

**FILED**

**MAR 30 2007**

**U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF ARIZONA**

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7 In re ) Chapter 11  
8 )  
9 SOUTHWEST SEAFOOD SHOPPES, ) No. 4-05-07565-EWH  
10 LLC, )  
11 Debtor. ) **MEMORANDUM DECISION**  
12 \_\_\_\_\_ )

13 Pending before the court is the Debtor's objection to the claim of the R. R. and A.Y.  
14 Long Family Trust ("Long"). The parties have entered into a settlement agreement which  
15 permits the Debtor to assume its real property lease ("Lease") with Long, but cannot agree  
16 on the amount of Long's claim. The Debtor agrees that \$46,689.35 of the claim should be  
17 allowed, but objects to the approximately \$51,000 balance of Long's "updated" claim.  
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19 Because the Debtor is assuming the Lease, the Debtor is bound by the Lease  
20 terms. In re McDaniel, 89 B. R. 861, 863 (Bankr. E. D. Wash. 1988) ("The contract terms  
21 can not be modified against the will of a contracting party. Assumption requires assuming  
22 the burdens of the contract along with the benefits"). The Lease provides for the payment  
23 of interest on past due amounts and for assessment of late fees. The Debtor's objection  
24 to payment of postpetition interest is, therefore, overruled. The Debtor has also provided  
25 insufficient evidence that a May 21, 2003 check for \$3,480.00 fully paid all sales taxes and  
26 late fees. Long's calculation of its claim credits the Debtor for the May 21, 2003 check.  
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1 Long is entitled, therefore, to include any remaining sales taxes and late fees that were not  
2 timely paid by the Debtor.

3 The Debtor's objection to the fees incurred by Long's attorney is non-specific. There  
4 is no itemization of what fees were allegedly excessive because of Long's counsel  
5 purported inexperience. Accordingly, the Debtor's objection to Long's counsel's fees  
6 cannot be sustained.  
7

8 The Debtor also objected to Long's accountant's fees. There is merit in that  
9 objection because the accountant appears to have been providing something more than  
10 accounting services. Long is entitled under Section 12.01 of the Lease to reasonable  
11 attorneys' fees and "costs," but to the extent that the accountant provided the equivalent  
12 of legal services at a time when Long had engaged counsel, the accountant's fees cannot  
13 be allowed as a cost, and they cannot be allowed as additional attorneys' fees because  
14 such duplicative fees are not reasonable. The Court has reviewed the accountant's bills  
15 and finds that \$6,609.88 could reasonably be charged as accounting related costs. The  
16 balance of \$6,872.05 claimed as accounting fees are disallowed.  
17

18 Long also seeks an additional \$2,816.77 in legal fees and costs and another  
19 \$647.50 in accounting fees in conjunction with the claim dispute. There is no basis  
20 provided for the additional accounting fees, and they will not be allowed. The court has  
21 also reviewed the detailed billing records of Long's attorney and finds that \$1,684.49 is a  
22 reasonable amount of additional fees and costs for the work involved in filing pleadings  
23 related to this claim dispute.  
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1 A separate order will be entered this date allowing Long's claim in the total amount  
2 of \$87,158.33 which represents a \$8,651.83 reduction in the amount requested.

3 Dated this 30<sup>th</sup> day of March, 2007.  
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8 Eileen W. Hollowell  
9 U.S. Bankruptcy Judge

10 Copy of the foregoing mailed  
11 this 30<sup>th</sup> day of March, 2007, to:

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By   
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