

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

IN RE:

CASE NO. 04-4114-3P3

ROBIN G. SHORES and
VALERIE E. SHORES

Debtors

_____ /

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

This Case is before the Court upon Debtors' Objection to Claim Three (3) of Cook Sales, Debtors' Motion to Value Claim Three (3) of Cook Sales and the Motion to Assume or Reject Personal Property Lease filed by Cook Sales. After a hearing held on January 13, 2005 at 10:30 a.m., the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On June 10, 2003, Debtor, Valerie R. Shores, executed a Portable Warehouse Operating Lease with Cook Sales, Inc.
2. Cook Sales is identified as the lessor under the Portable Warehouse Operating Lease and Valerie Shores is identified as the lessee.
3. On April 21, 2004, Debtors filed for Chapter 13 bankruptcy relief.
4. On August 20, 2004, Cook Sales ("Creditor") filed Claim Three (3). Claim Three (3) listed \$2,326.59 as a priority claim and \$4,760.70 as a secured claim, for a total claim amount of \$7,087.29.
5. On September 28, 2004, Debtors filed an Objection to Claim Three (3) of Cook Sales on the basis that the unsecured portion of Claim Three (3) should not receive priority status since the lease agreement was not a true lease but a disguised financing arrangement.

6. On September 28, 2004, Debtors filed a Motion to Value Creditor's Claim Three (3).

7. On November 15, 2004, Creditor filed a Motion to Assume or Reject Personal Property.

8. Pursuant to the terms of the parties agreement, Debtors' have the option of becoming the owner of the portable building, which has a very long economic life, for no additional consideration at the expiration of the thirty-six month agreement.

9. Debtor, Robin Shores, testified at the hearing that he believed the value of the portable building to be \$2,000. Debtor also testified that he had no expertise in valuing portable buildings.

10. Mr. Oliver, the Branch manager for Cook Sales, Inc. testified that at the time Debtors filed for bankruptcy that a portable building similar to the Debtors would sell for approximately \$4,000.

11. Mr. Cook also testified that the cost of reconditioning the portable building would be approximately \$200.00 to \$300.00, the sales commission would be \$250.00 to \$300.00 and the profit margin would be approximately \$600.00.

CONCLUSIONS OF LAW

The instant case presents the Court with the following three issues: (1) whether the Portable Warehouse Agreement between the parties should be construed as a financing arrangement or a lease, (2) whether the Court will grant or deny Debtors' Motion to Value and (3) whether the Court will grant or deny Creditor's Motion to Compel Assumption or Rejection of Personal Property Lease. Since how the Court will resolve the first issue is indicative of how the Court will deal with the remaining two issues, the Court will first address whether the agreement between the parties should be construed as a financing arrangement or a lease.

A. *Financing Arrangement v. True Lease*

Pursuant to Florida Statute § 671.201 (37), “Security Interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Whether a transaction creates a lease or security interest is determined by the facts of each case; however:

(a) A transaction creates a security interest if the consideration 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 not subject to termination by the lessee, and;

1. The original term of the lease is equal to or greater than the remaining economic life of the goods;
2. The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
3. The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or
4. The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.”

Florida Statutes § 671.201(37)(a)

“By its terms, § 671.201(37) mandates that if a “lease” contains both a non-termination clause, whereby the “lessee” may not terminate the “lease” without further obligation, and also contains one of the other provisions listed in subsections (a)(1)-(4), then the Court must find that the transaction in question is a financing transaction, rather than a true lease.” All American Manufacturing Corp., 172 B.R. 394 (S.D. Fla. 1994). In the instant case, the agreement between the parties is subject to termination by the lessee at any time. Therefore, Debtors cannot rely on the safe harbor provisions of § 671.201 (37) and the Court must look at the entire agreement to make a determination.

“In determining whether a lease is a “true” lease courts have traditionally focused on whether or not the lease contains an option to purchase. If the

lease contains an option to purchase for a nominal sum at the end of the lease term, then it is argued that the lessee has been purchasing the item over the term of the lease and, thus, it is a financing arrangement and not a true lease.” In re Canaveral Seafoods, Inc., 79 B.R. 57, 58 (Bankr. M.D. Fla. 1987). In Canaveral Seafoods, this Court held that an Equipment Lease that had an option to purchase of \$1.00 was a financing agreement and not a true lease. This Court noted that creditor’s witness had testified to there being other types of leases under which the debtor would have been able to pay a lower lease payment but would either have had no option to purchase at the end of the lease term, or if given an option, it would have been one which would have required the debtor to pay full market value for the property. Id. Since, debtors’ agreement under the Equipment Lease had a purchase option of the nominal amount of \$1.00 this Court held it to be a financing agreement and not a true lease.

In the instant case, Debtors have the option of becoming the owner of the lease for no additional consideration. Additionally, even though the lease has a very long economic life, as testified to by Mr. Oliver, the Branch Manager for Cook Sales, it is sold under a lease that allows the buyer to become the owner in only thirty-six (36) months. Based upon the above two factors, the Court finds that the Equipment Lease is a financing arrangement and not a true lease.

B. *Debtors’ Motion to Value*

Having held that the Equipment Lease is a financing arrangement, the Court must now determine Debtors’ Motion to Value. At the hearing, Debtor, Robin Shores, testified that he believed the value of the portable building to be \$2,000. However, Debtor also testified that he had no expertise in valuing portable buildings. Mr. Oliver, the Branch manager for Cook Sales, Inc., testified that at the time Debtors filed for bankruptcy a portable building, similar to Debtors, would sell for approximately \$4,000. He further testified that the cost of reconditioning the portable building would be approximately \$200.00 to \$300.00, the sales commission would be \$250.00 to \$300.00 and the profit margin would be approximately \$600.00. Upon consideration of both parties’ testimony, the Court finds the value of the portable building to be \$2,900.

C. *Creditor’s Motion to Compel Assumption or Rejection of Personal Property Lease*

Based upon the Court's holding that the Equipment Lease is a financing arrangement rather than a true lease the Court denies Creditor's Motion to Compel Assumption or Rejection of Personal Property Lease.

CONCLUSION

For the reasons stated above, the Court will (1) Sustain Debtors' Objection to Claim Three (3) of Cook Sales, Inc., (2) Grant Debtors' Motion to Value Claim Three (3) in the amount of \$2,900 and (3) Deny Creditor's Motion to Compel Assumption or Rejection of Personal Property Lease. A separate order will be entered that is consistent with these Findings of Fact and Conclusions of Law.

Dated this 18 day of April, 2005 in Jacksonville, Florida.

/s/ George L. Proctor
George L. Proctor
United States Bankruptcy Judge

Copies furnished to:
Dennis J. LeVine,
Gregory A. Veach
Chad A. Dean
Ed Jackson
Debtors
Mamie L. Davis, Trustee
United States Trustee