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

GLENN WILLIAM RUSSELL

Debtor

Case No. 3:21-bk-31714-SHB
Chapter 13

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

Pending before the Court is the Motion of Salem Building Rentals, LLC to Modify Automatic Stay (the "Motion") [Doc. 44], to which Debtor objected at the initial hearing on April 5, 2023 [Doc. 50]. The Court entered an order continuing the hearing on the Motion to allow the parties to decide whether they desired to brief the issues, which are whether the confirmed Chapter 13 Plan is binding on Salem Building Rentals, LLC ("SBR") and (2) whether the Rental Purchase Agreement and Disclosure Statement – TN between SBR and Debtor (the "Agreement") [Doc. 44-1] is a true lease under Tennessee law.[1] On May 10, 2023, Debtor's

[1] The legal issues in this case are identical to those in the Chapter 13 case of Ben William Belew and Karen Rae Belew, No. 3:21-bk-31572-SHB, in which Key Building Rentals, LLC, represented by the same attorney as here, filed a similar motion to modify the automatic stay. In *Belew*, counsel for Key Building Rentals, LLC and the debtors' counsel

counsel notified the Court that he did not desire to brief the issues, after which the Court took the matter under advisement, and it is now ripe for adjudication.

I. PROCEDURAL POSTURE

Debtor filed a voluntary Chapter 13 petition and proposed Chapter 13 plan on October 29, 2021 [Docs. 1, 9]. Debtor scheduled SBR as a secured creditor with a service address of "P.O. Box 332521, Murfreesboro, TN 37133." [Doc. 1 at pp. 27, 51.] The Bankruptcy Noticing Center ("BNC") sent both the proposed Chapter 13 Plan and the Notice of Chapter 13 Bankruptcy 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, to SBR at the scheduled mailing address. [Docs. 13, 16.] Debtor's proposed Chapter 13 Plan provided for SBR in section 3.3, treating the debt as secured in the amount of $1,300.00, to be paid at $30.00 per month with interest at 6% and identifying a storage building as collateral. [Doc. 9 at ¶ 3.3.]

Although SBR did not object to Debtor's proposed treatment of SBR's claim, three other creditors objected to the proposed Chapter 13 Plan [Docs. 18, 21, 22]; however, two of those objections were withdrawn before the confirmation hearing first set for December 29, 2021 [Docs. 24, 25]. The December 29 confirmation hearing on the remaining objection was continued to January 26, 2022 [Doc. 31], then to February 9, 2022 [Doc. 33], and then to February 23, 2022 [Doc. 34]. The objecting creditor finally withdrew its objection on February 17, 2022 [Doc. 35], making the proposed Chapter 13 Plan ripe for confirmation. The Court

(not the same as Debtor's counsel here) briefed the legal issues, and the Court took the matter under advisement. At the April 5, 2023 hearing, the Court inquired whether counsel in this case desired to brief the issues or to rely on the legal arguments raised in the briefing in the *Belew* case.

entered the Order Confirming Chapter 13 Plan on May 9, 2022 (the "Confirmed Plan"), and the BNC sent the Confirmed Plan to SBR at its scheduled address. [Docs. 36, 37.]

Nearly nine months after confirmation and fifteen months after the deadline for objections to confirmation, on March 1, 2023, SBR filed its Motion, raising for the first time its opposition to being treated as a secured creditor instead of a lessor of personal property. [Doc. 41.]

II. DISCUSSION

Citing to 11 U.S.C. § 365(p)(3), SBR 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. 44 at ¶ 8.] SBR asserts that Debtor is sixteen months delinquent in his payments and that he has accrued no equity in the portable storage building because under the Agreement, Debtor accrues no equity until SBR receives payment in full. [*Id.* at ¶¶ 5-6.]

"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 F.2d 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).

Here, SBR was provided with several notices and opportunities to object before and after confirmation, with each notice sent to the same address identified in the Agreement as SBR's principal place of business. Before the deadline to object to Debtor's proposed plan treatment of it, SBR was noticed of Debtor's bankruptcy case two times, with a copy of the proposed Chapter 13 plan included in one of those notices. [Docs. 13, 16.] Finally, SBR also was noticed by BNC with the Confirmed Plan. [Doc. 37.]

Accordingly, this Court must treat the Confirmed Plan "as the exclusive and transcendent relationship between the debtor and the creditor." *In re Wellman*, 322 B.R. at 301–02. The result is that notwithstanding that the Agreement probably was a "true lease" under Tennessee law,[2] the Confirmed Plan controls, including its treatment of the Agreement as a security interest in the storage building as collateral for the debt owed to SBR.[3] Because the Confirmed Plan is a final order and is binding on all parties, including SBR, cause does not exist to grant stay relief pursuant to 11 U.S.C. § 362(d), and SBR is not entitled to stay termination under § 365(p)(3).

III. ORDER

For these reasons, the Court directs that the Motion of Salem Building Rentals, LLC to Modify Automatic Stay filed on March 1, 2023 [Doc. 44], is DENIED, and the hearing scheduled for July 12, 2023, at 9:00 a.m., is STRICKEN.

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[2] Because the Confirmed Plan controls, the Court need not reach the second issue of whether the Agreement is a true lease under Tennessee law. Had SBR objected to Debtor's proposed plan treatment, however, the Court likely would have refused to allow Debtor to treat the debt to SBR 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'").

[3] SBR's failure to file a proof of claim means that it can receive no payment under the Confirmed Plan, notwithstanding the secured treatment of SBR in the Confirmed Plan. *See* Fed. R. Bankr. P. 3002(a); Confirmed Plan [Doc. 36], 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.").