the Portable Building, a 10 x 16 portable storage building, is personal property.

In *In re Johnston,* the evidence showed that the debtor was using the portable barn to store personal items; therefore, the Court was able to conclude that it was being used for household purposes. *Id.*, at *2. After considering the arguments at the Hearing and reviewing the record, the Court was unable to find any indication of how the Portable Building is used.

Like the portable barn in *In re Johnston,* the Portable Building is rather small, and is likely used for storing personal or household items, or possibly yard maintenance items. There is no indication anywhere in the record that the Debtors are farmers or conduct farming or commercial operations of any kind. The Rental Agreement was executed by Jerry Bell, an individual, and in no way evidences that the Portable Building is to be used for agricultural purposes or in a farming operation. Additionally, Schedule I: Your Income (Dkt. 4 at 21) indicates that both of the Debtors are unemployed and there is no indication that they have income from farming operations. The H&M Contract provided that the Portable Building was to be delivered to the Debtors' home address, indicating that it would be used for storage or other household use. The Court, therefore, concludes that the Portable Building is used for household purposes.[2] Accordingly, the Rental Agreement satisfies the definition of a rental-purchase agreement under MISS. CODE ANN. 75-24-153(f) and is therefore excluded from treatment as a security interest by MISS. CODE ANN. § 75-24-155(1)(c).

B. MISS. CODE ANN. § 75-1-203

Even if the Rental Agreement did not fall within the definition of a rental-purchase agreement under the MRPAA, MISS. CODE ANN. § 75-1-203 also precludes a finding that the Rental Agreement created a security interest. Section 75-1-201 of the Mississippi Code provides that "[w]hether a transaction in the form of a lease creates a 'security interest' is determined pursuant to Section 75-1-203." MISS. CODE ANN. § 75-1-201(35). Section 75-1-203 of the Mississippi Code provides that the facts of each case govern whether a true lease is created, and

[2] At the Hearing, Phillips argued that the MRPAA excludes agricultural items, and a barn is, by definition, an agricultural item. *See* MISS. CODE ANN. § 75-24-155(2)(a) (providing that the MRPAA does not apply to rental-purchase agreements "primarily for . . . agricultural purposes"). The Debtors introduced no evidence to support their contention that the Portable Building is an agricultural item. Because the Court finds that the Portable Building is personal property utilized for household use, this argument fails.

that a security interest in the form of a lease is created "if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and *is not subject to termination by the lessee* . . . ." MISS. CODE ANN. § 75-1-203(b) (emphasis added).

In *In re Johnson*, this Court recognized the bright-line test created by MISS. CODE ANN. § 75-1-203: "a lease creates a security interest only if (1) the lessee does not have the right to terminate the lease; and (2) one of the four enumerated requirements . . . is satisfied." *In re Johnson,* No. 16-00104-NPO, 2015 WL 1508460, at *3 (Bankr. S.D. Miss. Mar. 27, 2015) (citations omitted). "If the bright-line test is not satisfied, then the transaction in question does not create a security interest *per se.* In that event, the Court must then examine the facts and circumstances of the transaction and determine whether the lessor retained a meaningful reversionary interest in the goods at the end of the lease term." *Id.* (citations omitted). The party attempting to characterize the agreement as something other than it purports to be bears the burden of proof. *Id.* The Rental Agreement purports to be a lease; therefore, Jerry Bell bears the burden of proving that it is a security interest disguised as a lease.

The first prong of the bright-line test is whether Jerry Bell had the right to terminate the Rental Agreement prior to the expiration of the term. *Id.*, at *4. If Jerry Bell had the right to terminate the Rental Agreement early, "then the transaction is not deemed to have conclusively created a security interest, and the Court need not proceed in the analysis of the four factors listed in MISS. CODE ANN. § 75-1-203(b), known as the 'Residual Value Factors.'" *Id.* But, if Jerry Bell does not have the right to terminate the Rental Agreement early, "the satisfaction of any one of the Residual Value Factors will result in the finding that the Rental Agreement is a disguised secured transaction as a matter of law." *Id.*

The Rental Agreement unambiguously provided that Jerry Bell had the right to terminate at any time "without penalty" by voluntarily surrendering the rented property to Oak Hill. (Rental Agreement at 1). Because the Rental Agreement contained the Termination Clause allowing Jerry Bell to terminate the Rental Agreement at any time, the Court does not need to analyze the Rental Agreement any further to determine whether a security interest was created. The Termination Clause precludes a finding of a security interest. Thus, under MISS. CODE ANN. § 75-1-203(b), no security interest was created. Under § 75-1-203 of the Mississippi, therefore, like the MRPAA, the Rental Agreement was a true lease subject to 11 U.S.C. § 365.

C. Signature Requirement

In the Debtors' Brief, the Debtors argued that the MRPAA does not apply to the Rental Agreement because a lessee is required to initial or sign each provision, and Jerry Bell did not sign or initial each provision of the Rental Agreement. (Debtors' Brief at 2-3); *See* MISS. CODE ANN. § 75-24-175 (providing that "[e]ach provision of a contract under Sections 75-24-151 through 75-24-175 shall contain a provision to be signed or initialed by the lessee."). The bottom of each page of the Rental Agreement was signed and dated by Jerry Bell, the lessee of the contract, indicating his consent. Although each individual provision of the Rental Agreement itself is not signed or initialed, the Court finds no authority that supports the Debtors' argument that the omissions renders the MRPAA inapplicable to the transaction.

II. 11 U.S.C. § 365

As the Court found in Section I, the Rental Agreement is properly classified as an "unexpired lease," meaning that 11 U.S.C. § 365 applies. Section 365 of the Bankruptcy Code "authorizes the trustee to assume or reject executory contracts or unexpired leases" and "requires the trustee to cure certain defaults before assumption and to provide adequate assurance of future performance of contracts or leases that are in default." 3 COLLIER ON BANKRUPTCY ¶ 365.01. Because the Rental Agreement created a lease and not a disguised security interest, 11 U.S.C. § 365 applies. The Debtors did not propose to

assume or reject the Rental Agreement in the Plan, and the Claim Objection proposed to pay the amount owed at 5.00% interest. Accordingly, the Court finds that the Claim Objection should be overruled and the Plan Objection should be sustained. Confirmation of the Plan, therefore, should be denied.

Conclusion

The Court finds that the Rental Agreement is a rent-to-own contract that constitutes a "true" lease rather than a lease disguised as a security interest under Mississippi law. Specifically, the Rental Agreement meets the definition of a rental-purchase agreement under the MRPAA. Additionally, the Rental Agreement satisfies the test for a true lease under MISS. CODE ANN. § 75-1-203. Accordingly, 11 U.S.C. § 365 applies to the Rental Agreement, and the Debtors must assume or reject the Rental Agreement in its entirety. The Claim Objection, therefore, should be overruled, and the Plan Objection should be sustained. Confirmation of the Plan should be denied, and the Debtors should have fourteen (14) days from the date of this Order in which to propose a plan that complies with 11 U.S.C. § 365.

IT IS, THEREFORE, ORDERED that the Claim Objection is hereby overruled.

IT IS FURTHER ORDERED that the Plan Objection is hereby sustained.

IT IS FURTHER ORDERED that confirmation of the Plan is hereby denied, and the Debtors shall have fourteen (14) days from the date of this Order in which to propose a confirmable plan that complies with 11 U.S.C. § 365.

##END OF ORDER##