

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

OTB HOLDING LLC, *et al.*,

Debtors.

CHAPTER 11

CASE NO. 25-52415-SMS

(Jointly Administered)

**RESPONSE OF WALLEN VENTURES, LLC IN OPPOSITION TO DEBTORS’
FOURTH OMNIBUS OBJECTION TO CLAIMS LISTED ON EXHIBITS A-1 AND A-2**

COMES NOW Wallen Ventures, LLC (“Wallen Ventures”) and files this *Response of Wallen Ventures, LLC in Opposition to Debtors’ Fourth Omnibus Objection to Claims Listed on Exhibits A-1 and A-2* (this “Response”). By and through this Response, Wallen Ventures opposes the above-captioned Debtors’ (the “Debtors”) August 5, 2025 *Debtors’ Fourth Omnibus Objection to Claims Listed on Exhibits A-1 and A-2* (Docket No. 544) (the “Claim Objection”). Wallen Ventures opposes the Claim Objection to the limited extent that it seeks to disallow the administrative priority claim held by Wallen Ventures.

BACKGROUND

1. On June 30, 2010, Cole OB Woodbridge VA, LLC (“Cole”) entered into a *Lease* with OTB (the “Original Lease”) for the use of real property located at 2651 Prince William Pkwy, Woodbridge, VA 22192 (the “Premises”). At the Premises, OTB operated an “On the Border Mexican Grill & Cantina”, Store # 69 (the “Restaurant”).

2. The Original Lease was assigned and assumed by Wallen Ventures from Cole on September 13, 2019.

3. On April 11, 2020, Wallen Ventures and OTB entered into an amendment to the Original Lease (the “First Amendment”).



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4. On August 1, 2020, Wallen Ventures and OTB entered into a *Second Lease Amendment Agreement* (the “Second Amendment”, together with the Original Lease and the First Amendment, the “Lease”).

5. Pursuant to the Second Amendment base rent was \$24,805.73 per month (“Rent”), and would contractually increase to \$25,301.84 per month starting in December of 2025.

6. On February 28, 2025, Wallen Ventures received a letter stating OTB’s intent to surrender possession of the Premises back to Wallen Ventures (the “February Letter”). Despite the February Letter stating the intent of the Debtors to surrender the Premises back to Wallen Ventures, an “On the Border” van remained parked at the Restaurant until the last week of April, 2025.

7. Debtors initiated the above-captioned jointly administered Chapter 11 bankruptcies on March 4, 2025 (the “Petition Date”).

8. On April 11, 2025, Wallen Ventures filed proof of claim no. 200 (the “Claim”). The Claim contained (i) an administrative priority component in the amount of \$22,405.19 (the “Administrative Claim”), and (ii) a general unsecured component in the amount of \$467,103.89.

9. Pursuant to the Lease, Rent came due on March 1, 2025 in the amount of \$24,805.73. From March 1st through March 3rd the Debtors owed a pre-petition prorated amount of \$2,400.54 (at a proration of \$800.18 per day). For the next 27 days of March, Debtors incurred an administrative expense debt for the remaining \$22,405.19.

10. On August 5, 2025, Debtors filed the Claim Objection, which listed Wallen Venture’s Administrative Claim in Schedule A-2 as one of the administrative priority claims that the Debtors sought to disallow.

DISCUSSION AND ARGUMENT

In the Claim Objection, Debtors seek to disallow the Administrative Claim held by Wallen Ventures in its entirety. This Court should deny Debtors’ Claim Objection to the limited extent it

seeks to disallow Wallen Venture's Administrative Claim. This is because: (i) Debtors have failed to meet their burden of proof as to the intent of the parties, and (ii) Debtors enjoyed the use of the Restaurant post-petition.

The Northern District of Georgia has ruled that a landlord may get prorated "stub-rent" for the post-petition liability of a debtor under a lease:

It follows from this analysis that even if Debtor was unalterably liable to pay rent for the entire month of November on November 1, so that the Landlord had no right to payment under section 365(d)(3), that Landlord would still be entitled to payment of an administrative expense for the use of the premises between November 4 and November 30. Whatever expense Debtor incurred for the stub period would reduce the amount of the prepetition claim in those circumstances.

Gwinnett Prado, L.P. v. Rhodes, Inc. (In re Rhodes, Inc.), 321 B.R. 80, 92 (Bankr. N.D. Ga. 2005) (Massey, J.)

In essence, this Court has ruled that stub-rent may be due for the portion of the month that was post-petition.

I. Debtors Have Failed to Meet Their Burden of Proof

Courts in this District have held that a party seeking to disallow a stub-rent claim must, "show what the parties to each lease intended with respect to when a liability to pay rent became fixed and unalterable." *See Gwinnett Prado, L.P. v. Rhodes, Inc. (In re Rhodes, Inc.)*, 321 B.R. 80, 90 (Bankr. N.D. Ga. 2005) (Massey, J.). That showing can be made "by parsing the language of the lease or through other evidence, including affidavits." *Id.*

The burden of proof is on the party seeking to disallow the claim, not the responding creditor:

Once a Movant has filed a supplemental brief, together with any evidence it desires to point to, Debtor may file a response articulating its reading of the lease and may also present evidence. If there is an issue of material fact concerning what the lease provides, the matter will have to be tried.

In re Rhodes, Inc., 321 B.R. at 90.

After supplemental briefs have been filed, “[i]f there is an issue of material fact concerning what the lease provides, the matter will have to be tried.” *Id.*

Here, Debtors have objected to Wallen Venture’s Administrative Claim through an omnibus Claim Objection. The Claim Objection makes no statement as to the intent of the parties when entering into the lease. The Claim Objection contains no affidavit regarding the intent of the parties. No factual allegations are made with respect to the Lease whatsoever.

Debtors have failed to meet their prima facie burden of proof in the Claim Objection. Debtors should be required to file supplemental briefing as to Wallen Venture’s Administrative Claim and the Lease with specificity.

II. The Estate Benefited from its Use of the Restaurant Post-Petition

A bankruptcy estate is also liable for any administrative expense associated with a Debtor’s actual post-petition use of leased property. “[T]hat which is actually utilized by a trustee in the operation of a debtor’s business is a necessary cost and expense of the preserving the estate and should be accorded the priority of an administrative expense.” *In re Beverage Canners Int’l Corp.*, 255 B.R. 89, 93 (Bankr. S.D. Fla. 2000). “It is a well established that postpetition storage co[s]ts, or use and possession costs, may be granted administrative expense priority.” *In re Great Northern Forest Products, Inc.*, 135 B.R. 46, 59 (Bankr. W.D. Mich. 1991).

Here, Debtor used the Restaurant to park an “On the Border” branded vehicle (the “Van”). The Van remained parked at the Restaurant until the last week of April, 2025, at which time an employee of the Debtors removed the vehicle. It is clear that the storage of the Van at the Restaurant benefited the Debtors’ estate.

Because the Van remained at the Restaurant for multiple months, the Restaurant was not fully surrendered to Wallen Ventures at the time the February Letter was received by Wallen

Ventures. Evidence should be taken as to the per diem value of the storage of the Van, which may mirror the community rate in Woodbridge, Virginia, for the storage of towed cars. *See generally In re Gray*, 2005 Bankr. LEXIS 374, *16 (Bankr. D. Kan. 2005).

CONCLUSION

The Claim Objection should be denied to the limited extent that it seeks to disallow the Administrative Claim held by Wallen Ventures. This is because: (i) the Debtors failed to meet their burden of proof as the intent of the parties when entering into the Lease, and (ii) the Debtors actually used the Restaurant post-petition for storage.

WHEREFORE, Wallen Ventures requests that the Court enter an order denying Debtors' Claim Objection and granting such other and further relief as may be just and proper.

This 3rd day of September, 2025.

JONES WALDEN LLC

/s/ Mark D. Gensburg

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing *Response of Wallen Ventures, LLC in Opposition to Debtors' Fourth Omnibus Objection to Claims Listed on Exhibits A-1 and A-2* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of and an accompanying link to this document to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing Program:

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This 3rd day of September, 2025.

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