

In the United States Bankruptcy Court

for the Northern District of Iowa

RUBBER DEVELOPMENT INC.
Debtor(s).

Bankruptcy No. 98-03432-W
Chapter 11

ORDER RE MOTION TO COMPEL ASSUMPTION OR REJECTION OF UNEXPIRED LEASE

The above-captioned matter came on for hearing on December 14, 1999 on what was entitled a Motion to Compel Assumption or Rejection of Unexpired Lease. However, the parties agree that the issues involving the lease of a liquid nitrogen tank are resolved. The parties agree that this hearing can be properly considered a Motion for Approval of Administrative Expense under 11 U.S.C. §503(b)(1) (A). Debtor appeared by Attorney Thomas Fiegen. Movants Generic Resources, Inc. and Gerin Welding Sales appeared by Attorney Eric Lam. Evidence was presented after which the Court took the matter under advisement.

STATEMENT OF THE CASE

Debtor Rubber Development, Inc. filed its Chapter 11 petition in November of 1998. Debtor manufactures molded rubber products. When these products are removed from the molds, there exists a parting line and a waste product called flash. Liquid nitrogen is used in the manufacturing process to remove this parting line from the finished product.

Liquid nitrogen is stored in a liquid nitrogen tank. Debtor leased a liquid nitrogen tank from Gerin Welding Sales, Inc. in Santa Clara, California on October 29, 1991. The lease provided for a monthly rental. The monthly rental was either \$476.19 or \$476.16 per month. The lease between the parties reflects both numbers (Exhibit 1). The lease was for a period of five years with an option to renew for an additional five year period.

Debtor originally had business operations in California. In 1993, the liquid nitrogen tank was relocated from California to Iowa. It has remained in Iowa since that time. The lease payments were made until the lease expired in 1996. Since that time, the tank has been used but no payments have been made since the expiration of the lease. The tank was used by Debtor from the time of the filing of the Chapter 11 petition in November of 1998 until November of 1999 when the tank was returned to Gerin Welding. Since that time, Debtor has leased a replacement tank which the testimony reflects is similar, if not identical, to the leased tank. The rental for the replacement tank is \$350 per month.

The testimony reflects that Rubber Development produces products with sales of approximately \$2.4 million. Of this number, \$300,000 to \$400,000 per year of product uses liquid nitrogen in formulation of finished products.

ISSUE

There appears to be no issue that the rented tank was of benefit to Debtor in the manufacturing process. The only issue is the value to the estate. Debtor asserts that the value is the amount presently paid for the replacement tank in the amount of \$350 per month for a period of 12 months from the time of the filing of the petition until the Gerin Welding tank was returned to them. Gerin Welding, however, states that the value was lease value in the amount of \$476.19 per month for 12 months.

CONCLUSIONS

The Code provides that:

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including -

(1) (A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case.

11 U.S.C. §503.

It is universally held that for a postpetition claim to qualify for administrative expense priority, the claim must have benefitted the estate. Transamerican Natural Gas Corp., 978 F.2d 1409 (5th Cir. 1992). There is no substantial question in this case that the use of the liquid nitrogen tank benefitted Debtor in its manufacturing process. The only issue is the value of that benefit. To determine the appropriate rental, all evidence of fair rental value must be considered. In re Bilyk, 101 B.R. 586, 587 (Bankr. E.D. Mo. 1989). Absent contrary evidence, the prior lease rate is presumed to be the proper measure for the administrative claim. In re Cregar's Autowerks, Inc., No. L-92-00872-C (Bankr. N.D. Iowa, Dec. 10, 1993), slip op. at 4. Absent convincing evidence to the contrary, a fair rental rate may be determined by the prepetition rental rate agreed to be the parties. In re Mel-Hart Products, Inc., 136 B.R. 197, 199 (Bankr. E.D. Ark. 1991).

The Court has reviewed the entire record presented. Debtor and Gerin Welding entered into this lease in 1991. Obviously, the tank in question was of value to the estate during this entire period of time. While Debtor was ultimately able to get a replacement tank at a lesser rate, the Court concludes that the lease rate under all of the circumstances is a fair rental value which provided value to the estate during the one year post-petition period. As such, the Court concludes that Gerin Welding Sales, Inc. is entitled to an administrative claim in the amount of \$476.19 per month for a period of 12 months.

SO ORDERED this 3rd day of January, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge