

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 09-02433

ORDER

The relief set forth on the following pages, for a total of 5 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
12/30/2009



Entered: 01/04/2010

A handwritten signature in cursive script, appearing to read "John L. Currie".

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

Hollie L. Davis,

Debtor(s).

C/A No. 09-02433-HB

Chapter 11

ORDER

This matter comes before the Court on the Debtor's Objection to the Claims of Zachary M. Smith and Michael V. Craig and the Claimants' response thereto.

Facts

1. Claimants rented a house from the Debtor and gave Debtor a security deposit of \$1,200.00¹ to secure their rental obligations.
2. Claimants subsequently moved out of the house and Debtor did not return the security deposit to Claimants.
3. Claimants filed suit in state magistrate's court for the return of the deposit.
4. The state court found that Debtor did not follow the relevant statutes and awarded Claimants a judgment against Debtor for the return of the remainder of the \$1,200.00 deposit and statutory damages pursuant to S. C. Code of Laws § 27-40-410.²
5. Prior to the expiration of the appeal period, Debtor filed for Chapter 11 protection in this Court.

¹ From the judgment set forth below it appears that three individuals deposited \$1,200.00 total to rent a house for their personal use. Only two of those individuals are involved in this claims proceeding. These two parties assert that they are each entitled to one-half of any resulting claim.

² S. C. Code of Laws § 27-40-410 instructs that a landlord must return a security deposit to a tenant at the end of the tenancy. In addition, a landlord must give written notice of any amounts owed to or withheld from the tenant within thirty days of the end of the tenancy. Failure to comply with the statutory requirements permits a tenant to "recover the property and money in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees."

Discussion and Conclusions of Law

The Bankruptcy Code provides that a claim for the return of a security deposit may be a priority claim as follows:

[T]o the extent of \$2,425 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

11 U.S.C. § 507(a)(7). Claimants argue that the full amount of their claims are “arising from the deposit” and are priority claims. Debtor argues that the statutory damages added to the deposit are general unsecured claims, and therefore the total amount of priority (the aggregate for all claimants related to this deposit) is \$1,131.00.

Although the statute uses the term “arising from the deposit” and Claimants argue that this language would include the treble damages award as a priority claim, the Court finds no bankruptcy authorities to support this position.⁴ Further, in *Guarracino v. Hoffman*, 246 B.R. 130 (D. Mass. 2000), the District Court reviewed a similar issue. In that case a landlord failed to return a non-residential real estate deposit. Claimant sued in state court and was awarded a judgment for three times the amount of the security deposit, plus interest and attorneys’ fees. A month after the judgment was entered, the landlord filed bankruptcy. Claimant filed a priority claim. The Bankruptcy Court in that case found that a tenant security deposit was not included in § 507(a)(7) as a priority claim, but the District Court disagreed. The District Court in *Guarracino* found that § 507(a)(7) includes such a deposit. This Court agrees with that conclusion. However, as

⁴ Claimants cited the case of *Humphries v. Various Fed. United States INS Employees*, 164 F.3d 936 (5th Cir. 1999), in support of their position that their entire claim should be entitled to priority treatment. However, the *Humphries* case does not deal with bankruptcy law, is not binding authority on this Court, and does not provide guidance in interpreting the statutes involved in this case.

was the case in *Guarracino*, “nothing in section 507(a)(6) [now 507(a)(7)] . . . suggests that state law damages stemming from mishandling of security deposits ought to receive administrative priority. Thus, the remainder of the state court judgment remains a general unsecured claim.” *Id.* at 134.

IT IS THEREFORE, ORDERED:

That Zachary M. Smith and Michael V. Craig hold a priority claim pursuant to 11 U.S.C. § 507(a)(7) in the collective amount of \$1,131.00.

That any remaining portion of each claim is a general unsecured claim.

AND IT IS SO ORDERED.