

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

) Chapter 11
In re:)	
)	Case No. 23-90054 (CML)
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	
)	(Jointly Administered)
Debtors.)	
)	Re: Docket No. 982

DEBTORS’ OBJECTION TO AMENDED MOTION OF CLARIT REALTY, LTD. FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. § 503(B)(1)

The above-captioned wind-down debtors (collectively, the “Debtors”) submit this objection (the “Objection”) to the *Amended Motion of Clarit Realty, Ltd. for Allowance and Payment of Administrative Expenses Claim* [Docket No. 982] (the “Motion”). In support of the Objection, the Debtors state as follows:

Preliminary Statement

1. Clarit Realty, Ltd.’s (“Movant”) 503(b)(1) administrative expense claim for alleged damages arising from rejection of certain unexpired leases is improper because the alleged damages are not actual or necessary costs and expenses of preserving the estate, nor were they caused by the Debtors following the Petition Date.

Responses

2. The averments in paragraph 1 of the Motion are admitted.

¹ The Wind-Down Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Wind-Down Debtors’ service address is: 5330 Caramel Crest Lane, Charlotte, NC 28226.



3. The averments in paragraph 2 of the Motion are admitted.
4. The averments in paragraph 3 of the Motion are admitted.
5. The averments in paragraph 4 of the Motion are admitted.
6. The averments in paragraph 5 of the Motion are admitted.
7. The averments in paragraph 6 of the Motion are admitted.
8. The averments in paragraph 7 of the Motion are admitted.
9. The averments in paragraph 8 of the Motion are admitted.
10. The averments in paragraph 9 of the Motion are admitted.
11. The averments in paragraph 10 of the Motion are denied.
12. The averments in paragraph 11 of the Motion are denied.
13. The averments in paragraph 12 of the Motion are denied.
14. The averments in paragraph 13 of the Motion are denied.
15. The averments in paragraph 14 of the Motion are denied.
16. The averments in paragraph 15 of the Motion are denied.
17. The averments in paragraph 16 of the Motion are admitted.
18. The averments in paragraph 17 of the Motion are admitted.
19. The averments in paragraph 18 of the Motion are admitted.
20. The averments in paragraph 19 of the Motion are admitted.
21. The averments in paragraph 20 of the Motion are admitted.
22. The averments in paragraph 21 of the Motion are admitted.
23. The averments in paragraph 22 of the Motion are denied.
24. The averments in paragraph 23 of the Motion are denied.

Background

25. On August 4, 2023, the Court entered the *Order Granting Debtor's Fourth Omnibus Motion for Entry of an Order (I) Authorizing and Approving (A) the Rejection of Certain Unexpired Leases of Non-Residential Real Property and (B) Abandonment of Certain Personal Property Located at Non-Residential Real Property, If Any, Each Effective As of the Respective Effective Rejection Date, and (II) Granting Related Relief* [Docket No. 840] authorizing the Debtors to reject, as relevant here, five unexpired leases of real property where Movant was landlord: (1) 5900 Front Street, Kansas City, Missouri; (2) 2771 Chouteau Avenue, St. Louis, Missouri; (3) 1281 St. Paul Street, Rochester, New York; (4) 30 Pickering Street, Brookville, Pennsylvania; and (5) 270 Braddock Avenue, Turtle Creek, Pennsylvania (together with 205 University Drive, Amherst, Massachusetts, (the "Rejected Properties")), effective as of June 30, 2023.

26. On August 10, 2023, the Court entered *Order Granting Debtor's Fifth Omnibus Motion for Entry of an Order (I) Authorizing and Approving (A) the Rejection of Certain Unexpired Leases of Non-Residential Real Property and (B) Abandonment of Certain Personal Property Located at Non-Residential Real Property, If Any, Each Effective As of the Respective Effective Rejection Date, and (II) Granting Related Relief* [Docket No. 851] authorizing the Debtors to reject the unexpired lease of the property located at 205 University Drive, Amherst, Massachusetts (the "205 Property") effective as of June 30, 2023.

27. On September 2, 2023, the Movant filed Proof of Claim 726 alleging a general unsecured claim in the amount of \$106,811.32 for a "lease rejection and property damages claim" related to the 205 Property. A purported inspection report attached to the Proof of Claim provide a cost analysis for repair of various alleged damages arising out of the Debtor's use of the property totaling \$46,000. The inspection report does not provide any indication or finding of when the alleged damages occurred.

28. On September 8, 2023, the Movant filed Proof of Claim 728, alleging a general unsecured claim in the amount of \$885,249.00 for a “lease rejection claim and property damages claim” related to the Rejected Properties. Several purported inspection reports attached to the Proof of Claim provide a cost analysis for repair of various alleged property damages arising out of the Debtor’s use of the property (\$423,044), removal costs of certain personal property (\$180,000), and for miscellaneous fees (\$10,000), all totaling \$613,044. The inspection report does not provide any indication or finding of when the alleged damages occurred.

29. On November 5, 2023 the Motion was filed asserting a 503(b)(1) administrative claim for the same alleged property damages, removal costs, and miscellaneous fees referenced in Proofs of Claim 726 and 728 totaling \$659,044 (the “Damages Claim”), listed in more detail as follows:

#983 Clarit Realty, Ltd. Detail				
Lease	Rejection	Damage Report	Equipment Removal	Total Damages
5900 Premises	Rejected 4th Omni	\$ 229,544.00	\$ 32,500.00	\$ 262,044.00
2771 Premises	Rejected 4th Omni	\$ 61,000.00	\$ 62,500.00	\$ 123,500.00
1281 Premises	Rejected 4th Omni	\$ 81,000.00	\$ -	\$ 81,000.00
30 Premises	Rejected 4th Omni	\$ -	\$ -	\$ -
270 Premises	Rejected 4th Omni	\$ 61,500.00	\$ 85,000.00	\$ 146,500.00
205 Premises	Rejected 5th Omni	\$ 46,000.00	\$ -	\$ 46,000.00
Total				\$ 659,044.00

30. It is unclear from the Motion how the Damages Claim rises to the level of administrative priority.

Objection

31. Section 503(b)(1) states, “After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including . . . the actual, necessary costs and expenses of preserving the estate” The Movant has not established how its Damages Claim represents an actual or necessary cost of preserving the estate, or that it otherwise warrants administrative expense treatment under section 503. The Movant does cite one

case related to treatment of a claim for damage actually caused by a debtor after its petition was filed, but the Movant does not establish or even assert that any portion of the Damages Claim was caused by the Debtor post-petition.

32. The Movant has the burden of showing that it is entitled to administrative expense claims. *See Nabors Offshore Corp. v. Whistler Energy II, LLC (In re Whistler Energy II, LLC)*, 931 F.3d 432, 441 (5th Cir. 2019). The Motion seems to assert that post-rejection, post-move out inspection reports purporting to place a price tag on getting previously leased real property back to mint, broom swept condition rises to the level of “actual, necessary costs and expenses of preserving the estate.” That is incorrect.

33. Not all of a debtor’s post-petition expenses or obligations warrant administrative priority; *rather*, administrative priority applies only to a select subset of a debtor’s overall expenses, and such expenses must be both “actual” and “necessary” to preserve the estate. *See* 11 U.S.C. § 503(b)(1)(A); *); In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011); *Toma Steel Supply, Inc. v. TransAmerican Nat. Gas Corp. (In re TransAmerican Nat. Gas Corp.)*, 978 F.2d 1409, 1416 (5th Cir. 1992), *cert. denied*, 507 U.S. 2048 (1992) (requiring a creditor to prove that claims based on a contract were “actual, necessary costs and expenses of preserving the estate”). “The words ‘actual’ and ‘necessary’ have been construed narrowly: ‘the debt must benefit [the] estate and its creditors.’” *Id.* at 1416 (quoting *NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5th Cir. 1991), *cert. denied*, 502 U.S. 1032 (1992)); *see also Tex. v. Lowe (In re H.L.S. Energy Co., Inc.)*, 151 F.3d 434, 437 (5th Cir. 1998).

34. In order to constitute an “actual, necessary cost[] and expense [] of preserving the estate,” the cost generally arises post-petition and is a result of actions taken by the debtor in order to benefit the estate. *In re Talen Energy Supply, LLC*, Case No. 22-50094, 2023 WL 2816683, at *4

(Bankr. S. D. Tex. Apr. 6, 2023) (citing *Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)* 258 F.3d 385, 387 (5th Cir. 2001)). “Section 503(b)(1)(A) claims, therefore, generally stem from voluntary transactions with third parties who lend goods or services necessary to the successful reorganization of the debtor’s estate.” *In re Jack/Wade Drilling, Inc.*, 258 F.3d at 387.

35. The issue of whether the debtor-in-possession engaged in post-petition activity for the purpose of benefitting the estate is a way of testing whether a particular expense was truly necessary. The Debtors did not engage in any such post-petition action here. The rejection of an unexpired lease constitutes a breach of contract “immediately *before* the date of the filing of the petition.” 11 U.S.C. § 365(g)(1) (emphasis added). A party aggrieved by such a rejection may assert a general unsecured claim for damages. *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1661 (2019). Courts *consistently* hold that a post-petition breach of a pre-petition contract gives rise only to a pre-petition claim. *Pearl-Phil GMT (Far E.) Ltd. v. Caldor Corp.*, 266 B.R. 575, 582 (S.D.N.Y. 2001) (emphasis added). Therefore, no post-petition activity occurred.

36. Further, if the expense provided no benefit to the debtor’s estate, it cannot be necessary. *In re Northstar Offshore Grp., LLC*, 528 B.R. 286, 299 (Bankr. S. D. Tex. 2020). The inspection reports attached to the Motion do not assert that a post-petition activity even occurred, much less that it was provided any benefit to the estate whatsoever. The Debtors vacated each Rejected Properties by June 30, 2023, before any of the inspection reports are dated, and well before any clean-up or personal property removal activity would have taken place. Therefore, the Damages Claim could not have provided an “actual, necessary benefit” to the Debtors’ estate.

37. Additionally, removal of personal property and “miscellaneous” cleaning fees do not qualify as property damage caused by the Debtor post-petition. Claims for damages arising from a debtor’s breach of its clean-up obligation are not entitled to administrative expense priority—such

claims are generally unsecured. *In re Ames Dep't Stores, Inc.*, 306 B.R. 43 (Bankr. S.D.N.Y. 2004). This includes costs for removing abandoned personalty that has been deemed to be of inconsequential value to the estate. *Id.* This is because the obligation to perform such services is triggered by the rejection or termination of the lease—it is not a continuing obligation for which the debtor remains bound to perform. To qualify as an administrative expense, the service must have been provided pursuant to a post-petition transaction. *In re Talen Energy*, 22-90054 at 4 (S.D. Tex. Bankr. 2022). The Court looks to the time the agreement was consummated, not the time which the performance was made. *Id.* at 4. “It is established that a debt is not entitled to priority as a cost and expense of administration simply because the claimants’ right to payment arises after the debtor-in-possession has taken some action.” *Cramer v. Mammoth Mart, Inc. (In re Mammoth Mart, Inc.)*, 536 F.2d 950, 955 (1st Cir. 1976).

38. Again, no post-petition transaction occurred here. The Debtors did not seek clean-up or personal property removal services from the Movant, and therefore the Damages Claim is solely related to the pre-petition leases which were rejected and created a pre-petition unsecured claim. The Damages Claim is an unsecured claim and the Motion should be denied.

Reservation of Rights

39. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to

section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. The Debtors reserve all rights to supplement or add to the legal and factual arguments raised in this objection, on any bases whatsoever, at a future date.

40. The GUC Trustee reserves all rights with respect to any general unsecured claim held by the Movant.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court deny the Motion.

Houston, Texas
Dated: December 18, 2023

/s/ Zachary McKay

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Certificate of Service

I certify that on December 18, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Zachary McKay

Zachary McKay