

Appeal History:

appealed by Cross-Claimants Ernest & Louise Reiter 3/12/99
appealed by Cross-Claimants Arnold & Delores Bartz 3/15/99

appeal pending

[Eighth Circuit Court of Appeals Ruling](#)
[BAP Ruling](#)

In the United States Bankruptcy Court

for the Northern District of Iowa

KEVIN J. WEDEMEIER
KENDA R. WEDEMEIER
Debtor(s).

Bankruptcy No. 98-01705-W

Chapter 7

FIRST NATIONAL BANK
Plaintiff(s),

Adversary No. 98-9166-W

vs.

KEVIN J. WEDEMEIER, KENDA R.
WEDEMEIER,
HABBO FOKKENA, Solely in his Capacity as
Trustee,
ARNOLD A. BARTZ, DELORES J. BARTZ and
DUANE WEDEMEIER
Defendant(s).

ARNOLD A. BARTZ and DELORES J. BARTZ,
Cross-Claimants,

vs.

KEVIN J. WEDEMEIER, KENDA R.
WEDEMEIER,
HABBO FOKKENA, Solely in his Capacity as
Trustee,
Defendants to Cross-Claim,

EARNEST and LOUISE REITER,
Cross-Claimants,

vs.

KEVIN J. WEDEMEIR, KENDA R.
WEDEMEIER,
HABBO FOKKENA, Solely in his capacity as
Trustee,
Defendants to Cross-Claim.

ORDER RE TRUSTEE'S MOTION FOR SUMMARY JUDGMENT

This matter came before the undersigned on February 10, 1999 on Trustee's Motion for Summary Judgment. Atty. Ron Van Veldhuizen represented Arnold and Delores Bartz. Atty. John Hofmeyer represented Ernest and Louise Reiter. Habbo Fokkena appeared as Chapter 7 Trustee. After hearing arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B), (K).

STATEMENT OF THE CASE

Plaintiff First National Bank filed this action requesting that the Court determine the extent and priority of its lien on Debtors' crops. The Court approved a settlement agreement between the Bank, Debtors and Trustee which allowed Debtors to harvest the crops and escrow \$34,538 to protect landlord liens. Landlords Arnold and Delores Bartz (Bartz) and Ernest and Louise Reiter (Reiter) assert liens on the crops and seek payment of rent pursuant to farm leases with Debtors, or as administrative claims. Trustee seeks to avoid the landlords' liens. He argues Bartz and Reiter are not entitled to administrative claims.

STATEMENT OF FACTS

The parties have stipulated to the facts. Bartz and Reiter are landlords under farm leases with Debtors. They claim rent due and a lien on crops. Trustee did not assume the leases postpetition. Bartz claims \$15,630 due for lease payments from the \$34,538 escrowed, or as an administrative claim. Reiter claims \$18,338.25 from the amount escrowed or as an administrative claim.

Trustee filed a counter-cross claim against Bartz and Reiter. He states these landlords failed to perfect their liens with UCC filings prepetition. Therefore, both landlords are unperfected. Bartz filed a UCC statement postpetition, which Trustee seeks to avoid. Trustee also seeks to avoid the landlords' liens under §545, preserving the liens for the benefit of the estate under §551.

The parties agreed to submit this matter on stipulated facts and Trustee filed a Motion for Summary Judgment. He presents two issues for resolution:

1. Whether Trustee can avoid the statutory landlord liens and the unperfected contractual liens.
2. Whether the landlords are entitled to administrative or priority claims and the amounts of such claims.

According to the parties' Factual Stipulation, the written farm leases specify reasonable rent for the real estate. The leases were effective for the 1998 crop year and were unexpired leases of

nonresidential real estate on June 8, 1998 when Debtors filed their Chapter 7 petition. Debtors planted crops prepetition and harvested corn and soybeans postpetition. From crop proceeds, Debtors escrowed \$34,538.25 with Trustee to protect any liens of Bartz and Reiter.

As Trustee did not assume the leases within the time allowed under §365, the leases were deemed rejected on August 7, 1998, 60 days after Debtors filed their petition. Debtors continued in possession of the farm real estate through harvest. This benefitted Debtors' bankruptcy estate by allowing the crops to mature and increase in value.

Both Bartz and Reiter have statutory landlord's liens on crop proceeds. They also have contractual liens pursuant to their leases. Neither of the landlords perfected their contractual liens prepetition by filing a financing statement with the Iowa Secretary of State. Bartz filed a financing statement postpetition on June 12, 1998.

The parties' Factual Stipulation on pages 5 through 7 sets out a formula for determining the value of the growing corn and soybeans on the landlords' premises. The formula is based on a growing season of 153 days from May 15 to October 15. The crop yield and prices per bushel have been determined. Bartz and Reiter argue the value of their administrative claims should be determined by the value of the crops during the growing season. Trustee argues the landlords' administrative claims, if any, should be valued on a per diem basis based on the total annual rent of the farmland.

AVOIDANCE OF LIENS

Landlord liens may arise through statute and through contract. In re Arnold, 88 B.R. 917, 919 (Bankr. N.D. Iowa 1988). A contractual lien must be perfected by compliance with U.C.C. Article 9 filing requirements. In re Waldo, 70 B.R. 16, 18 (Bankr. N.D. Iowa 1986). The trustee may avoid a landlord's unperfected contractual lien in crops. Id.; 11 U.S.C. § 545(2). A landlord also has a statutory lien in crops pursuant to Iowa Code § 570.1 which has no requirements for perfection. Arnold, 88 B.R. at 919. Such a lien is subject to avoidance under §545(3) which wholly invalidates statutory liens for rent. Id. Trustee may avoid the postpetition perfection of a lien under §549(a). See In re Aztec Concrete, Inc., 136 B.R. 535, 537 (Bankr. S.D. Iowa 1992). Furthermore, a postpetition perfection of a security interest is void as violating the automatic stay. In re Prine, 222 B.R. 610, 611 (Bankr. N.D. Iowa 1997).

Based on the foregoing, Trustee may avoid the liens claimed by Bartz and Reiter. On the date Debtors filed their Chapter 7 petition, the landlords' contractual liens were unperfected and are avoidable under § 545(2). Their statutory liens arising from Iowa Code sec. 570.1 are avoidable under § 545(3). Bartz' postpetition perfection of its lien by filing a financing statement with the Iowa Secretary of State on June 12, 1998 is avoidable under §549 and void under §362(a).

Pursuant to §551, Trustee seeks to preserve the lien rights of Bartz and Reiter for the benefit of the bankruptcy estate. The Bank acknowledges that its liens are secondary to the landlords' liens and disclaims any interest in the amounts escrowed from the crop proceeds. Having avoided the landlords' liens, Trustee can preserve priority of the liens over junior secured interests under §551. See In re Coal-X Ltd., 103 B.R. 276, 281 (D. Utah 1986), rev'd on other grounds, 881 F.2d 865 (10th Cir. 1989); In re Roberts, 38 B.R. 128, 134 (Bankr. D. Kan. 1984). Bartz and Reiter held liens with priority over the Bank's lien which attached to the \$34,538.25 escrowed from crop proceeds. Trustee is entitled to avoid those liens under §545. The escrowed amount is preserved for the benefit of the bankruptcy estate under §551.

ADMINISTRATIVE CLAIMS

Bartz and Reiter assert administrative, priority claims under §§365(d)(3) and 503(b)(1)(A) pursuant to their leases. A debtor's rejection of a lease of nonresidential property can result in damages in three different intervals, i.e. (1) prepetition, (2) postpetition prior to rejection of the lease, and (3) postrejection. In re JAS Enter., Inc., 180 B.R. 210, 215 (Bankr. D. Neb. 1995), aff'd 113 F.3d 1238 (8th Cir. 1997). A claim for prepetition rent is classified as a general unsecured claim. Id. For the postpetition, prerejection period, landlords of nonresidential property are entitled to an administrative expense claim under §365(d)(3) which requires the trustee to timely perform debtor's lease. In re ASAP Printing, Inc., No. 93-60443LW, slip op. at 4 (Bankr. N.D. Iowa July 26, 1993). This Court has stated:

Sec. 365(d)(3) requires the trustee to pay rent under the lease between the [landlord] and Debtor from the date of filing the bankruptcy petition. . . until rejection of the lease. . . This obligation is treated as an administrative expense and is not dependent on the sec. 503(a)(1) requirement that the lessor show the use was necessary or of benefit to the bankruptcy estate.

Id.; see also In re International Ventures, Inc., 215 B.R. 726, 728 (Bankr. E.D. Ark. 1997) (holding lessor is entitled to administrative claim without showing benefit to estate in prerejection period). Under §365(d)(3), a landlord is entitled to full rent in the postpetition, prerejection period. International Ventures, 215 B.R. at 728.

Section 503(b)(1)(A) provides administrative expense priority for "the actual, necessary costs and expenses of preserving the estate" for the postrejection period. Not all postpetition expense is entitled to administrative priority. In re Ramaker, 117 B.R. 959, 962 (Bankr. N.D. Iowa 1990). "Such status will be granted if the court finds that the debt arises from a transaction with the debtor-in-possession and is 'beneficial to the debtor-in-possession in the operation of the business.'" Id. The claimant must show that other creditors received tangible benefits. International Ventures, 215 B.R. at 728; In re Bellman Farms, Inc., 140 B.R. 986, 995 (Bankr. D.S.D. 1991). The claimant should not be compensated if the expense solely furthered its own self-interest. Bellman Farms, 140 B.R. at 995. The parties have stipulated that use of the leased real estate produced a tangible benefit to the Bankruptcy Estate. Factual Stipulation at 4, ¶ 19. This stipulation is adopted by the Court as a finding that Debtors' use of the farm real estate was beneficial to the bankruptcy estate.

In considering a farm lease, the court in In re Norton, 112 B.R. 932, 937 (C.D. Ill. 1990), held that a crop share lease landlord was entitled to rent for the number of days the trustee used the farm prior to rejection of the lease in a Chapter 7 case. In In re Strause, 40 B.R. 110, 112 (Bankr. W.D. Wis. 1987), the court stated that the landlord of a rejected lease for pasture and cropland was clearly entitled to use and occupancy costs. Strause held that the test to be applied is benefit to the estate and consequence to all creditors. Id. The principal purpose of granting administrative expense priority is to prevent unjust enrichment of the estate. Id. In In re Nordyke, 43 B.R. 856, 863 (Bankr. D. Or. 1984), the court found that a debtor who did not assume a farm lease must pay for its use to raise crops as an administrative expense. It held the landlord was entitled to administrative rent for the period of occupation prior to surrender. Id. at 864.

Authority exists in this district intimating that a farm landlord whose liens had been avoided might be entitled to payment as an administrative expense claimant. Arnold, 88 B.R. at 919. In In re Heitshusen, No. L-88-00779-C, slip op. at 5 (Bankr. N.D. Iowa June 14, 1994), this Court held that a claim for the final lease payment under a farm lease is an administrative expense.

[The] Debtor benefitted from the lease in the operation of his farm business. Therefore, [the landlord's] final lease payment has administrative expense priority. Since all but the final eight days of the lease transpired during Debtor's Chapter 12 case, the entire lease payment due should be treated as a Chapter 12 administrative expense.

Id. at 5.

Absent contrary evidence, the lease rate is presumed to be the proper measure for the administrative claim. ASAP Printing, slip op. at 2. Rent under a lease is presumed fair rental value unless the evidence establishes that the lease rent is unreasonable. In re Bio-Med Labs., 131 B.R. 72, 74 (Bankr. N.D. Ohio 1991). The parties have stipulated that the rental rate in the leases is reasonable rent. Factual Stipulation at 2, ¶ 5. The Court adopts this stipulation as a finding of fact.

Another issue is the proper timing for payment of administrative claims. This Court has previously concluded that it is inappropriate to order immediate payment of a § 365(d)(3) administrative expense claim without considering the solvency of the bankruptcy estate. In re ASAP Printing, Inc., No. 93-60443LW, slip op. at 4 (Bankr. N.D. Iowa Nov. 24, 1993) (ASAP Printing II). Payment of postpetition rent under § 365(d)(3) must be made immediately upon demand unless a showing is made by the trustee that there is substantial doubt that sufficient funds will be available to pay all administrative claimants in full. Id. (citations omitted).

Unlike § 365(d)(3), there is no requirement in § 503(b)(1) that the trustee "timely perform" any obligation of Debtor arising under a use and occupancy claim. The timing of the payment of a § 503(b)(1)(A) claim is within the discretion of the bankruptcy court. See ASAP Printing II, slip op. at 3; In re United West, Inc., 87 B.R. 138, 141 (Bankr. D. Nev. 1988). The court's discretion should be exercised with reference to other provisions and policies of the Code. In re Dieckhaus Stationers of King of Prussia, Inc., 73 B.R. 969, 972 (Bankr. E.D. Pa. 1987). "It is an important policy underlying the Bankruptcy Code that a debtor's limited resources are to be equally distributed among all creditors with the same priority." In re Cardinal Indus., Inc., 109 B.R. 738, 742 (Bankr. S.D. Ohio 1989).

Based on the forgoing authority, the Court concludes Bartz and Reiter are entitled to administrative claims for the use of their farmland during the pendency of this case. Section 365(d)(3) requires payment for the 60 days postpetition prior to rejection of the lease, or from June 8, 1998 to August 7, 1998. Section 503(b)(1)(A) requires payment postrejection until the time the property was surrendered, or from August 8, 1998 through the completion of the harvest. Although not explicit in the parties' Factual Stipulation, the Court will assume the harvest was complete and the property was surrendered to the landlords on October 29, 1998, the date that the Court entered its Order Approving Stipulation for Settlement which settled the rights between First National Bank, Trustee and Debtors. Thus, the postrejection period consists of 82 days. Unless Trustee can establish substantial doubt that all administrative claims will be paid in full, he is directed to immediately pay Bartz and Reiter under §365(d)(3) for the postpetition, prerejection portion of their administrative claim.

COMPUTING AMOUNT OF ADMINISTRATIVE CLAIMS

The parties disagree on the method of calculating a per diem rate to determine the amount of rent due postpetition. Bartz and Reiter assert the total payments under the lease should be prorated over a period of 153 days which is the growing season for corn and beans from May 15 to October 15. They extrapolate this computation from a memo to Iowa Inheritance Tax Appraisers for valuing growing crops. They reason that the farmland only has worth during the crop growing season.

Trustee asserts the lease payments should be prorated over 365 days pursuant to the terms of the leases. The term of the Reiter lease is from January 16 to January 16 the following year, with payments of \$9,000 due March 1 and December 1, 1998. The Bartz lease ran from March 1 to March 1 the following year, with \$4,500 due March 1 and \$15,630 due November 15, 1998. Trustee argues the land has rental value during the nongrowing season when farmers typically perform ground preparation, fertilizer application and corn stalk removal.

In Norton, the court used 365 days as the denominator and the number of postpetition days the debtor used the farm land as the numerator to determine the amount of administrative rent which accrued postpetition. 112 B.R. at 936. The court in Strause likewise divided the total annual payment for leased pasture and cropland by the number of days of the lease term to get the per diem rate. 40 B.R. at 113. See also Nordyke, 43 B.R. at 863. This Court has used similar computations in computing per diem rates for leases of commercial property. See In re ASAP Printing, Inc., No. 93-60443LW, slip op. at 4 (Bankr. N.D. Iowa July 26, 1993) (granting administrative claim for pro rata share of monthly rent).

The Court agrees with Trustee's position. The formula advanced by Bartz and Reiter values growing crops for inheritance tax purposes. The value of a farm lease is not necessarily the same as the value of growing crops. As Trustee points out, the tenant of a farm lease has the benefit of the use of the land for purposes other than merely planting, growing and harvesting crops. One major benefit for the tenant outside the growing season is reserving the land for the growing season. The Court will use a per diem rate based on the total lease payments divided by 365 days to determine the amount of the landlords' administrative claims. The administrative claims of Bartz and Reiter are computed as follows:

	Annual lease <u>payment</u>	Rate per <u>diem</u>	§365(d)(3) Pre- rejection <u>60 days</u>	§503(b)(1) Post- rejection <u>82 days</u>	<u>Total</u>
Bartz	\$18000	49.32	2959.20	4044.24	\$7003.44
Reiter	\$20130	55.15	3309.00	4522.30	\$7831.30

Trustee is directed to immediately pay Bartz and Reiter their claims under §365(d)(3), or \$2,959.20 and \$3,309.00 respectively, unless substantial doubt exists whether all administrative claims will eventually be paid in full. The landlords' administrative claims under §503(b)(1) shall be paid with any other administrative claims.

WHEREFORE, Trustee's Motion for Summary Judgment is GRANTED.

FURTHER, the liens asserted by landlords Bartz and Reiter are avoided and the priority of such liens is preserved for the benefit of the bankruptcy estate.

FURTHER, landlords Bartz and Reiter hold claims for administrative rent as set forth above.

SO ORDERED this 4th day of March, 1999.

PAUL J. KILBURG

Paul J. Kilburg
U.S. Bankruptcy Judge