

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE:)	
)	Case No. 08-35994
LANDAMERICA FINANCIAL GROUP, INC., et al.,)	Consolidated
)	Chapter 11
Debtors.)	
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REQUEST AND CLAIM BY CFS RAMBLER, L.P. FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSES PURSUANT TO 11 U.S.C. § 503(b)

CFS Rambler, L.P. (“CFS) respectfully submits this Request and Claim for Allowance and Payment of Administrative Expenses Pursuant to 11 U.S.C. § 503(b) to LandAmerica Financial Group, Inc. (“LFG”). The amount of \$96,418.54 is claimed (“the CFS Administrative Expense Claim”) for unpaid charges after the commencement of this bankruptcy case related to a certain lease of commercial property between CFS, as landlord, and LFG, as lessee.

FACTS

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).
2. CFS is the owner of a commercial office building located at 7557 Rambler Road, Dallas, Texas (“the Premises”). LFG was a tenant of CFS, pursuant to a certain lease (“the Lease”) which was entered into between the parties on or about October 1, 1998. Exhibit 1 hereto is a copy of the Lease.
3. On or about November 26, 2008, (“the Petition Date”), LFG filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code.
4. The Lease provides for LFG to rent the Premises through March 31, 2014.

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5. After the filing of the Petition, LFG continued to occupy the Premises. LFG did not reject the Lease, or purport to reject the Lease or to vacate the Premises, until on or after May 14, 2009.
6. CFS sent a demand letter to LFG dated July 22, 2009, for post-petition amounts on the Lease. With the demand letter, a copy of which is attached as Exhibit 2, CFS attached an outstanding invoice (included with Exhibit 2). CFS requested payment of the outstanding invoice.
7. The invoice included charges for the following:
 - a. Rent, including late fees, for certain of the months between December 2008 and May 2009, plus operating expenses, utility charges and storage charges, all as provided for in the Lease;
 - b. Repairs for damage in Suite 500 of the Premises for the following: 1) repair of missing ceiling grid; 2) furnish and installation of missing carpet base; and 3) removal of abandoned data cabling from above ceiling;
 - c. Charges for an AC space unit, owned by CFS, that was improperly removed and converted when LFG vacated Suite 500; and
 - d. Repairs for damage in Suite 1200 of the Premises for the following: 1) repair and paint for walls throughout; and 2) demo and patching of damaged vinyl tile in break and work area.
8. LFG has failed to remit payment of the outstanding invoice in response to CFS's demand letter and invoice. Therefore, CFS now seeks allowance and payment of an administrative claim in the amount of \$96,418.54, plus its attorney's fees and costs in this matter. See also Exhibit 3 hereto.

ARGUMENT

CFS seeks allowance and payment as administrative expenses for the amounts due pursuant to the Lease terms and applicable law. Section 503(b)(1)(A) of the Bankruptcy Code provides for allowance of administrative expenses for “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(b)(1)(A). To be deemed an administrative expense, a post-petition expense must arise from a transaction between the claimant and the debtor-in-possession, and must benefit the debtor-in-possession in the operation of its business. In re Mid Region Petroleum, Inc., 1 F.3d 1130, 1133 (10th Cir. 1993).

If the debtor in possession elects to continue to receive benefits from the other party to an executory contract pending a decision to assume or reject the contract, the debtor in possession is obligated to pay for the reasonable value of those services which, depending on the circumstances of a particular contract, may be what is specified in the contract.

Nat'l Labor Rel. Bd. v. Bildisco & Bildisco, 465 U.S. 513, 531 (1984); In re Crystal Apparel, Inc., 220 B.R. 816, 830 (Bankr. S.D.N.Y. 1998). The mere fact that a debtor is occupying a landlord's premises is sufficient, in and of itself, to establish that payment for that use and occupancy is an actual, necessary expense of preserving the debtor's estate under section 503(b)(1). In re Goody's Family Clothing, Inc., 392 B.R. 604, 614 (Bankr. D. Del. 2008) citing Zagata Fabricators, Inc. v. Superior Air Prods., 893 F.2d 624, 627 (3d Cir. 1990). Because LFG was occupying the premises until May 14, 2009, and beyond, LFG is obligated to pay for the value of the leased premises that it occupied post-petition. The amounts due as administrative expenses include all amounts due under the Lease, including the monthly rental amount, taxes, interest, late fees and attorney's fees. See In re Midway Airlines, Corp., 406 F.3d 229, 234-240 (4th Cir. 2005).

The CFS Administrative Expense Claim includes the entire amount of the May 2009 rent. Section 5.5 of the Lease states that the rent is due in advance on the first of each month. Therefore, although LFG purported to vacate the Premises on May 14, 2009, the rent for the entire month is due. CFS contends that, when a lease provides that rent is due in advance on the first of each month, there is a valid claim for administrative expenses, of the entire monthly amount, if the debtor occupies the premises after the first day of the month and fails to remit payment. See In re Goody's Family Clothing, Inc., 392 B.R. 604 at 609; see also In re Comdisco, Inc., 272 B.R. 671, 674-675 (Bkrcty.ND.III. 2002). Moreover, LFG's breaches of the Lease by, among other things, failing to repair missing ceiling grids; removal of the carpet base; removal of the AC space unit; failing to repair vinyl tile and walls; and failing to remove data cable meant that, effectively, LFG failed to vacate the Premises prior to the end of May 2009.

LFG is also required to pay for the cost of repairs that were required by the Lease to be made after LFG vacated the Premises. When a debtor fails to maintain a leased premises in accord with a lease obligation, the debtor is allowed to use the money saved and not paid for lessor's benefit to continue operations and thus there is a benefit to the estate. See In re United Trucking Service, Inc., 851 F.2d 159 (6th Cir. 1988). Because the cost of repairs benefitted the estate -- in that LFG saved the amount of money for the repairs for the business operations -- CFS is entitled to an administrative expense for same.

Additionally, conversion of a lessor's property that is used in a debtor's business operations confers a benefit on the estate and is thus allowed as an administrative expense. See In re Hayes Lemmerz Intern., Inc., 340 Bar. 461, 481 (Bkrcty.D.Del. 2006). Upon its vacating the leased premises, LFG removed the AC space unit from Suite 500, which is property of CFS. The AC space unit was used in LFG's business operations to cool its computer equipment and

keep it from overheating. The AC space unit therefore confers a benefit on the estate and the cost of the unit should be awarded to CFS as an administrative expense. *Id.*

The above benefits regarding the Leased Premises constitute actual necessary expenses incurred for the benefit of LFG. By using the leased premises, LFG was able to continue business operations and to provide services to its customers, which in turn resulted in continuing revenues and the generation of cash for the debtor-in-possession.

The charges under the Lease are standard fees and/or rates, or are fees based upon the market rate of the premises leased by LFG. The rented space provided by CFS under the Lease, and the other benefits mentioned above, unquestionably benefitted the estate. The value received by LFG through this Lease is based on negotiated rates. In short, repairs and the AC space unit provided by CFS constitute “actual, necessary costs and expenses of preserving the estate” and are entitled to allowance as administrative expenses pursuant to section 503(b) of the Bankruptcy Code.

RELIEF REQUESTED

WHEREFORE, CFS requests that this court enter an order: 1) allowing CFS’s administrative expenses against LFG in the total amount of \$96,418.54; 2) requiring LFG to pay such administrative expenses within ten (10) days of an entry of the order granting the relief requested herein; and 3) granting such other and further relief as may be just, including interest and attorney’s fees. CFS further requests that no action be taken adverse to this claim without notice and opportunity to be heard.

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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2009, the foregoing Request and Claim by CFS Rambler, L.P. for Allowance and Payment of Administrative Expenses Pursuant to 11 U.S.C. § was filed electronically with the Clerk of Court using the CM/ECF system, and that a copy was sent by regular mail, postage prepaid, to the following:

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