

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
AMERICAN ARCHITECTURAL PRODUCTS * CASE NUMBER 00-43726
CORP., et al., * CHAPTER 11
*
Debtors. * HONORABLE KAY WOODS
*

O R D E R

The matter before the Court is the Motion of LeasePlan USA for Ruling on Allowance of its Administrative Expense Claim (the "Motion for Administrative Claim"), the Clarifying Response to Motion of LeasePlan USA for Ruling on Allowance of its Administrative Expense Claim ("Debtors' Response") filed by AAPC Liquidation LLC ("AAPC"), the successor in interest under the confirmed Joint Plan to the Debtors and Debtors-in-Possession (the "Debtors"), and the Motion to Strike Clarifying Response of AAPC Liquidation, LLC (the "Motion to Strike") filed by LeasePlan USA ("LeasePlan"). As a threshold matter, the Court denies LeasePlan's Motion to Strike, finding that Debtors' Response does not contain any scandalous matter.

LeasePlan and Debtors entered into a vehicle lease agreement dated as of July 18, 1996 relating to twenty-six (26) motor vehicles (the "Lease Agreement"). Eight (8) of the vehicles covered by the Lease Agreement were transferred, with the consent of the parties, to PGT Industries, Inc. in connection

with the sale of the North Carolina assets of Binnings Building Products, Inc. LeasePlan seeks allowance of an administrative expense claim in the amount of Fifty-Two Thousand Two Hundred Fifty-Five and 87/100 Dollars (\$52,255.87) as post-petition, pre-rejection rent due under the Lease Agreement on the remaining eighteen (18) vehicles from and after March 11, 2002 through January 11, 2003.

Debtors sold certain assets to Profile Group LLC ("PG"), pursuant to Court order entered on January 31, 2002 (the "January 31, 2002 Order"). Debtors, evidently in the belief that they had the authority to assume and assign the Lease Agreement or otherwise transfer the vehicles as part of the sale to PG,¹ transferred the eighteen (18) vehicles in question to PG, but con-tinued to pay rent on the eight (8) vehicles that Debtors retained and subsequently transferred to PGT Industries, Inc. On or about August 30, 2002, LeasePlan filed a Motion for Relief from Stay and to Vacate the January 31, 2002 Order as to LeasePlan ("Motion for Relief from Stay") in order to take possession of the eighteen (18) vehicles because rent had not been paid for several months. On October 2, 2002, Debtors filed an Objection to LeasePlan's Motion for Relief from Stay.

¹Debtors have since conceded that the Court order authorizing the sale of these assets was not effective as to the Lease Agreement and the Lease Agreement was not assumed pursuant to Bankruptcy Code § 365. See Paragraph 8 of Debtors' Motion for Order Authorizing Rejection of Vehicle Lease Agreement with LeasePlan USA, Inc. filed January 2, 2002.

Prior to a ruling on LeasePlan's Motion for Relief from Stay, on October 21, 2002, Debtors filed another motion to sell property, including the request to assume and assign the Lease Agreement. LeasePlan objected to such assumption and assignment. Pursuant to Order dated December 17, 2002, this Court approved the asset purchase agreement with PGT Industries, Inc., including the assumption and assignment of certain executory contracts. The December 17, 2002 Order, however, specified in Paragraph 7 that "[t]he term 'Assumed Contracts,' as defined in this Order and in the Agreement, does not include any vehicle leases to which LeasePlan USA is a party; such leases are excluded from the provisions of this Order." Thereafter, on January 2, 2003, Debtors filed a motion to reject the Lease Agreement. LeasePlan filed a response thereto on January 9, 2003, which included a request for allowance of an administrative expense claim. The Court granted the motion to reject the Lease Agreement pursuant to Order dated January 31, 2003, but did not rule on the request for allowance of the administrative expense claim.

LeasePlan argues that it is entitled to an administrative expense claim for the entire amount of unpaid rent due post-petition, but prior to the rejection of the Lease Agreement. LeasePlan cites § 365(d)(10) of the Bankruptcy Code as authority for the proposition that Debtors were required to timely perform all obligations of the Lease Agreement prior to

rejecting such agreement. Since Debtors and/or AAPC failed to timely perform all payment obligations under the Lease Agreement, LeasePlan argues that it is entitled to an administrative expense claim for all unpaid post-petition, pre-rejection rent. AAPC argues that LeasePlan is not entitled to an administrative expense claim, but has only a general unsecured claim, pursuant to § 365(g) of the Bankruptcy Code because the vehicles in question provided no benefit to the estate during the time that the rent was not paid. AAPC argues that Debtors did not have possession or use of the vehicles after February 2002, and thus, any rent due after that period of time cannot constitute an administrative expense claim under § 503(b). AAPC relies on *In re Palace Quality Services Industries, Inc.*, 283 B.R. 868 (Bankr. E.D. Mich. 2002) in support of its position.

Although it appears to be true and Debtors did not have possession of the eighteen (18) vehicles after the end of February 2002, and, thus, such vehicles provided no benefit to the estate, the transfer of the vehicles was made voluntarily by Debtors and without Court authority to do so. Section 503(b) provides for the allowance of administrative expense claims for the "actual, necessary costs and expenses of preserving the estate." The post-petition, pre-rejection lease payments relating to the period when the vehicles were no longer in the possession of Debtors would appear not to fall within that

definition. However, Debtors did not derive any benefit from the vehicles or reject the Lease Agreement at an earlier time because they voluntarily transferred the vehicles to a purchaser of assets without authority to do so. Since Debtors mistakenly thought they had the authority to transfer the eighteen (18) vehicles, it is logical that the consideration paid for the assets may have included some consideration for the vehicles in question. Even if there was no specific consideration paid for transfer of the eighteen (18) vehicles, under these circumstance, it would be inequitable to permit Debtors to avoid payment of an administrative expense claim arising under the Lease Agreement prior to its rejection for the sole reason that Debtors' estates did not receive any benefit. Under these facts, the Court is not persuaded by the reasoning of *In re Palace Quality Services Industries, Inc.*

Accordingly, the Motion for Administrative Claim is granted and LeasePlan is awarded an administrative expense claim in the amount of Fifty-Two Thousand Two Hundred Fifty-Five and 87/100 Dollars (\$52,255.87).

IT IS SO ORDERED.

JUDGE

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order was placed in the United States Mail this _____ day of March, 2005, addressed to:

JORDAN A. KROOP, ESQ., Squire, Sanders & Dempsey L.L.P., Two Renaissance Plaza, 40 North Central Avenue, Suite 2700, Phoenix, AZ 85004.

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JOANNA M. ARMSTRONG