SO ORDERED.
SIGNED this 29th day of June, 2023

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

BEN WILLIAM BELEW
KAREN RAE BELEW

Debtors

Case No. 3:21-bk-31572-SHB
Chapter 13

MEMORANDUM AND ORDER ON MOTION OF KEY BUILDING RENTALS, LLC TO MODIFY AUTOMATIC STAY

Pending before the Court is the Motion of Key Building Rentals, LLC to Modify Automatic Stay (the "Motion") [Doc. 55], to which Debtors objected at the initial hearing on March 8, 2023 [Doc. 58]. The Court directed the parties to file briefs concerning (1) whether the confirmed Chapter 13 Plan is binding on Key Building Rentals, LLC ("KBR") and (2) whether the Rental Purchase Agreement between KBR and Debtor Ben Belew (the "Agreement") [Doc. 55-1] is a true lease under Tennessee law. [Doc. 59.] The parties filed their respective briefs [Docs. 61, 62], and this contested matter is now ripe for adjudication.

I. PROCEDURAL POSTURE

Debtors filed their Chapter 13 bankruptcy petition on October 5, 2021, scheduling KBR as a secured creditor with a service address of "P.O. Box 330736, Murfreesboro, TN 37133" under a "Lease/Purchase" agreement with a storage building as collateral. [Doc. 1 at p. 30.] Debtors provided for KBR in section 3.2 of their proposed Chapter 13 Plan, treating the debt as secured in the amount of $2,592.00, to be paid at $50.00 per month with interest at 3% and identifying a storage building as collateral. [Doc. 2 at ¶ 3.2.] As required by E.D. Tenn. LBR 3015-1(c), Debtors filed a Certificate of Service reflecting service of the Chapter 13 Plan on "Brian Berryman, Registered Agent for Key Building Rentals, LLC." [Doc. 12.] Additionally, on October 15, 2021, the Bankruptcy Noticing Center ("BNC") sent to KBR, at the scheduled address, and to the registered agent both the proposed Chapter 13 Plan and the Notice of Chapter 13 Case, which included notice of the meeting of creditors, notice of the proposed Chapter 13 Plan with the deadline for objections and the date of the confirmation hearing as determined by E.D. Tenn. LBR 3015-3, and the claims deadline. [Docs. 21, 23, 25.]

The Court held a confirmation hearing on another creditor's objection to the proposed Chapter 13 Plan on December 1, 2021, and on withdrawal of that objection, the Chapter 13 Plan was confirmed by Order entered December 8, 2021 ("Confirmed Plan"). [Doc. 40.] The BNC sent the Confirmed Plan to KBR, again at both the scheduled P.O. Box 330736 and to Brian Berryman as KBR's registered agent. [Doc. 41.]

Because KBR did not file a proof of claim by the deadline of December 14, 2021, Debtors filed a proof of claim on KBR's behalf on January 18, 2022 ("Claim #31"), notice of which the BNC sent to KBR at P.O. Box 330736, as required by Federal Rule of Bankruptcy Procedure 3004. [*See* Docs. 47, 49]. Claim #31 having been filed late by Debtors, the Chapter

13 Trustee objected on March 24, 2022 (the "Objection"), serving KBR with the Objection at P.O. Box 330736. [Doc. 50.] After expiration of the passive-notice period without objection, on April 29, 2022, the Court entered the Order Resolving Chapter 13 Trustee Objection to Proof of Claim Filed by Debtor(s) Attorney on Behalf of Key Building Rentals (#31) (the "April 29, 2022 Order"), disallowing the claim in its entirety. [Doc. 51.] The BNC sent a copy of the April 29, 2022 Order to KBR at P.O. Box 330736 on May 1, 2022. [Doc. 52.]

More than nine months later, and more than sixteen months after KBR was first served with notice of Debtors' Chapter 13 case, on February 10, 2023, KBR filed its Motion, asserting that it is entitled to stay relief because the Confirmed Plan did not provide for assumption of the Agreement, that Debtor Ben Belew was sixteen months delinquent in his payments under the Agreement, and that there is no equity in the storage building. [Doc. 55.]

II. DISCUSSION

Citing to 11 U.S.C. § 365(p)(3), KBR seeks relief from the automatic stay "as a precaution only as the failure to assume an unexpired lease operates as a rejection of the lease and the stay terminates automatically." [Doc. 55 at ¶ 7.] In its brief, KBR argues that Debtors have "attempted to transmogrify a lease into a completely different – and more advantageous – commercial device without the creditor's consent; obtained a confirmed plan that mischaracterizes the nature of the debt to Key Building Rentals and provides for an inadequate monthly payment to such creditor; and then failed to pay anything whatsoever, all while maintaining possession and control of Key Building Rentals' property." [Doc. 61 at p. 7.] Debtors oppose the Motion, arguing that the Confirmed Plan is res judicata and binding on KBR, which did not file a proof of claim, oppose confirmation, or appeal the Confirmed Plan. [*See* Doc. 62.]

"The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). As explained recently by one bankruptcy court in the Sixth Circuit, "a confirmation order is *res judicata* of all issues that should have been resolved at the confirmation hearing[, and] . . . a confirmed plan is 'treated as the exclusive and transcendent relationship between the debtor and the creditor.'" *In re Parker*, No. 18-23444, 2022 WL 17591603, at *4 (Bankr. W.D. Tenn. Dec. 8, 2022) (quoting *Salt Creek Valley Bank v. Wellman (In re Wellman)*, 322 B.R. 298, 301–02 (B.A.P. 6th Cir. 2004)); *see also Bullard v. Blue Hills Bank*, 575 U.S. 496, 502-03 (2015) ("When the bankruptcy court confirms a plan, its terms become binding on debtor and creditor alike[, and] [c]onfirmation has a preclusive effect, foreclosing all relitigation of 'any issue actually litigated by the parties and any issue necessarily determined by the confirmation order.'" (citation omitted)). Thus, if the order confirming a plan is final, it is binding on all parties even if the confirmed plan contains a clearly illegal provision under the Bankruptcy Code. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 275 (2010) ("Given the Code's clear and self-executing requirement for an undue hardship determination, the Bankruptcy Court's failure to find undue hardship before confirming Espinosa's plan was a legal error, . . . [b]ut the order remains enforceable and binding on United because United had notice of the error and failed to object or timely appeal.").

So long as the creditor received notice, the creditor is barred by res judicata "from later asserting that the confirmed plan did not correctly treat its claim, including a challenge regarding whether the agreement between the parties was a lease or a security interest." *RentalAccess, LLC v. Johnson (In re Johnson)*, 587 B.R. 195, 198 (Bankr. M.D. Ga. 2018) (citing *In re Durham*, 260 B.R. 383, 387 (Bankr. S.C. 2001); *HPSC, Inc. v. Wakefield (In re Wakefield)*, 217 B.R. 967

(Bankr. M.D. Ga. 1998)). A confirmed plan, however, binds only a creditor with notice of its proposed treatment in the plan. *Id.* (citing *Green Tree Acceptance, Inc. v. Calvert (In re Calvert)*, 907 F.2d 1069, 1070 (11th Cir. 1990)). When "a party does not have sufficient information to 'alert' it of the possibility that [the] plan's confirmation may impede its rights, the confirmation order does not bind that party." *Id.* (citing *In re Calvert*, 907 at 1070).

Adequate notice of proposed treatment in a Chapter 13 plan is governed by Federal Rule of Bankruptcy Procedure 2002(b), which requires "not less than 28 days' notice by mail of the time fixed . . . for the hearing to consider confirmation of a chapter 13 plan." Confirmation of a Chapter 13 plan also must be noticed under Rule 2002(f)(7). Notices required by Rule 2002 must be mailed to the scheduled address if the creditor has not appeared in the case. Fed. R. Bankr. P. 2002(g). If the proposed Chapter 13 plan is not noticed with the confirmation hearing notice to creditors under Rule 2002(b), it must be served by the debtor when it is filed with the Court. Fed. R. Bankr. P. 3015(d).

Here, KBR was provided with a plethora of notice and opportunities to object before and after confirmation. Before the deadline to object to Debtors' proposed plan treatment of KBR, it was noticed of Debtors' bankruptcy case three times, with a copy of the proposed Chapter 13 plan included in two of those notices. [Docs. 2, 12, 21.] KBR was noticed concerning the case another four times, including the Confirmed Plan, Debtors' filing of Claim #31, the Objection, and the April 29, 2022 Order. [Docs. 40, 41, 47, 49, 50, 51.]

Regarding the address at which KBR was noticed, the Court notes that the Agreement reflects a mailing address for KBR of P.O. Box 331422, Murfreesboro, Tennessee [Doc. 55-2 at p. 1] and that such is different from the scheduled address of P.O. Box 330736 to which all of the notices were sent. [*See* Doc. 1 at p. 66.] KBR relies solely on the Agreement and Tennessee

law's treatment of it and does not assert that it did not receive adequate notice of the bankruptcy case and filings related to KBR. In any event, KBR's registered agent for service of process was sent notice of the bankruptcy case, Debtors' proposed Chapter 13 plan, and the Confirmed Plan. [Docs. 12, 23, 25, 41.]

Thus, despite the unexplained discrepancy in the address for the principal place of business in the Agreement and the address scheduled by Debtors, because notice was provided to KBR's registered agent, this Court finds that KBR received adequate notice and sufficient information to be alerted of Debtors' bankruptcy case, proposed Chapter 13 plan, and Confirmed Plan.

Because this Court must treat the Confirmed Plan "as the *exclusive and transcendent relationship* between the debtor and the creditor," *Salt Creek Valley Bank v. Wellman (In re Wellman)*, 322 B.R. 298, 301–02 (B.A.P. 6th Cir. 2004) (emphasis added), the *de jure* result is that what was probably a "true lease" under Tennessee law[1] indeed was "transmodrif[ied]" by the Confirmed Plan into a security agreement with the storage building serving as collateral for the debt owed to KBR.[2]

Because the Confirmed Plan is a final order and binding on all parties, including KBR, cause does not exist to grant stay relief pursuant to 11 U.S.C. § 362(d), and KBR is not entitled to stay termination under § 365(p)(3).

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[1] Because the Confirmed Plan controls, the Court need not reach the second question briefed by the parties – whether the Agreement is a true lease under Tennessee law. Had KBR objected to Debtors' proposed plan treatment, however, the Court likely would have refused to allow Debtors to treat the debt to KBR as secured instead of as a true lease. *See In re Johnson*, 587 B.R. at 199 (holding that Tennessee Code Annotated section 47-18-601-614 defines a "rental-purchase agreement," and Tennessee Code Annotated section 47-18-603(7)(F) provides that a rental-purchase agreement "shall not be construed to be . . . [a] 'security interest'").

[2] KBR's failure to file a proof of claim or respond to the Objection means that it can receive no payment under the Confirmed Plan, notwithstanding the secured treatment of KBR in the Confirmed Plan. *See* Fed. R. Bankr. P. 3002(a); Confirmed Plan [Doc. 40], at p. 1 ("Regardless of plan treatment, creditors will need to file a proof of claim before any claim can be paid under the plan.").

III. ORDER

For these reasons, the Court directs that the Motion of Key Building Rentals, LLC to Modify Automatic Stay filed on February 10, 2023 [Doc. 55], is DENIED.

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