

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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Brian L. Roberg and  
Margaret A. Roberg  
*Debtor(s)*.

Bankruptcy No. L92-00777W

Chapter 11

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### ORDER RE: MOTION FOR ADMINISTRATIVE EXPENSE

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The matter before the court is a motion filed November 9, 1992, by First National Leasing, Inc. (FIRST NATIONAL) requesting the court to allow an administrative expense claim for the rental value of agricultural equipment leased to the debtors. Hearing was held April 7, 1993, in Cedar Rapids, Iowa. Judith O'Donohoe appeared for the debtors. First National submitted a brief in support of its motion but did not appear at the hearing. The court now issues its findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

Brian Roberg leased two items of agricultural equipment from First National. On October 11, 1990, Roberg executed a lease for a model 470 Brent grain cart, and on April 17, 1991, he executed a lease for a model 3127A Krause Landsman. First National's Motion to Require Debtors to Assume or Reject Executory Contract, Document No. 53, Exhibits A and B. On April 17, 1992, the Robergs filed their chapter 11 petition. First National filed a motion to require the Robergs to assume or reject the farm equipment leases. On October 8, 1992, the court issued an order under which the leases were deemed rejected, and the automatic stay was lifted to allow First National to obtain possession of the equipment.

On November 9, 1992, First National filed a motion for an administrative expense claim for the rental value of the Krause Landsman during the time after the Robergs filed the Chapter 11 petition until First National regained possession of the equipment. The lease provided for annual rent in the amount of \$4,256.25. Document no. 67, Exhibit A. In its brief filed April 5, 1993, First National requested an administrative expense claim in the amount of \$2,043.00 for the pro rata share of rent for the post-petition use. The Robergs resisted the motion, alleging that they had not used the equipment at any time since the date of their petition and that First National could have obtained possession of the equipment by contacting them.

Section 503(b)(1) provides that administrative expenses shall be allowed for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). An administrative expense may be allowed under Bankruptcy Code § 503(b)(1) for "use and occupancy" expenses between the petition filing date and the time the trustee or debtor-in-possession rejects an unexpired lease or executory contract. In re Carmichael, 109 B.R. 849, 850 (Bankr. N.D. Ill. 1990). Administrative expenses allowed under § 503(b) receive priority in payment under 11 U.S.C. § 507(a)(1).

Statutory priorities are to be narrowly construed in order to minimize administrative expenses and thus preserve the estate for the benefit of all creditors. Matter of Patch Graphics, 58 B.R. 743, 745

(Bankr. W.D. Wis. 1986), citing Standard Oil Co. v. Kurtz, 330 F.2d 178 (8th Cir. 1964); In re Grant Broadcasting of Philadelphia, Inc., 71 B.R. 891, 897 (Bankr. E.D. Pa. 1987). The burden of proof is on the claimant to prove that expenses were "actual and necessary" and were incurred for the benefit of the estate and all creditors as a whole. Patch Graphics, 58 B.R. at 745.

Cases have established a two-part test for determining whether a debt should be given administrative priority. A claim will be given priority under § 503 if the debt (1) arises from a transaction with the debtor-in-possession and (2) results in a benefit to the debtor-in-possession in the operation of the business. Matter of Jartran, Inc., 732 F.2d 584, 587 (7th Cir. 1984), citing In re Mammoth Mart, Inc., 536 F.2d 950, 954 (1st Cir. 1976). An administrative claim should be viewed in light of the benefit provided to the debtor-in-possession, not the detriment to the creditor. In re Neuhaus, No. 87-01187W, slip op. (Bankr. N.D. Iowa, May 27, 1988), citing In re Intran Corp., 62 B.R. 435, 436 (Bankr. D. Minn. 1986).

No evidence was presented showing that the farm equipment lease provided a benefit to the estate. The Robergs have alleged that there was no benefit because they did not use the equipment at all since the time that they filed their chapter 11 petition. First National apparently concedes that the Robergs may not have used the equipment. First National relies instead on the legal argument that it is entitled to an administrative expense without regard to whether the Robergs used the equipment, citing In re Fred Sanders Co., 22 B.R. 902 (Bankr. E.D. Mich. 1982). In Fred Sanders, the court said that a lessor may assume that, until the debtor rejects a lease, the leased property is being used for the purpose for which it was leased and that the debtor will pay the reasonable value of such use. An administrative claim, the court said, should be computed by reference to the use value of the property, presumptively the contract rate, "and not by the benefit, if any, conferred upon the debtor." Fred Sanders, 22 B.R. at 906-07.

Numerous courts have rejected the reasoning of the Fred Sanders decision. See In re Carmichael, 109 B.R. 849, 850-51 (Bankr. N.D. Ill. 1990), and In re Pickens-Bond Construction Co., 83 B.R. 581, 583-85 (Bankr. E.D. Ark. 1988), discussing the contrary line of authority as represented by Broadcast Corporation of Georgia v. Broadfoot (In re Subscription Television of Greater Atlanta), 54 B.R. 606 (N.D. Ga. 1985), *aff'd* 789 F.2d 1530 (11th Cir. 1986). The Fred Sanders decision has been criticized for misinterpreting the distinction between entitlement to an administrative expense for providing a benefit to the estate and the method for valuing that benefit. Carmichael, 109 B.R. at 852. Cases have also found that the Fred Sanders decision improperly placed the burden of minimizing administrative expenses on the debtor. Id.; Intran, 62 B.R. at 437.

Two of the cases cited in First National's brief, In re F. A. Potts & Co., Inc., 137 B.R. 13 (E.D. Pa. 1992), and Matter of Thayn Farms, Inc., 117 B.R. 510 (Bankr. D. Neb. 1988), involved valuation of the administrative expense claim once it had been shown that the debtor had used the leased property. In Potts, the court cited cases which measured a landlord's claim by the "reasonable value of the leased property without regard to the actual use by the debtor." Potts, 137 B.R. at 17. The court followed what is sometimes called the "objective" approach, which adopts the contract rate as the presumptively reasonable measure of the benefit received by the estate. Id. The issue in Potts was whether the court should consider the extent of the debtor's use of the property, not whether the court would disregard whether there was any use at all. *Cf.* In re Curry Printers, Inc., 135 B.R. 564 (Bankr. N.D. Ind. 1991) (claim for rental of copiers would be presumptively set at contract rates regardless of whether debtor used them at all). In Thayn Farms, the court rejected the debtor's argument that an administrative priority claim should be based on the "actual net dollars that the use of the property actually benefited the estate." The court valued the claim at the leased equipment's fair rental value, which was far less than the contract rate. 117 B.R. at 514.

However, in several cases involving pre-petition leases of personal property, courts have not allowed an administrative expense claim when the evidence showed the debtor had not used the property at all. A creditor must initially show entitlement to an administrative expense by showing a benefit to the estate. In re Intran Corp., 62 B.R. 435 (Bankr. D. Minn. 1986) (computer equipment not used since well before filing petition); In re Lease-A-Fleet, 140 B.R. 840 (Bankr. E.D. Pa. 1992) (administrative expenses allowed only for vans actually used in debtor's vehicle leasing business); Kinnan & Kinnan Partnership v. Agristor Leasing, 116 B.R. 162 (D. Neb. 1990) (leased equipment--silo, unloader and accessories--was broken and not used at all post-petition); Pickens-Bond, 83 B.R. 581 (Bankr. E.D. Ark. 1988) (aircraft was not used or flown by debtors and provided no benefit to estate); In re Carmichael, 109 B.R. 849 (Bankr. N.D. Ill. 1990) (irrigation equipment sat idle on leased property that was not used after the Chapter 12 filing).

First National has not been induced to provide goods or services to the Robergs post-petition. First National's claim under the lease is essentially a pre-petition claim. Carmichael, 109 B.R. at 852. The rationale for allowing "use and occupancy" expenses as priority claims is to prevent unjust enrichment of the estate until the time the lease is rejected. In re Strause, 40 B.R. 110, 113 (Bankr. W.D. Wis. 1984) ("the principal purpose of according administrative priority to claims for benefit to the estate is to prevent unjust enrichment of the debtor's estate, rather than simply to compensate the creditor"); Carmichael, 109 B.R. at 851, n. 1. First National has not shown that the estate has been unjustly enriched or has received any benefit at all from the equipment lease. Allowing First National's claim regardless of whether the Robergs used the equipment would be contrary to the purpose of the administrative priority under § 503(b)(1). See Matter of Jartran, Inc., 732 F.2d 584, 586 (7th Cir. 1984).

The Robergs' rejection of the lease constituted a breach of the lease. First National's claim arising from the rejection of the lease is a pre-petition claim. 11 U.S.C. § 365(g)(1); § 502(g); Intran Corp., 62 B.R. 435; Pickens-Bond, 83 B.R. at 586. The motion for administrative expense will be denied.

### ORDER

IT IS ORDERED that First National Leasing, Inc.'s motion for administrative expense is denied.

SO ORDERED ON THIS 18th DAY OF MAY, 1993.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and a judgment by U. S. mail to: Judith O'Donohoe, Donald J. Pavelka, Jr. and U. S. Trustee.